



PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA

FINANCE COMPANIES (AMENDMENT)
ACT, No. 23 OF 1991

[Certified on 20th June, 1991]

Printed on the Orders of Government

Published as a Supplement to Part II of the **Gazette of the Democratic
Socialist Republic of Sri Lanka** of June 21, 1991

PRINTED AT THE DEPARTMENT OF GOVERNMENT PRINTING, SRI LANKA

TO BE PURCHASED AT THE GOVERNMENT PUBLICATION BUREAU, COLOMBO

Price : 90 cents.

Postage : Re. 1.00

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L.D.—O 84/90

AN ACT TO AMEND THE FINANCE COMPANIES ACT, NO. 78 OF 1988

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

1. This Act may be cited as the Finance Companies (Amendment) Act, No 23 of 1991. short title.

2. The following new section is hereby inserted immediately after section 5 of the Finance Companies Act, No. 78 of 1988 (hereinafter referred to as the “principal enactment”) and shall have effect as section 5A of that enactment :— Insertion of new section 5A in Act No. 78 of 1988.

“ Failure to pay deposit to be an offence.

5A. (1) Where any finance company fails to pay a deposit and the interest thereon on demand by a depositor, on or after the date of maturity of such deposit, every director, manager or secretary of such company shall be guilty of an offence under this Act :

Provided however that, no such director, manager or secretary shall be guilty of an offence if he proves that such offence was committed without his knowledge, and that he exercised all due diligence to prevent the commission of that offence.

(2) Any depositor whose deposit and interest has not been paid on maturity in terms of subsection (1), may institute proceedings in the Magistrates Court in terms of section 136 of the Code of Criminal Procedure Act, No. 15 of 1979.”

3. Section 9 of the principal enactment is hereby amended in subsection (1) thereof, by the addition immediately after paragraph (r) of the following new paragraph :— Amendment of section 9 of the principal enactment.

“(rr) the remuneration and other payment to directors or employees of finance companies by way of salary, allowance, perquisites and reimbursement of expenses”.

Insertion
of new
section 12B
in the
principal
enactment.

4. The following new section is hereby inserted immediately after section 12A of the principal enactment and shall have effect as section 12B of that enactment :—

“Apoin-
ment of
officer of
Central Bank
as its
represent-
ative in
finance
Company.

12B. (1) The Monetary Board of the Central Bank of Sri Lanka may appoint an officer of the Central Bank of Sri Lanka as its representative in every finance company registered under this Act, for the purpose of monitoring the affairs of such company.

(2) It shall be lawful for a representative appointed under subsection (1) to exercise all the powers conferred on the Director by section 12; and—

(a) to participate in the meetings of the Board of Directors of such company and to require such Board of Directors to defer reaching a decision on any matter which, in his view, would be detrimental to the interests of the depositors and creditors of that company or to the national economy, for a period not exceeding forty eight hours and it shall be the duty of such Board of Directors to comply with such requirement. The Board of Directors may, thereafter, take a decision on such matter only with the written concurrence of the Chairman of the Monetary Board;

(b) to convene meetings of the Board of Directors of such company when he considers it necessary;

(c) to employ professional or expert staff to assist him in the monitoring and the supervision of the affairs of such company.

(3) It shall be the duty of every director, manager, secretary, employee or auditor of any finance company to comply with any requirement imposed upon him under this

section and to afford to the representative, or to any auditor authorised by him, or to any person employed under paragraph (c) of subsection (2) access to all books and records of that finance company including its cash balances, assets and liabilities whenever requested to do so by the Director.

(4) The costs of employing such representative and his supporting staff shall be recovered from the finance company.

(5) The terms and conditions of employment of the representative and his staff shall be determined by the Board.

(6) The representative shall exercise his powers under this section under the direction and supervision of the Director."

5. Section 25 of the principal enactment is hereby amended as follows :—

**Amendment
of section
25 of the
principal
enactment.**

(1) by the repeal of subsection (1) thereof, and the substitution therefor, of the following subsection :—

" (1) If the Board upon review of the facts and circumstances set out in a report of the Director, is of the opinion that any past or present Director, chief executive, manager, employee or an agent of a finance company has fraudulently, wrongfully and unlawfully enriched himself or any other person or persons by misapplication or any other improper utilisation of any money or property belonging to the company or has by an act of omission, enabled any other person to fraudulently, wrongfully, or unlawfully enrich himself by misapplication or other improper utilisation of money or property belonging to the company the Board may notwithstanding that action has also been taken under section 18 or 20, require such Director,

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chief executive, manager, employee, agent or any other person to repay or restore to the finance company the money or property attributable to, or which may reasonably be suspected of belonging, to, the finance company or which may reasonably be suspected of having belonged to the Finance Company and to have been utilized or expended to acquire any asset, construct any building or discharge any debt or liability with interest on such money or property at such rate as the Board may think fit and within such period of time as may be specified by the Board”;

(2) in subsection (2) of that section—

(a) in paragraph (g) thereof—

(i) by the substitution for the words “assets purchased with monies attributable to the funds of a finance company” and “assets specified to in that notice”, of the words “assets purchased or acquired by any other means by the improper utilization or misapplication of monies attributable to the funds of the finance company” and “asset specified in that notice” respectively; and

(ii) by the substitution for all the words from “Every notice issued” to the end of that paragraph, of the following:—

“Every notice issued under this paragraph shall be in force for a period of ninety days and during the period a notice issued under paragraph (g) is in force any transfer of ownership, possession or other interest in any property or assets specified in such notice shall be void and of no effect;”;

(b) in paragraph (i) thereof by the substitution for the words "the custody of such authority;" of the words "the custody of such authority and during the period, that a notice is in force, the Registrar of Lands, the Commissioner of Motor Traffic and the Registrar of Companies and any other relevant authority on whom a copy of such notice has been served under paragraph (h) shall not register any deed or instrument of transfer or other document of title relating to the property or assets specified in that notice;"; and

(c) in paragraph (k) thereof—

(i) by the repeal of sub-paragraph (ii) thereof, and the substitution therefor of the following sub-paragraphs:—

" (ii) The District Court upon application made to it under sub-paragraph (i) and being satisfied that such past or present Director, chief executive, manager, employee or agent of a finance company referred to in subsection (1) has fraudulently, wrongfully, unlawfully, enriched himself, or any other person or persons by misapplication or any other improper utilization of any money or property belonging to the company or has by an act of omission, enabled any person to fraudulently, unlawfully and wrongfully enrich himself by misapplication or other improper utilization of money or property to the company shall direct a writ of execution to issue to the Fiscal authorising and requiring him to seize and sell—

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(a) any property or assets owned by such Director, chief executive, manager, employee or agents of the finance company or any other person or persons so enriched ; or

(b) any property or assets held in trust by a relative or any other person for such Director, chief executive manager, employee or agent of the finance company ; or

(c) any property or assets acquired or purchased with monies attributable to the assets of the finance company.

(iii) Where any property or assets are sold in pursuance of a writ issued under subparagraph (ii) of paragraph (k) the excess, if any of the proceeds of sale over the monies held by court to be attributable to the finance company, shall be repaid to the owner of such assets or property ;” ; and

(ii) by the renumbering of sub-paragraphs (iii) and (iv) as sub-paragraphs (iv) and (v) thereof.

Amendment
of section
33 of the
principal
enactment.

6. Section 33 of the principal enactment is hereby amended in subsection (2) thereof by the repeal of paragraph (c) thereof and the substitution therefor of the following paragraph :—

“ (c) The regulation on the prohibition of the issue by any finance company of any prospectus or advertisement

relating to any aspect of finance business, and the conditions subject to which, any such prospectus or advertisement may be issued."

7. Section 38 of the principal enactment is hereby repealed and the following section substituted therefor:—

Replacement of section 38 of the principal enactment.

"Penalties.

38. (1) Every person who is guilty of an offence under this Act, shall be liable on conviction after trial before a Magistrate's Court, to imprisonment of either description for a term not exceeding three years or to a fine not less than fifty thousand rupees and not exceeding one million rupees.

(2) A Director, Manager or Secretary of a body corporate or a member of an unincorporate body held guilty of an offence under this Act and ordered to pay a fine shall be guilty of an offence under this Act, if he applies any funds of such body corporate or unincorporate body as the case may be for the payment of such fine or part thereof.

(3) All fines received under this Act shall be credited to the Depositors' Relief Fund maintained by the Central Bank of Sri Lanka."

8. Section 46 of the principal enactment is hereby amended by the substitution for the definition of the expression "Finance Company", of the following definition:—

Amendment of section 46 of the principal enactment.

"finance company" means a company as defined in the Companies Act, No. 17 of 1982, registered under this Act, for carrying on finance business and shall be deemed to include for the purpose of any action that may be taken by the Board or the Directors under this Act, any Institution within the meaning of the Control of Finance Companies Act, No. 27 of 1979, notwithstanding that such "Institution" has ceased to carry on finance business on the day preceeding the date of commencement of this Act."

Validation
of actions
&c.

9. Any action taken, order made or direction given under the Finance Companies Act, No. 73 of 1988 read with the Emergency (Finance Companies) Regulations, made under the Public Security Ordinance, during the period commencing on November 20th 1990, and ending on the date of commencement of this Act, shall be valid and effective as if the Public Security Ordinance, had authorised the making of those regulations.”.

Sinhala text
to prevail
in case of
inconsistency.

10. In the event of any inconsistency between the Sinhala and Tamil texts of this Act the Sinhala text shall prevail.