



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**BANKING (SPECIAL PROVISIONS)
ACT, No. 17 OF 2023**

[Certified on 14th of September, 2023]

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*Banking (Special Provisions)
Act, No. 17 of 2023*

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L.D.–O. 48/2022

AN ACT TO PROVIDE FOR THE RESOLUTION AUTHORITY OF THE CENTRAL BANK AND THE RESOLUTION MEASURES THAT CAN BE IMPLEMENTED BY THE CENTRAL BANK AND THE GOVERNMENT OF SRI LANKA TO RESOLVE A LICENSED BANK SUBJECT TO CAPITAL, LIQUIDITY, INSOLVENCY OR ANY OTHER RISK IN A TIMELY MANNER; TO REVIVE SUCH BANK AS A GOING CONCERN TO ENSURE THE INTERESTS OF THE DEPOSITORS AND CREDITORS THEREOF ENSURING THE FINANCIAL SYSTEM STABILITY; TO PROVIDE FOR A DEPOSIT INSURANCE SCHEME AND WINDING UP PROCESS FOR SUCH LICENSED BANKS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

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

1. (1) This Act may be cited as the Banking (Special Provisions) Act, No. 17 of 2023.

Short title and
date of
operation

(2) The provisions of this Act other than the provisions of this section shall come into operation on such date as the Minister may appoint by Order published in the *Gazette* (in this Act referred to as the “appointed date”).

(3) The provisions of this section shall come into operation on the date on which the Bill becomes an Act of Parliament.

2. Notwithstanding anything to the contrary in any other written law for the time being in force, provisions of this Act shall apply in the exercise, performance and discharge of the powers, duties and functions relating to the authority vested with the Central Bank to resolve banks licensed under the Banking Act (in this Act referred to as the “licensed banks”).

Application of
the Act

PART I

RESOLUTION AUTHORITY OF THE CENTRAL BANK

Resolution
authority of the
Central Bank

3. The Central Bank shall be responsible for the exercise of resolution authority in respect of licensed banks under this Act.

Establishment of
a department for
the purpose of
resolution of
licensed banks

4. (1) For the purposes of this Act, the Central Bank shall establish a Department under the Central Bank, for the proper and efficient exercise, performance and discharge of its powers, duties and functions relating to the resolution authority under this Act.

(2) The Department established under subsection (1) shall not carry out regulatory and supervisory functions over licensed banks under any written law.

Exercise,
performance
and discharge of
resolution
authority by the
Central Bank

5. (1) In the exercise, performance and discharge of the powers, duties and functions relating to its resolution authority, the Central Bank shall take into consideration, the structure, scale, complexity, interconnectedness with other institutions, and the risk profile of the licensed bank subject to resolution.

(2) The Central Bank shall have the power to require any person to provide any information necessary for the Central Bank to decide upon and formulate resolution measures, including updates and supplements of information relating to the resolution plan, and information collected through on-site examinations.

(3) Any licensed bank, regulatory or supervisory authority, or such other person on whom any Order, regulation, direction, determination, guideline or instruction has been issued or a request has been made by the Central Bank under this Act, shall comply with such Order, regulation, direction, determination, guideline or instruction or request forthwith or not later than the time period specified therein.

(4) Every regulatory and supervisory department of the Central Bank shall extend cooperation to the Department established under section 4 to expeditiously facilitate the relevant regulatory or supervisory approvals required to implement the resolution measures prepared under this Act.

6. (1) The provisions of any one or more enactments specified in the Schedule to this Act or any part of such provisions relating to resolution, winding up or deposit insurance shall have no application in the exercise, performance and discharge of the powers, duties and functions of the Central Bank on a licensed bank subject to resolution under this Act in securing compliance with the provisions of this Act and any other regulation, Order, direction, determination, guideline or instruction issued or made thereunder by the Central Bank.

Exclusion of the application of certain other enactments

(2) Notwithstanding the Central Bank exercising the resolution authority under this Act, the regulatory requirements applicable to any licensed bank under the Banking Act or any regulation, Order, direction, determination, guideline or instruction issued or made thereunder, shall continue to apply in respect of such licensed bank subject to resolution.

7. (1) Where the Central Bank is satisfied that a holding company of a licensed bank, a subsidiary or associate company of a licensed bank or any entity within a financial group or conglomerate of such licensed bank, as the case may be, which is not regulated or supervised by the Central Bank—

Provisions of this Part of this Act to apply to a holding company, &c. of a licensed bank

- (a) provides any service or performs any duty for or on behalf of such licensed bank subject to resolution, which are or are deemed to be significant to perform critical functions of such licensed bank; or
- (b) the suspension or discontinuation of such service or duty by such entities is or is likely to be

detrimental to the interests of the depositors and creditors of such bank, or jeopardize the stability of the financial system of Sri Lanka, and

in the event, there are no alternatives available for such licensed bank to ensure the continuity of such service or duty which is significant to perform critical functions, it shall be lawful for the Central Bank to apply the provisions of this Part of this Act to a company or entity specified in this subsection in the same manner as they apply to a licensed bank subject to resolution.

(2) In the event of any company or entity specified in subsection (1) is regulated by a financial sector regulator other than the Central Bank, the Central Bank shall prior to taking any measures to resolve such company or entity under this Act, consult such regulator and give due notice to such regulator in respect of such measures.

Objectives of
resolution

8. The Central Bank shall, in the exercise, performance and discharge of its powers, duties and functions relating to the resolution authority under this Act, on a licensed bank, endeavour to ensure-

- (a) the stability of the financial system, including the payment, clearing and settlement systems;
- (b) the continuity of critical functions of such licensed bank;
- (c) the protection of public funds by minimizing public financial support;
- (d) the protection of depositors of such licensed bank;
and
- (e) avoiding destruction of the value of assets and minimizing losses to creditors and minimizing overall costs of resolution of such licensed bank.

9. (1) Every licensed bank shall prepare a recovery plan as part of its risk management process, which shall provide for measures to be taken by such licensed bank in the event of deterioration of its financial position.

Licensed banks
to prepare a
recovery plan

(2) In the preparation of a recovery plan, a licensed bank shall take into consideration, financial and macroeconomic crisis scenarios relevant to the specific characteristics of the licensed bank, systemic events, crisis scenarios specific to such licensed bank and other individual entities of the banking group, as a whole.

(3) In the preparation of a recovery plan, a licensed bank shall not rely on in any manner, the access to any extraordinary public financial support.

(4) Every licensed bank shall update its recovery plan at least annually, or at the request of the Central Bank in the event of any change in the organizational structure or legal structure of the licensed bank, business activities or financial situation of the licensed bank, which may cause a significant impact on the recovery plan or where it requires modification.

(5) The recovery plan prepared under subsection (1) shall include –

- (a) a presentation of the general recovery capacity of the licensed bank;
- (b) the scope of the recovery plan, considering the nature, scale, structure, complexity, and interconnectedness to other institutions of the licensed bank;
- (c) the details of other entities within the banking group covered under the recovery framework;
- (d) the details of communication planning on recovery options;

- (e) an identification of critical functions and critical shared services of the licensed bank that are organized in a manner ensuring the continuous availability of such functions or services to the entire licensed bank under possible recovery or resolution processes;
- (f) an identification of recovery indicators, triggers, and procedures to ensure the timely implementation of recovery actions;
- (g) the range of recovery options available to deal with shocks, to capital, liquidity and all other aspects that may arise from entity specific stresses or market wide stresses, or both of such stresses, as the case may be;
- (h) the time and resources required to implement recovery options;
- (i) significant deficiencies of resources that may hinder the effective and timely implementation of the recovery plan;
- (j) the actions to be taken to remedy the impediments including the availability of business continuity planning;
- (k) the details on costs of implementation;
- (l) a detailed description of how the recovery plan is integrated into the licensed bank's management;
- (m) the persons who are responsible for the development and implementation of the recovery plan within the licensed bank;
- (n) the policies and procedures for approving the recovery plan;

- (o) the mechanisms and measures for-
 - (i) the conservation or reconstitution of the funds of the licensed bank;
 - (ii) ensuring that the licensed bank has access to emergency financing sources, including potential sources of liquidity, assessment of available collateral and assessment of the possibility of transferring liquidity between entities within the group and between the businesses;
 - (iii) ensuring that the licensed bank may continue its activities and fulfill its obligations when they become due;
 - (iv) reducing leverage risk and effect;
 - (v) restructuring debts;
 - (vi) maintaining continuous access to financial market infrastructures;
 - (vii) facilitating the sale of assets or businesses within an appropriate period of time in order to restore financial soundness; and
 - (viii) facilitating the implementation of the recovery plan, including necessary measures to allow its timely recapitalization;
- (p) other management actions or strategies aimed at restoring the financial soundness and the anticipated financial effect of those actions or strategies;
- (q) an analysis of the situations in which the licensed bank may seek access to the financial facilities offered by the Central Bank and identify the assets that can be qualified as collateral;

- (r) the preparatory measures that the licensed bank has adopted or intends to adopt; and
- (s) such other requirements or information, as the Central Bank may, from time to time, specify or require, to be included in a recovery plan.

(6) The Central Bank may, if it considers necessary, direct all or selected licensed banks to submit recovery plans prepared under subsection (1) for its approval, within one month from the expiration of each calendar year.

(7) Where the Central Bank considers that a recovery plan submitted by a licensed bank has major deficiencies or that there are obstacles in the implementation of the recovery plan, the Central Bank shall notify such deficiencies or the obstacles to such licensed bank and direct such licensed bank to submit a revised recovery plan, containing adequate solutions to overcome the deficiencies or obstacles, within one month from the date of such notification.

(8) The Central Bank may, at the request of the licensed bank, extend the period specified in subsection (7), to a period which shall not exceed fourteen days from the date of expiry of the period of one month specified in subsection (7).

(9) Where the Central Bank is of the opinion that-

- (a) a licensed bank has not identified the changes that are required to be introduced to its economic activity; or
- (b) the actions proposed by the licensed bank to address the deficiencies or obstacles of such recovery plan are not adequate,

the Central Bank shall direct such licensed bank to take one or more of the measures specified in subsection (10) or any

other measure as it may consider necessary and proportionate, taking into consideration the seriousness of the deficiencies and the effect of the respective measures on the continuity of the business of the licensed bank.

(10) The measures referred to in subsection (9) shall include the following: -

- (a) to reduce the risk profile of the licensed bank, including reducing the liquidity risk;
- (b) to apply prompt recapitalization measures;
- (c) to review the strategy and structure of the licensed bank;
- (d) to modify the financing strategy, in order to improve the shock resistance of the critical functions; or
- (e) to modify the administration structure of the licensed bank.

10. (1) The Central Bank may, from time to time, issue directions to any licensed bank on preparation of recovery plans for such licensed bank.

Central Bank to issue directions on the preparation of recovery plans

(2) The regulatory or supervisory departments of the Central Bank shall promptly notify the Department established under section 4, any changes that would require a reassessment or updating of the recovery plans of licensed banks.

11. (1) The Central Bank shall design a resolution plan for each licensed bank having a systemic importance or impact in keeping with the international standards and best practices applicable to resolution of banks.

Central Bank to design a resolution plan

For the purpose of this subsection, a licensed bank shall be deemed to have systemic importance or impact, where failure of such bank may cause or likely to cause a severe impact on the financial system stability due to the size, interconnectedness, lack of substitutability, complexity, and such other similar criteria as may be determined by the Central Bank.

(2) The Central Bank shall evaluate and update periodically, or immediately after any material changes in the organizational structure of such licensed bank, its business, or its financial condition, the resolution plan designed under subsection (1).

(3) The Central Bank shall provide for in the resolution plan, options for the implementation of resolution measures and the exercise of its resolution authority under this Act.

(4) At the request of the Central Bank, a licensed bank shall provide assistance to the Central Bank in elaborating and updating the resolution plan by the Central Bank.

(5) A licensed bank shall immediately inform the Central Bank, of any changes that may require an evaluation or updating of the resolution plan designed by the Central Bank.

(6) At the request of the Central Bank, a licensed bank shall provide to the Central Bank all information necessary for the effective implementation of the resolution plan, including the details of –

- (a) the critical functions of such licensed bank, including the significant holdings of assets and liabilities relating to the respective functions and activities;
- (b) the description of the class or classes of debt obligations of the licensed bank and of all the legal entities under its control;

- (c) the off-balance sheet exposures of the licensed bank and of the other legal entities within the banking group;
- (d) the main operations of hedging the risks of the licensed bank and of the other legal entities within the banking group;
- (e) the main contracting counterparties of the licensed bank or of the critical functions;
- (f) an analysis of the impact of the distressed financial condition of the licensed bank on the main contracting counterparties;
- (g) each system in which the licensed bank carries out significant transactions in terms of the number or value, including the identification of their correspondence with legal entities and critical functions;
- (h) each payment, clearing or settlement system in which the licensed bank is a participant, directly or indirectly, including the establishment of their correspondence with legal entities and critical functions;
- (i) the inventory, and the main information management systems on risk management, accounting, and financial and statutory reporting used by the licensed bank, including the establishment of their correspondence with legal entities and critical functions;
- (j) the agreements executed on provision of services-related information management systems, information technology systems or licences, including the establishment of their correspondence with legal entities and critical functions;

- (k) the interconnectedness and interdependencies between the licensed bank and other stakeholders including the staff, shared facilities and systems or capital financing or liquidity mechanisms, existing or contingent credit exposures, cross-border guarantee agreements, cross-default collateral agreements, and cross-settlement agreements between affiliates, risk transfer arrangements and back-to-back trading arrangements or service provision agreements;
- (l) the key management personnel of the licensed bank, who are responsible for providing the information necessary for the elaboration of the licensed bank's resolution plan;
- (m) the mechanisms that the licensed bank has put in place to ensure that the Central Bank will receive all necessary information for the purpose of resolution plan;
- (n) termination of any agreements by the licensed bank and any other legal entity within the banking group with third parties which may be triggered by a decision of the authorities to apply one or more resolution measures and whether the consequences caused by the termination may affect the implementation of such resolution measures; and
- (o) possible sources of liquidity in support of the resolution.

(7) All regulatory and supervisory departments of the Central Bank and any other authority regulating the financial sector, other than the Central Bank shall extend cooperation to the Department established under section 4, to implement the resolution function and, for that purpose, to ensure that the information referred to in subsection (6) is available with such supervisory and regulatory departments

and other authorities regulating the financial sector other than the Central Bank. Where such information is available, such departments and authorities shall transmit such information to the Department established under section 4.

(8) The Central Bank may, if it considers necessary, design simplified resolution plans for a licensed bank or banks which are not considered as having systemic importance or impact.

12. (1) The Central Bank shall, having regard to the systemic importance or impact of any licensed bank in respect of which a resolution plan has been prepared under subsection (1) of section 11, assess whether such licensed bank is resolvable and develop such resolution measures as it may consider appropriate and feasible for each such licensed bank, in a manner that allows for credible strategies to resolve the licensed bank without using–

Resolvability
assessment

- (a) extraordinary public financial support, except for the financing mechanisms established under this Act; and
- (b) liquidity assistance in emergency situations from the Central Bank, whether guaranteed or otherwise.

(2) Without prejudice to the provisions of subsections (3) and (4), the Central Bank shall, in determining the resolvability of such licensed bank, take such measures as may be necessary to direct a licensed bank including any one or more of the following:–

- (a) to revise and conclude an intra-group financial support agreement with other entities pertaining to the financial group of the licensed bank;
- (b) to enter into a service agreement with third parties, or to include clauses in existing agreements aiming at ensuring that such agreements will not be affected in the case the Central Bank places the licensed bank under resolution;

- (c) to limit its exposure to a single entity or to a group of related entities;
- (d) to dispose of specific assets;
- (e) to limit or cease the performance or development of specific activities, or commencing new activities;
- (f) to introduce appropriate legal and organizational changes to the licensed bank, ensuring that critical functions may be separated from other functions in the resolution procedure;
- (g) to establish mechanisms, including insurance mechanisms, to cover specific losses; and
- (h) to take any measures that are necessary to meet the minimum requirements for capital and liabilities, including loss-absorbing liabilities.

(3) The Central Bank may, from time to time, issue directions to ensure resolvability of any licensed bank, specifying key elements, standards, and criteria to be used to conduct an assessment on resolvability of such licensed bank.

(4) The Central Bank shall, during the assessment of resolvability under subsection (3), grant the licensed bank an opportunity of being heard.

(5) The Central Bank may, if it deems necessary, take into consideration the group-wide exposure of a licensed bank in assessing the resolvability of such licensed bank.

Conditions for
resolution

13. (1) Notwithstanding anything to the contrary in any other provisions of this Act or any other written law, where the Central Bank is satisfied that a licensed bank is, or is likely to be, no longer viable, and has no reasonable prospects of becoming viable under the circumstances set out in subsection (2), the Central Bank may decide to resolve such licensed bank under this Act.

(2) A licensed bank is deemed to be, or is deemed likely to be, no longer viable, and has no reasonable prospects of becoming viable in any one or more of the following circumstances: -

- (a) where the Central Bank is of the opinion that a licensed bank has failed, or is likely to fail to comply with the provisions of the Banking Act, or any regulation, direction, determination, Order, or any requirement made, issued or imposed thereunder, including the regulatory, capital and liquidity requirements, in a manner that would compel the Central Bank to cancel the licence issued to such licensed bank;
- (b) where the Central Bank is of the opinion that a licensed bank is, or is likely to become, insolvent; or
- (c) where a licensed bank is unable to meet its obligations to its depositors or other creditors, or the Central Bank is of the opinion that such licensed bank is likely to be unable to meet its obligations to its depositors or other creditors as they fall due.

(3) The implementation of any early intervention measures or any other supervisory measures on a licensed bank shall not be deemed as a pre-condition for the Central Bank to exercise its resolution authority under this Act.

(4) Where the Central Bank decides to resolve a licensed bank, it shall notify its decision in writing to such licensed bank and commence implementation of resolution measures under this Act.

(5) Where the Central Bank decides to resolve a licensed bank under subsection (1), the Central Bank may exercise any one or more of the resolution powers set out in section 14:

Provided however, the Central Bank shall exercise at least one such resolution power within a period not exceeding thirty days from the date of notification referred to in subsection (4).

(6) A licensed bank subject to resolution shall, after the commencement of the resolution measures under this Act, carry on its business under the control of the Central Bank.

Resolution
powers of the
Central Bank

14. (1) For the purpose of resolution of a licensed bank, the Central Bank shall have the power to -

- (a) appoint an Administrator to such licensed bank;
- (b) effect a transfer of shares of such licensed bank;
- (c) transfer all or any selected assets and liabilities of such licensed bank;
- (d) cause a capital increase through the existing shareholders and new shareholders;
- (e) request the Minister to provide capital to establish a bridge bank; or
- (f) request the Minister to provide temporary financial assistance for the resolution of such licensed bank, based on reports submitted by the Central Bank to that effect.

(2) For the purpose of resolution of a licensed bank under this Act, the Central Bank shall, in addition to the powers set out in subsection (1), have the following powers which it may exercise singly or jointly with, directly or through the appointment of, an Administrator: -

- (a) to remove or replace the directors, chief executive officer or the key management personnel or any other employee of such licensed bank;

- (b) to recover or claw-back of variable remuneration paid by such licensed bank to any person referred to in paragraph (a);
- (c) to override the rights of shareholders of such licensed bank in any transaction;
- (d) to terminate, continue or assign contracts, purchase or sell assets, write-down debts and take any other action necessary to restructure or wind-down the operations of the licensed bank;
- (e) to ensure continuity of essential services and critical functions by-
 - (i) the licensed bank to its successor or any acquiring company for a temporary period;
 - (ii) procuring necessary services from unaffiliated third parties on behalf of the licensed bank;
 - (iii) requiring any service provider to continue provision of such services as are necessary for the continuity of critical functions of the licensed bank to a transferee including the bridge bank under the terms and conditions existing prior to the resolution;
- (f) to suspend, restrict, or prohibit all or part of the business of the licensed bank for a period not exceeding six months as may be determined by the Central Bank;
- (g) to suspend, for a period of no longer than two working days-
 - (i) the acceleration right, termination right, or set-off right of a financial contract to which

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the licensed bank is a party, that arises by virtue of the entry of the licensed bank into the resolution or the exercise of any resolution powers under this Act;

- (ii) the obligation to make a payment or delivery under a contract to which the licensed bank is a party;
 - (iii) the right to attach assets or otherwise collect money or property under a contract to which the licensed bank is a party;
- (h) to re-organize the licensed bank by increasing its capital and selling shares to new shareholders, and reconstituting the Board of Directors of the licensed bank;
- (i) to re-construct the licensed bank in any manner in the interest of depositors, including the closure of unviable business of the licensed bank or re-organizing its management;
- (j) to recognize losses to be allocated to shareholders and subordinated debt holders of a licensed bank;
- (k) to convert debt obligations of the licensed bank into capital;
- (l) to engage, at the expense of the licensed bank, independent attorneys, accountants, auditors, valuation experts and consultants, on such terms and conditions as may be specified by the Central Bank;
- (m) to meet expenditure incurred in the exercise of resolution powers under this Act; or

- (n) to do such other things as the Central Bank may consider necessary in relation to any matter affecting, or connected with, or incidental to, the exercise of powers under this section.

15. (1) In order to achieve the objectives of resolution specified in section 8 and to ensure the effective implementation of resolution measures provided for in sections 30, 31, 32, 33 and 34, the Central Bank shall establish a Financial Stability Fund under this Act.

Financial
Stability Fund

(2) The Financial Stability Fund shall be managed separately from other assets of, and the assets managed by, the Central Bank.

(3) The Central Bank shall have the power to-

- (a) manage, administer, and supervise the Financial Stability Fund, subject to the provisions of this Act;
- (b) formulate policies in relation to the general administration of the Financial Stability Fund;
- (c) invest and enter into any transaction or agreement as may be necessary or desirable for the financial management of the Financial Stability Fund; and
- (d) contribute to financing of resolutions of licensed banks, without prejudice to the provisions of subsection (3) of section 51.

(4) The following shall be credited to the Financial Stability Fund:-

- (a) budgetary allocations provided by the Government;
- (b) contributions from the Government;
- (c) grants or loans provided by international financial institutions;

- (d) investment income and gains deriving from and out of the investments of the moneys of the Financial Stability Fund;
- (e) contributions from licensed banks as the Central Bank may consider necessary, for the purposes of subsection (5) of section 33; and
- (f) any income from any other source as may be approved by the Minister.

Valuation of assets and liabilities of a licensed bank for the purpose of resolution

16. (1) In order to assess the value of the assets, liabilities or shares of a licensed bank for the purpose of resolution, the Central Bank may, at any time before the implementation of any resolution measure, direct such licensed bank to cause a prudent and realistic valuation of the assets, liabilities or shares of such licensed bank to be carried out by an independent professional valuer who shall possess such qualifications and experience as may be determined by the Central Bank, from time to time.

(2) Notwithstanding the provisions of subsection (1), the Central Bank may cause a valuation of the assets, liabilities or shares of a licensed bank to be carried out through an independent professional valuer who shall possess qualifications and experience referred to in subsection (1).

(3) Where a definitive valuation for resolution purposes is not possible due to the urgency of taking resolution measures, the Central Bank may-

- (a) direct a licensed bank to cause a provisional valuation to be carried out; or
- (b) directly undertake a provisional valuation:

Provided however, such provisional valuation shall be complemented with a final independent valuation, as soon as practicable.

(4) The payments to be made to the valuer under subsections (1) and (2) shall be borne by the licensed bank in accordance with such terms and conditions as may be determined by the Central Bank.

(5) The Central Bank shall have the authority to appoint and publish a list of professional valuers for the purposes of this section.

(6) The Central Bank may issue directions, from time to time, for the purpose of giving effect to the provisions of this section.

17. (1) Where the Central Bank has, in the interests of the depositors of a licensed bank, prohibited such licensed bank from carrying on all or part of its business for the purposes of implementing resolution measures under this Act, an officer authorized in that behalf by the Central Bank may make an application to the court for an order to prevent the continuance of any proceedings of a civil nature against the licensed bank with respect to any of its businesses.

Order staying court proceedings against the licensed bank

(2) The court may, upon hearing *ex parte*, an application made under subsection (1), make an order staying for a period not exceeding three months the continuance of any proceedings of a civil nature against the licensed bank with respect to any of its businesses.

(3) Where a court makes an order under subsection (2), the Central Bank shall, as soon as practicable, publish a notice of such order in the *Gazette* and at least in three Sinhala, Tamil and English daily newspapers circulating in Sri Lanka.

PART II

RESOLUTION MEASURES

18. (1) The Central Bank may, for the purpose of resolution of a licensed bank, by Order published in the *Gazette* and at least in three Sinhala, Tamil and English

Appointment of an Administrator

daily newspapers circulating in Sri Lanka, appoint a fit and proper person as provided for in subsection (2), as the Administrator to such licensed bank.

(2) In determining whether a person is a fit and proper person to be appointed as the Administrator under subsection (1), the criteria used to determine the fitness and propriety of directors of a licensed bank under any law for the time being in force shall *mutatis mutandis* apply to such person.

(3) The Administrator shall be an independent person who shall not have any interest, direct or indirect, financial or otherwise, in the affairs of the licensed bank subject to resolution. Any person appointed as the Administrator of a licensed bank under this Part of this Act, who acquires any interest, direct or indirect, financial or otherwise, in the affairs of such bank after such appointment, shall forthwith inform such fact to the Central Bank and immediately thereafter cease to act as the Administrator.

(4) An Administrator shall be appointed for a term of six months from the date of appointment. Such term may be extended, from time to time, for further periods of six months at a time by the Central Bank, if required to do so, by an Order published in the *Gazette* and at least in three Sinhala, Tamil and English daily newspapers circulating in Sri Lanka.

(5) The Order of the Central Bank appointing an Administrator or extending the term of an Administrator shall be notified to the licensed bank in writing, specifying the reasons for such appointment or extending the term, as the case may be.

(6) Where an Administrator becomes subject to any disqualification pursuant to the provisions of subsection (2) or (3), the Central Bank shall appoint any other person as the Administrator, having regard to the provisions of subsection (2).

(7) Subject to the provisions of subsection (9), an Administrator shall be paid such remuneration as may be determined by the Central Bank.

(8) The Administrator shall be deemed to be a public servant within the meaning and for the purposes of Part IX of the Penal Code (Chapter 19), and where the Administrator is a body corporate or a firm, its directors or managing partners, as the case may be, shall be considered as public servants for such purposes.

(9) All costs incurred by the Central Bank on account of the Administratorship, including the payment of remuneration of the Administrator, shall be borne by, and charged to, the licensed bank subject to resolution, in accordance with such terms and conditions as may be determined by the Central Bank. Any cost so payable shall constitute a debt due to the Central Bank from such licensed bank, until the same is paid in full to the Central Bank.

19. (1) The Administrator appointed under section 18 shall assume control of all the assets, rights, business and affairs of the licensed bank subject to resolution, and carry on the business and affairs of that licensed bank in the name and on behalf of the licensed bank, until the expiry of the period of time specified in the Order referred to in subsection (1) or subsection (4) of that section or until such time any such Order is revoked.

Effect of taking
control by the
Administrator

(2) Upon the appointment of an Administrator, it shall be the duty of all the directors and employees of the licensed bank subject to resolution, to submit the details of all property, business and affairs of such licensed bank to the Administrator and assign the control of such property, business and affairs to the Administrator.

(3) Without prejudice to the provisions of paragraph (b) of subsection (4), the directors and employees of a licensed bank subject to resolution, shall provide the Administrator with all such facilities as may be required to carry on the business and affairs of such licensed bank.

(4) During the period within which an Order made by the Central Bank in respect of a licensed bank under section 18 is in force-

- (a) all the duties and functions of such licensed bank, its directors, and shareholders under any written law for the time being in force and the respective constituent documents of such licensed bank, shall be vested with the Administrator;
- (b) any director, key management personnel or an employee of such licensed bank shall not, either directly or indirectly, engage in any activity in relation to, or for and on behalf of, the licensed bank, except as may be required or authorized by the Administrator; and
- (c) any remuneration of whatever nature shall not accrue or be payable to any director, key management personnel or an employee of such licensed bank, except with the prior written approval of the Administrator.

Administrator to prepare an inventory of assets and liabilities

20. The Administrator shall, within thirty days from the date of his appointment or such other date as may be specified by the Central Bank, prepare and submit to the Central Bank an inventory of all assets and liabilities of the licensed bank under his control.

Administrator to prepare a report on the viable resolution options

21. (1) The Administrator shall, not later than sixty days from the date of his appointment, prepare and submit to the Central Bank, a detailed report on the licensed bank under his control containing his recommendations as to the most viable resolution options to be implemented in respect of such licensed bank.

(2) The Central Bank may, having considered the report and the recommendations made by the Administrator under subsection (1), approve or issue one or more directions to

the Administrator, the licensed bank, directors or key management personnel, as the case may be, as to the most viable resolution option to be implemented.

(3) The Administrator may, in the report referred to in subsection (1), recommend that the licensed bank under the control of such Administrator -

- (a) be sold as a going concern;
- (b) be resolved through transfer of selected assets and liabilities, or the establishment of a bridge bank under section 30;
- (c) be resolved through any other resolution power as may be determined by the Central Bank considering the financial position and risk profile of such licensed bank; or
- (d) be wound up.

(4) The Administrator shall prepare and submit to the Central Bank such regular reports as may be specified by the Central Bank in the Order referred to in section 18 on the financial conditions of the licensed bank subject to resolution, and information relating to the exercise, performance and discharge of the powers, duties and functions of the Administrator in the implementation of the resolution measures.

(5) The Administrator shall be responsible for the organization and maintenance of files, information and documents of the licensed bank subject to resolution, and shall maintain a register containing information relating to all decisions or actions taken on such licensed bank during the period of his administratorship.

Termination of
administratorship

22. (1) An Administrator appointed for the purpose of resolution of a licensed bank shall cease to function as such Administrator in the following situations, whichever occurs first: -

- (a) on completion of the term specified in the Order referred to in subsection (1) or (4) of section 18, as the case may be; or
- (b) where the Central Bank determines to terminate the term of such Administrator.

(2) The Administrator shall, within twenty working days of the termination of the appointment under subsection (1), prepare and submit to the Central Bank a final report on activities of his administratorship.

Capital increase
by existing
shareholders

23. (1) The Central Bank, or the Administrator with the approval of the Central Bank, may take following actions to increase the capital of the licensed bank subject to resolution through the issuance of new shares: -

- (a) to determine the extent of losses and prepare the financial statements of such licensed bank covering the amount of such losses from and out of the profits, reserves and, if necessary, the capital of such licensed bank; and
- (b) to determine the amount of additional capital required to be invested in the shares of such licensed bank in order to comply with all capital requirements made under the Banking Act and to request in writing, the existing shareholders of the licensed bank to subscribe and purchase additional shares, by submitting binding commitments equal to the full amount of additional capital needed, or any part thereof, within the time specified in such request:

Provided however, prior to the request referred to in this paragraph, the Central Bank may, if it considers necessary, examine and identify shareholders who may have acted as shadow directors and contributed directly or indirectly to the failure of such licensed bank and shall not allow such shareholders to participate in the increase of the capital under this section:

Provided further, if shareholders subscribe or purchase additional shares under this section, such shareholders may be exempted from the application of directions issued by the Monetary Board under the Banking Act on share ownership limits of licensed banks for a period as may be determined by the Central Bank.

(2) Notwithstanding anything to the contrary in any other written law, or the articles of Association or any other constituent document of the licensed bank, the existing shareholders of a licensed bank subject to resolution shall have no pre-emptive or any other rights to purchase additional shares issued except as provided for in subsection (1).

(3) Subject to the provisions of subsection (1), the Central Bank shall have the power to recognize losses to be allocated to shareholders and subordinated debt holders in the performance of its duties under this section.

24. (1) Without prejudice to the provisions of section 23 and for the purposes of recapitalization of a licensed bank by new shareholders, the Central Bank-

Recapitalization
by new
shareholders

(a) shall, if not already determined in accordance with the provisions of paragraph (a) of subsection (1) of section 23, determine the extent of losses and prepare the financial statements of such licensed bank covering the amount of such losses from and

out of the profits, reserves and, if necessary, the capital and subordinated debt and any other instrument issued for the purpose of loss absorbency of such licensed bank;

- (b) may cause revaluation of the stated capital to reflect losses, notwithstanding anything to the contrary in any other written law;
- (c) may determine the amount and type of funding needed to bring such licensed bank into compliance with all capital requirements made under this Act;
- (d) may cause such licensed bank to issue additional capital in any form as may be determined by the Central Bank in order to comply with the capital requirements applicable for licensed banks imposed by the law for the time being in force.

(2) Notwithstanding anything to the contrary in any other written law, the Central Bank may, in relation to regulation of the securities market and other disclosures to be made by issuers of securities, cause such licensed bank to issue shares under the provisions of this section.

(3) The Central Bank shall have the power to recognize losses to be allocated to shareholders and subordinated debt holders in the performance of its duties under this section.

Transfer of
shares and
effecting a
merger

25. (1) Notwithstanding anything to the contrary in any other written law, the Central Bank may, in whole or part, transfer the shares of, any licensed bank subject to resolution to any other financial institution or effect a merger of such licensed bank with any other financial institution.

For the purposes of this section, “financial institution” means a bank licensed under the Banking Act or a finance company licensed under the Finance Business Act or any other institution as may be specified by the Central Bank.

(2) Subject to the provisions of subsection (1) of section 5, the Central Bank shall ensure that at the time of transferring shares or effecting a merger under subsection (1), transferee of such shares is solvent, and complies with applicable requirements under the Banking Act or any regulation, direction, determination or Order made thereunder, including fitness and propriety of the shareholders, directors and key management personnel who shall have sufficient expertise, capacity and resources to effectively hold the shares so transferred and to achieve the objectives of resolution.

(3) The transfer of shares or effect of a merger under subsection (1) shall be conducted by the Central Bank based on a prudent and realistic valuation of the assets and liabilities of such licensed bank, carried out by an independent professional valuer possessing such qualifications and experience referred to in subsection (1) of section 16.

(4) The Central Bank may, by way of directions issued, from time to time, specify the procedure for transferring of shares under subsection (1).

(5) The Central Bank shall have the power to recognize losses to be allocated to shareholders and subordinated debt holders in the performance of its duties under this section.

26. (1) Subject to the provisions of subsection (5), the Central Bank may, after giving a prior notification to the licensed bank subject to resolution (in this Part of this Act referred to as the “transferor bank”), transfer all or part of the assets or liabilities, or both such assets and liabilities of such transferor bank prevailing as at a specific date (in this Part of this Act referred to as the “relevant date”), to any third party (in this Part of this Act referred as the “transferee”):

Transfer of
selected assets
and liabilities to
a third party

Provided however, where such liabilities or part thereof consist of deposit liabilities, such deposit liabilities shall not be transferred to any entity which is not permitted by law to accept deposits.

(2) The transferee referred to in subsection (1) shall be solvent, and shall comply with applicable requirements under the Banking Act or any regulation, direction, determination, or Order made or issued thereunder, including the requirements relating to the suitability of qualifying shareholders, directors and key management personnel, and shall have sufficient expertise, capacity and resources to effectively hold the assets or liabilities or both such assets and liabilities so transferred to achieve the objectives of resolution.

(3) The transfer of assets and liabilities under subsection (1) shall be conducted by the Central Bank based on a prudent and realistic valuation of the selected assets and liabilities of such licensed bank, carried out by an independent professional valuer possessing such qualifications and experience referred to in subsection (1) of section 16.

(4) The Central Bank may, by way of directions issued from time to time, specify the criteria for the selection of assets and liabilities to be transferred under subsection (1), having regard to the interests of depositors, creditors, and shareholders of such licensed bank.

(5) For the purpose of subsection (1), “assets and liabilities of a transferor bank” includes,-

- (a) all or part of the immovable and movable property owned by the transferor bank on the day immediately preceding the relevant date (including loans, cash balances, reserve funds, investments and deposits);
- (b) all or part of the rights, powers, privileges, authorities, and interests arising in, or out of, any property, movable or immovable, owned by the transferor bank on the day immediately preceding the relevant date;

- (c) any legal rights or obligations of the transferor bank subsisting on the day immediately preceding the relevant date;
- (d) subject to the provisions of paragraph (e) of section 28, all or part of the liabilities including legal rights and obligations of the transferor bank subsisting on the day immediately preceding the relevant date; and
- (e) all books, accounts and documents relating, or appertaining, to such transferor bank in Sri Lanka.

(6) The transferee referred to in subsection (1) shall-

- (a) not be controlled, directly or indirectly, by related parties of the transferor bank;
- (b) only be liable to the shareholders or other creditors of the transferor bank for those liabilities expressly transferred, or in accordance with any other terms or conditions expressly agreed to by the transferee, to the exclusion of any other responsibilities including liabilities related to taxes and liabilities related to the labour;
- (c) be responsible for compensating the Central Bank or the Deposit Insurance Scheme established under section 39 for any losses caused due to the transferee's failure to comply with the terms and conditions of the transfer of assets and liabilities in resolution.

27. A transfer of assets and liabilities under section 26 shall not be made by the Central Bank unless –

- (a) the Central Bank is satisfied that the transferee is solvent and complies with applicable regulatory requirements, and capable of carrying out in a

Requirements to fulfill for the transfer of assets and liabilities

competent manner the business of the transferor bank proposed to be transferred, and meeting liabilities of the transferor bank to its depositors and creditors pertaining or relating to the business proposed to be transferred;

- (b) the transferee agrees in writing to comply with such terms and conditions as may be specified by the Central Bank relating to the manner in which-
 - (i) any existing assets of the transferor bank pertaining or relating to the business proposed to be transferred, are to be used and any existing liabilities of the transferor bank pertaining or relating to the business proposed to be transferred are to be met; and
 - (ii) any payments due to the Government from the transferor bank are to be made; and
- (c) the transferee agrees to comply with such other directions as the Central Bank may, from time to time, issue to such transferee under this Act.

Effect of the transfer of assets and liabilities

28. Unless the Central Bank otherwise decides, where the assets and liabilities of the transferor bank have been transferred to a transferee under section 26, with effect from the relevant date-

- (a) the transferee shall have the control and possession of the transferred assets and liabilities of the transferor bank:

Provided however, upon a request made by the transferee, the Central Bank may transfer any assets or liabilities back to the transferor bank, within a period as may be specified at the time of such transfer, where such assets or liabilities do not meet the criteria applicable for the transfer:

Provided further, that the shareholders, depositors and creditors whose interests and rights remain in the transferor bank, shall have no rights or claims in respect of the assets and liabilities transferred to the transferee;

- (b) the licence issued by the Monetary Board under the relevant laws to the transferor bank to carry on business, shall be modified or cancelled, as the case may be, to the extent as is necessary to enable the transferor bank to carry on any remaining part of its business which has not been transferred to the transferee;
- (c) all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature pertaining, or relating to the transferred assets and liabilities of the transferor bank and subsisting, or having effect on the day immediately preceding the relevant date, and to which the transferor bank is a party or which are in favour of the transferor bank, shall, with effect from the relevant date, be deemed to be contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation or other instruments entered into or granted, as the case may be, by the transferee;
- (d) all actions and proceedings of whatever nature instituted by or against the transferor bank pertaining or relating to the transferred assets and liabilities and pending on the day immediately preceding the relevant date, shall, with effect from the relevant date, be deemed to be actions and proceedings instituted by or against the transferee, and may be continued and disposed of accordingly;
- (e) all such officers and other employees of the transferor bank as are connected with such part of

the business of the transferor bank as was transferred to the transferee, or all the officers and other employees of the transferor bank, where the entirety of the business of the transferor bank is transferred to the transferee, as the case may be, who are in employment in the transferor bank on the day immediately preceding the relevant date and who are not offered employment by the transferee, shall be entitled to the payment of compensation:

Provided however, where any officer or other employee of the transferor bank is entitled to a payment of compensation, the transferee shall determine the amount of compensation that shall be paid to such officer or employee in consultation with the Commissioner-General of Labour. Such determination shall not affect the right of such officer or employee to claim any other compensation under any other written law.

Extent of the liability of the transferee in respect of foreign currency depositors

29. Notwithstanding anything to the contrary in this Act or any other written law, where the foreign currency deposits of the transferor bank is not made available to the transferee, the liability of the transferee to meet the demands of any foreign currency depositors of the transferor bank shall be limited only in respect of such depositors who agree to accept the terms and conditions of any scheme for the grant of relief to such depositors, as may be formulated by the Central Bank, upon a review of the business of the transferor bank, and only to the extent as set out in such scheme:

Provided however, in the event of such foreign currency deposits being made available to the transferee, or the transferee recovering such foreign currency deposits or other assets abroad, of the transferor bank, the Central Bank shall have the power to give directions to the transferee with regard to the payment to such foreign currency depositors of the foreign currency deposits so made available or foreign

currency deposits and other assets so recovered, and the transferee shall comply with such directions.

30. (1) Notwithstanding anything to the contrary in any other written law, where the Central Bank, having regard to the relevant circumstances, is of the opinion that the failure of a licensed bank subject to resolution under this Act can have systemic importance or impact, the Central Bank may decide to establish one or more institutions (in this Act referred to as “bridge bank”), subject to the terms and conditions specified in subsection (6) of section 31 and with the approval of the Minister, for the purpose of-

Establishment of
a bridge bank

- (a) continuing operations of all or part of the critical functions and viable operations of such licensed bank; or
- (b) transferring shares, any one or more of the assets, liabilities, legal rights and obligations or other property instruments owned or issued by such licensed bank:

Provided however, the amount of liabilities transferred to a bridge bank shall not, in any manner, exceed the amount of the transferred assets and other resources provided by the Deposit Insurance Scheme provided for in Part III of this Act, or the Government, as the case may be.

(2) The Central Bank shall publish the decision taken under subsection (1) in the *Gazette* and at least in three Sinhala, Tamil and English daily newspapers circulating in Sri Lanka, within five days from the date of establishment of the bridge bank.

(3) The Central Bank shall issue a licence to the bridge bank to carry on the banking business in Sri Lanka subject to such terms and conditions as the Central Bank may consider necessary.

(4) The Central Bank shall ensure that the bridge bank is established in an expeditious manner, and the period of such establishment shall not exceed two days from the decision of the Central Bank referred to in subsection (1).

(5) The establishment of the bridge bank shall be based on primary constituent documents of the licensed bank subject to resolution, and the other relevant documents pertaining to its establishment shall be submitted to the relevant authorities within thirty days from the date of the establishment.

(6) The operations of the bridge bank shall be commenced from the first working day following the date of issuance of licence under subsection (3).

Management of
the affairs of the
bridge bank

31. (1) The bridge bank established under section 30 shall be a body corporate and may sue or be sued by its corporate name.

(2) (a) The management and administration of the affairs of the bridge bank shall be vested in a governing body of the bridge bank which shall consist of such number of members as may be determined by the Central Bank.

(b) The members of the governing body of the bridge bank shall be fit and proper persons and shall be appointed by the Central Bank. The Central Bank shall, based on the criteria referred to in paragraph (f) of subsection (11), assess the fitness and propriety of persons to be appointed as members of the governing body prior to their appointment.

(3) The key management personnel of the bridge bank shall, subject to the provisions of paragraph (f) of subsection (11), be appointed by the governing body of the bridge bank, subject to the approval of the Central Bank.

(4) Notwithstanding anything to the contrary in any other written law, any officer of the Central Bank shall not be

appointed as a member of the governing body or as a key management personnel of the bridge bank.

(5) The capital of the bridge bank shall be fully provided by the Government subject to appropriation of necessary funds in terms of any applicable written law. The Government shall have the right to decide on the issuance of Government guarantees and Government securities in connection with the financing of the bridge bank:

Provided however, nothing contained in this section shall be construed as preventing the Central Bank from extending emergency liquidity assistance, conventional market liquidity injecting mechanisms or loans to the bridge bank:

Provided further, provision of capital to a bridge bank by the Government under this section shall not prevent the Central Bank from exercising control over such bridge bank. The Central Bank shall ensure that the bridge bank shall be subject to standard prudential rules in line with the international standards and best practices.

(6) The terms and conditions for the establishment and operation of a bridge bank shall include –

- (a) the provision of capital;
- (b) operational financing and liquidity support;
- (c) any temporary changes to prudential and other supervisory and regulatory requirements that apply to the bridge bank, for a period up to six months;
- (d) the requirement of setting out governance framework; and
- (e) the board of directors and the management of the bridge bank.

(7) For the purpose of this section, the Central Bank shall have the power to -

- (a) transfer to the bridge bank, from time to time, shares, assets, liabilities or other instruments of ownership, as the case may be, issued by the licensed bank subject to resolution;
- (b) subject to the provisions of subsection (8), reverse the transfer of all or part of the assets and liabilities from the bridge bank to the licensed bank subject to resolution;
- (c) transfer shares, assets and liabilities, legal rights and obligations, from the bridge bank to any other person subject to an eligibility criteria determined by the Central Bank by directions, for such purpose; and
- (d) facilitate the closure and orderly winding up of the bridge bank.

(8) The reversal of transfer of shares, assets and liabilities, legal rights and obligations and any other instruments of ownership under subsection (7), to the licensed bank subject to resolution shall be performed in one of the following circumstances: -

- (a) where the possibility of such reversal is expressly provided for in the decision to establish a bridge bank referred to in subsection (1) of section 30;
- (b) where the shares, assets and liabilities, legal rights and obligations and any other instrument of ownership transferred to the bridge bank from the licensed bank subject to resolution do not meet the conditions of such transfer or do not fall into the categories of shares, assets and liabilities, legal rights and obligations and any other instruments of ownership specified in the decision to establish the bridge bank; or

- (c) where it is necessary to rectify the valuation errors that took place at the time of transfer of shares, assets and liabilities, legal rights and obligations and other instruments of ownership.

(9) The transfer of shares, assets and liabilities, legal rights and obligations and other instruments of ownership to and from the bridge bank shall be based on a valuation carried out by an independent professional valuer possessing such qualifications and experience referred to in subsection (1) of section 16.

(10) Any shareholder or creditor of a licensed bank subject to resolution and other third party whose shares, assets and liabilities, legal rights and obligations and other instruments of ownership are not transferred to the bridge bank shall not have any right over the shares, assets and liabilities, legal rights and obligations and other instruments of ownership transferred to the bridge bank, its governing body, or the Central Bank.

(11) The Central Bank may, from time to time, having regard to the interests of depositors, creditors and shareholders, issue to the bridge bank, directions, guidelines, and operating instructions, as the case may be, specifying-

- (a) the manner in which the remaining assets and liabilities of the licensed bank subject to resolution need to be liquidated;
- (b) the manner in which the operations of the bridge bank shall be carried out;
- (c) the exemptions granted to the bridge bank:
- (d) minimum capital and liquidity requirements to be met by the bridge bank;

- (e) principles of corporate governance to be applicable to the bridge bank;
- (f) the criteria applicable for the assessment of fitness and propriety of the members of the governing body and the key management personnel of the bridge bank;
- (g) criteria for acceptability of the valuations of assets and liabilities to be transferred to the bridge bank;
- (h) modes of consideration to be passed when transferring assets and liabilities, legal rights and obligations and instruments of ownership; or
- (i) the manner and the circumstances of reversals of assets and liabilities and other instruments of ownership initially transferred to the bridge bank.

Term of a
bridge bank

32. (1) Subject to the provisions of subsections (3) and (4), the term of the bridge bank shall not exceed a period of two years from the last date of transfer of shares, assets and liabilities and instruments of ownership of the licensed bank subject to resolution.

(2) The Central Bank shall terminate the bridge bank as soon as practicable, according to its own assessment, having regard to the objectives of resolution, completion of the tasks assigned to the bridge bank and such other matters on its merit, upon the completion of the period of two years referred to in subsection (1).

(3) Subject to the provisions of subsection (4), where the Central Bank is satisfied that the bridge bank no longer serves the objectives of resolution, the Central Bank may, after informing the Minister-

- (a) merge the bridge bank with another entity;

- (b) sell in whole or part, the assets, rights, and obligations of the bridge bank to a third party; or
- (c) liquidate the assets of the bridge bank and pay its obligations in full.

(4) The term of the bridge bank may be extended by the Central Bank for a further period of one year at a time:

Provided however, the term of a bridge bank shall not, in the aggregate, exceed five years.

(5) (a) All the decisions of the Central Bank under subsections (2), (3) and (4) shall be based on an assessment of the circumstances and market conditions that justify such decisions.

(b) The Central Bank shall submit a report to the Minister within one month from the date of such decisions. In the case of an extension granted under subsection (4), the Central Bank shall also publish a reasoned explanation as to why such an extension is necessary.

(6) Where the term of the bridge bank is terminated under subsection (2), the Central Bank shall-

- (a) cancel the licence issued to such bridge bank; and
- (b) wind up such bridge bank under Part V of this Act.

(7) Subject to the provisions of subsection (3) of section 51, all receipts resulting from the cessation of the operation of the bridge bank under this section shall be transferred to the Government.

33. (1) Subject to the provisions of subsection (2), the Government may, having considered the report submitted by the Central Bank to the Minister in that behalf, provide temporary financial assistance to contribute to the funding of the resolution of a licensed bank, or to a bridge bank, as the case may be.

Providing temporary financial assistance by the Government

(2) The temporary financial assistance referred to in subsection (1) shall be provided by the Government only if the following conditions are satisfied: -

- (a) such financial assistance is necessary to avoid a risk of disturbance to the stability of the financial system;
- (b) alternative funding through Deposit Insurance Fund established under section 49 as permitted under subsection (3) of section 51 or private sources has been depleted or such sources are not sufficient or available within a reasonable time frame;
- (c) losses of the licensed bank are allocated at least to shareholders and subordinated debt holders; and
- (d) the Central Bank is of the opinion that the licensed bank subject to resolution or the bridge bank will become viable with the implementation of a resolution or restructuring plan.

(3) The temporary financial assistance under this section may be provided by the Government to –

- (a) extend financial assistance for a licensed bank subject to resolution or for a bridge bank established under section 30;
- (b) pay compensation to shareholders and creditors under section 36; or
- (c) take such other measure as is incidental or connected to the purposes referred to in paragraph (a) or (b).

(4) (a) Where the Government becomes the holder of a controlling interest in a licensed bank subject to resolution or the bridge bank, as a result of providing temporary financial

assistance under this section, such licensed bank or the bridge bank shall be managed on a commercial and professional basis and shall be subject to enhanced supervision by the Central Bank.

(b) The licensed bank or the bridge bank, as the case may be, referred to in paragraph (a) shall develop a plan, to the satisfaction of the Central Bank, for its exit from Government control, within a reasonable timeframe. The Minister shall, on the recommendation of the Central Bank, prescribe the procedures for the utilization of exit options in a fair and transparent manner, having regard to the timing, and market conditions and confidentiality requirements.

(5) Any temporary financial assistance provided under this section and related costs and net of expected recoveries, may be recovered from all banks under subsection (4) of section 15.

(6) The Minister may, on the recommendation of the Central Bank, prescribe the rules for the provision of temporary financial assistance and the recoupment of such funds under this Act.

34. (1) Without prejudice to the provisions of section 30, where the Government is of the opinion that the failure of a licensed bank can have systemic importance or impact, it shall have the authority to resolve such licensed bank.

Capitalization of
a licensed bank
having systemic
impact

(2) In resolving a licensed bank under subsection (1), the Government may infuse capital for such licensed bank through –

- (a) participation of the Government in the recapitalization of such licensed bank; or
- (b) taking over such licensed bank into temporary public ownership.

(3) The conditions set out in subsection (2) of section 33 shall *mutatis mutandis* apply to a licensed bank subject to resolution under this section.

Central Bank to notify the exercising of resolution powers

35. (1) The Central Bank may, where appropriate, notify the Minister and other relevant authorities including any foreign supervisory or resolution authorities, of the exercise by the Central Bank of its resolution powers under this Act.

(2) The Central Bank shall publish a notice in three Sinhala, Tamil and English daily newspapers circulating in Sri Lanka with respect to the exercise of resolution powers on any licensed bank under this Part of this Act.

Compensating shareholders and creditors

36. (1) Notwithstanding anything to the contrary in any other written law, where the Central Bank, in the exercise, performance or discharge of its powers, duties or functions under this Act, considers that it is necessary-

(a) to mitigate any impact of the failure of a licensed bank in the economy and avoid contagion risk of such failure across the financial system; or

(b) to maximize the value for the benefit of all depositors and creditors of a licensed bank,

it shall be lawful for the Central Bank to apply different treatments to a class or classes of persons among the creditors of a licensed bank subject to resolution having considered the impact of losses to be attributable to such class or classes of creditors as a whole, the interests of the depositors and creditors of such licensed bank, and the financial system stability of Sri Lanka.

(2) (a) A shareholder or creditor who incurs higher losses than what he would have incurred if the licensed bank subject to resolution had been liquidated through winding up, may be compensated for the difference.

(b) The difference to be compensated under paragraph (a) shall be determined based on a valuation, carried out after completion of the resolution, by an independent professional valuer possessing such qualifications and experience referred to in subsection (1) of section 16.

(3) The valuation referred to in subsection (2), shall be carried out on the basis that such licensed bank would be wound up immediately before the initiation of such resolution by the Central Bank and shall be based on the value that could be given at the time of winding up:

Provided however, any value created or preserved in such licensed bank as a result of any public financial support or emergency liquidity assistance provided by the Central Bank or the Government, as the case may be, shall be deducted in the calculation of difference.

(4) The compensation referred to in subsection (2) may be provided by the Government through temporary financial assistance as provided for in section 33.

(5) The Central Bank may give effect to the provisions of this section by issuing directions, from time to time.

37. (1) Notwithstanding anything contained in this Act or any other written law for the time being in force, the Central Bank and the Ministry of Finance shall exchange information in respect of planning, preparation and implementation of resolution measures related to any licensed bank which requires funding by the Government under this Act.

Central Bank
and the Ministry
to exchange
information

(2) The Minister, Secretary, Director General, any director, officer or any other person engaged or employed in the functions or affairs of the Ministry of the Minister shall maintain strict confidentiality in respect of all information

exchanged under subsection (1) and shall not reveal any such information except-

- (a) as required by a court of law;
- (b) in the performance of their duties under this Act; or
- (c) in order to comply with any of the provisions of this Act or any other written law.

Cross-border
cooperation

38. (1) Notwithstanding anything contained in this Act or in any other written law for the time being in force, the Central Bank shall have authority to enter into agreements, memoranda of understanding and arrangements for the coordination, cooperation and the exchange of information with relevant authorities established outside Sri Lanka, including supervisory or regulatory authorities of banks in other jurisdictions outside Sri Lanka:

Provided however, if the Central Bank is of the opinion that any confidential information, if exchanged with any such authority cannot be secured due to the unavailability of duty to preserve confidentiality in such authority, the Central Bank shall not exchange such information with any such authority outside Sri Lanka.

(2) The agreements, memoranda of understanding and arrangements with the relevant authorities outside Sri Lanka referred to in subsection (1), shall include the following: -

- (a) procedures for the timely exchange of information on matters agreed between the parties including consultations, prior notifications, regulatory or supervisory concerns, recovery plans, resolvability assessments, resolution plans, early intervention measures and resolution actions;
- (b) procedures for the coordination of resolution measures;

- (c) procedures for the recognition and facilitation of resolution measures taken by foreign regulatory authorities and the Central Bank;
- (d) restrictions on the use of information for purposes other than those for which the information is shared;
- (e) stipulation that the information be treated in a confidential manner and not be further disclosed without the express consent of the Central Bank; and
- (f) any other matter which the parties may consider necessary for the effective implementation of resolution measures under this Act.

(3) The Central Bank may, on the request of a foreign resolution authority, make an Order that the effects of a resolution measure of such foreign authority be fully or partially applicable in Sri Lanka:

Provided however, the Central Bank shall not make such Order where the Central Bank is of the opinion that -

- (a) in terms of its objective and anticipated results, the foreign resolution measure is not comparable to the exercise of resolution powers under this Act;
- (b) the relevant laws of the foreign resolution authority's jurisdiction do not allow for the recognition of the Central Bank's resolution measures on request;
- (c) recognizing a foreign resolution measure would not contribute to the achievement of resolution objectives under this Act;
- (d) creditors of the licensed bank in Sri Lanka would not be treated equitably under the foreign resolution proceedings;

- (e) such recognition would have material adverse fiscal implications in Sri Lanka; or
- (f) such recognition would contravene the public policy of Sri Lanka.

PART III

SRI LANKA DEPOSIT INSURANCE SCHEME

Establishment of
a deposit
insurance
scheme

39. The Central Bank shall, in order to uphold the public confidence in the financial system and to promote, and contribute to, the stability of the financial system in Sri Lanka, establish a scheme called Sri Lanka Deposit Insurance Scheme (hereinafter referred to as the “Scheme”) under this Act, for the purposes of-

- (a) insuring the deposits made by the depositors in an institution which is a member of the Scheme (in this Part of this Act referred to as a “member institution”) in order to compensate such depositors up to any maximum amount as may be determined by the Central Bank, from time to time, subject to subsection (9) of section 44, in the event the licence issued to such member institution is cancelled by the Central Bank; and
- (b) establishing a system for providing appropriate financial assistance to facilitate transfer of assets and liabilities of a member institution as a resolution measure, subject to safeguards.

Administration
and management
of the Scheme

40. (1) The Central Bank shall be responsible for the administration and management of the Scheme and shall exercise, perform, and discharge all the powers, duties and functions conferred or imposed on, or assigned to it under this Act for the effective implementation of the Scheme.

(2) In relation to the administration and management of the Scheme under this Act or any other written law, the Central Bank may-

- (a) formulate policies in relation to the general administration of the Scheme;
- (b) set out the organizational arrangements relating to the exercise, performance and discharge of the powers, duties and functions in relation to the Scheme in order to prevent a conflict of interest or possible conflict of interest between the functions of the Scheme and other functions of the Central Bank;
- (c) make rules setting out the procedure for repaying the insured deposits by utilizing the moneys available in the Fund; and
- (d) make any other arrangement which the Central Bank considers necessary to ensure the effective administration and management of the Scheme.

(3) The Central Bank may delegate any power, duty and function relating to the day-to-day administration and management of the Scheme to any officer of the Central Bank.

41. (1) The Head of the Department established under section 4 or any other officer authorized by the Central Bank shall publish a list of all institutions who are members of the Scheme annually, at least in one Sinhala, Tamil, and English daily newspapers circulating in Sri Lanka.

Members of the
Scheme

(2) The Central Bank shall, by way of a direction, notify the member institutions of the membership in the Scheme.

For the purposes of this Part of this Act, a “member institution” means, a licensed commercial bank, a licensed specialized bank within the meaning of the Banking Act or a licensed finance company within the meaning of the Finance Business Act or any other institution as the Central Bank may determine, from time to time, as a member institution under this Act.

Cessation of membership in the Scheme

42. (1) A member institution shall cease to be a member of the Scheme upon the cancellation of the licence issued to such institution to carry on banking business or finance business by the Central Bank, or the commencement of winding up, as the case may be.

(2) The Central Bank shall, upon the cancellation of licence as referred to in subsection (1), give notice to the public under the Banking Act or the Finance Business Act that such institution ceases to be a member of the Scheme upon such cancellation.

Member institutions to insure deposits under the Scheme

43. (1) Subject to the provisions of subsection (3), the member institutions shall insure all eligible deposits under the Scheme.

(2) The eligible deposits to be insured under the Scheme shall include demand, time and savings deposit liabilities of member institutions other than the deposit liabilities specified in subsection (3) and debt instruments including any promissory notes, hybrid equity and such other debt instruments as may be determined by the Central Bank.

(3) The following deposit liabilities shall not be considered as eligible deposits: -

- (a) deposit liabilities to other member institutions;
- (b) deposit liabilities maintained individually or jointly with any other party, by directors and key

management personnel of a member institution, close relations of such directors and key management personnel, a subsidiary company or an associate company of a member institution, and any concern in which any of the directors and key management personnel of a member institution or close relations of such directors and key management personnel have any interest;

- (c) deposit liabilities of former directors or key management personnel of a member institution where –
- (i) such directors or key management personnel have been removed from such position on the direction by the Central Bank due to such directors or key management personnel being involved in or connected with any unsound, improper, dishonest, deceitful or fraudulent financial practice detrimental to the interests of the depositors and other creditors of such member institution, in carrying out business operations or management of such member institution;
 - (ii) such directors or key management personnel have been determined by the Central Bank, to be not fit and proper to hold such office in a member institution under any written law for the time being in force;
 - (iii) the Central Bank determines *ex mero motu*, upon being satisfied based on the material available, and after granting such directors or key management personnel, as the case may be, an opportunity of being heard, that such directors or key management personnel are not entitled to receive any benefit under the Scheme, due to such directors or key management personnel engaging in, or having engaged in, or being involved in, or

being responsible for, carrying on the business operations or management of such member institution through any unsound, improper, dishonest, deceitful or fraudulent financial practices detrimental to the interests of its depositors and other creditors;

- (d) deposits falling within the meaning of abandoned property under the Banking Act and dormant deposits under the Finance Business Act, as the case may be, which have been transferred to the Central Bank, in terms of the directions issued by the Central Bank, from time to time;
- (e) deposits held by any Government institution, including a Ministry, Department, Provincial Council or local authority; and
- (f) any other deposit liability of a member institution as may be determined by the Central Bank as not eligible under the Scheme.

(4) The Central Bank may, from time to time, issue operating instructions to member institutions regarding the implementation and operation of the Scheme.

Compensation to
depositors

44. (1) Compensation shall be paid to depositors on insured deposits as per the directions issued by the Central Bank, from time to time, or as hereinafter provided.

(2) Payment of compensation on insured deposits of a member institution shall be initiated within thirty days from the date of cancellation of the licence issued to such member institution.

(3) A depositor of insured deposits shall be entitled to receive compensation under subsection (1) in so far as such depositor submits a duly completed claim for compensation within six years from the date of the cancellation of the licence issued to the member institution.

(4) For the purpose of making compensation under subsection (1), the Deposit Insurance Fund established under section 49 shall automatically subrogate to the rights of depositors against such member institution in an amount equal to the amount of the insured deposits owed by the member institution, regardless of the date on which such amounts are actually paid to its insured depositors:

Provided however, the depositors of insured deposits of member institutions whose licences have been cancelled or suspended prior to August 6, 2021 shall submit their claims not later than four years from the date of the cancellation or suspension of the licences issued to such institutions.

(5) For the purposes of this Part of this Act, a member institution shall maintain records of all depositors of such institution with a unique identification number for each such depositor and submit the details of all depositors to the Central Bank periodically, in such form and manner as may be determined by the Central Bank.

(6) In the event a licence issued to a member institution is cancelled by the Central Bank, such member institution shall, within fourteen days from the date of such cancellation, submit a list of depositors of such institution in the form and manner specified in subsection (5) to the Central Bank for the purpose of payment of compensation to the depositors under the Scheme.

(7) The list of depositors referred to in subsection (6) shall be certified by the respective heads of the supervisory departments of the Central Bank. For the purpose of certification of the list of depositors, the respective heads of the supervisory departments may obtain the service of an external auditor, if necessary.

(8) The compensation payable in respect of insured deposits of a member institution shall be computed aggregating all insured deposit liabilities for each depositor

inclusive of any interest accrued thereon as at the date of cancellation of licence of such member institution, and any interest shall not be paid for the succeeding period.

(9) The maximum amount of compensation payable to a depositor under subsection (8) shall be determined by the Central Bank, from time to time, considering the protection of the interests of the majority of insured depositors under the Scheme, the soundness of the banking and financial system and the monies available in the Deposit Insurance Fund.

(10) When determining the compensation payable under subsection (8), the Central Bank shall take into consideration the type of currency of the insured deposits. If such deposits are in foreign currency, an amount equivalent to such amount of money in Sri Lanka Rupees determined by the Central Bank under subsection (9) shall be paid to such depositor.

(11) The payment of compensation shall not in any event incur a liability of the Central Bank and the Central Bank shall not be held liable for any liability that exceeds the total amount of moneys lying to the credit of the Deposit Insurance Fund.

(12) Where the amount of money lying to the credit of the Deposit Insurance Fund falls short of its liabilities to depositors, additional funding may be raised through borrowings from the Government or from other sources, and for such purpose, the Scheme and the Ministry of Finance shall maintain at all times a memorandum of understanding setting out the terms, conditions and procedures to facilitate such borrowings.

(13) The Head of the Department established under section 4 or any officer authorized by the Central Bank may issue instructions to member institutions relating to the maintaining of records of depositors or any other matter, from time to time.

45. (1) Upon the payment of compensation under section 44, the Scheme shall be subrogated to all the rights of the insured depositors against the member institution whose licence has been cancelled, to the extent of total insured deposit value.

Subrogation of the Scheme to the rights of depositors

(2) The subrogation to the rights of depositors set forth in this section shall not affect a depositor's claims against the member institution for amounts that are not covered by the Deposit Insurance Fund.

46. The Central Bank may make payments of compensation to depositors under the Scheme directly or through any other licensed bank as may be determined by the Central Bank which consents to act as a payment bank.

Compensation may be paid through another licensed bank

47. The Central Bank shall, within seven working days prior to the date of implementation of the payment of compensation under the Scheme, publish a notice on the implementation of such payment in at least three Sinhala, Tamil and English daily newspapers circulating in Sri Lanka, containing-

Notice of payment of compensation

- (a) the details of the payment bank;
- (b) particulars to be submitted by the depositors to receive compensation;
- (c) maximum amount of compensation that shall be paid per depositor; and
- (d) such other instructions to depositors as to how they shall submit their claims for the payment of compensation.

Reporting by
member
institutions

48. Every member institution shall provide to the Central Bank or to any officer authorized by the Central Bank, the information as may be required by the Central Bank, from time to time, in such manner as the Central Bank may specify, from time to time.

Deposit
Insurance Fund

49. (1) The Central Bank shall, as part of the operation of the Scheme, establish a Deposit Insurance Fund, which shall be managed separately from other assets of the Central Bank and the assets managed by the Central Bank.

(2) The Central Bank may sue or be sued in the name of the Deposit Insurance Fund.

Powers, duties
and functions of
the Central Bank
relating to the
Deposit
Insurance Fund

50. (1) The Central Bank shall manage, administer, and supervise the affairs of the Deposit Insurance Fund subject to the provisions of this Act.

(2) In managing, administering and supervising the affairs of the Deposit Insurance Fund, the Central Bank shall exercise, perform and discharge the following powers, duties and functions:-

- (a) to formulate policies in relation to the general administration of the Deposit Insurance Fund and such other matters relating thereto;
- (b) to enter into agreements with any international financial institution in the name of the Deposit Insurance Fund to ensure the effective administration and management of the Deposit Insurance Fund;
- (c) to accept from the Government or any international financial institution, any grant or aid, or borrowing in the name of the Deposit Insurance Fund, as it may consider necessary;
- (d) to formulate procedures for repaying insured deposits by utilizing the moneys available in the Deposit Insurance Fund;

- (e) to make investments and enter into any transaction or agreement as may be necessary or desirable for the financial management of the Deposit Insurance Fund;
- (f) to settle or compromise any claim authorized by the Central Bank by or against the Deposit Insurance Fund;
- (g) to determine the period within which the compensation shall be paid to depositors under section 44; or
- (h) to do such other things which the Central Bank considers necessary to ensure the effective administration and management of the Deposit Insurance Fund.

51. (1) There shall be credited to the Deposit Insurance Fund –

Sources of funds of the Deposit Insurance Fund

- (a) the monies lying to the credit of the Deposit Insurance Fund under the Sri Lanka Deposit Insurance and Liquidity Support Scheme established under the laws for the time being in force, as at the appointed date;
- (b) the premia and penalties paid by member institutions;
- (c) the investment income and gains derived from the investments of the moneys in the Deposit Insurance Fund;
- (d) recoveries of secured advances or loans granted to any member institutions under the Sri Lanka Deposit Insurance and Liquidity Support Scheme established under the laws for the time being in force;

- (e) the sums from the recovery of compensation paid to depositors from and out of the assets of a member institution during the winding up proceedings instituted against such institution;
- (f) such sums as may be appropriated out of the abandoned property or dormant deposits of member institutions, as the case may be, which have been transferred to the Central Bank under the Banking Act;
- (g) the moneys received as additional premia and penalties paid by the member institutions under this Part of this Act;
- (h) the borrowings from the Government or any international financial institution, as may be approved by the Central Bank; and
- (i) any other receipt from any other sources of income as may be approved by the Central Bank.

(2) The Deposit Insurance Fund shall be utilized to make payments in respect of –

- (a) compensation to depositors of insured deposits of member institutions;
- (b) abandoned property or dormant deposits of member institutions lying to the credit of the Deposit Insurance Fund;
- (c) repaying of any borrowings obtained from the Government or any international financial institution; and
- (d) such operating expenses of the Scheme as may be determined by the Central Bank.

(3) The Central Bank may require the Scheme to provide financing to effectively facilitate the resolution of a licensed bank through the transfer of assets and liabilities to a transferee or bridge bank, by way of paying any difference between such assets and liabilities transferred, or by issuing guarantee or providing indemnities for losses related to the transferred assets and liabilities:

Provided that, the total amount of financing provided under this subsection shall not exceed the amount of total compensation to be paid to the depositors of such bank under section 44, and such financing shall be subject to a confirmation by the Central Bank that, with the transfer of assets and liabilities, insured deposits shall be owed by a viable bank:

Provided further, that the holders of all classes of share capital and subordinated debt holders shall have absorbed, or will absorb, the losses.

(4) (a) The Central Bank shall have the right to recover from the licensed bank subject to resolution, the total amount of financing provided by the Scheme to such bank under subsection (3).

(b) The amount to be recovered from the licensed bank to the Scheme under this subsection shall rank, *pari passu* with the insured deposits and claims of the Deposit Insurance Fund arising from subrogation of rights of insured depositors under section 45.

52. All moneys lying to the credit of the Deposit Insurance Fund, shall be invested by the Central Bank in Treasury Bills, Treasury Bonds, any other marketable securities, having regard to the safety, liquidity and return of such investments in accordance with the policies and guidelines issued by the Central Bank, from time to time, relating to the investment of the moneys of the Deposit Insurance Fund.

Investment of
the moneys of
the Deposit
Insurance Fund

53. If, at any time, the liquid funds available in the Deposit Insurance Fund are considered insufficient to meet the payout requirements of the Scheme, the Central Bank may extend a liquidity line to the Deposit Insurance Fund against existing collateral in the Deposit Insurance Fund's portfolio or against a guarantee issued by the Ministry of Finance on such terms and conditions, and for such period, as it may consider necessary.

Transfer of
funds from the
Central Bank to
the Deposit
Insurance Fund

Financial
statements of the
Deposit
Insurance Fund

54. (1) The financial statements of the Deposit Insurance Fund shall be prepared in accordance with the applicable accounting standards. The accounts of the Deposit Insurance Fund shall be maintained in such form and manner as may be determined by the Central Bank, from time to time. Such financial statements shall be maintained separately and shall not be considered as part of the financial statements of the Central Bank.

(2) The Central Bank shall be responsible for the preparation of the financial statements of the Deposit Insurance Fund within three months from the end of each financial year and such financial statements shall be audited by the Auditor-General.

(3) The Central Bank shall publish the audited financial statements of the Deposit Insurance Fund within four months from the end of the financial year at least once in three Sinhala, Tamil and English daily newspapers circulating in Sri Lanka and in such other manner as may be determined by the Central Bank.

Member
institutions to
pay a premium
to the Deposit
Insurance Fund

55. (1) Each member institution shall pay to the Deposit Insurance Fund a premium calculated on the total amount of eligible deposits for such periods, at such rate, at such times and in such manner as may be determined, from time to time, by the Central Bank.

(2) Where any member institution makes any default in the payments of premium due under subsection (1), such member institution shall be liable to pay to the Central Bank, a penalty for the period of such default, at such rate as may be determined by the Central Bank.

(3) In exceptional circumstances, the Central Bank shall have the authority to require the member institutions to pay such additional premium to the Deposit Insurance Fund within such period, as may be specified by the Central Bank.

(4) In the event any member institution fails to pay the additional premium referred to in subsection (3) within the period specified, the Central Bank may, on a case-by-case basis-

- (a) having regard to the reasons explained by such institution, grant additional time for such member institution to pay such additional premium; or
- (b) impose on such member institution a late payment fee on the defaulted premium at such rate, as may be determined by the Central Bank.

(5) No person other than a member institution, shall represent to the general public that such person is a member of the Scheme and its deposit liabilities are insured under this Act.

(6) Any person who contravenes the provisions of subsection (5) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million rupees or to imprisonment for a term not exceeding three years or to both such fine and imprisonment, and shall, in addition, be liable to a fine not exceeding fifty thousand rupees for each day during which such contravention continues.

56. For the purposes of this Part of this Act, the Head of the Department established under section 4 or any other officer authorized by the Central Bank shall have the power to examine and supervise the activities of any member institution.

Examination
and supervision
of member
institutions

Application of
certain
provisions of the
Act to non-bank
financial
institutions

57. (1) The Central Bank may, from time to time, by Order, declare that the provisions of Part I and Part II of this Act relating to resolution of licensed banks shall apply to any class or category of non-bank financial institutions licensed or appointed, and regulated and supervised by the Central Bank (hereinafter referred to as a "non-bank financial institution"), where the Central Bank is satisfied that it is necessary to-

- (a) promote monetary and financial system stability;
or
- (b) protect the interests of the public in respect of the business or activities carried on by such class or category of non-bank financial institutions.

(2) Where an Order is made under this section by the Central Bank, any reference made in this Act to the Director of Bank Supervision shall, where appropriate, be deemed to have been made to the Director, the Department of Supervision of Non-bank Financial Institutions of the Central Bank.

PART IV

FINANCIAL SECTOR CRISIS MANAGEMENT COMMITTEE

Financial Sector
Crisis
Management
Committee

58. (1) There shall be established a committee called the Financial Sector Crisis Management Committee for the purpose of effectively managing and minimizing the impact of financial crises which are systemic in nature.

(2) The Financial Sector Crisis Management Committee shall consist of the following members: -

- (a) the Governor of the Central Bank, who shall be the Chairperson of the Financial Sector Crisis Management Committee;
- (b) the Secretary to the Treasury who shall be the Deputy Chairperson of the Financial Sector Crisis Management Committee;
- (c) an appointed member of the Governing Board of the Central Bank with expertise on financial sector;
- (d) the Deputy Governor of the Central Bank in charge of financial system stability; and
- (e) the Deputy Secretary to the Treasury in charge of fiscal operations.

59. (1) The Financial Sector Crisis Management Committee shall, for the purpose of operationalization of the Financial Sector Crisis Management Committee, prepare and approve procedures, including procedures for -

Duties and functions of the Financial Sector Crisis Management Committee

- (a) identifying crisis times;
- (b) determining the powers, duties and functions of the Financial Sector Crisis Management Committee on crisis preparedness and management;
- (c) the appointment of members to the Technical Committee on Financial Sector Crisis Management appointed under section 60;
- (d) determining the duties and functions of the Technical Committee on Financial Sector Crisis Management during crisis and non-crisis times; and

(e) determining the duties and functions of the Secretariat.

(2) During non-crisis times, it shall be lawful for the Financial Sector Crisis Management Committee to take decisions on an ongoing basis, aimed at strengthening its crisis management powers, expertise, and resources to strengthen the preparedness and resilience to avoid, control, or manage the risk of future crises, which may cause instability of the financial system.

(3) During crisis times, it shall be lawful for the Financial Sector Crisis Management Committee to approve, and coordinate the overall crisis management strategy, in consultation with the other authorities of the financial sector, and take decisions to manage, and control such crises, without prejudice to the powers, duties, functions, and independence of such authorities.

The Technical
Committee on
Financial Sector
Crisis
Management

60. (1) There shall be a technical committee called the Technical Committee on Financial Sector Crisis Management to assist the Financial Sector Crisis Management Committee, which shall operate in crisis and non-crisis times.

(2) The Technical Committee on Financial Sector Crisis Management shall consist of such number of members appointed by the Financial Sector Crisis Management Committee, representing the Central Bank and the Ministry of the Minister.

(3) Without prejudice to the provisions of section 59, the Technical Committee on Financial Sector Crisis Management shall be chaired by the Deputy Governor of the Central Bank in charge of financial system stability.

Secretariat of the
Committees

61. The Central Bank shall function as the Secretariat of the Financial Sector Crisis Management Committee and the Technical Committee on Financial Sector Crisis Management.

62. (1) The Financial Sector Crisis Management Committee shall hold meetings as and when necessary, but at least once a month when it operates in crisis times and at least once every quarter in non-crisis times.

Meetings of the
Financial Sector
Crisis
Management
Committee

(2) The Chairperson of the Financial Sector Crisis Management Committee may call extraordinary meetings depending on the circumstances and needs.

(3) The *quorum* for any meeting of the Financial Sector Crisis Management Committee shall be constituted by the presence of the Chairperson or the person acting as Chairperson and the simple majority of the remaining members.

(4) In the absence of the Chairperson from any meeting, the Deputy Chairperson shall preside at such meetings. In the absence of both the Chairperson and the Deputy Chairperson from any meeting, any other member shall be elected to preside at such meeting from among the members present at such meeting.

63. The Chairpersons of the Financial Sector Crisis Management Committee and the Technical Committee on Financial Sector Crisis Management may, as and when necessary, invite such relevant stakeholders from the public and private sectors as such Committees may determine, to attend the meetings of such Committees as observers to discuss relevant issues depending on the circumstances and needs.

Committees may
invite public and
private sector
stakeholders to
meetings

64. Each member of the Financial Sector Crisis Management Committee and the Technical Committee on Financial Sector Crisis Management and the officers and other employees of the Secretariat shall maintain strict

Confidentiality
of the
information of
Committees

confidentiality with regard to the information received and collected by such Committees, including the views expressed by the members of such Committees in the performance and discharge of the duties and functions of such Committees and shall use them solely for the purpose of the activities of the respective Committees.

PART V

WINDING UP OF LICENSED BANK

Provisions of this Part of this Act to prevail over any other law

65. Unless otherwise provided for in this Part of this Act, in the event of any conflict or inconsistency between the provisions of this Part of this Act and the provisions of the Banking Act, the Monetary Law Act, the Finance Business Act, the Companies Act, or any other written law relating to insolvency of companies for the time being in force, the provisions of this Part of this Act shall prevail.

Winding up of a licensed bank

66. (1) A licensed bank may be wound up by the Central Bank, in any of the following circumstances: -

- (a) where the Central Bank is satisfied that the resolution measures referred to in Part II of this Act are not likely to achieve one or more of the objectives set out in section 8;
- (b) the Administrator recommends that the licensed bank be wound up, under section 21;
- (c) where the assets and liabilities of a licensed bank are partially transferred to a transferee, including a bridge bank under the provisions of Part II of this Act; or
- (d) the Central Bank, in the process of resolution, concludes that the prospect of a successful resolution is unlikely under the provisions of Part II of this Act.

(2) Where the Central Bank determines that a licensed bank shall be wound up due to any of the grounds specified in subsection (1), the Central Bank shall grant such licensed bank, an opportunity of being heard and take steps to cancel the licence issued to such licensed bank and commence proceedings for its winding up in accordance with the provisions of this Part of this Act.

(3) Upon cancellation of the licence by the Central Bank under subsection (2), the licensed bank shall forthwith cease carrying out of its business within and outside Sri Lanka.

67. (1) Where the licence issued to a licensed bank is cancelled by the Central Bank under subsection (2) of section 66, the Head of the Department established under section 4 may make an application to the court to commence winding up proceedings against such licensed bank.

Application to
court for a
winding up
order

(2) An application to the court under subsection (1) shall be by way of a petition made in accordance with the provisions of this Part of this Act. Such petition shall be supported by documentary evidence to prove the grounds for the winding up.

(3) The court shall, after considering the application made under subsection (1), fix a date to support the winding up petition, which shall not exceed two months from the date of the winding up petition filed under subsection (2).

(4) The Head of the Department established under section 4 shall publish in the *Gazette*, the date fixed to support the winding up petition under subsection (3), within a period of fourteen working days from the date called to fix the date to support, requiring creditors or any other interested party of the licensed bank subject to winding up, to notify him in such form and within such period as may be specified in that

publication, whether they intervene into the winding up application filed under subsection (1), as parties (in this Act referred to as the "intervening parties"). The period of notification given to intervening parties shall not exceed fourteen days from the date of such *Gazette*. Details of the intervening parties notified under this section shall be submitted to the court on the date fixed to support the winding up petition.

(5) No person specified in subsection (4) shall intervene in the winding up proceedings before the date on which such petition is supported.

(6) The court may, after considering the application made under subsection (1), and submissions of the intervening parties, make an order (in this Act referred to as the "winding up order") to commence the winding up proceedings against such licensed bank.

(7) The winding up order shall come into effect from the date specified in such order.

(8) If the court is of the opinion, after considering the submissions of the Head of the Department established under section 4 and the intervening parties that the licensed bank is not insolvent, it may make order permitting the licensed bank to resume business, either unconditionally or subject to such conditions as the court may consider necessary in the public interest or in the interests of the depositors and other creditors of the licensed bank.

(9) Upon coming into effect of the winding up order, the right of any depositor, creditor, or any contracting counterparty to access or execute their rights, titles and interests recorded in the books or records of the licensed bank shall be forthwith suspended.

(10) For the purposes of this Part of this Act, the value of the assets and liabilities of a licensed bank which is subject to winding up shall be determined in accordance with the applicable Sri Lanka Accounting Standards.

(11) Every order made by the court under this section shall be subject to an appeal to the Supreme Court and the provisions of the High Court of the Provinces (Special Provisions) Act, No.10 of 1996 relating to an appeal shall, *mutatis mutandis*, apply to and in respect of any such appeal.

68. (1) In pursuance to the winding up order, the court shall appoint a person nominated by the Central Bank as the liquidator to act on its behalf for the purposes of winding up of the operations of the licensed bank.

Appointment of
a liquidator

(2) The Central Bank shall, immediately after the appointment of the liquidator under subsection (1), give notice of the winding up order and the appointment of liquidator under subsection (1), to the licensed bank, and shall publish such notice in the *Gazette* and at least in three Sinhala, Tamil and English daily newspapers circulating in Sri Lanka.

69. (1) The liquidator appointed under section 68 shall be the sole legal representative of the licensed bank subject to winding up, and shall succeed to all rights and powers of the shareholders, the Board of Directors, key management personnel and such other officers of the licensed bank, including all the powers necessary or expedient to manage, control, operate, and wind up the licensed bank:

Powers, duties
and functions of
the liquidator

Provided however, the liquidator may request the court to vest all or part of the assets and liabilities of the licensed bank subject to winding up in another licensed bank, with the concurrence of the Central Bank.

(2) The liquidator shall exercise, perform and discharge the powers, duties and functions relating to winding up under the direction and supervision of the court and the Central Bank:

Provided however, the Central Bank shall ensure that any direction given to the liquidator does not contravene the directions, orders, judgements and instructions given by the court during the winding up process.

(3) The liquidator shall, subject to the direction and supervision of the Central Bank, take charge of the offices, books, records and other information and assets of the licensed bank subject to winding up.

(4) A liquidator may, for the purpose of exercising, performing and discharging the powers, duties and functions relating to the winding up of the licensed bank, at the expense of the licensed bank, obtain services of independent attorneys, accountants, auditors, consultants, valuers, or such other persons, on such terms and conditions, as may be agreed with such persons in writing.

(5) The liquidator shall be entitled to an indemnity out of the property of the licensed bank subject to winding up in respect of his personal liabilities under this Part of this Act.

Remuneration of
the liquidator

70. (1) The liquidator shall be paid such remuneration as may be specified by the court as a percentage of the value of the assets of the licensed bank subject to winding up or as the court may otherwise specify.

(2) The remuneration specified by the court under subsection (1) and such reasonable and incidental expenses incurred by the liquidator in the process of winding up of the licensed bank shall be paid from the existing assets of such licensed bank.

71. (1) The court shall remove the liquidator, upon an application made in that behalf by the Head of the Department established under section 4, where the liquidator-

Removal of the liquidator

- (a) has died or been incapacitated to act as the liquidator;
- (b) has submitted a letter of resignation;
- (c) in the opinion of the Central Bank, has failed to exercise, perform or discharge any power, duty, or function of such liquidator or to comply with the terms and conditions imposed on such liquidator under this Part of this Act; or
- (d) becomes ineligible to serve in that capacity in any other manner.

(2) The court shall, upon removal of the liquidator under the provisions of subsection (1), appoint another person nominated by the Central Bank as the liquidator.

(3) The Central Bank shall, immediately after the appointment of the liquidator under subsection (2), give notice of appointment of the new liquidator to the licensed bank, and shall publish such notice in the *Gazette* and at least in three Sinhala, Tamil and English daily newspapers circulating in Sri Lanka.

(4) The provisions of sections 69 and 70 shall, *mutatis mutandis*, apply to the liquidator appointed under subsection (2).

Liquidator to
prepare a
winding up plan

72. (1) Within a period of three months from the date of winding up order made under section 67, the liquidator shall prepare and submit to the Central Bank for its approval, a detailed winding up plan for the licensed bank subject to winding up.

(2) The winding up plan referred to in subsection (1) shall include –

- (a) a current *pro forma* statement of financial position showing the assets and liabilities of the licensed bank;
- (b) quarterly statements of income and expenditure of the preceding period of two years and projected income and expenditure for the succeeding period of two years of the licensed bank;
- (c) a progress report on the sale and plans for the sale of major assets or groups of assets of the licensed bank;
- (d) a report on the judicial or extra-judicial pursuit of claims of the licensed bank, including any action to obtain an annulment or a declaration of invalidity of fraudulent conveyances, and the transfers made and rights created by them;
- (e) a report on offences and other illegal activities of directors or officers of the licensed bank and actions to obtain compensation for the licensed bank from such directors or officers;
- (f) a report on the continuation or termination of ongoing contracts, such as insurance, employment and service contracts of the licensed bank, including a detailed analysis of financial provisions for its employees;

- (g) a report on the liabilities of the licensed bank and a schedule of expected payments to creditors of the licensed bank during the succeeding period of three months; and
- (h) a report on actual, past and estimated future costs for the preceding and succeeding period of two years, respectively, and expenses of the winding up.

(3) The Central Bank shall, if it is satisfied with the content of the winding up plan submitted under subsection (1), approve such plan and inform the liquidator in writing of such approval.

(4) The liquidator shall, after the winding up plan is approved by the Central Bank under subsection (3), submit such winding up plan, together with the approval given by the Central Bank, to the court for approval.

(5) The liquidator shall, after receiving the approval of the court for the winding up plan, publish, once a week for three consecutive weeks, a notice at least in three Sinhala, Tamil, and English daily newspapers circulating in Sri Lanka, which shall contain information of the date when, and the place where, the winding up plan and updates of such plan will be available for inspection by the claimants of the licensed bank subject to winding up who have registered their claims under section 79.

(6) The winding up plan approved by the court shall be updated quarterly by the liquidator.

(7) The liquidator shall maintain proper books and records including a cost-benefit analysis of the implementation of the winding up plan and shall submit the same for the

inspection of the Head of the Department established under section 4 or any officer authorized in that behalf by the Central Bank.

Prohibition in regard to court proceedings against licensed bank subject to winding up

73. (1) Where the winding up proceedings on a licensed bank are initiated pursuant to a winding up order, any court proceeding against such licensed bank shall not be commenced, and all court proceedings pending against such licensed bank shall be stayed forthwith, with the leave of the court and subject to such terms as the court may impose.

(2) In pursuance of the winding up order, any creditor other than a secured creditor shall not have the right to execute any of his personal right, title or interest against the licensed bank subject to winding up or impose any other restraints on the assets thereof.

(3) All attachments placed, and acts of execution performed on the assets of the licensed bank subject to winding up after the date of coming into effect of the winding up order, shall be void, except for realization of assets encumbered by a mortgage or lien, to the extent of the debt secured by such assets.

(4) Any interest or other charge shall not accrue on liabilities of a licensed bank on or after the date of coming into effect of the winding up order.

Liquidator to apply to court for an order to nullify certain acts

74. (1) The liquidator shall, in consultation with the Central Bank, and after giving notice to the licensed bank subject to winding up, make an application to the court requesting that any act, including but not limited to, any act of such licensed bank that has been carried out within the period of ninety days before the date of coming into effect of the winding up order, be declared null and void.

(2) The court may upon receipt of an application under subsection (1), and on being heard the parties named in such application, if satisfied, that such licensed bank and such parties involved in such act have had the knowledge or should have known at the time of carrying out of such act that it is likely to damage the interests of depositors or other creditors of such licensed bank, declare that any act, including but not limited to, any transaction of the licensed bank subject to winding up that has been carried out within the period of ninety days before the date of coming into effect of the winding up order, to be null and void.

(3) The knowledge referred to in subsection (2) shall be presumed whenever such act consists of –

- (a) a gift or other transfer to any person without consideration;
- (b) a payment of money, or transfer of assets or any other interest of the licensed bank, a shareholder, director, an Administrator, a key management personnel or an employee of the licensed bank, unless such licensed bank, shareholder, director, Administrator, key management personnel or the employee proves to the satisfaction of the court, taking into account the views of the Central Bank, that-
 - (i) such person engaged in the payment of money or transfer of assets or interests of the licensed bank as a *bona fide* counterparty;
 - (ii) such person had reasonable grounds to believe that the payment of money or transfer of assets or interests of the licensed bank as the case may be, is genuine based on the representations made by the licensed bank in that respect; and

- (iii) such person was not aware that the payment of money or the transfer of assets or interests of the licensed bank would have damaged the interests of the depositors and creditors of such licensed bank;
- (c) a payment or transfer made prior to its due date, or the transfer of collateral for a debt prior to the date on which such debt becomes payable;
- (d) the conclusion or performance of a contract imposing obligations on the licensed bank that are significantly more onerous than the obligations imposed on the other party or parties to the contract;
- (e) an arrangement between the licensed bank and one or more other persons, other than a financial contract, permitting setting off rights and obligations of the licensed bank, prior to the issuance of the winding up order;
- (f) an inter-bank transfer between a bank incorporated outside Sri Lanka, which has been issued a licence under the Banking Act and the head office of that bank, its branches or subsidiaries which have been established outside Sri Lanka; or
- (g) a transfer between the licensed bank and its related parties.

Termination of
fiduciary
functions

75. The liquidator shall, as soon as practicable, take steps to –

- (a) cease and terminate all functions discharged by the licensed bank in a fiduciary capacity;

- (b) return all funds and other property held by the licensed bank in a fiduciary capacity, or under bailment, or as bailor of a safe deposit box, to the persons or their legal heirs or representatives who are legally entitled to the ownership of such funds or property, as the case may be; and
- (c) settle the fiduciary accounts of the licensed bank.

76. (1) Within a period of six months from the date of the winding up order, the liquidator may, with the approval of the court and subject to the issuance of a ninety days' prior written notice, and the provisions of any other law for the time being in force, terminate -

Termination of
existing
contracts

- (a) any contract of employment entered into with the licensed bank;
- (b) any contract for services to which the licensed bank is a party; or
- (c) any obligations of the licensed bank including, but without limiting to, its obligations, if any-
 - (i) under any credit facility provided by the licensed bank;
 - (ii) as a lessee;
 - (iii) to deliver or to take delivery of securities, payment instruments or foreign currency;
 - (iv) under letters of credit; or
 - (v) under guarantees, options and other contingent liabilities.

(2) A lessor who has received a ninety days' prior notice of the termination of a lease under paragraph (c) of subsection (1), shall have no claim for rent other than the rent accrued on the date of termination of the lease, nor for damages by reason of such termination.

(3) Any person aggrieved by the decision of the court to grant approval under subsection (1) may appeal to the Supreme Court against such decision, within forty-five days from the date of the notice issued under that subsection and the provisions of the High Court of the Provinces (Special Provisions) Act, No.10 of 1996 shall, *mutatis mutandis*, apply to and in respect of such appeal.

Finality in
payment,
clearing and
settlement
systems

77. (1) Notwithstanding anything to the contrary contained in the provisions of this Act or any other written law for the time being in force-

- (a) any irrevocable money or securities transfer order that has been entered by a licensed bank into a payment or securities settlement system recognized as such by the Central Bank shall be legally enforceable and binding on third parties, despite the issuing of a winding up order against the licensed bank, provided that such transfer order has become irrevocable before the winding up order takes effect; or
- (b) where a licensed bank enters any irrevocable money or securities transfer order into a payment or securities settlement system after the winding up order issued against the licensed bank takes effect, and such transfer order is carried out on the day of coming into effect of the winding up order, such transfer order shall be legally enforceable and binding on any third party.

(2) Any written law for the time being in force on the setting aside of contracts and transactions entered into or made before the coming into effect of the winding up order, shall not have effect on unwinding of a netting by a payment or settlement system recognized by the Central Bank.

(3) For the purposes of this section –

- (a) a transfer order entered into a payments or securities settlement system becomes irrevocable at the time defined by the laws, regulations or rules applicable to that system; and
- (b) "netting" means the conversion into one net claim or one net obligation of all claims or obligations resulting from transfer orders, which a participant or participants in a settlement system either issue to, or receive from, one or more other participants in that system with the result that only a net claim or a net obligation remains.

78. (1) Within one month from the date of taking charge of the assets, books, records and other information in any form under subsection (3) of section 69, the liquidator shall submit to the Central Bank an interim report containing all assets, claims, contracts, and major transactions of the licensed bank subject to winding up.

Reports to be
submitted by
liquidator

(2) It shall be lawful for any officer authorized by the Central Bank to submit to the liquidator such information on the assets and liabilities of the licensed bank subject to winding up, available in the custody of such authorized officer, which may be required to recognize assets and liabilities of such licensed bank.

(3) Within two months from the date of the interim report referred to in subsection (1), the liquidator shall submit to the Central Bank a final report of –

- (a) all the assets of the licensed bank, including claims of the licensed bank on account of unpaid subscriptions of share capital of the licensed bank, loan and guarantee agreements and agreements of purchase or sale, together with the book values and estimated liquidation values of such assets;
- (b) major transactions entered into by the licensed bank during the period of ninety days immediately preceding the date of the winding up order;
- (c) the contracts pursuant to which any property of the licensed bank is or will be held by other parties, including sales, rent, lease and such other collateral agreements; and
- (d) the contracts pursuant to which the licensed bank receives services from third parties.

(4) Within fourteen days from the submission of the final report under subsection (3), the Central Bank may grant approval to, or further develop the same, in consultation with the liquidator.

(5) The liquidator shall tender to the court a certified copy of the final report approved by the Central bank under subsection (4).

(6) The liquidator shall update the report tendered to the court under subsection (5) periodically as may be required by the Central Bank and submit the same to the Central Bank. The provisions of subsections (4) and (5) shall *mutatis mutandis* apply to such updated report.

Registration of
claims

79. (1) Any claim on a licensed Bank subject to winding up shall be made to the liquidator in writing, within four months from the date of winding up order.

(2) Any claim under subsection (1) shall accompany the documentary evidence in relation to such claim, including the following information at a minimum: -

- (a) the name and address of the creditor;
- (b) nature of the claim, including the amounts of interest and other charges, penalties and taxes included in the principal amount of the claim; and
- (c) details concerning any mortgage, lien or guarantee securing the claim, including the name and address of any guarantor.

(3) Subject to the provisions of subsection (5) of section 80, the liquidator shall register each such claim made to him under subsection (1) and issue a receipt in such form as may be specified by the Central Bank in proof of such registration.

(4) The receipt referred to in subsection (3), shall be *prima facie* evidence of the registration of a claim.

(5) Anything contained in this section shall not apply to any claim submitted by a depositor in respect of a deposit recorded in the books or records of a licensed bank subject to winding up, and such claim shall be admitted for the amount so recorded, for the purpose of giving effect to the winding up order.

80. (1) Subject to the provisions of subsections (4) and (5), only the claims that are registered with the liquidator shall be considered by the liquidator for the purpose of giving effect to winding up proceedings of a licensed bank, without further evidence to that effect.

Admission or
rejection of
claims

(2) Any creditor of the licensed bank whose claim is secured by a mortgage or lien, may register such claim for an amount exceeding the expected value of the underlying asset which may be sold at a public auction or the market value as may be determined by an independent professional valuer possessing such qualifications and experience referred to in subsection (1) of section 16.

(3) Any claim registered under the provisions of subsection (2), shall only be admitted by the liquidator after the public auction has taken place.

(4) Any claim of which the value is uncertain, may be admitted by the liquidator for a value as determined by the liquidator in consultation with an independent professional valuer possessing such qualifications and experience referred to in subsection (1) of section 16.

(5) The liquidator shall, after examining each claim registered under subsection (3) of section 79, classify such claims as-

- (a) claims admitted by the liquidator; and
- (b) claims rejected by the liquidator.

(6) The liquidator shall, for the purpose of recording the claims classified under subsection (5), maintain two separate lists. In the case of claims classified as claims rejected under paragraph (b) of subsection (5), the liquidator shall record in such list the reasons for classifying such claims as rejected claims.

(7) In both of the lists referred to in subsection (6)-

- (a) the name and address, the amount of the claim, and whether the claim is secured by collateral shall be specified in respect of each claimant; and

(b) claims of equal ranking shall be listed together, in the order of their priority of payment.

(8) Both of the lists referred to in subsection (6) shall be completed and submitted to the court, within a period of thirty working days from the deadline specified for the registration of claims.

(9) The liquidator shall, after submitting the first set of lists as referred to in subsection (6), update such reports periodically and submit the updated lists to the court at such times as may be specified by the court.

(10) The liquidator shall notify every claimant whose claim has been classified as rejected under subsection (5) the fact of such rejection in writing, within a period of one month from the date of issuance of the receipt under subsection (3) of section 79.

81. (1) Any claimant who is aggrieved by the rejection of a claim under the provisions of section 80 may, within a period of one month from the date of receipt of the notification under subsection (10) of section 80, apply to the court for an order for the admission of such claim.

Appeals against
rejected claims

(2) The court may, after considering the application made under subsection (1), make order admitting or rejecting such claim.

(3) Any claim admitted by the court under subsection (2), shall be removed from the list of rejected claims referred to in subsection (6) of section 80, and be recorded in a separate list of admitted claims to be maintained jointly by the court and the liquidator.

(4) Any payment shall not be made by the liquidator on account of claims that are rejected by the court.

(5) Any claimant whose claim has been rejected by the court, may appeal to the Supreme Court against such decision within forty-five days from the date of such decision and the provisions of the High Court of the Provinces (Special Provisions) Act, No.10 of 1996 relating to appeals shall, *mutatis mutandis*, apply to and in respect of such appeal.

Disposal of assets, liabilities, or shares, &c in a winding up

82. Subject to the provisions of section 84, the liquidator may, with the concurrence of the Central Bank and with the approval of the court, dispose of all or part of any assets, liabilities, legal rights and obligations or any property of the licensed bank after the commencement of winding up under this Part of this Act.

Setting off and netting

83. (1) Anything contained in the provisions of this Act and any decision taken thereunder shall not prevent or prohibit the setting off, by operation of the law, of obligations between a licensed bank subject to winding up and its contractual counterparties.

(2) In determining the rights and obligations between a licensed bank subject to winding up and its contractual counterparties, close-out netting and set off provisions contained in financial contracts between such licensed bank and the respective contractual counterparties shall be taken into consideration.

(3) The net termination value determined in accordance with a financial contract between the licensed bank subject to winding up and the respective contractual counterparty, shall be a claim of such licensed bank on the counterparty, or shall be admitted after its registration as a claim of the counterparty on the licensed bank under the provisions of section 79.

(4) For the purposes of this section, "net termination value" means the net amount obtained after setting off the mutual obligations between the parties to a financial contract in accordance with the terms and conditions thereof.

(5) The Central Bank shall specify the matters pertaining to setting off and netting including financial contracts, by issuing directions, from time to time.

84. (1) All assets of a licensed bank subject to winding up, other than assets securing approved claims of secured creditors against such licensed bank, and all assets securing claims of such licensed bank shall be sold by the liquidator in a commercially reasonable manner.

Sale of assets in winding up

(2) The assets including collaterals, shall be deemed to have been sold in a commercially reasonable manner as referred to in subsection (1), when such assets are disposed of as follows: -

- (a) when securities, foreign currencies and other assets that can be readily sold are sold at market price in the markets where they are traded; and
- (b) when such assets are sold at public auction:

Provided however, if the liquidator determines that a reasonable price cannot be obtained for the assets in a public auction, the liquidator shall seek the approval of the court to sell the assets privately.

(3) The assets of a licensed bank subject to winding up other than the assets referred to in paragraph (a) of subsection (2), shall be placed at the disposal of the liquidator, promptly upon a request of the liquidator.

(4) Any dispute between the liquidator and a secured creditor as to the value of an asset securing a claim shall be resolved by the Central Bank, unless the asset is sold at market value as may be determined by an independent professional valuer possessing such qualifications and experience referred to in subsection (1) of section 16, or at public auction, as the case may be, in which event the sale price at market value or at public auction shall be conclusive as to the value of the asset.

Priority of
claims for the
distribution of
assets in winding
up

85. (1) The liquidator shall distribute the assets of a licensed bank subject to winding up in accordance with the priority of claims specified in subsection (2).

(2) The assets of a licensed bank subject to winding up shall be distributed in the following order of priority: -

- (a) all reasonable costs and expenses incurred by the liquidator on account of the administration of the insolvency;
- (b) unpaid premium due to the Deposit Insurance Fund;
- (c) insured deposits and claims of the Deposit Insurance Fund arising from subrogation of the rights of insured depositors under section 45 as a result of compensation or resolution financing provided under subsection (3) of section 51;
- (d) deposits over the insured limit determined by the Central Bank under section 44;
- (e) salaries and wages of officers and other employees of the licensed bank, as accrued to the date of the winding up order made under subsection (6) of section 67;

- (f) sums owed to the Government for the financing of resolution under this Act;
- (g) taxes, rates, and deposits owed to the Government and local authorities by the licensed bank which were due over a period of not more than one year preceding the date of the winding up order made under subsection (6) of section 67;
- (h) industrial court awards and any other statutory dues payable to, or on account of, any officer or other employee of the licensed bank;
- (i) liabilities of the licensed bank on account of resolution and any other liabilities due and owing to the Central Bank and the Deposit Insurance Fund;
- (j) claims of unsecured creditors other than depositors;
- (k) any other claim not paid under paragraphs (a) to (j) of this subsection.

86. (1) The payment of claims to depositors or other creditors of a licensed bank subject to winding up, shall be made only for amounts listed in a distribution schedule approved by the Central Bank.

Distribution
schedule of
payments in
winding up

(2) For the purpose of subsection (1), the liquidator shall prepare a distribution schedule of payments to be made to depositors and other creditors of the licensed bank subject to winding up, consisting of claims admitted under sections 80 and 81, and submit the same for approval of the Central Bank.

(3) Each distribution schedule of payments shall rank and combine the payments to be made on approved claims according to their priority of payment as specified in the provisions of section 85, only if-

- (a) all payments due on approved claims of a higher priority ranking than the claims to be included, have been made in full under an earlier distribution schedule of payments, or can be made in full under this distribution schedule of payments; and
- (b) sufficient funds have been reserved to pay in full of all claims that have a higher priority ranking than the claims to be included and that are not yet approved and to ensure equal treatment of the claims that have a priority ranking equal to the ranking of the claims to be included and that are not yet approved.

(4) If the funds available are insufficient to settle all claims of a certain priority ranking in full, the funds shall be distributed *prorata* among payments on those claims, and any funds shall not be allocated to payments on claims of a lower priority ranking unless such payment can be made in full on the first mentioned claims.

(5) Immediately after the approval by the Central Bank, of a distribution schedule of payments submitted under subsection (2), the liquidator shall publish once a week for three consecutive weeks, a notice, at least in three Sinhala, Tamil, and English daily newspapers circulating in Sri Lanka, containing information of the date when, and place where, the persons entitled to approved claims can receive the payments, or any such other manner in which the entitled persons can receive the payments listed in that distribution schedule.

(6) Any amount included in the distribution schedule which is not paid owing to the inability to identify or contact the relevant depositors and creditors shall be deposited in a special account maintained for that purpose in the Central Bank.

(7) Any funds deposited under subsection (6), which is not claimed by the owner within a period of ten years after the date of the final distribution to the depositors or creditors of the licensed bank under this section, shall be deemed to be abandoned property under the Banking Act.

(8) After all the disputed claims have been either approved or rejected by the court and all possible payments on approved claims have been made, and all amounts that could not be paid have been deposited under subsection (6), any remaining net proceeds of the winding up shall be –

- (a) distributed among all shareholders of the licensed bank subject to winding up *pro rata* to the nominal value of their respective share holdings, subject only to preferences among classes of shareholders;
- (b) paid to the Government where the licensed bank subject to winding up is a public corporation; or
- (c) paid to a head office of the licensed bank subject to winding up, incorporated outside Sri Lanka.

87. (1) The winding up proceedings may be commenced against a licensed bank incorporated or established outside Sri Lanka -

- (a) if such licensed bank wishes to close down its business in Sri Lanka with the prior written approval of the Central Bank, subject to such terms and conditions as the Central Bank may specify;
- (b) if any of the grounds listed in section 66 applies to such licensed bank as if it were a separate legal person; or

Winding up proceedings concerning a licensed bank incorporated or established outside Sri Lanka

- (c) on the petition by the Central Bank, if the winding up proceedings have commenced against the licensed bank in the country in which such licensed bank is incorporated or established or where such licensed bank principally carries on its business.

(2) The provisions of this Part of this Act relating to the winding up of a licensed bank shall apply to the winding up of a licensed bank incorporated or established outside Sri Lanka, as they apply to a licensed bank incorporated in Sri Lanka.

(3) All assets, liabilities, acts and omissions of the licensed bank subject to winding up incorporated or established outside Sri Lanka resulting from, or otherwise relating to, the business carried out by such licensed bank in Sri Lanka shall be attributed to that licensed bank when applying the provisions of this section.

(4) The liquidator shall be authorized to take all actions with respect to such licensed bank as could be taken, as if such licensed bank was a licensed bank incorporated in Sri Lanka.

(5) At the time when the order of the court to commence winding up proceedings against a licensed bank incorporated or established outside Sri Lanka is served, such licensed bank shall cease all its activities carried out in Sri Lanka, except for permissible activities carried out by it with the prior written approval of the liquidator.

(6) In the application of the provisions of this Part of this Act in winding up proceedings against a licensed bank incorporated or established outside Sri Lanka, only the provisions of section 83 shall apply to the setting off and netting of obligations resulting from, or otherwise relating to, the business of such licensed bank in Sri Lanka.

(7) The liquidator shall take all measures necessary to ensure that no assets owned by the licensed bank subject to winding up incorporated or established outside Sri Lanka, are removed from Sri Lanka until all obligations and liabilities incurred by such licensed bank, to which the undertaking given by such licensed bank to the Central Bank at the time of obtaining the licence to carry on banking business under the Banking Act, have been met in accordance with such undertaking.

88. (1) Upon completion of the winding up, the liquidator shall prepare and submit to the court for its approval, an audited statement of accounts and a report of winding up of the licensed bank, together with an opinion of an external auditor.

Termination of winding up proceedings and revocation of licence

(2) The audit referred to in subsection (1) shall be conducted by an external auditor appointed by the Central Bank in consultation with the Auditor- General.

(3) The external auditor shall be paid a remuneration out of the assets of the licensed bank.

(4) The external auditor's opinion referred to in subsection (1) shall state-

- (a) whether the statement of accounts of the liquidator is true and fair and has been properly drawn up;
- (b) whether the statement of accounts of the liquidator exhibits a true and correct statement of the dealings of the liquidator with the assets of the licensed bank;
- (c) where such external auditor has called for any explanation or information from the liquidator, whether the explanation or information provided by the liquidator is satisfactory; and

(d) whether the liquidator has acted in accordance with the directions given by the Central Bank.

(5) The court may approve the audited statement of accounts and the report of winding up and direct the liquidator to deposit the books and records of the licensed bank and other documents relating to the winding up in a place as the court may deem appropriate.

(6) Upon the receipt of the approval under subsection (5), the liquidator shall publish a notice of such approval for the information of the public at least in three Sinhala, Tamil, and English daily newspapers circulating in Sri Lanka.

(7) (a) Upon the publication of the notice of approval under subsection (6), if such notice relates to a company registered under the provisions of the Companies Act, the liquidator shall inform the Registrar-General of Companies to strike-off the name of the company from the register maintained by the Registrar-General of Companies under the provisions of the Companies Act.

(b) Thereupon, the Registrar-General of Companies shall strike off the name of such company from the register and publish a notice to that effect in at least three Sinhala, Tamil and English daily newspapers circulating in Sri Lanka.

(8) From the date of publication of a notice striking off the name of a company under subsection (7), the proceedings of winding up against the licensed bank shall terminate, and the company shall stand dissolved.

(9) The approval by the court of the audited statement of accounts and the report of winding up discharges and relieves the liquidator from any liability in connection with the winding up of the licensed bank.

(10) The dissolution of a company under subsection (8) shall not affect the liability under this Act or any other written law of any director, chief executive officer, other officer or owner of the company, and such liability shall continue and may be enforced as if the company had not been dissolved.

89. (1) Every person, being a director or an officer of a licensed bank subject to winding up, whether present or past, who-

Offences by
directors or
officers of the
licensed bank

- (a) fails to disclose to the liquidator, to the best of his knowledge and belief, information relating to all the movable and immovable property of such licensed bank, including how, to whom and for what consideration such property or part thereof have been disposed of, except such property or part as has been disposed of in the ordinary course of the business of the licensed bank;
- (b) fails to deliver up to the liquidator, or as the liquidator directs –
 - (i) all the movable and immovable property of such licensed bank in the custody of such director or officer, or under the control of such director or officer; or
 - (ii) all the books, records, registers and documents belonging to such licensed bank, in the custody of such director or officer, or under the control of such director or officer;
- (c) within twelve months immediately preceding the commencement of the winding up of such licensed bank, or at any time thereafter –

- (i) has concealed any part of the property of the licensed bank to the value of rupees ten thousand or more, or has concealed any debt due to, or due from, such licensed bank;
- (ii) has fraudulently removed any part of the property of such licensed bank to the value of rupees ten thousand or more;
- (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book, register, record or document affecting or relating to the property or affairs of such licensed bank;
- (iv) has made or has been privy to the making of any false entry in any book, register, record, or document affecting or relating to the property or affairs of such licensed bank;
- (v) has fraudulently parted with, altered, or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any book, register, record or document affecting or relating to the property or affairs of such licensed bank;
- (vi) by any false representation or other fraud, has obtained any property for, or on behalf of, the licensed bank on credit which such licensed bank has not subsequently paid for;
- (vii) has obtained on credit, for or on behalf of such licensed bank, under the false pretense that the licensed bank is carrying on its business, any property which such licensed bank has not subsequently paid for; or

- (viii) has pawned, pledged or disposed of any property of such licensed bank which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary course of the business of the licensed bank;
- (d) makes any material omission in any statement relating to the affairs of such licensed bank;
- (e) knowing or having reasons to believe that a false debt has been proved by any person, fails for a period of one month to inform the liquidator of such fact;
- (f) prevents the production of any book, register, record or document affecting or relating to the property or affairs of such licensed bank;
- (g) within twelve months immediately preceding the commencement of the winding up, or at any time thereafter, has attempted to account for any part of the property of such licensed bank by fictitious losses or expenses; or
- (h) within twelve months immediately preceding the commencement of the winding up or at any time thereafter, has been found to have made any false representation or committed or involved in the commission of any other fraudulent activity for the purpose of obtaining the consent of the creditors of the licensed bank or any one of them to an agreement with reference to the affairs of the licensed bank or to the winding up,

commits an offence under this Act.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1), every person who takes in pawns or pledge,

or otherwise receives the property knowing it to be pawned, pledged, or disposed of in those circumstances, commits an offence under this Act.

(3) Every director, officer, employee, or servant of any licensed bank subject to winding up who destroys, mutilates, alters, or falsifies any book, register, record, document or security, or makes or is privy to the making of any false or fraudulent entry in any book, register, record, document or account belonging to the licensed bank with intent to defraud or deceive any person, commits an offence under this Act.

Offences by
body corporates

90. Where a person convicted of an offence under this Act is a body corporate, every person who, at the time of the commission of the offence was a director, or an officer performing executive functions, or secretary of the body corporate, shall be deemed to be guilty of that offence, unless such director, officer or secretary proves to the satisfaction of the court that the offence was committed without his knowledge or such director, officer or secretary exercised all due diligence to prevent the commission of such offence.

Penalties

91. Every person who is found guilty of an offence by reason of the contravention of, or failure to comply with, any regulation, rule, order or direction or requirement made or issued under this Act, shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five million rupees or to imprisonment of either description for a term not exceeding three years, or to both such fine and imprisonment.

Central Bank to
issue directions
on any aspects
of its resolution
authority

92. Without prejudice to any other provisions of this Act or any other written law, the Central Bank may issue directions to a licensed bank regarding the manner in which any aspect of resolution of such licensed bank shall be conducted.

93. In this Act, unless the context otherwise requires— Interpretation

"abandoned property" means the property as defined in Part IX of the Banking Act and dormant deposits as specified in section 23 of the Finance Business Act;

"Bank of Ceylon Ordinance" means the Bank of Ceylon Ordinance (Chapter 397);

"Banking Act" means the Banking Act, No. 30 of 1988;

"bridge bank" means an institution established by the Central Bank to take over and continue operations of certain critical functions and viable operations or to transfer shares, any one or more of the assets, liabilities, legal rights and obligations or other property instruments owned or issued by a licensed bank subject to resolution, which, in the opinion of the Central Bank, is having systemic importance or impact;

"Central Bank" means the Central Bank of Sri Lanka established by the Central Bank of Sri Lanka Act, No. 16 of 2023;

"close-out netting" means a contractual provision, including a provision in a collateral arrangement, or, in the absence of any such provision, any statutory rule, on the basis of which, upon the occurrence of a predefined event in relation to a party to the contract, the obligations owed by the parties to the contract to each other that are covered by the provision, whether or not they are at that time due and payable, are automatically or at the election of one of the parties to be immediately due, reduced to or replaced by a single net obligation, whether by way of novation,

termination, set-off or otherwise, representing the aggregate value of the combined obligations, which is thereupon due and payable by one party to the other;

"Companies Act" means the Companies Act, No. 07 of 2007;

"court" means the High Court established under Article 154P of the Constitution for a Province, empowered with civil jurisdiction by Order published in the *Gazette* under section 2 of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996, within the Province for which such High Court is established, or where any such High Court vested with such civil jurisdiction is not established for any Province, the High Court established for the Western Province;

"crisis times" means a period of time in which the financial system is unable to perform its key functions including intermediation of financial funds, management of risks, and settling of payments efficiently, and non-crisis times shall be construed accordingly;

"critical functions" means activities performed by a licensed bank for and on behalf of third parties other than the licensed bank, where the failure to perform any such activities would lead to a disruption of banking services which are essential for the functioning of the real economy or for ensuring financial system stability, due to the size or the market share of such licensed bank, external and internal interconnectedness, complexity or cross-border activities of such licensed bank;

"critical shared services" means activities performed by a licensed bank itself or outsourced to be performed by any third party service provider, where the failure

to perform any such activities would lead to an inability on the part of the licensed bank to perform critical functions and, thereby disrupting services which are essential for the functioning of the real economy or for ensuring financial system stability;

"extraordinary public financial support" means infusion of capital for a licensed bank having a systemic importance or impact, through funds other than the funds of the Central Bank;

"Finance Business Act" means the Finance Business Act, No. 42 of 2011;

"financial sector" means a subsector of the economy which comprises institutions that manage funds on behalf of customers, either corporate or retail, or provide financial intermediary services to transfer and allocate funds in an economy;

"Housing Development Finance Corporation Bank of Sri Lanka Act" means the Housing Development Finance Corporation Bank of Sri Lanka Act, No. 7 of 1997;

"insolvency" means a situation where the liabilities of a licensed bank are higher than the assets of such licensed bank as reflected in its balance sheet;

"insured deposits" means all eligible deposits, subject to the maximum compensation payable to a depositor under section 44;

"insured depositors" means holders of eligible deposits, subject to the maximum compensation payable to a depositor under section 44;

"international financial institutions" includes the Asian Development Bank, the International Bank for Reconstruction and Development, the International Development Association, the International Monetary Fund or similar institutions;

"key management personnel" means the employees of a licensed bank who are primarily responsible for the overall management and operation of such licensed bank, including the heads of the functions of credit, finance, treasury, operations, compliance, audit, risk management, company secretariat, information technology, information security and such other function as may be determined by the Central Bank, from time to time;

"licensed bank" means a commercial bank or a specialised bank licensed by the Monetary Board of the Central Bank under the Banking Act, and includes a branch of a foreign bank incorporated outside Sri Lanka;

"licensed exchange" means an exchange, licensed under the provisions of the Securities and Exchange Commission of Sri Lanka Act, No.19 of 2021;

"Minister" means the Minister assigned the subject of Finance in terms of Article 44 or 45 of the Constitution;

"Monetary Board" means the Monetary Board established by the Monetary Law Act (Chapter 422);

"National Savings Bank Act" means the National Savings Bank Act, No. 30 of 1971;

"netting" means determination of net claims or obligations after setting-off or adjusting all the claims or obligations based on or arising from mutual dealings between the parties to a contract;

"non-bank financial institutions" means finance companies licensed by the Monetary Board under the Finance Business Act;

"People's Bank Act" means the People's Bank Act, No. 29 of 1961;

"Pradeshya Sanwardhana Bank Act" means the Pradeshya Sanwardhana Bank Act, No. 41 of 2008;

"recovery plan" means a plan which provides for measures to be taken by a licensed bank in the event of a deterioration of its financial position prior to the Central Bank taking resolution action on such licensed bank;

"Registrar-General of Companies" means the Registrar-General of Companies or other officer performing the duty of registration of companies under the Companies Act;

"resolution" means, restructuring of a licensed bank by the Central Bank through the exercise of resolution powers of the Central Bank in order to safeguard the public interest, including the continuity of the critical functions of such licensed bank, securing financial stability and ensuring minimal costs to taxpayers;

"resolution plan" means a plan designed by the Central Bank for each licensed bank having systemic importance or impact, in accordance with the international standards and best practices available for resolution of banks;

"State Mortgage and Investment Bank Law" means the State Mortgage and Investment Bank Law, No. 13 of 1975;

"subordinated debt holder" means a holder of debt having a claim against the issuer's assets which are of lower ranking, or junior to all other obligations of a licensed bank and is paid after claims of holders of senior securities are paid;

"temporary financial assistance" means the financial assistance to contribute to the funding of the resolution of a licensed bank, or to a bridge bank by the Government for a temporary period;

"wind-down" means gradually reducing or closing down of business; and

"write-down" means reducing the value of an asset to offset a loss or an expense.

Protection from
action

94. The officers of the Central Bank and the Administrator appointed under section 18, shall not be liable for any damage, or act or omission done pursuant to and in the course of the exercise, performance and discharge of the powers, duties and functions under this Act, unless it has been proved that such damage, act or omission has been done without good faith or has constituted intentional wrongful misconduct or willful default.

Provisions for
appeals

95. (1) Subject to the provisions of subsections (2) and (3), any person aggrieved by a decision of the Central Bank including the decision under subsection (1) of section 13, any regulation, order, rule, direction, or any determination issued, request made or requirement imposed by the Central Bank under this Act, or who apprehends that he would be affected by any such decision, regulation, order, rule, direction, determination, request or requirement imposed or proposed to be taken, as the case may be, shall not be entitled to a permanent or interim injunction, an enjoining order, a stay order or any other order having the effect of staying, restraining, or impeding the Central Bank from giving effect to such order.

(2) (a) The jurisdiction conferred on the Court of Appeal by Article 140 of the Constitution shall, in relation to a decision, regulation, order, rule, direction, determination, request or requirement referred to in subsection (1), be exercised by the Supreme Court and not by the Court of Appeal.

(b) Every application invoking the jurisdiction referred to in paragraph (a) shall be made within one month of the date of commission of the act in respect of which or in relation to which such application is made and the Supreme Court shall hear and finally dispose of such application within two months of the filing of such application.

(3) Nothing contained in subsection (1) shall affect the powers which the Supreme Court may otherwise lawfully exercise in respect of any application made under Article 126 of the Constitution or in the exercise of the jurisdiction referred to in subsection (2).

(4) No application under paragraph (b) of subsection (2) shall be made without giving seven days' prior notice to the Central Bank of such application.

96. (1) In the event of any inconsistency between the provisions of this Act and any other written law for the time being in force, the provisions of this Act shall prevail.

This Act to
prevail over
other written
laws

(2) Nothing contained in the provisions of the Bank of Ceylon Ordinance, the People's Bank Act, the National Savings Bank Act, the State Mortgage and Investment Bank Act, the Housing Development Finance Corporation Bank of Sri Lanka Act, the Pradeshiya Sanwardhana Bank Act or any other Statute under which a state-owned commercial bank or a specialised bank will be established, shall be construed as a waiver or restriction of the resolution authority of the Central Bank under this Act.

Savings

97. (1) The Sri Lanka Deposit Insurance and Liquidity Support Scheme established by the Monetary Board by virtue of the regulations issued under the Monetary Law Act and subsisting on the day immediately preceding the appointed date shall, with effect from the appointed date, be deemed to be the Deposit Insurance Scheme of the Central Bank under this Act.

(2) The Sri Lanka Deposit Insurance and Liquidity Support Fund established by the Monetary Board by virtue of the regulations issued under the Monetary Law Act and subsisting on the day immediately preceding the appointed date shall, with effect from the appointed date, be deemed to be the Deposit Insurance Fund of the Central Bank under this Act.

(3) The amount lying to the credit of the Sri Lanka Deposit Insurance and Liquidity Support Fund established by the Monetary Board by virtue of the regulations issued under the Monetary Law Act and subsisting on the day immediately preceding the appointed date shall, with effect from the appointed date, be deemed to be the amount lying to the credit of the Deposit Insurance Fund under this Act.

(4) All rights, obligations, assets, properties, liabilities, powers, privileges and authorities attributed to the Sri Lanka Deposit Insurance and Liquidity Support Scheme established by the Monetary Board by virtue of the regulations issued under the Monetary Law Act, and interests arising in or out of such rights, assets, properties and such liabilities of the said Scheme and subsisting on the day immediately preceding the appointed date, shall, with effect from the appointed date, be deemed to be rights, obligations, assets, properties, liabilities, powers, privileges, authorities and interests of the Deposit Insurance Scheme under this Act.

- (5) (a) all premia or additional premia collected from member institutions;
- (b) all penalties imposed on member institutions;
- (c) all payments of compensation paid and to be paid to depositors of member institutions whose licences have been cancelled by the Monetary Board;
- (d) all the secured loans or advances granted to any member institutions and any recovery thereof, and all collaterals pledged against such loans or advances, as the case may be;
- (e) all the investments made and any return received thereon;
- (f) all or any books, accounts and records relating or appertaining to, any other property maintained; and
- (g) all or part of the taxes, duties, levies or any other charges of similar nature paid,

by the Sri Lanka Deposit Insurance and Liquidity Support Scheme established by the Monetary Board by virtue of the regulations issued under the Monetary Law Act, subsisting on the day immediately preceding the appointed date shall, with effect from the appointed date, be deemed to be premia or additional premia collected, penalties imposed, payment of compensation paid or to be paid, secured loans or advances granted, and collaterals pledged, investments made and returns received, books, accounts and records maintained, and taxes, duties, levies or charges paid by the Deposit Insurance Scheme under this Act.

(6) With effect from the appointed date, every reference to the Sri Lanka Deposit Insurance and Liquidity Support Scheme established by the Monetary Board under the Monetary Law Act in any regulation, notification, contract, instrument, record, share certificate, document, deed, bond, agreement, guarantee, power of attorney, grant of legal representation and other instruments of whatever nature shall be deemed to be a reference to the Sri Lanka Deposit Insurance Scheme under this Act to give effect to the provisions thereof.

(7) Any agreement, memorandum of understanding or contract entered into by the Monetary Board with any other regulatory, supervisory or state authority, whether in or outside Sri Lanka, in respect of the exercise of resolution authority and cross-border cooperation and subsisting on the day immediately preceding the appointed date shall, with effect from the appointed date, be deemed to be an agreement, memorandum of understanding or contract entered into by the Central Bank under this Act.

(8) Notwithstanding the operation of this Act, any resolution measure or early intervention measure taken by the Monetary Board or any other officer of the Central Bank authorized in that behalf by the Monetary Board under the Monetary Law Act, the Banking Act or the Finance Business Act, as the case may be, and continuing on the day immediately preceding the appointed date shall be deemed to be a resolution measure or an early intervention measure taken under this Act and shall be continued under the said Acts for such period as the Monetary Board may determine.

Sinhala text to
prevail in case
of inconsistency

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

Banking (Special Provisions) 107
Act, No. 17 of 2023

SCHEDULE

[section 6]

1. Banking Act, No. 30 of 1988.
2. Finance Business Act, No. 42 of 2011.
3. Companies Act, No. 07 of 2007.
4. Securities and Exchange Commission of Sri Lanka
Act, No. 19 of 2021.

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