

PARLIAMENT OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF

SRI LANKA

FINANCE BUSINESS

ACT, No. 42 OF 2011

[Certified on 09th November, 2011]

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Finance Business Act, No. 42 of 2011 1

[Certified on 09th November, 2011]

L.D.—O. 20/2010.

ANACTTO PROVIDE FOR THEREGULATION OF FINANCE BUSINESSAND 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. This Act may be cited as the Finance Business Act, Short title

No. 42 of 2011.

PART I

LICENSING OF FINANCE COMPANIES

2. (1) Subject to the provisions of section 3 of this Act, Carrying on

no person other than a person licensed under this Act shall finance business

and accepting

carry on finance business. deposits, without

authority, to be

(2) No person, other than a person licensed to carry on an offence.

finance business under this Act or a person exempted from

the application of the provisions of this Act in terms of

section 3, shall accept deposits.

(3) A person shall not be eligible to be licensed as a

finance company under this Act unless such person is a

company registered under the Companies Act, No. 7 of 2007,

and such company is not a company limited by guarantee, a

private company, an offshore company or an overseas

company within the meaning of the Companies Act, No. 7

of 2007.

(4) Any person who contravenes the provisions of

subsections (1) or (2) shall be guilty of an offence under this

Act.

2—PL 005688 — 4,090 (04/2011)

2 Finance Business Act, No. 42 of 2011

Non-application 3. The provisions of this Act shall not apply to and in

of provision of

relation to any bank licensed under the Banking Act, No. 30

this

Act to certain of 1988 or any institution, other than a finance company,

institutions. exempted in terms of section 76A thereof or a co-operative

society registered under a Statute of a Provincial Council, or

any other institution exempted from the application of this

Act by any written law for the time being in force.

Application for 4. An application for a licence shall be made in writing

a license.

to the Board in such form as may be prescribed by rules and

shall contain a declaration by the applicant company that

the particulars stated in the application are, to the knowledge

and belief of the applicant, true and accurate.

Licensing of 5. (1) Where an application is made to the Board for a

companies as

licence under this Act, the Board may require the Director to

finance

companies. make his recommendation in respect of the application and

the Director may call for information as he may consider

necessary and call for and examine or cause to be examined

books, records and documents of whatever description, of

the company applying for a licence and its holding company,

any subsidiary company, any associate company or any

subsidiary or associate company of its holding company or

any other company that in the view of the Director, has a

substantial financial interest or a significant management

interest in the company applying for a licence and shall

make his recommendation to the Board.

(2) The Board may, at any time prior to issuing of a licence

under subsection (3) to a company, cause such investigations

as it may deem necessary to satisfy itself as to the suitability

of the applicant company and may require the applicant

company to satisfy the Board on any matter relevant to the

suitability of the applicant company and in particular—

(a) the veracity and validity of the documents and

particulars submitted by the applicant company ;

Finance Business Act, No. 42 of 2011 3

(b) the financial status and history of the applicant

company;

(c) the academic and professional qualifications,

experience, financial standing and suitability of

the Board of Directors, the Chief Executive Officer

and key management personnel, as the Board may

deem necessary;

(d) the adequacy of the capital of the applicant

company or based on the information furnished by

the applicant company, the ability of such company

to raise adequate capital;

(e) the ability of the applicant company to cover all

obligations and liabilities that may be incurred in

the conduct of finance business of such company

and to comply with the provisions of this Act; and

(f) the applicant company’s compliance with the

provisions of this Act or any direction given

thereunder in relation to the application for a

licence under this Act.

(3) On consideration of an application made to the Board

and the recommendations of the Director under subsection

(1) and after such investigations under subsection (2) —

(a) if the Board is satisfied that—

(i) the applicant company has a core capital of

not less than two hundred million rupees or

such other higher amount as may be

determined by the Board in terms of

subsection (1) of section 17;

(ii) the applicant company has the ability to

comply with the directions and rules

applicable to finance companies; and

4 Finance Business Act, No. 42 of 2011

(iii) the issue of a licence to the applicant

company on the strength of the information

made available to the Board, would not be

detrimental to the interests of its creditors and

other stakeholders,

the Board may issue a license to the applicant

company as a finance company to carry on finance

business subject to such terms and conditions as

the Board may deem fit;

(b) if the Board is satisfied that the issue of a licence to

the applicant company would not be detrimental

to the interests of its creditors and other

stakeholders and that the applicant company has

the potential to fulfil the requirements specified in

sub-paragraphs (i) and (ii) of paragraph (a), the

Board may grant provisional approval subject to

such terms and conditions as the Board may deem

fit; or

(c) if the Board is satisfied that the issue of a licence to

the applicant company would be detrimental to the

interests of its creditors and other stakeholders or

to the interest and stability of the financial system,

the Board may reject the application and issue such

directions as it deems necessary.

(4) The provisional approval granted under paragraph

(b) of subsection (3) shall be valid for such period as may be

determined by the Board. The Board may in exceptional

circumstances extend the period of validity of a provisional

approval: Provided however, the period of validity of the

provisional approval shall not exceed eighteen months from

the date on which the provisional approval was granted under

paragraph (b) of subsection (3).

(5) An applicant company to whom a provisional

approval has been granted shall not commence finance

Finance Business Act, No. 42 of 2011 5

business before being issued with a licence under this Act.

Any prospectus or notice issued or any advertisement or

other publication made by such company shall not state the

fact that it has been granted provisional approval under

paragraph (b) of subsection (3) unless such disclosure is

required under any written law.

(6) The Board may, withdraw the provisional approval:

(a) if any information contained in the application for

a licence or any information submitted in

connection therewith by the applicant company is

found to be false, incomplete or incorrect; or

(b) if having regard to any information made available

to the Board it becomes apparent that the issue of a

licence to the applicant company is detrimental to

the interest and stability of the financial system.

(7) The Board having considered the fulfillment of terms

and conditions imposed under paragraph (b) of subsection

(3) and information received after granting provisional

approval and being satisfied that the licensing of the

applicant company would not be detrimental to the interests

of its creditors and other stakeholders or to the interest of

financial system stability may issue a licence to the

applicant company subject to such terms and conditions as

the Board may deem necessary:

Provided however, that the provisional approval shall

not bind the Board to grant a licence to the applicant

company.

(8) Upon the issuance of a licence to an applicant

company, the Board shall cause to be published in the

Gazette and in at least one Sinhala, Tamil and English daily

newspapers circulating in Sri Lanka, a notice informing the

public that a licence has been issued to such applicant

company authorizing it to carry on finance business.

6 Finance Business Act, No. 42 of 2011

(9) Any person who submits information in an application

for a licence or in any other document submitted in

connection therewith or in the course of any inquiry or

investigation conducted to ascertain the suitability of the

company to be issued with a licence under this Act, which is

false, incomplete or incorrect, shall be guilty of an offence

under this Act.

Licence fee. 6. Every finance company licensed under this Act, shall

pay an annual licence fee in such amount as may be

prescribed by rules.

Register of 7. (1) The Board shall keep and maintain in such form

finance as may be prescribed by rules a Register of Finance

companies

Companies licensed under this Act.

and

publication

of names of (2) The Board may from time to time cause to be published

finance a notice containing the names of finance companies licensed

companies.

under this Act, in a manner and form as the Board deems fit

and it may also include the supervisory rating of those

companies.

Exhibiting 8. Every finance company shall exhibit its licence at

the licence of all times in the principal office or place of business of such

finance

company. finance company and a copy of such licence at each of its

branches.

Duty of 9. (1) Where any finance company licensed under this

finance Act has ceased to carry on finance business, a notice of such

company to

notify Board cessation shall be given to the Board forthwith upon such

of cessation cessation by such company.

of finance

business. (2) On receipt of a notice of cessation under subsection

(1), the Board may issue to such finance company directions

for winding up or for divesting the finance business of the

finance company or for the settlement in such manner as

may be specified by the Board of the deposit liabilities of

the finance company and such other directions incidental

thereto.

Finance Business Act, No. 42 of 2011 7

(3) Where the Board has reasonable grounds to believe

that any finance company licensed under this Act is not

carrying on finance business, the Board may send to such

company a notice by registered post requiring such company

to furnish proof, within two weeks from the date of such

notice, that it has not ceased to carry on finance business.

After the expiration of two weeks from the date of such notice

or in the event of the company furnishing proof after

considering such proof, the Board may withdraw such notice,

or may issue to such finance company directions for winding

up or for divesting the finance business of the finance

company or for the settlement in such manner as may be

specified by the Board of the deposit liabilities of the finance

company and such other directions incidental thereto.

(4) Where a finance company fails to comply with

directions issued under subsections (2) or (3) within the

period specified by the Board, which period may be

extended by the Board in exceptional circumstances having

considered the steps taken by the finance company to

comply with such directions, the Board may require the

Director to file action for winding up of the finance company

and the provisions of section 32 shall apply thereto.

10. (1) A finance company shall have as part of its name, Use of the word

the word “finance”, “financing” or “financial” or any of its “finance”.

transliterations, or their equivalent in any other language.

Any finance company which does not have in its name, the

word “finance”, “financing” or “financial” or any of its

transliterations, or their equivalent in any other language in

its name, shall forthwith take such steps as are necessary to

change its name to include the word “finance”, “financing”

or “financial” or any of its transliterations or their equivalent

in any other language in its name, within six months from

the date of commencement of operation of this Act.

(2) No person other than a finance company and an

institution specified in subsection (6) shall, except with the

prior written approval of the Board, use the word “finance”,

8 Finance Business Act, No. 42 of 2011

“financing” or “financial” alone or in combination with

another word or any of its derivatives or its transliterations

or their equivalent in any other language, as part of the

name or the description or the business name of such person.

(3) Subject to the provision of subsections (1) and (6),

any person who uses the word “finance”, “financing” or

“financial” or any of its derivatives or its transliterations, or

their equivalent in any other language as part of the name or

the description or the business name of such person, unless

it has obtained the written approval of the Board, shall

change such name or such description or such business name

by deleting the word “finance”, “financing” or “financial”

or any of its derivatives or its transliterations, or their

equivalent in any other language, from such name or such

description or such business name within six months from

the date of commencement of operation of this Act.

(4) The Director may require the Registrar General of

Companies, the Registrar of Voluntary Social Service

Organizations, Registrars of Business Names of Sri Lanka

and any other relevant authority to furnish information of

the bodies corporate or unincorporate using the word

“finance”, “financing” or “financial” or any of its derivatives

or its transliterations, or their equivalent in any other

language, in the name or the description or the business

name of such bodies which are established or registered under

such authority and such Registrar or Authority shall furnish

the information as required by the Director.

(5) The Board may, in the public interest, where any person

uses the word “finance”, “financing” or “financial” or any of

its derivatives or its transliterations, or their equivalent in

any other language as part of the name or the description or

the business name of such person in contravention of the

provisions of this section and notwithstanding that any action

has been or is to be taken under the provisions of any other

section of this Act in respect of such contravention, publicise

by any means whatsoever :—

Finance Business Act, No. 42 of 2011 9

(a) in the case of an incorporated body of persons, the

name, description and address of such incorporated

body and the names and addresses of the directors

of such incorporated body;

(b) in the case of an unincorporate body of persons,

the name, description and address of such body

and if the Board thinks fit the names and addresses

of the members of such body; and

(c) in the case of an individual the name and address

of such individual and his description or business

name or both his description and business name,

and that such person is not authorized to use any of the

words “finance”, “financing” and “financial” or any of it

derivatives or its transliterations or their equivalent in any

other language as part of the name or the description or the

business name of such person.

(6) Nothing in this section shall apply to -

(a) a company which is required by the Board to

have as part of its name the word “finance”,

“financing” or “financial” or its

transliterations, or their equivalent in any

other language in its name;

(b) an association of finance companies formed

for the protection of their interests;

(c) a trade union registered under the Trade Union

Ordinance (Chapter 138), which is an

association or combination of workers who

are employees of a finance company;

(d) an institution in respect of which such usage

is established or recognized by law or

international agreement; and

10 Finance Business Act, No. 42 of 2011

(e) a body corporate which exclusively provides

educational or consultancy services.

(7) The Board may introduce a logo or a sign to be used

by every finance company. No person other than a finance

company shall use such logo.

Restriction on 11. (1) No company, proprietorship, partnership or other

use of entity shall without the prior written approval of the Director,

abbreviated

name or be registered under any written law with a name that contains

acronym of a as part of it, the abbreviated name or acronym of any finance

finance company:

company.

Provided however, the provision of this subsection shall

not be construed in such manner as would affect the powers

conferred on the Registrar General of Companies in terms of

section 7 and 10 of the Companies Act, No. 7 of 2007.

(2) No person other than the respective finance company

shall use the name, abbreviated name or acronym of a finance

company, in any of its advertisements promoting its business

without the prior written approval of the Director.

PART II

DIRECTIONS, RULES AND REQUIREMENTS ON FINANCE COMPANIES

Directions of the 12. (1) Notwithstanding the provisions of any other

Board. law, the Board may give directions to finance companies or

to any group or category of finance companies regarding

the manner in which any aspect of the business and corporate

affairs of such finance companies are to be conducted and,

in particular -

(a) the terms and conditions under which deposits may

be accepted by such companies, the maximum rates

of interest payable on such deposits, and the

maximum period for which deposits may be

Finance Business Act, No. 42 of 2011 11

accepted and the maximum amount that may be

deposited with a company in the name of one

person in one or more accounts;

(b) the terms and conditions under which any loan,

credit facility or any type of financial

accommodation may be granted by such

companies, the maximum rates of interest that may

be charged on such loans, credit facilities or other

types of financial accommodation, and the

maximum periods for which any such loan, credit

facility or other type of financial accommodation

may be granted;

(c) the maximum rates which may be paid to, or charged

by, such companies by way of commissions,

discounts, fees or other receipts or payments

whatsoever;

(d) the terms and conditions under which investments

may be made by such companies;

(e) the maximum permissible maturities for loans,

credit facilities or other types of financial

accommodation and investments made by such

companies, and the nature and amount of the

security that may be required or permitted for

various types of lending, credit and investment

operations;

(f) the form and manner in which books of accounts or

other records or documents are to be maintained by

such companies;

(g) the exclusion from the income of such companies

in whole or in part, unpaid interest in respect of

loans granted, if such loans have become overdue;

(h) the minimum ratio which the liquid assets of such

companies should bear to the total deposit

liabilities of such companies;

12 Finance Business Act, No. 42 of 2011

(i) the maintenance of cash balances by finance

companies with the Central Bank if so required by

the Board, and the minimum ratio of such cash

balances should bear to the deposit liabilities of

finance companies;

(j) conditions which should be applicable to

withdrawal by depositors of deposits before

maturity;

(k) prohibiting such companies from increasing the

amount of their loans, credit facilities, other types

of financial accommodation or investments;

(l) fixing the limits to the rate at which the amount of

any loans, investments or financial accommodation

made or granted by such companies may be

increased within specified periods;

(m) requiring such companies to decrease the amount

of their loans, investments or financial

accommodation to specified limits within a

specified period;

(n) the maximum percentage of the share capital in a

finance company which may be held –

(i) by a company, an incorporated body, or an

individual; and

(ii) in the aggregate by-

(a) a company and one or more of the

following:-

(aa) its subsidiary companies;

(bb) its holding company;

Finance Business Act, No. 42 of 2011 13

(cc) a subsidiary company of its

holding company; or

(dd) a company in which such

company or its subsidiary

company, or its holding

company, or a subsidiary

company of its holding company

has a substantial interest; or

(b) an individual and one or more of the

following:-

(aa) his relative;

(bb) a company in which he has a

substantial interest or in which

his relative has a substantial

interest;

(cc) a subsidiary company of such

company;

(dd) the holding company of such

company;

(ee) a subsidiary company of such

company’s holding company;

(ff) a company in which such

company, or its subsidiary

company, or its holding

company, or a subsidiary of its

holding company has a

substantial interest; or

(gg) an incorporated body, other than

a company, in which such

individual or his relative has a

substantial interest; or

14 Finance Business Act, No. 42 of 2011

(c) companies in each of which an

individual or a company as the case may

be, has either directly, indirectly or

beneficially a substantial interest or

significant management interest;

(o) the margins to be maintained by such companies in

respect of secured accommodations;

(p) restriction on the types of activities that may be

carried on by finance companies;

(q) payment to directors or employees of such

companies by way of salary, allowance, perquisites,

reimbursement of expenses, terminal benefits,

gratuity and other superannuation payments;

(r) the amount of core capital to be maintained by a

finance company;

(s) the academic and professional qualifications and

experience required of directors, the chief executive

officer and key management personnel of a finance

company;

(t) composition and the constitution of the quorum of

the Board of Directors of such companies;

(u) requirement for obtaining prior approval of the

Board for appointing, electing or nominating

directors of such companies;

(v) requirement for obtaining prior approval of the

Director for appointing the chief executive officer

of a finance company;

(w) terms, conditions and procedures to be followed by

such companies in the acquisition of real estate,

and pricing thereof;

Finance Business Act, No. 42 of 2011 15

(x) formation of subsidiary and associate companies

by such companies;

(y) submission of a bank guarantee by a finance

company for such value and on such terms as may

be determined by the Board to ensure the payment

of any penalty that may be imposed by the Board

under this Act.

(2) A direction issued under subsection (1) shall have effect

notwithstanding that such direction will require a finance

company to effect a change in the nature or amount of any of

its assets or liabilities, whether acquired or incurred before or

after the date of the coming into operation of this Act:

Provided that, a finance company required to effect a

change as stated above, shall be allowed a period of twelve

months from the date of such direction within which to

effect such change, or such longer period as may be granted

by the Board for such purpose.

(3) In order to comply with a direction issued to it under

paragraph (n) of subsection (1), a finance company may direct

a person holding shares in such finance company to reduce

within such period as specified in such direction, the number

of shares held by such person in such finance company,

whether such shares were acquired by such person before or

after the date of commencement of this Act. It shall be the

duty of such person to comply with such direction.

(4) The Board may in its discretion pay interest on any

cash balance maintained by a finance company in the Central

Bank in pursuance of a direction issued to it under paragraph

(i) of subsection (1), at such rate as may be determined by

the Board.

(5) The Board may give directions where necessary to

any finance company in particular on such matters as are

specified in subsection (1).

16 Finance Business Act, No. 42 of 2011

(6) In order to ensure the soundness of the financial

system, the Board may issue directions to holding

companies, subsidiaries and associate companies of finance

companies regarding the manner in which any aspect of the

business of such companies is to be conducted.

Monitoring 13. The Board may issue guidelines to the Director

the

relating to the manner of monitoring compliance with the

compliance

with directions issued under subsections (1) and (2) of section 12

directions. and authorize the Director to direct finance companies to

comply with such directions either forthwith or within such

period as may be specified by the Director.

Action on 14. (1) If any finance company fails to comply with any

failure to

direction issued under subsection (1) or (2) of section 12,

comply with

directions. the Director shall report such fact to the Board unless

otherwise provided for in any guidelines issued under

section 13 and the provisions in section 25 of this Act shall

apply in such event.

(2) If any finance company fails to comply with any

direction issued by the Director in terms of the guidelines

issued by the Board under section 13, the Director shall

report such fact to the Board and the provisions in section

25 of this Act shall apply in such event.

Directions to 15. The Director may with a view to ascertaining the

submit

manner in which business and corporate affairs of a finance

documents

and company are being conducted or for any other specified

information. purpose, direct any finance company to submit documents

and information in the manner, in such form and at such

intervals or at such times as shall be specified in such

direction.

Rules. 16. (1) The Board may make rules on any matter in

respect of which rules are authorized to be made under this

Act, or which is stated or required to be prescribed.

Finance Business Act, No. 42 of 2011 17

(2) In particular and without prejudice to the generality

of the powers conferred by subsection (1), the Board may

make rules in respect of all or any of the following matters:-

(a) licensing of finance companies and the annual

licence fees payable to the Board by finance

companies;

(b) the forms to be used under this Act;

(c) the regulation or the prohibition of the issue by

any finance company of any prospectus or

advertisement relating to any aspect of finance

business, and the conditions subject to which, any

such prospectus or advertisement may be issued.

(3) Every rule made by the Board under this Act shall be

published in the Gazette.

17. (1) The Board may, from time to time determine the Core capital

minimum amount of core capital that a company shall have

for licensing under this Act:

Provided however, such amount determined by the Board

shall not be less than two hundred million rupees.

(2) A finance company shall at all times maintain its core

capital at a level not less than the amount it had at the time

of being licensed as a finance company:

Provided however, that in the event the Board has issued

a direction stipulating a higher amount of core capital or

maintenance of core capital in relation to assets or liabilities

of a finance company in terms of section 12 of this Act, a

finance company shall maintain its core capital in conformity

with such direction.

18. (1) A finance company shall at all times maintain a Reserve Fund.

Reserve Fund. Every finance company shall after the

payment of tax in respect of each year, but before any

dividend is declared, transfer to the Reserve Fund such part

of its net profit as the Board may direct.

18 Finance Business Act, No. 42 of 2011

(2) A finance company shall not without the prior written

approval of the Board reduce or impair its capital or such

amount as is lying in its Reserve Fund.

Carrying on 19. A finance company shall at all times carry on its

business by business in such manner so as to safeguard the interests of its

finance

depositors and shall take all such measures as are reasonably

companies.

necessary to repay or pay on the due dates as the case may

be, the deposits or interest thereon to its depositors.

Failure to repay 20. (1) Where any finance company fails to repay a

deposit or pay deposit or fails to pay interest thereon to a depositor, on

interest to be an

demand or if a date of maturity is agreed upon at the time of

offence.

deposit, on or after such date of maturity, every director,

manager or secretary of such company shall be guilty of an

offence under this Act:

Provided however that, no such director, manager or

secretary shall be guilty of an offence if he proves that such

offence was committed without his knowledge, and that he

exercised all due diligence to prevent the commission of

that offence.

(2) Any depositor whose deposit and interest has not

been paid on demand or at maturity in terms of subsection

(1), may institute proceedings in the Magistrate’s Court in

terms of section 136 of the Code of Criminal Procedure Act,

No. 15 of 1979.

Disqualifications 21. (1) A person shall be disqualified from being

for holding appointed or elected, as the case may be, as a director, chief

certain posts in

executive officer, secretary or key management personnel

finance

companies. of a finance company or from holding such post if such

person-

(a) has been declared an undischarged insolvent or a

bankrupt, by any court in Sri Lanka or abroad;

(b) has been convicted by any court for an offence

involving moral turpitude;

Finance Business Act, No. 42 of 2011 19

(c) has been convicted by any court for any offence

under this Act or the Companies Act, No.07 of 2007;

(d) is a person against whom action has been taken by

the Board under section 51 of this Act;

(e) (i) is being subjected to any investigation or

inquiry in respect of an act of fraud, deceit,

dishonesty or other similar criminal activity,

conducted by the police, any regulatory or

supervisory authority, professional

association, commission of inquiry, tribunal,

or any other body established by law, in

Sri Lanka or abroad;

(ii) has been found guilty in respect of an act of

fraud, deceit, dishonesty or other similar

criminal activity, by any regulatory or

supervisory authority, professional

association, commission of inquiry, tribunal,

or any other body established by law, in Sri

Lanka or abroad, at any time during the

period of fifteen years immediately prior to

being so appointed or elected;

(f) (i) is being subject to court proceedings for an

offence involving an act of fraud, deceit,

dishonesty or other similar criminal activity;

(ii) has been convicted by any court for an offence

involving an act of fraud, deceit, dishonesty

or other similar criminal activity at any time

during the period of fifteen years immediately

prior to being so appointed or elected;

(g) has been removed or suspended by a regulatory or

supervisory authority from serving as a director,

chief executive or other officer in any bank, finance

company or corporate body in Sri Lanka or abroad;

registration has been suspe

20 Finance Business Act, No. 42 of 2011

(h) has been declared by a court of competent

jurisdiction to be of unsound mind;

(i) has been determined by the Board -

(i) as having carried on finance business-

(a) in contravention of subsection (1) of

section 2 of this Act; or

(b) in contravention of subsection (1) of

section 2 of the Finance Companies

Act, No. 78 of 1988 (prior to its repeal);

or

(ii) as having accepted deposits in contravention

of subsection (2) of section 2 of this Act; or

(j) has been a director, chief executive or held any

other position of authority in any body corporate

or unincorporate body which the Board has

determined as having carried on finance business

in contravention of subsection (1) of section 2 of

this Act or subsection (1) of section 2 of the Finance

Companies Act, No. 78 of 1988 (prior to its repeal)

or having accepted deposits in contravention of

subsection (2) of section 2 of this Act.

(2) If the Board so determines, any person who has been

a director, chief executive officer or held any other position

of authority in any bank, finance company or financial

institution whose licence or registration has been cancelled,

shall be disqualified from being appointed or elected as the

case may be, as a director, chief executive officer, secretary

or key management personnel of a finance comany or from

holding such post.

(3) Any person who acts as a director, chief executive

officer, secretary or key management personnel of a finance

company while being under any disqualification set out in

subsection (1), shall be guilty of an offence under this

Act.

ended or cancelled;

Finance Business Act, No. 42 of 2011 21

22. (1) The Director may require any director, manager, Declaration of

employee of a finance company to make a declaration of his assets and

liabilities.

assets and liabilities to the Director as at a date and in such

form as may be specified by the Director.

(2) In requiring a declaration under subsection (1) the

Director may also require the details of increase and decrease

in liabilities and acquisition and disposal of assets for a

particular period.

(3) For the purpose of this section “assets and liabilities”

means assets and liabilities within and outside Sri Lanka,

and includes immovable and movable property owned by

the declarent or a relative in whole or in part and any property

in which the declarent or a relative has a beneficial interest.

23. (1) Where an owner of a deposit or a holder of a Transfer of

valid Power of Attorney of the owner in respect of such dormant

deposits to a

deposit:- special account

in the Central

(a) has not transacted with the finance company either Bank.

by making a deposit or withdrawal; and

(b) has not had any correspondence with the finance

company,

for a period not less than ten years, such deposit shall be

considered to be a dormant deposit:

Provided, that in relation to a deposit owned by a person

who has not attained the legal age of majority the aforesaid

period of ten years in respect of such deposit shall commence

only upon such person attaining the legal age of majority.

(2) Any finance company holding any dormant deposit

referred to in subsection (1), shall make a report to the Board

stating the nature of the deposit in such manner and time as

may be required by the Board.

22 Finance Business Act, No. 42 of 2011

(3) The Board may direct a finance company to take such

action as it deems necessary in respect of dormant deposit

reported by such finance company. Notwithstanding

anything to the contrary in any other written law, all monies

in such deposit shall, if the Board so directs, be transferred

by the finance company to a special account in the Central

Bank and may be utilized by the Board for such purposes as

may be determined by the Board.

(4) Any dormant deposit included in the report of a

finance company and which does not fall under subsection

(3) shall be referred by the Board to the Minister who shall

issue such instructions as he considers appropriate in the

circumstances.

(5) Within thirty days from the submission of the report

required by subsection (2), the relevant finance company

shall publish a notice in at least one Sinhala, Tamil and

English daily newspapers circulating in Sri Lanka stating

the name of the owner and particulars with regard to such

deposit and shall dispatch, by registered post a notice to the

owner to his last known address containing particulars of

such deposit, provided that the Board may exempt the finance

company from the mailing of such notice upon the finance

company showing reasonable cause therefor.

(6) The Central Bank shall where any person furnishes

proof to the satisfaction of the Board, that any monies lying

to his credit in his name with any finance company or in the

name of a person from whom he derives title have been

transferred to a special account in the Central Bank under

subsection (3) subject to such terms, conditions or restrictions

as may be imposed in respect of such monies, by or under

any written law, repay to such person such monies, either

with interest payable on such monies up to the date of

repayment at such rate as the Board may, from time to time

determine or if the Board so determines without such

interest.

Finance Business Act, No. 42 of 2011 23

PART III

EXAMINATIONS AND SUPERVISORY ACTIONS ON

FINANCE COMPANIES

24. (1) The Director by himself, or by any officer of the Examination of

books and

Central Bank or any other person, authorized on that behalf accounts etc of

by the Director, may examine the books and accounts of finance

every finance company at least once in each examination companies.

period, and may make such further examinations in respect

of any specified finance company as the Director may deem

fit and for such purpose, may do one or more of the

following-

(a) require any finance company, or a director, secretary,

manager, employee, auditor, agent or contractor of

any finance company to furnish him within such

period and in such manner or form as he may specify,

information as he considers necessary;

(b) require any finance company or a director, secretary,

manager, employee, auditor, agent or contractor of

any finance company to produce for inspection

books, records, files, registers, and such other

documents, maintained in print, electronic or any

other form, of such finance company and to provide

authenticated copies in any form as required of such

books, records, files, registers and such other

documents;

(c) enter the premises or storage area of any finance

company, and notwithstanding anything to the

contrary in any other written law, examine books,

records, files, registers, and such other documents,

maintained in print, electronic or any other form,

of such finance company and may obtain copies,

authenticated or otherwise, in any form of such

books, records, files, registers and such other

documents:

24 Finance Business Act, No. 42 of 2011

Provided however, if the Director receives

reasonable information that the books, records, files,

registers and such other documents, maintained in

print, electronic or any other form, of a finance

company are kept at any place other than the places

specified above, the Director or any person

authorized by the Director shall have the power to

enter and examine such other place and examine

such books, records, files, registers and such other

documents and if necessary obtain copies,

authenticated or otherwise, thereof in any form as

required:

Provided further, if the Director believes that

there will be resistance or obstruction for such

entering or search or there will be concealment of

information, he may obtain a warrant from a

Magistrate to enable him or any person authorized

by the Director to enter upon and search such place

specified in such warrant and may take into custody

of the Director or the person so authorised any

books, records, files, registers and such other

documents, maintained in print, electronic or any

other form, and electronic devices containing

relevant information. The Director may when

entering upon, any such place obtain the assistance

of the office-in-charge of the police station within

whose area of jurisdiction such place is situated.

For the purposes of this paragraph any person

who is not an officer of the Central Bank when

entering the premises of such finance company shall

be accompanied by the Director or an officer of the

Central Bank authorized by the Director.

(d) require the holding company, any subsidiary or

associate company of any finance company, or any

subsidiary or associate company of the holding

company of any finance company, or any other

company that in view of the Director has a

substantial financial interest or significant

management interest in any finance company to

Finance Business Act, No. 42 of 2011 25

furnish information as the Director may consider

necessary and to produce for inspection books,

records, files, registers and such other documents,

maintained in print, electronic or any other form,

of such company at such time, date and place and

in a manner or form as the Director may specify

and to provide in any form as required,

authenticated copies of such books, records, files,

registers and such other documents;

(e) require any finance company or a director, manager,

employee, agent, contractor or secretary of any

finance company to submit the accounts of such

finance company, furnish such information and

produce such books, records, files, registers, and

such other documents, maintained in print,

electronic or any other form, for audit by an auditor

authorized by the Director;

(f) question and record statements of or if necessary

direct, any director, shareholder, secretary,

manager, employee, agent, auditor or contractor of

any finance company or of any other person who

may be acquainted with or is aware of or is in

possession of, information regarding the business

or corporate affairs of such finance company to

submit answers to the questions raised by way of

an affidavit or if necessary administer oath or

affirmation in accordance with the Oaths or

Affirmations Ordinance (Chapter 17) and cause

questions to be asked of and record or cause the

recording of statements;

(g) call for information by notice in writing from any

person who may be acquainted with or is aware of

or is in possession of or appears to have information

regarding the business or corporate affairs of any

finance company and if required summon such

person for an interview.

(2) A Report on such examination shall be furnished to

the Board by the Director after the examination is completed.

26 Finance Business Act, No. 42 of 2011

(3) The Board may recover the costs of such examination

from the finance company.

(4) It shall be the duty of every person to comply with

any requirement imposed on him under this section. Any

person who-

(a) fails to provide any information or produce for

inspection any book, record, file, register or such

other document, material or object required under

this section;

(b) fails to attend in person when summoned for an

interview;

(c) provides false, incomplete or incorrect or

misleading information, book, record, file, register

or such other document, material or object; or

(d) obstructs the Director or any other person

authorized by the Director under subsection (1)

in the performance of any function under

subsection (1),

shall be guilty of an offence under this Act.

(5) In this section “examination period” means a period

as may be fixed for the purpose by the Board.

Procedure to be 25. (1) Where the Board, on a report made under section

followed when 14 or subsection (2) of section 24 by the Director, is of the

Director is of

opinion that a finance company-

opinion that

finance

company is (i) is carrying on or is likely to carry on, its business

following following unsound or improper financial practices,

unsound which are detrimental to the interest of its depositors

practices. and other creditors; or

(ii) has contravened or failed to comply with any

provisions of this Act, or any direction, rule, order

or requirement made or imposed thereunder,

the Board may do one or more of the following-

Finance Business Act, No. 42 of 2011 27

(a) impose a penalty not exceeding five hundred

thousand rupees payable within such period as

may be specified by the Board;

(b) direct such finance company to cease any such

practice;

(c) direct such finance company to comply with the

provisions of this Act or direction, rule, order or

requirement made or imposed thereunder which

such finance company has failed to comply with,

forthwith or within such period as may be specified

by the Board;

(d) direct such finance company to take necessary

action to correct the conditions resulting from such

practice or contravention;

(e) publish the name of the finance company as a

finance company regarding which the Board has

serious supervisory concerns;

(f) appoint a person to manage the affairs of such

finance company with regard to the proper conduct

of the business of such finance company;

(g) appoint an officer of the Central Bank as its

representative in such finance company to monitor

the affairs of such finance company and carry on

such other functions on terms of reference as may

be determined by the Board;

(h) restrain any director, manager or controller of the

finance company from carrying out any function

in or in relation to the finance company;

(i) remove any director, manager or employee of the

finance company;

28 Finance Business Act, No. 42 of 2011

(j) re-organize the finance company, by arranging for

the increase of its capital or reconstituting its Board

of Directors or taking both such measures;

(k) require the reduction of the number of shares held

in the finance company by any person;

(l) provide for such arrangements as are necessary for

the amalgamation of the finance company with

another finance company or any other institution,

with the consent of such other finance company or

institution;

(m) notwithstanding the provisions of any other written

law, review any contract entered into by a depositor

with the finance company and vary the terms of

such contract, including the terms relating to

repayment, interest rates and charges where it

considers that such contract has been entered into

without due regard to the interests of depositors or

other creditors of the finance company or due regard

to prudent commercial practice;

(n) notwithstanding the provisions of any other written

law, review any agreement or contract entered into

by the finance company, with any person and if

upon such review, it appears to the Board that the

agreement or contract has been entered into without

due regard to the interest of the depositors and other

creditors of the finance company or without due

regard to prudent commercial practice, vary the

terms of such agreement or contract.

(2) Any finance company dissatisfied with a direction

given under paragraphs (b), (c) or (d) of subsection (1), may,

before the expiry of thirty days from the date of the issue of

such direction, appeal in writing to the Board and the Board

shall render its decision within thirty days of receipt of such

appeal.

Finance Business Act, No. 42 of 2011 29

(3) The Director may make an application to the

Magistrate to impound the passport of any director or key

management personnel of a finance company in an event

where such finance company has violated the provisions of

this Act and the Director has reasons to believe that such

director or key management personnel is responsible for

such violation.

PART IV

FINANCIAL STATEMENTS AND AUDIT OF FINANCE COMPANIES

26. Every finance company shall prepare at the Financial

statements of

expiration of each financial year a complete set of financial

finance

statements including- company.

(a) a balance sheet as at the end of such financial year;

and

(b) an income statement in respect of such financial

year.

27. (1) The balance sheet of a finance company shall Balance sheet of

set out the state of affairs of such company as at the end of finance

company.

the financial year to which such balance sheet relates.

(2) Unless the Board otherwise requires there shall be

shown in the balance sheet or in any statement annexed

thereto-

(a) capitalized expenses not represented by tangible

assets under separate headings, so far as they are

not written off;

(b) the market value of investments;

(c) the method adopted to value fixed assets if there

had been any valuation of such assets during the

financial year;

30 Finance Business Act, No. 42 of 2011

(d) the aggregate amounts of advances after the

provision for bad and doubtful debts;

(e) any increase or decrease in the provision for

depreciation, renewals, or diminution in the value

of fixed assets;

(f) the sources and application of funds;

(g) reserves, provisions and liabilities distinguishable

from each other;

(h) changes in equity;

(i) except in the case of the first balance sheet of the

finance company, the corresponding amounts at the

end of the immediately preceding financial year

for all items shown in the balance sheet.

Income 28. Unless the Board otherwise requires there shall be

statement of shown in the income statement of a finance company or in

finance

company. any statement annexed thereto-

(a) the amount charged to revenue by way of provision

for depreciation, renewals, or diminution in value

of fixed assets;

(b) the amount charged to revenue for Sri Lanka income

tax and other Sri Lanka taxation on profits and

distinguishable from such accounts, the amounts,

set aside, or proposed to be set aside, for liabilities

in respect of tax due in the current year of taxation

or a succeeding year;

(c) the aggregate amount of dividends paid or proposed

to be paid;

(d) the amount of remuneration of auditors;

Finance Business Act, No. 42 of 2011 31

(e) the amount charged to revenue representing the

aggregate amount of the emoluments of directors;

(f) the amount set aside or proposed to be set aside to,

or withdrawn from reserves;

(g) under separate headings, the profit or loss or the

income and expenses arising from transactions such

as are not usually carried on by the finance company

and are carried on owing to circumstances of an

exceptional or non-recurrent nature or by a change

in the basis of accounting;

(h) except in the case of the first income statement of

the finance company, the corresponding amount

for the immediately preceding financial year for all

items shown in the income statement.

29. (1) Every finance company shall transmit to the Transmission of

Director within three months after the closure of each balance sheet

and income

financial year -

statement of

finance

(a) the audited income statement of the company for company to the

that financial year; Director and

publication.

(b) the audited balance sheet of the company as at the

end of the financial year;

(c) the auditor’s report in respect of the documents

referred to in paragraphs (a) and (b) above; and

(d) the report by the directors relating to the state of

the affairs of the finance company attached to the

balance sheet.

(2) Every finance company shall publish at least once in

a Sinhala, Tamil and English daily newspapers circulating

in Sri Lanka within three months after the closure of each

financial year, the documents specified in paragraphs (a),

(b) and (c) of subsection (1).

32 Finance Business Act, No. 42 of 2011

(3) Every finance company shall exhibit documents

specified in paragraphs (a), (b) and (c) of subsection (1) in a

conspicuous place of each of its places of business until

those documents for the succeeding financial year are

prepared and exhibited.

(4) The Board may specify the form of the balance sheet

and income statement referred to in this section and where

such form is specified, the balance sheet and income

statement of every finance company shall be prepared in

such form.

(5) Every finance company shall publish its key financial

data and key performance indicators in respect of the period

of six months immediately following from the end of its

each financial year, in such form and within such period as

may be specified by the Director.

Auditing of 30. (1) The auditor of a finance company shall inspect

accounts. the accounts, the finances, the management of the finances

and the property of that finance company. The auditor shall

as far as possible, and where necessary, examine-

(a) whether the conduct of the affairs of the finance

company has been in accordance with the laws for

the time being in force relating to the conduct of

finance business by finance companies and rules

and directions issued by the Board;

(b) whether records relating to the acceptance of

deposits and maintaining of accounts are

satisfactory;

(c) whether the accounting systems, procedures, books,

records and other documents have been properly

and adequately designed from the point of view of

financial control purposes and from the point of

view of the presentation of information to enable

continuous evaluation of the activities of the finance

Finance Business Act, No. 42 of 2011 33

company and whether such systems, procedures,

books, records and other documents are in effective

operation;

(d) whether the accounts audited have been so designed

as to present a true and fair view of the affairs of the

finance company in respect of the period under

consideration due regard being had to principles

of accountancy, financing and valuation.

(2) The Board may having regard to the need to ensure

that competent and qualified auditors are engaged in

auditing the accounts of finance companies issue guidelines

in that respect to the Director who shall select from time to

time in accordance with such guidelines, such number of

qualified auditors to audit the accounts of finance companies

and transmit a list of the qualified auditors so selected to all

finance companies.

(3) The Board may issue directions regarding the rotation

of auditors of finance companies.

(4) It shall be the duty of each finance company to select

its auditors for the purpose of auditing its accounts from

and out of the list transmitted under subsection (2) and to

comply with directions issued in terms of subsection (3).

PART V

REGULATORY AND RESOLUTION ACTIONS ON

FINANCE COMPANIES

31. (1) Where the Director is satisfied after examination Suspension.

by himself or by any officer of the Central Bank or any other

person, authorized on that behalf by the Director, or upon

information received from the finance company, that it is

insolvent or is likely to become unable to meet the demands

of its depositors or that its continuance in business is likely

to involve loss to its depositors or other creditors, the Director

34 Finance Business Act, No. 42 of 2011

shall make a report accordingly to the Governor of the Central

Bank for submission to the Board; and if the Board, upon

review of the facts and circumstances, is of opinion that

action should be taken as hereinafter provided, the Board

may make an order directing the company forthwith to

suspend business and directing the Director to take charge

of all books, records and assets of the company, and to take

such measures as may be necessary to prevent the

continuation of business by the company.

(2) Any director, manager, secretary or employee of the

finance company or any other person having in his

possession or custody any books, records or assets of the

company, who fails to hand over the same to the Director or

to an officer of the Central Bank or to any other person,

authorized on that behalf by the Director, or any person who

obstructs or resists the Director or an officer of the Central

Bank or any other person, authorized on that behalf by the

Director from taking charge of any books, records or assets

of the company or from taking such other measures as the

Director may consider necessary to prevent the continuation

of business by the company, shall be guilty of an offence

under this Act.

(3) Where any loss or damage is incurred or is likely or

alleged to have been incurred by reason of any order made

in good faith under subsection (1) no action or proceeding

may be instituted in a court for securing review or revocation

of such order or recovery of such loss or damage unless it

can be proved that such order was not made in good faith.

(4) The Board may take such steps as it may consider

necessary for enabling the continuation of recovery of debts

of the finance company and for such purpose shall have the

power to open bank accounts in the name of the finance

company to enable the debtors to make payments to the

finance company.

(5) Any order of suspension made by the Board in respect

of any finance company under this section shall cease to

have effect upon the expiration of a period of six months

Finance Business Act, No. 42 of 2011 35

from the date on which it is made and it shall be the duty of

the Board as soon as practicable-

(a) make order permitting the company to resume

business, either unconditionally or subject to such

conditions as the Board may consider necessary in

the public interest, or in the interest of the depositors

and other creditors of the company; or

(b) cause the Director to make application as

hereinafter provided to a competent court for the

winding up of the finance company and notify such

company accordingly. Where a finance company

is so notified, the company shall not resume business

unless an order to do so is made by a Court,

without prejudice to the generality of the powers conferred

by paragraph (a) and notwithstanding anything to the

contrary in any other written law or the memorandum and

articles of association of the company, the Board may, as a

condition of permitting the company to resume business,

remove any director, manager or employee of such company

where it is of the view that the continuance of such director,

manager or employee in the company is detrimental to the

interests of its depositors and other creditors and appoint

any person as a director, manager or an employee of such

company.

(6) Notwithstanding anything to the contrary in any other

written law or the Memorandum and Articles of Association

of a finance company, the Board, may where an order has

been made by the Board under paragraph (a) of subsection

(5), do one or more of the following -

(a) make such arrangements as it considers necessary

for the amalgamation of the finance company with

another finance company or any other institution,

with the consent of such other finance company or

institution;

36 Finance Business Act, No. 42 of 2011

(b) re-organise the finance company by increasing its

capital and arranging for new shareholders;

(c) reconstruct the finance company in any manner as

it deems necessary in the interest of depositors and

other creditors of such finance company;

(d) appoint a person to manage the affairs of such

finance company with regard to the proper conduct

of the business of such finance company;

(e) restrain any director, manager or controller of the

finance company from carrying out any function in

or in relation to the finance company;

(f) remove any director, manager or employee of the

finance company;

(g) reconstitute the Board of Directors of the finance

company;

(h) review any contract entered into by a depositor with

the finance company and vary the terms of such

contract, including the terms relating to repayment,

interest rates and charges where it considers that

such contract has been entered into without due

regard to the interests of depositors or other

creditors of the finance company or due regard to

prudent commercial practice;

(i) review any agreement or contract entered into by

the finance company, with any person and if upon

such review, it appears to the Board that the

agreement or contract has been entered into without

due regard to the interest of the depositors and other

creditors of the finance company or without due

regard to prudent commercial practice, vary the

terms of such agreement or contract;

Finance Business Act, No. 42 of 2011 37

(j) direct any shareholder of the finance company to

divest or transfer the ownership of the shares owned

by him, to a person nominated by the Board, on

payment by such person of compensation as

follows:-

(i) where such shares are quoted, at the market

value thereof; or

(ii) where such shares are not quoted at a price

to be determined by a valuer nominated by

the Board.

(7) A shareholder who fails to comply with a direction

given to him under paragraph (j) of subsection (6) shall be

guilty of an offence under this Act.

32. (1) Where an order has been made by the Board Winding up.

under paragraph (b) of subsection (5) of section 31, the

Director shall make an application as hereinafter provided

to a competent court for the winding up of the finance

company.

(2) The Court may, on an application made by the

Director, order the winding up of the finance company and

accordingly the provisions of the Companies Act, No. 07 of

2007, relating to the winding up of companies subject to

the supervision of court shall, mutatis mutandis, apply to

the winding up of such company.

(3) If the court is of opinion, after such inquiry as it may

consider necessary, and after considering the submissions

of the Director, that the finance company is not insolvent, it

may make order permitting the finance company to resume

business, either unconditionally or subject to such

conditions as the Court may consider necessary in the public

interest or in the interest of the depositors and other creditors

of the company:

Provided, that the provisions of this subsection shall not

apply to a finance company which has made an application

38 Finance Business Act, No. 42 of 2011

to the Supreme Court in relation to an order made or

purported to have been made by the Board in terms of

subsection (5) of section 31 of this Act.

(4) The Director or any person authorized on that behalf

by the Board shall be appointed to be the liquidator for the

purposes of such winding up.

(5) Any costs, charges and expenses incurred in the

winding up of a finance company may be paid out of the

funds of the Central Bank where the Board considers it in

the public interest to do so, in the event such costs, charges

and expenses cannot be met out of the funds of such finance

company.

(6) Every order made by a competent court under this

section shall be subject to an appeal to the Supreme Court

and the provisions of the Civil Procedure Code (Chapter

101) relating to appeals in civil actions shall apply, mutatis

mutandis, in the case of any such appeal.

(7) Where the Director makes an application to Court for

winding up of the finance company under subsection (1) for

the continuity of legal proceedings it is deemed that the

original caption of the plaint shall be valid for all purposes

of law even if the Director who made the application to

court is no longer the head of the department of the Central

Bank to which the subject of finance companies has been

assigned.

(8) In this section ‘competent court’ in relation to any

finance company means a 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 no such High

Court vested with such civil jurisdiction is established for

any Province, the High Court established for the Western

Province.

Finance Business Act, No. 42 of 2011 39

33. The Minister may make regulations with regard to Priority of

claims in

the priority of claims in a winding up of a finance company:

winding up.

Provided however, until any regulations are made

under this section the provisions of the Companies Act,

No. 7 of 2007 or any other applicable law to the extent that

such provisions are not inconsistent with the provisions of

this Act shall, mutatis mutandis, apply with regard to the

priority of claims in a winding up of a finance company.

34. (1) The Board may, after review of the facts and Board may take

over

circumstances upon the receipt of a report by the Director

administration

under section 31 as an alternative to taking action under and management

section 31, take over the administration and management of of a finance

such finance company for such period as may be determined company.

by the Board and shall publish a notice in the Gazette of

such take over. The Board may extend the original period of

take over and shall publish a notice of such extension in the

Gazette. The Board shall inform the Registrar General of

Companies of such take over and any extension thereto and

the Registrar General shall make a minute thereof in the

books relating to the company.

(2) Where the Board takes over the administration and

management of a finance company, the Board may do one

or more of the following -

(a) exercise, perform and discharge with respect to such

finance company all the powers, duties and

functions conferred or imposed on, or assigned to,

the Board of Directors of such company by or under

any written law or by the Articles of Association of

such company or imposed on or assigned to any

other person by the Articles of Association of such

company;

(b) enter into any agreement with any person for the

management of the finance company subject to such

conditions as may be agreed upon between the

40 Finance Business Act, No. 42 of 2011

Board and such person having regard to the interests

of the depositors and other creditors of the company

and in the public interest;

(c) make such arrangements as it considers necessary

for the amalgamation of the finance company with

another finance company or any other institution

with the consent of such other finance company or

institution;

(d) re-organise the finance company by increasing its

capital and arranging for new shareholders;

(e) reconstruct the finance company in any such

manner as it considers to be in the interest of

depositors and other creditors of such finance

company;

(f) remove any director, manager or employee of the

finance company;

(g) reconstitute the board of directors of the finance

company;

(h) direct any shareholder of the finance company to

divest or transfer the ownership of any shares owned

by him to a person nominated by the Board on

payment by such person of compensation

determined as follows-

(i) where such shares are quoted, at the market

value thereof; or

(ii) where such shares are not so quoted, at a price

to be determined by a valuer nominated by

the Board;

(i) notwithstanding anything to the contrary in any

other written law, review any contract entered into

by a depositor with the finance company and vary

the terms of such contract, including the terms

Finance Business Act, No. 42 of 2011 41

relating to repayment, interest rates and charges

where it considers that such contract has been

entered into without due regard to the interests of

depositors or other creditors of the finance company

or due regard to prudent commercial practice;

(j) notwithstanding anything to the contrary in any

other written law, review any agreement or contract

entered into by the finance company, with any

person and if upon such review, it appears to the

Board that the agreement or contract has been

entered into without due regard to the interest of

the depositors and other creditors of the finance

company or without due regard to prudent

commercial practice, vary the terms of such

agreement or contract.

(3) During the period for which the administration and

management of finance company is taken over by the Board,

every director, manager and secretary of such finance

company shall, unless expressly authorized to continue by

the Board, cease to exercise, perform and discharge any

powers, duties and functions with respect to such company.

(4) Where the administration and management of a

finance company is taken over by the Board, the Board may

where it considers it in the public interest to do so-

(a) arrange for or grant such financial accommodation

as it may consider necessary to the finance company

by way of loans or other accommodation, other than

by way of grants; and

(b) meet all costs, charges and expenses incurred in

the administration and management of the

company.

(5) That the Board may at any time after the taking over

of the administration and management of a finance company

under subsection (1) suspend the business of the company,

42 Finance Business Act, No. 42 of 2011

if it is of opinion, that it is in the interest of the public or of

the depositors to do so, or direct the Director to apply to

wind up the company, if on a report made by the Director or

any person authorized by the Board, it appears to the Board

that the company cannot be made viable and solvent within

a reasonable period of time. In the event of the Board

directing the Director to wind up the finance company, the

provisions of section 32 relating to winding up shall apply.

Protection from 35. Where the Board has taken over the administration

suit. and management of a finance company under section 34,

the Board shall not be liable or subject to any action or

proceedings in any court in respect of any loss or damage

suffered or incurred or alleged to have been suffered or

incurred by any person by reason of any act or thing done or

omitted to be done in good faith by the Board or in the

exercise of any power, duty or function conferred or imposed

on, or assigned to, the Board by or under subsection (2) of

section 34.

Vesting of 36. (1) Where the Board has taken over the

administration administration and management of a finance company under

and

section 34 the Board may, in order to take steps to safeguard

management of

finance the interest of the depositors or creditors vest the

company in administration and management of such finance company

person. in any person with the consent of such person and publish a

notice in the Gazette in that regard. The person on whom

the administration and management of such finance

company is vested shall exercise, perform and discharge with

respect to such finance company all the powers, duties and

functions conferred or imposed on, or assigned to the Board

of Directors of such company by or under any written law or

by the Articles of Association of the company or to any

other person by the Articles of Association of such company.

(2) Where the Board has vested the administration and

management of a finance company in any person the Board

may direct any shareholder of such finance company to divest

or transfer the ownership of any shares owned by him to a

Finance Business Act, No. 42 of 2011 43

person nominated by the Board on payment by such person

of compensation as follows-

(a) where such shares are quoted, at the market value

thereof; or

(b) where such shares are not quoted, at a price to be

determined by a valuer nominated by the Board.

(3) Any person in whom the Board vests the

administration and management of a finance company, may,

discharge such functions in accordance with the provisions

of this Act and the provisions of subsection (2) of section 34

shall, mutatis mutandis, apply in relation thereto:

Provide however, if it appears necessary the Board may

require such person to obtain the prior written approval of

the Board to exercise any of the powers or functions given

under subsection (2) of section 34 of this Act.

37. (1) Where the Board is satisfied that any finance Cancellation of

company has- licence of a

finance

company.

(a) failed to commence business within nine months

of the issue of the licence;

(b) failed to pay up any debts incurred by it, on such

debts becoming due;

(c) had petition or action for relief filed against such

finance company, and has had appointed in respect

of such finance company under any bankruptcy

law or any other written law which provides for

relief for debtors or which relates to debtors, a

liquidator, custodian or receiver;

(d) ceased to carry on finance business;

(e) continuously been violating or contravening the

provisions of this Act or any direction or rule issued

thereunder;

(f) failed to pay the annual licence fee; or

44 Finance Business Act, No. 42 of 2011

(g) carried on, or is carrying on, its business in a manner

likely to be detrimental to the interests of its

depositors and other creditors,

the Board may, give notice to the finance company that it

would cancel the licence issued to such finance company.

(2) A finance company may tender objections in writing

to the Board against the notice of cancellation under

subsection (1), within thirty days of the date of such notice,

giving reasons why the licence issued to it under section 5

should not be so cancelled.

(3) After the expiration of sixty days from the date of

the notice of the cancellation and after considering the

objections tendered to the Board under subsection (2), the

Board may withdraw such notice or cancel the licence

issued to the finance company, and such cancellations

shall take effect on the date of the decision of the Board to

cancel the licence or such other later date as the Board may

deem appropriate.

(4) The decision of the Board to cancel the licence shall

be notified to the finance company and the notification of

cancellation shall be published in the Gazette and in at least

one Sinhala, Tamil and English daily newspapers circulating

in Sri Lanka, informing the public that such company is no

longer authorized to carry on finance business.

(5) Where the licence of a finance company is cancelled

the Board shall remove the name of the finance company

from the register maintained under subsection (1) of section

7 and may issue such directions as it considers necessary,

including directions for winding up or require the Director

to apply for winding up of the company in which event the

provisions of section 32, except subsection (3) thereof, shall

apply.

(6) Where the finance company fails to comply with any

directions issued under subsection (5) within the time

Finance Business Act, No. 42 of 2011 45

specified by the Board, the Board may require the Director

to file action for the winding up of the finance company,

and the provisions of section 32, except subsection (3)

thereof shall apply.

PART VI

INSURANCE OF DEPOSITS

38. (1) The Board may notwithstanding anything in the Scheme of

Regulation of Insurance Industry Act, No. 43 of 2000, or Insurance of

Deposits.

any other written law, establish, maintain, manage and

control a scheme for the insurance of deposits held by finance

companies and require such companies to insure under such

scheme the deposits held by them.

(2) (a)The Board may authorize a body corporate

(hereinafter referred to as “authorized body corporate”) to

carry out all or any of the functions referred to in subsection

(1), subject to such terms and conditions, and in such event,

the provisions of the Regulation of Insurance Industry Act,

No. 43 of 2000 shall not apply to such body corporate for

such purpose.

(b) The Board may acquire and hold shares in the

authorised body corporate.

39. (1) Where a scheme for the insurance of deposits Application for

has been established, every finance company shall apply to insurance of

deposits.

the Board or to the authorised body corporate in the form

specified by the Board to insure under such scheme, the

deposits held by such finance company.

A finance company, the deposits of which have been insured

under such scheme is referred to as an “insured finance

company” in this Part of this Act.

(2) The Board or the authorised body corporate, at its

discretion, may accept or reject any application made under

subsection (1).

46 Finance Business Act, No. 42 of 2011

(3) Every applicant finance company shall pay an initial

fee to the Board or authorized body corporate as the case

may be, which shall be determined, from time to time by the

Board or the authorised body corporate with the concurrence

of the Board.

(4) An insured finance company shall pay a premium of

insurance to the Board or to the authorised body corporate

on its deposits.

(5) If an insured finance company makes any default in

the payment of any premium, it shall, for the period of such

default, be liable to pay to the Board or to the authorised

body corporate interest on the amount of such premium at

such rate as may be determined by the Board or the authorised

body corporate with the concurrence of the Board, having

regard to the losses likely to be incurred by the Board or the

authorised body corporate by such default.

Examination by 40. (1) The authorised body corporate may, at its

authorized body discretion, cause to examine the books and accounts of any

corporate.

insured finance company and the provisions of subsections

(1) and (4) of section 24 of this Act shall, mutatis mutandis,

apply to such examination.

(2) A copy of the examination report shall be submitted

by the authorised body corporate to the Director forthwith

after an examination.

Rules relating to 41. (1) Rules may be made by the Board or the authorised

deposit body corporate with the concurrence of the Board in respect

insurance.

of establishment and operation of a scheme of insurance of

deposits and in particular –

(a) the amount, the time at which and the manner in

which the insurance premium shall be paid by an

insured finance company;

(b) the interest which may be charged from an insured

finance company, where it makes default in the

payment of premia;

Finance Business Act, No. 42 of 2011 47

(c) any matter that is stated or is required to be

prescribed or determined under this Part of this

Act for the purpose of insuring depositors of finance

companies;

(d) record keeping requirements for an insured finance

company;

(e) reporting requirements for an insured finance

company;

(f) any other matter affecting, connected with or

incidental to the exercise, discharge or performance

of the powers, functions and duties of the Board or

the authorised body corporate under this Part of

this Act.

(2) Every rule made under this section shall be published

in the Gazette.

PART VII

ACTION AGAINST PERSONS CARRYING ON FINANCE BUSINESS OR

ACCEPTING DEPOSITS WITHOUT AUTHORITY

42. (1) For the purpose of ascertaining whether any Investigation.

person has carried on or is carrying on finance business or

has accepted or is accepting deposits from the public in

contravention of the provisions of section 2, the Director or

any officer of the Central Bank authorized on that behalf by

the Director may conduct an investigation and for that

purpose may do one or more of the following –

(a) require such person or a director, partner, member,

secretary, manager, employee, agent, contractor or

auditor of such person to furnish him within such

period and in such manner or form as he may specify,

such information as he may consider necessary;

(b) require such person or a director, partner, member,

manager, secretary, employee, agent, contractor or

auditor of such person to produce for inspection

48 Finance Business Act, No. 42 of 2011

books, records, files, registers and such other

documents, maintained in print, electronic or any

other form, relating to the business and corporate

affairs of such person at such place as specified and

to provide authenticated copies in any form as

required, of such books, records, files, registers and

such other documents;

(c) at any time enter or authorize any other person whose

services have been obtained by the Director for such

purpose, to enter the premises or storage area of

such person or any vehicle of such person or of any

director, partner, member, secretary, manager,

employee, agent, contractor or auditor of such

person which is at the premises of such person and

notwithstanding anything to the contrary in any

other written law examine or cause to be examined

such premises or storage area or vehicles and books,

records, files, registers and such other documents,

maintained in print, electronic or any other form,

found in such premises, storage area or vehicle

relating to the business and corporate affairs of such

person and if necessary obtain copies, authenticated

or otherwise, in any form as required, of such books,

records, files, registers and such other documents,

and take account of currency, bills of exchange,

corporate and government securities found in such

premises or storage area or vehicle or which may be

kept in safe custody in such premises or storage

area:

Provided further that, if the Director

receives reasonable information that the books,

records, files, registers and such other documents,

maintained in print, electronic or any other form,

relating to the business and corporate affairs of such

person are kept at any place other than the premises

or storage area of such person or any vehicle of

such person or of any director, partner, member,

Finance Business Act, No. 42 of 2011 49

secretary, manager, employee, agent, contractor or

auditor of such person which is at the premises of

such person, the Director or any person authorized

by the Director shall have the power to enter and

examine such place or vehicle and examine the

books, records, files, registers and such other

documents, and if necessary obtain copies,

authenticated or otherwise, thereof in any form as

required and take account of currency, bills of

exchange, corporate and government securities

found at such place.

(d) question and record statements of or if necessary

direct such person or a director, partner, member,

secretary, manager, employee, agent, auditor or

contractor of such person or any other person who

may be acquainted with or aware of or in possession

of information regarding the business or corporate

affairs of such person to submit answers to the

questions raised by way of an affidavit or if

necessary administer oath or affirmation in

accordance with the Oaths or Affirmations

Ordinance (Chapter 17) and cause questions to be

asked of and record or cause the recording of

statements ;

(e) require the holding company, any subsidiary or

associate company of such person, or any subsidiary

or associate company of the holding company of

such person, or any other company that in view of

the Director has a substantial financial interest or

significant management interest in such person to

furnish information as the Director may consider

necessary and to produce for inspection the books,

records, files, registers and such other documents,

maintained in print, electronic or any other form,

relating to its business and corporate affairs at such

time, date, place and in a manner or form as the

Director may specify and to provide in any form as

50 Finance Business Act, No. 42 of 2011

required, authenticated copies of such books,

records, files, registers and such other documents;

(f) call for information by notice in writing from any

person who may be acquainted with or is aware of

or is in the possession of or appears to have

information regarding the business and corporate

affairs of such person and if required summon such

person for an interview;

(g) take any other action which he may deem necessary

for the purpose.

(2) (a) Notwithstanding anything to the contrary in any

other written law, the Director may require the Inspector

General of Police or the Deputy Inspector General of Police

in charge of the Province or the Division to provide all

assistance as may be necessary in the circumstances in order

to carry on an investigation for the purposes of subsection

(1) and report the findings of such investigation to the

Director in such manner and within such time as he may

specify.

(b) The Inspector General of Police or the Deputy

Inspector General of Police in charge of the Province or the

Division may order the Assistant Superintendent of Police

of the division or the Officer in Charge of the relevant police

station to carry on an investigation for the purposes of

subsection (1), and such officer shall, in addition to the powers

he may lawfully exercise, have the power to do mutatis

mutandis any act specified in paragraphs (a) to (g) of

subsection (1).

(c) The Director may request the assistance of any

Divisional Secretary to carry on an investigation for the

purposes of subsection (1) and such Divisional Secretary

shall assist the Director in such manner and within such time

as he may specify.

(3) The Director shall, where he has reasons to believe

that a person has carried on or is carrying on finance business,

or has accepted or is accepting deposits, report such fact to

the Board.

Finance Business Act, No. 42 of 2011 51

(4) The Board shall, after considering the report of the

Director under subsection (3) and after giving the person in

respect of whom the report is submitted an opportunity of

being heard, determine whether such person has carried on

or is carrying on finance business or has accepted or is

accepting deposits in contravention of the provisions of

section 2, and shall if determined that such person has carried

on or is carrying on finance business or has accepted or is

accepting deposits in contravention of the provisions of

section 2, notify such determination, in writing, to such

person accordingly. Any notice required to be given by the

Board under this section including the notice regarding the

hearing, shall be deemed to be served if dispatched by

registered post to the last known address of such person.

(5) Where in any prosecution instituted under this Act,

any question arises as to whether any person has carried on

or is carrying on finance business or has accepted or is

accepting deposits, a certified copy of the minutes of the

meeting of the Board regarding the determination that such

person has carried on or is carrying on finance business or

has accepted or is accepting deposits shall be admissible in

evidence and shall be prima facie evidence of the facts stated

therein.

(6) The Board may along with or after the notification of

its determination under subsection (4) issue to such person

directions as it considers necessary, including directions to

divest the business of such person to a person specified by

the Board or to repay the deposit liabilities or to make an

application within a specified period of time to a competent

court for winding up and it shall be the duty of such person

to comply with such directions.

(7) In the event of issuing directions under subsection

(6) to divest the business of such person, the Board may

notwithstanding provisions to the contrary in any other

written law -

(a) review any contract entered into by a depositor with

such person and may vary the terms of such contract,

52 Finance Business Act, No. 42 of 2011

including the terms relating to repayment, interest

rates and charges where it considers that such

contract has been entered into without due regard

to the interests of depositors or other creditors of

such person or without due regard to prudent

commercial practice;

(b) review any agreement or contract entered into by

such person with any other person and upon such

review, if it appears to the Board that the agreement

or contract has been entered into without due regard

to the interest of the depositors and other creditors

of such person or without due regard to prudent

commercial practice, vary the terms of such

agreement or contract.

(8) (a) Where such person fails to comply with the

directions issued under subsection (6), the Board may take

such steps as it considers necessary including the winding

up of such person or to take action to declare such person as

insolvent by a court.

(b) In the event of winding up of a company, the provisions

of section 32 other than the provisions of subsection (3)

thereof shall mutatis mutandis apply.

(c) In the event of winding up of a body of persons other

than a company, the provisions of section 32 other than the

provisions of subsections (2) and (3) thereof shall mutatis

mutandis apply and the value of the assets and liabilities of

such body of persons shall be ascertained in such manner

and upon such basis as the liquidator thinks fit. The

competent Court may at any time after making a winding up

order authorize the liquidator to realize all assets and may

require any person to pay, deliver, convey, surrender or

transfer forthwith or within a specified time to the liquidator

any money, property or books and other documents in his

hands to which such body of persons is entitled. A scheme

for the purpose of winding up of such body of persons shall

Finance Business Act, No. 42 of 2011 53

be prepared by the liquidator and submitted for confirmation

to the competent court and the winding up of such body of

persons shall be carried out according to the scheme.

(9) The Board may take such steps as it considers necessary

to recover the money and property of such person determined

in terms of subsection (4) and the provisions of section 51 of

this Act shall mutatis mutandis apply in respect of such

recovery.

(10) The Board may publish a notice in at least one

Sinhala, Tamil and English daily newspapers circulating

in Sri Lanka, that the person referred to in the determination

has carried on or is carrying on finance business or has

accepted or is accepting deposits in contravention of

the provisions of section 2. Where such person is a body

of persons, such notice may include, if that body of

persons is:-

(i) a body corporate the names and addresses of

directors of such body corporate;

(ii) a firm the names and addresses of partners of that

firm; and

(iii) an unincorporate body other than a firm, the names

and addresses of members of such body and officers

of that body.

(11) It shall be the duty of every person to comply with

any requirement imposed on him under this section and any

person who-

(a) fails to provide any information or produce for

inspection any book, record, file, register or such

other document, material or object required under

this section;

(b) fails to attend in person when summoned for an

interview;

54 Finance Business Act, No. 42 of 2011

(c) provides false, incomplete or incorrect or

misleading information, book, record, file, register

or such other document, material or object; or

(d) obstructs the Director or any other person

authorized by the Director under subsection (1) or

the Inspector General of Police or the Deputy

Inspector General of Police in charge of the Province

or the Division or any Divisional Secretary required

or requested to assist the Director in carrying out an

investigation by him, or any other person authorized

by the Inspector General of Police or the Deputy

Inspector General of Police or the Divisional

Secretary, as the case may be, in the performance of

any function under subsection (1) of this section,

shall be guilty of an offence under this Act.

Court order to 43. Where any person fails to provide information,

compel a person book, record, file, register or such other document or material

to provide

or object or provides false, incorrect or incomplete

information and

books. information, book, record, file, register or such other

document or material or object when required in terms of

subsection (1) of section 42 or section 46, the Director or

any person authorized by the Director may make an

application to the appropriate Magistrate for the issuance of

an order –

(a) authorizing any person named in the application

to inspect the books, records, files, registers and

such other documents maintained in print, electronic

or any other form, material or object of the person

who has failed to comply with the requirement made

in terms of subsection (1) of section 42 or section

46; or

(b) requiring the person who has failed to comply with

the requirement made in terms of subsection (1) of

section 42 or section 46, or a director, partner,

member, secretary, manager, employee, agent,

contractor or auditor of such person as may be

named in the order, to produce the books, records,

Finance Business Act, No. 42 of 2011 55

files, registers and such other documents

maintained in print, electronic or any other form,

material or object of such person, to a person and at

a place specified in the order.

44. (1) The Director may at any time where a person is Issue of

being investigated in terms of subsection (1) of section 42, Freezing Order.

issue an order (hereinafter referred to as a “Freezing Order”)

for any one or more of the following:-

(a) prohibiting such person from disposing assets of

such person or any part thereof;

(b) prohibiting such person from entering into any

transaction or class of transactions as may be

determined by the Director;

(c) prohibiting such person from soliciting or

mobilizing deposits;

(d) prohibiting any transaction in relation to any

account, property or investment as may be

determined by the Director.

(2) The Director may at any time where a body of persons

is investigated in terms of subsection (1) of section 42, issue,

if such body of persons is-

(i) a body corporate, on any director, or manager

of that body corporate;

(ii) a firm, on any partner of that firm;

(iii) an unincorporate body other than a firm, on

any member of such body, or any officer of

that body responsible for its management and

control,

a Freezing Order for any one or more of the following:-

(a) prohibiting such person from disposing assets of

such person or any part thereof;

56 Finance Business Act, No. 42 of 2011

(b) prohibiting such person from entering into any

transaction or class of transactions as may be

determined by the Director;

(c) prohibiting such person from soliciting or

mobilizing deposits;

(d) prohibiting any transaction in relation to any

account, property or investment as may be

determined by the Director.

(3) Subject to the provisions of section 45, a Freezing

Order issued under subsections (1) and (2) shall not be in

force for a period exceeding seven days of the issuing thereof.

Confirmation of 45. (1) The Director after issuing a Freezing Order under

Freezing Order the provisions of section 44 shall within the period during

and impounding

which the Freezing Order is in force, make an application to

of passports.

the High Court seeking confirmation of such Freezing Order

and also if the circumstances so necessitates, request an

extension thereto.

(2) Where the High Court is satisfied that there are

sufficient reasons for issuance of such Freezing Order, the

court may confirm the Freezing Order and if it is satisfied

there are sufficient reasons for extension thereof may grant

extensions for such periods as it considers appropriate.

(3) (a) The Director may at any time where a person is

investigated in terms of subsection (1) of section 42, make

an application to the relevant Magistrate’s Court to impound

the passport of such person so investigated.

(b) In an event where the person investigated in terms of

subsection (1) of section 42 is a body of persons, it shall be

lawful for the Director to make an application or applications

as may be necessary to impound the passport –

(i) if that body of persons is a body corporate, of

any director, or manager of the body

corporate; and

Finance Business Act, No. 42 of 2011 57

(ii) if that body of persons is a firm, of any partner

of that firm; and

(iii) if that body of persons is an unincorporate

body other than a firm, of any member of such

body, or any officer of that body responsible

for its management and control.

46. (1) The Director may call for information by notice Information of

in writing in such manner and as at such date as he may assets and

liabilities of a

specify of the assets and liabilities of a person regarding person under

whom an investigation has commenced in terms of investigation.

subsection (1) of section 42 from such person or from any

other person who may be acquainted with or aware of or

appears to have information regarding the assets and

liabilities of such person.

(2) Where such person is an individual, information of

the assets and liabilities of his spouse, children and parents

may also be called.

(3) Where such person is a body of persons, information

of the assets and liabilities of:—

(a) the Directors, managers and employees of a body

corporate;

(b) the Partners of a firm;

(c) the Members of an unincoporate body other than a

firm,

and of their spouses, children and parents may also be called.

(4) Where the Director has information that assets of such

person has been transferred, gifted, assigned or disposed of

in any manner to any other person the Director may call for

information of the assets and liabilities of such other person.

58 Finance Business Act, No. 42 of 2011

(5) In requiring information under subsection (1), ( 2), (3)

or (4), the Director may also require the details of increase

and decrease in liabilities and acquisition and disposal of

assets for a particular period.

(6) For the purpose of this section “assets and liabilities”

means assets and liabilities in and outside Sri Lanka, and

includes immovable and movable property owned by a

person or his relative in whole or in part and any property in

which such person or his relative has a beneficial interest.

Police and 47. The Director may require any officer in charge of a

Divisional police station or the relevant Divisional Secretary to furnish

Secretaries to

him with information regarding any person residing or having

provide

information. his place of business within the limits of the relevant police

division or the Divisional Secretary’s Division as the case

may be, in order to facilitate an investigation in terms of

section 42 of this Act, and such officer in charge of a police

station or such Divisional Secretary shall make every

endeavour to furnish the information required by the

Director.

Prohibition of 48. (1) No person, other than a person licensed under

advertising this Act to carry on finance business or any bank or institution

soliciting

exempted in terms of section 3 of this Act, shall advertise by

deposits without

authority. any means, in any manner whatsoever, either directly or

indirectly, soliciting deposits.

(2) Where the Director is of the opinion that an

advertisement made by a person contravenes the provisions

of subsection (1), the Director may send a notice to such

person requiring him to refrain from publishing

advertisements soliciting deposits.

(3) The notice referred to in subsection (2) shall be deemed

to have been served on the person referred to in the notice if

such notice was sent by registered post-

(a) to the address given in the advertisement;

Finance Business Act, No. 42 of 2011 59

(b) if such person is an individual to such person’s

place of business or residential address;

(c) if such person is a body corporate, to such person’s

place of business or registered address; or

(d) if such person is an unincorporate body, to such

person’s place of business or to the addresses of

partners or members of such body.

(4) If any person fails to comply with the notice sent by

the Director in terms of subsection (2), the Director may

make an application in writing to the Magistrate’s Court

within whose jurisdiction such person’s place of business is

situated or to, within whose jurisdiction the registered

address, residential address or the address given in the

advertisement is situated.

(5) (a) The application made by the Director in terms of

subsection (4) shall contain the following matters: -

(i) that he is the Director for the purposes of this Act;

(ii) that the advertisement referred to in the notice

issued in terms of subsection (2), is in his opinion

intended directly or indirectly for the purpose of

soliciting deposits;

(iii) that in terms of subsection (2) a notice was issued

to the person named in the application, who in his

opinion, is the advertiser of the advertisement

referred to in subparagraph (ii);

(iv) that the advertiser is not a person authorized by

subsection (1) to publish an advertisement soliciting

deposits; and

(v) that the advertiser failed to comply with the

requirements contained in the notice issued in

terms of subsection (2);

60 Finance Business Act, No. 42 of 2011

(b) The application shall contain a prayer for the making

of an order directing the advertiser who is named in the

application to forthwith refrain from advertising, in any

manner, either directly or indirectly soliciting deposits.

(6) Every application made under subsection (4) shall be

supported by an Affidavit confirming the matters set forth in

such application and shall be accompanied by a copy of the

advertisement referred to in the notice issued in terms of

subsection (2) and a copy of such notice.

(7) Upon receipt of an application made under subsection

(4), the court shall, forthwith issue on the advertiser named

in the application-

(a) a conditional order restraining him from publishing

the advertisement in respect of which the

application is made, and also restraining him from

publishing by any means whatsoever any further

advertisements soliciting deposits, until the

conclusion of the Court proceedings or until such

time the Court may consider fit; and

(b) summons requiring him to appear and show cause

on the date specified in such summons (being a

date not later than two weeks from the date of issue

of such summons) as to why an order restraining

him from advertising, in any manner, either directly

or indirectly soliciting deposits, should not be

issued.

(8) If the person on whom the summons were issued under

subsection (7) fails to appear in court on the date specified

therein or informs the court that he has no cause to show, the

court shall make the conditional order issued under

subsection (7) hereof a final order restraining the advertiser

from publishing advertisement in respect of which the

application is made, and also restraining him from publishing

by any means whatsoever any further advertisements

soliciting deposits.

Finance Business Act, No. 42 of 2011 61

(9) If a person on whom summons have been served under

subsection (7) appears on the date specified therein and

informs court that he has cause to show as to why an order

should not be issued prohibiting him from advertising, in

any manner, soliciting deposits, the court may proceed to

hear and determine the matter.

(10) (a) At such inquiry under subsection (9) the advertiser

on whom summons under subsection (7) have been served

shall not be entitled to contest any of the matters stated

in the application under subsection (4) except that he has

not made the advertisement referred to in the application or

he had made such advertisement in accordance with any

written law under which he is permitted to do so and such

permission is in force and not revoked or otherwise rendered

invalid.

(b) It shall not be competent to the Magistrate’s Court to

call for any evidence from the Director in support of the

application under subsection (4).

(11) If after inquiry the Magistrate is unable to conclude

on the evidence adduced before him that the person showing

cause is entitled to advertise soliciting deposits, the

Magistrate shall make the conditional order issued under

subsection (7) hereof, a final order restraining the advertiser

from publishing advertisement in respect of which the

application is made, and also restraining him from publishing

by any means whatsoever any further advertisements

soliciting deposits. If such person shows cause to the

satisfaction of the court, the Magistrate shall set aside the

conditional order issued under sub section (7).

(12) Where a Court has made, in pursuance of any

application under subsection (4), an Order directing a person

to stop forthwith advertising in any manner, soliciting

deposits, the Court shall along with such Order make all

such orders as are necessary to ensure that the Order of

restraint is effectively enforced.

62 Finance Business Act, No. 42 of 2011

Media 49. Any media institution shall, before publishing an

institutions to advertisement which solicits deposits, verify from the

verify before

publishing relevant advertiser whether he is authorised under this Act

advertisements to accept deposits.

soliciting

deposits.

Publication of 50. (1) The Director may send a notice to any media

advertisements

institution requiring such institution to refrain from

soliciting

deposits without publishing advertisements soliciting deposits by a person

authority is an specified in such notice.

offence.

(2) Any person who contravenes the provisions of

subsection (1) shall be guilty of an offence under this Act.

PART VIII

OFFENCES AND PENALTIES

Action to be 51. (1) If the Board, on consideration of a report of the

taken regarding

Director, is of the opinion that any past or present director,

wrongful gain.

chief executive officer, manager, employee, agent or a

contractor of a finance company has by an act or omission

caused a-

(a) wrongful gain for himself or for any other person of

any money or property belonging to such finance

company; or

(b) wrongful loss to the finance company,

the Board may notwithstanding that any action has also

been taken under this Act or any other law, require such

director, chief executive officer, manager, employee, agent,

contractor or any other person referred to in paragraph (a) to

repay, restore to or compensate the finance company, the

money or property so wrongfully gained or caused to

wrongfully lose, with interest on such money or property at

such rate as the Board may think fit and within such period

of time as may be specified by the Board.

Finance Business Act, No. 42 of 2011 63

(2) Where any person referred to in subsection (1) fails to

repay, restore to or compensate the finance company, the

money or property referred to in that subsection, the Board

may-

(a) direct such person to disclose to any officer

authorized by it within a specified time, the value,

nature and whereabouts of any monies, properties

or other assets –

(i) owned by such person; or

(ii) in which such person has a beneficial

interest; or

(iii) acquired or purchased or held or

possessed, by a relative of such person or

any other person, in trust for such person,

including the properties and other assets

disposed in any manner whatsoever, as at

a specified date or within a specified

period.

(b) require such person to furnish an affidavit

enumerating all movable or immovable property

owned or possessed by such person at any time, or

at such time as may be specified by the Board stating

the date on which each of the properties enumerated

was acquired and whether the acquisition was by

way of purchase, gift, bequest, inheritance or

otherwise;

( c) require any other person to furnish an affidavit –

(i) enumerating all movable or immovable

property owned or possessed at any time, or

at such time as may be specified by the Board

by such person, where the Board has

reasonable grounds to believe that such

information can assist an investigation into

the affairs of a finance company;

64 Finance Business Act, No. 42 of 2011

(ii) containing particulars of such other matters

which in the opinion of the Board are relevant

to such investigations;

(d) require the chief executive officer of any bank in

Sri Lanka or any finance company as the case may

be to produce within such time as may be specified

in the notice, any book, document or cheque of the

bank or any book, document or certificate of the

finance company containing entries relating to the

account of such person or to furnish as so specified,

certified copies of such entries;

For the purpose of this paragraph, “document” shall

include details of any safe deposit box.

(e) notwithstanding the provisions to the contrary in

any written law, require the Commissioner-General

of Inland Revenue to furnish, as specified in the

notice, all information available to him relating to

affairs of such person and to produce or furnish as

specified in the notice, any document or certified

copy of any document relating to such person, which

is in the possession or under the control of the

Commissioner-General of Inland Revenue;

(f) invite the public by any means whatsoever to furnish

to a person authorized by it, any information

required in terms of paragraph (a);

(g) serve a notice on the chief executive officer of any

bank or finance company to freeze the accounts

and safe deposit boxes of such person, whether held

individually or jointly, up to an amount specified

by the Board.

Every notice issued under this paragraph shall be

in force for a period specified in such notice which

period shall however not exceed ninety days and

during the period a notice issued under this paragraph

is in force any transfer of funds in contravention to

the notice shall be void and of no effect;

Finance Business Act, No. 42 of 2011 65

(h) serve a notice on any person referred to in subsection

(1), or on a relative or other person holding property

or assets in trust for the first mentioned person, or

on any other person holding property or assets

purchased or acquired by the improper utilization

or misapplication of monies attributable to the

funds of the finance company, prohibiting the

transfer by such person, relative of such person, or

other person, of possession, ownership or any

interest in any properties or other assets specified

in that notice, and also requiring such person to

submit to the Director:—

Every notice issued under this paragraph shall be

in force for a period specified in such notice which

period shall however, not exceed ninety days and

during the period a notice issued under this paragraph

is in force any transfer of ownership, possession or

other interest in any property or assets specified in

such notice shall be void and of no effect;

(i) in the case of immovable property the copies

of deeds relating to the title of such property;

(ii) in the case of a motor vehicle, a copy of the

Certificate of Registration issued by the

Commissioner of Motor Traffic, in respect of

that motor vehicle;

(iii) in the case of movable property other than

motor vehicles copies of documents in proof

of ownership.

(i) serve a copy of the notice referred to in paragraph

(h) on any relevant authority including in the case

of immovable property, on the Registrar of Lands,

in the case of motor vehicles, on the Commissioner

of Motor Traffic, in the case of shares, stocks and

debentures of any company, on the Registrar

66 Finance Business Act, No. 42 of 2011

General of Companies and the Secretary of the

relevant finance company and where applicable on

the Director General of any stock exchange licensed

under the Securities and Exchange Commission of

Sri Lanka Act, No. 36 of 1987 and in the case of

Government securities on primary dealers appointed

in terms of Registered Stock and Securities

Ordinance, (Chapter 420) and Local Treasury Bills

Ordinance, (Chapter 417);

(j) require any authority on whom a copy of a notice

referred to in paragraph (i) is served, to register such

notice in the appropriate books or records in the

custody of such authority and during the period,

that a notice is in force, the Registrar of Lands,

Commissioner of Motor Traffic and Registrar

General of Companies and any other relevant

authority on whom a copy of such notice has been

served under paragraph (i) shall not register any

deed or instrument of transfer or other document of

title relating to the property or assets specified in

that notice;

(k) require any person or authority referred to in

paragraphs (d) and (i) to furnish such information

as he may have in his possession or custody relating

to the assets of any person or relative of a person,

referred to in paragraph (a);

(l) (i) before the expiration of the period specified in

notices served under paragraphs (g) and (h), the

Director may make an application by way of

summary procedure to the District Court having

jurisdiction in the district within which any

property specified in such notices is situated,

for an order authorizing the seizure and sale of

such property, and for a writ of execution for

seizure and sale of such property;

Finance Business Act, No. 42 of 2011 67

(ii) the District Court upon application made to it

under sub-paragraph (i) of this paragraph and

being satisfied that such past or present director,

chief executive officer, manager, employee,

agent, contractor or any other person referred to

in subsection (1) has by an act or omission caused

a wrongful gain for himself or for any other person

of any money or property belonging to the

company or wrongful loss to the company shall

direct the chief executive officer of any bank or

finance company to deposit the amount specified

by the Board in the notices issued under

paragraph (g) in the District Court, out of the

funds in the accounts of such person, whether

held individually or jointly, and the District

Court shall direct a writ of execution to issue to

the Fiscal authorizing and requiring him to seize

the deposits so made;

(iii) the District Court upon application made to it

under sub-paragraph (i) of this parahraph and

being satisfied that such past or present director,

chief executive officer, manager, employee,

agent, contractor or any other person referred

to in subsection (1) has by an act or omission

caused a wrongful gain for himself or for any

other person of any money or property belonging

to the company or wrongful loss to the company

shall direct a writ of execution to issue to the

Fiscal authorizing and requiring him to seize

and sell-

(a) any property or assets owned by such

director, chief executive officer,

manager, employee, agent or

contractor of the finance company or

any other person or persons so gained

wrongfully; or

68 Finance Business Act, No. 42 of 2011

(b) any property or assets held in trust by a

relative or any other person for such

director, chief executive officer,

manager, employee, agent or contractor

of the finance company; or

(c) any property or assets acquired or

purchased with monies attributable to

the assets of the finance company;

(iv) the provisions of sections 217 to 297 of the

Civil Procedure Code shall, mutatis mutandis,

apply to the seizure and sale of any property

under a writ of execution issued under sub

paragraphs (ii) and (iii) of this paragraph;

(v) any sum realized by the seizure and sale of

any property under this paragraph shall be

applied by the court-

(a) firstly, in payment of the costs and

charges incurred in seizing, keeping

and selling such property;

(b) secondly, in satisfaction of the amount

determined by court to be attributable

to the finance company, referred to in

sub paragraph (ii) of this paragraph,

and the balance shall be paid to the owner of

the property seized.

(vi) where any money is seized in terms of sub-

paragraph (ii) of this paragraph it shall be

applied by the court in satisfaction of the

amount determined by court to be attributable

to the finance company, referred to in sub

paragraph (ii) of this paragraph, and the

balance shall be repaid to the person to whom

such money is due.

Finance Business Act, No. 42 of 2011 69

(3) Any past or present director, chief executive officer,

manager, employee, agent or contractor of a finance company

who has by an act or omission caused a-

(a) wrongful gain for himself or for any other person,

of any money or property belonging to the

company; or

(b) wrongful loss to the company;

shall be guilty of an offence under this Act.

52. (1) Any person, who being a director, secretary, chief Offences by a

executive officer, manager, officer, employee or auditor of a director,

secretary, chief

finance company-

executive

officer,

(a) fails to take all reasonable steps to secure manager,

compliance by that finance company with the officer,

requirements of this Act; employee or

auditor of a

finance

(b) fails to comply with any direction issued or rule company.

made by the Board under the provisions of this

Act;

(c) fails to comply with any direction issued or

requirement made by the Director under the

provisions of this Act;

(d) fails to take all reasonable steps to secure the

correctness of any statement submitted by such

finance company under the provisions of this Act;

(e) makes a false entry in any book, record, file, register

or such other document or statement relating to the

business affairs, transactions, conditions, assets or

liabilities or accounts of such finance company or

causes such entry to be made;

(f) omits to make an entry in any book, record, file,

register or such other document or statement

70 Finance Business Act, No. 42 of 2011

relating to the business affairs, transactions,

conditions, assets or liabilities or accounts of such

finance company or causes such entry to be omitted;

(g) alters, abstracts, conceals, erases or destroys any

entry in any book, record, file, register or such other

document, or statement relating to the business

affairs, transactions, conditions, assets or liabilities

or accounts of such finance company or causes any

such entry to be altered, abstracted, concealed,

erased or destroyed; or

(h) maintains multiple sets of books, records, files,

registers, or such other documents for the purpose

of concealing the true condition of such finance

company,

shall be guilty of an offence under this Act.

(2) In any prosecution instituted against a person under

subsection (1), it shall be a defence to prove that he had

reasonable grounds to believe that another person was

charged with the duty of securing compliance with the

requirements of this Act or with the duty of ensuring that the

statements in question were accurate and that such person

was competent and in a position to discharge that duty.

Offences by 53. (1) Where an offence under this Act is committed

persons. by a person, such person shall be guilty of an offence.

(2) Where an offence under this Act is committed by a

person that is–

(a) a body corporate, every director, manager, or

secretary of that body corporate;

(b) a firm, every partner of that firm; or

(c) an unincorporate body other than a firm, every

member of such body,

shall be guilty of such offence:

Finance Business Act, No. 42 of 2011 71

Provided however, that no person shall be deemed to be

guilty of an offence if he proves that the offence was

committed without his knowledge and that he exercised all

due diligence to prevent the commission of that offence.

54. Where proceedings are instituted in High Court or Hearing and

Magistrate Court under the provisions of this Act for the decision on

applications

offences under this Act, the court shall give priority to the

made under this

disposal of such cases. Act.

55. Any person who abets, conspires or attempts to Abetting to

commit an offence under this Act shall be guilty of an offence commit an

and shall be punishable in the same manner as punishable offence is an

offence.

for the substantive offence under this Act.

56. (1) Any person who is guilty of an offence under Penalties.

subsection (4) of section 2 of this Act shall be liable on

conviction after trial before the High Court to imprisonment

of either description for a term not exceeding five years or to

a fine not exceeding five million rupees or to both such

imprisonment and fine and to settle liabilities of such person

to depositors and other creditors under the supervision of

court:

Provided however, that any person who is found guilty

of an offence under subsection (4) of section 2 by application

of the provisions of subsection (2) of section 53 of this Act

shall settle the liabilities of the relevant body corporate or

the unincorporate body as the case may be, in such manner

and in such extent as the Court may direct:

Provided further, that the court may direct the debtors of

such person or of the relevant body corporate or the

unincorporate body as the case may be, to repay their debts

in such manner and within such time as the court may direct.

(2) Any person who is guilty of an offence under

subsection (9) of section 5, subsection (1) of section 20,

subsection (4) of section 24, subsections (2) and (7) of

72 Finance Business Act, No. 42 of 2011

section 31, subsection (11) of section 42, subsection (3) of

section 51 or subsection (1) of section 52 of this Act shall be

liable on conviction after trial before a Magistrate to a fine

not exceeding three million rupees or to imprisonment of

either description for a term not exceeding three years or to

both such fine and imprisonment.

(3) Any person who is guilty of an offence under

subsection (2) of section 21 and subsection (2) of section 50

of this Act shall be liable on conviction after trial before a

Magistrate to a fine not exceeding one million rupees or to

imprisonment of either description for a term not exceeding

one year or to both such fine and imprisonment.

(4) Any person who contravenes or fails to comply with

any provisions of this Act or any rule, direction, order or

requirement made or imposed thereunder other than where

such contravention or failure constitutes an offence in terms

of subsections (1), (2) and (3), shall be guilty of an offence

under this Act and shall be liable on conviction after trial by

a Magistrate, to a fine not exceeding one million rupees or

to imprisonment of either description for a term not

exceeding one year or to both such fine and imprisonment.

Application of 57. (1) A director, manager or secretary of a body

funds for corporate or a partner or a member of an unincorporate body

payment of fine.

ordered to pay a fine shall be guilty of an offence under this

Act, if he applies any funds of such body corporate or

unincorporate body, as the case may be, for the payment of

such fine or part thereof.

(2) Any person who commits an offence under subsection

(1) of this section shall be liable on conviction after trial by

a Magistrate to a fine not exceeding one million rupees or to

imprisonment of either description for a term not exceeding

three years or to both such fine and imprisonment and to

restore to such body corporate or unincorporate body an

amount equivalent to the amount of funds he utilized from

such body corporate or unincorporate body to pay the fine.

Finance Business Act, No. 42 of 2011 73

58. (1) No person aggrieved by any determination or Provision for

appeals from

decision made, direction issued, requirement imposed or

certain orders.

purported to have been made, issued, or imposed under

section 5 or section 12 or subsection (2) of section 25 or

paragraph (b) of subsection (5) or sub section (6) of section

31 or section 34 or section 36 or section 37 or section 42 or

section 51 or who apprehends that he would be affected by

any act or any step taken, or proposed to be taken or

purporting to be taken under any such section shall 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 Board 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 any

determination, decision, direction, or requirement or purported

determination, decision ,direction, or requirement under

sections 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) The Supreme Court shall before making any order

whether interim or final against the Board, in the exercise of

the jurisdiction conferred on it by this section, afford the

Board an opportunity of being heard.

74 Finance Business Act, No. 42 of 2011

PART IX

GENERAL

Fund. 59. (1) There shall be a fund called Enhancing Public

Awareness on Financial Matters Fund.

(2) All fines received under this Act shall be credited to

the Fund and the money lying to the credit of such Fund

may be utilized for the purposes and in a manner as may be

determined by the Board from time to time.

(3) The amount lying to the credit to the Depositors’ Relief

Fund of the Central Bank as at the date of coming into

operation of this Act shall be transferred to the Enhancing

Public Awareness on Financial matters Fund.

Authority to 60. (1) Subject to and in accordance with such rules, if

represent and any, as may be made by the Board in that behalf, the Board

delegation of

may in writing authorise any officer of the Central Bank to

powers.

represent the Board for any of the purposes of this Act, so

however, that the Board shall remain and continue to remain

to be responsible for any act or thing done or omitted to be

done by such officer in representing the Board under such

authorisation.

(2) The Board may in writing delegate to any officer of

the Central Bank any of its powers under this Act, so

however, that the Board shall remain and continue to be

responsible for any act or thing done or omitted to be done

by such officer in the exercise of such powers delegated to

him.

Maintenance of 61. (1) Every director, manager, officer, employee and

secrecy. agent of any finance company and of any body corporate

authorized in terms of paragraph (a) of subsection (2) of

section 38 shall observe strict secrecy in respect of all

transactions of the finance company, its customers and the

Finance Business Act, No. 42 of 2011 75

state of accounts of any person and all matters relating thereto

and shall not reveal any such matter except –

(a) when required to do so by a court of law or by the

person to whom such matter relates, in the

performance of the duties of such director, manager,

officer, employee and agent; or

(b) in order to comply with any of the provisions of

this Act or any other written law:

(2) Every director, manager, officer, employee and agent

of any finance company and of any body corporate

authorized in terms of paragraph (a) of subsection (2) of

section 38 shall sign a declaration pledging himself to

observe strict secrecy in accordance with subsection (1).

(3) The provisions of subsections (1) and (2) shall not

prohibit a finance company from providing in good faith to

another finance company on request an opinion or reference

relating to a customer in accordance with customary

practices in the finance industry.

62. Notwithstanding anything to the contrary in section Finance

61 of this Act or section 77 of the Banking Act, No.30 of companies and

banks to inform

1988 every director, manager, officer, employee and the Director of

agent of any finance company or of any bank shall inform persons

the Director in writing of any customer of such finance carrying on

finance business

company or bank with respect to whom he has reasonable

or accepting

suspicion of carrying on finance business or accepting deposits without

deposits from the public in contravention of section 2 of authority.

this Act.

63. Every member of the Board, the Director, and any Members of the

officer authorized by the Board or the Director under Board, Director,

authorized

this Act shall be deemed to be public servants, within officers deemed

the meaning of and for the purposes of the Penal Code to be public

(Chapter19). servants.

76 Finance Business Act, No. 42 of 2011

Director, 64. The Director or any officer authorized shall be

authorized

deemed to be public officers within the meaning of section

officers deemed

to be public 136 of the Code of Criminal Procedure Act, No. 15 of 1979

officers. for the purpose of instituting proceedings in respect of

offences under this Act:

Provided however, in respect of an offence committed in

contravention of the provisions of section 2 of this Act the

Board may request the Attorney General to consider

instituting criminal proceedings.

Offences to be 65. Notwithstanding anything to the contrary in the

cognizable and Code of Criminal Procedure Act, No.15 of 1979 every offence

bailable.

under this Act shall be a cognizable and bailable offence

within the meaning and for the purpose of the Code.

Pre-condition 66. (1) No prosecution shall be instituted in any court

for prosecution.

against the Board or a member thereof or the Director or any

officer or servant of the Central Bank or any other person

who is authorized under the provisions of this Act to carry

out any duty or function, by reason of any act done or

purported to be done, or omitted to be done under this Act or

any direction, order or requirement made or imposed

thereunder unless the prior written sanction of the Attorney-

General has been obtained for such prosecution.

(2) Any expenses incurred by a member of the Board, the

Director or any officer or servant of the Central Bank in any

suit or prosecution brought against such person before any

court in respect of any act which is done or purported to be

done or omitted to be done by such person under this Act or

any direction, order or requirement made or imposed

thereunder, as the case may be, shall, if the court holds that

such act was done in good faith, be paid out by the Board

unless such expenses are recovered by him in such suit or

prosecution.

Finance Business Act, No. 42 of 2011 77

67. (1) Where the Director is satisfied, after examination Providing

by himself, or by any officer of the Central Bank or any temporary

financial

other person, authorized on that behalf by the Director, of

assistance &

the affairs of any finance company, or upon information guarantees by

received from the finance company that it would be in the the Board.

interest of depositors to provide temporary financial

accommodation to such finance company, the Director shall

report accordingly to the Board and the Board may grant a

loan or advance to a commercial bank from the Medium and

Long Term Credit Fund established under section 88E of the

Monetary Law Act (Chapter 422), for the purpose of lending

to such finance company on such terms and conditions as

may be determined by the Board.

(2) The provisions of section 88A to 88E of the Monetary

Law Act shall, mutatis mutandis, apply to any loan or

advance granted to a commercial bank under the provisions

of subsection (1).

(3) The Board may guarantee loans, advances or other

accommodation granted to a finance company by credit

institutions operating in Sri Lanka.

(4) In this section “credit institution” means-

(a) any bank licensed under the Banking Act, No.

30 of 1988;

(b) any finance company licensed under this Act;

(c) any agency or institution acting on behalf of

the government (whether established by any

written law or otherwise) which grants loans and

advances or makes investments or accepts

deposits from the public;

(d) any other person declared by the Minister in

charge of the subject of Finance, by Order

published in the Gazette, to be a banking

institution for the purposes of Monetary Law

Act (Chapter 422); and

78 Finance Business Act, No. 42 of 2011

(e) any such society registered under the Co-operative

Societies Law, No 5 of 1972.

Directions of the 68. The Minister may give to the Board general or

Minister.

special directions in writing for the purpose of giving effect

to the principles and provisions of this Act and the Board

shall give effect to such directions.

Regulation of 69. (1) The Minister may make regulations in respect of

the Minister.

matters required by this Act to be prescribed or in respect of

which regulations are authorized to be made.

(2) Every regulation made by the Minister shall be

published in the Gazette and shall come into operation on

the date of such publication or on such later date as may be

specified in the regulation.

(3) Every regulation made by the Minister shall, as soon

as is convenient after its publication in the Gazette, be

brought before Parliament for approval.

(4) Every regulation which is not so approved shall be

deemed to be rescinded as from the date of such disapproval

but without prejudice to anything previously done

thereunder. Notification of the date on which any regulation

is deemed to be rescinded shall be published in the Gazette.

Power to call for 70. Where an investigation or an examination has been

information to

commenced or a litigation has been instituted in terms of

find out the

whereabouts of this Act, notwithstanding the provisions of any other written

a person. law, the Director shall have power to call for information by

notice in writing, for the purpose of finding the whereabouts

of a person who is subject to such investigation, examination

or litigation, from:-

(a) the Telecommunication Regulatory Commission

of Sri Lanka or any one or more of

telecommunication service providers or internet

service providers regarding the telephone or internet

usage of such person including the location from

Finance Business Act, No. 42 of 2011 79

which he has made use of the service so provided,

whether frequently or at any given time; and

(b) any bank or a finance company regarding the

transactions made by such person with such bank

or finance company including the branch or

automated teller machine location from which he

has transacted, whether frequently or at any given

time.

71. (1) The Finance Companies Act, No 78 of 1988 is Repeal and

hereby repealed. savings.

(2) Notwithstanding the repeal of the Finance Companies

Act, No 78 of 1988, every regulation, notice, order, rule,

guideline or direction issued, requirement imposed,

determination or delegation made under the repealed Act

and in force on the day preceding the date of commencement

of this Act shall in so far as such regulation, notice, order,

rule, guideline, direction, requirement, determination or

delegation is not inconsistent with the provisions of this

Act, be deemed to be a regulation, notice, order, rule,

guideline, direction, requirement, determination or

delegation issued, imposed or made, as the case may be,

under the provisions of this Act.

(3) Companies registered under the Finance Companies

Act, No. 78 of 1988 which are carrying on finance business

on the day preceding the date of commencement of this

Act, shall, with effect from the date of commencement of

this Act, deemed to be finance companies licensed under

this Act.

(4) All actions, procedings or matters instituted in terms

of Finance Companies Act, No. 78 of 1988 and pending in a

Magistrate Court or District Court on the day preceding the

date of commencement of this Act, shall from and after the

date of commencement of this Act be heard and determined

by the said Magistrate Court or District Court in terms of the

provisions of this Act.

80 Finance Business Act, No. 42 of 2011

This Act to 72. In the event of any conflict or inconsistency between

prevail over the provisions of this Act and the provisions of any other

other laws.

written law, the provisions of this Act shall prevail.

Deposit. 73. (1) For the purposes of this Act, “deposit” means a

sum of money paid on terms under which it will be repaid,

with or without interest or a premium, and either on demand

or at a time or in circumstances agreed to by or on behalf of

the person making the payment and the person receiving it,

subject to subsections (2) and (3).

(2) In any of the following instances a sum of money paid

on terms specified in subsection (1) shall not be a deposit for

the purposes of this Act:-

(a) a sum of money paid by way of a loan or investment

in a debt instrument including a hybrid debt

instrument by –

(i) the Central Bank;

(ii) a bank licensed under the Banking Act,

No. 30 of 1988, a finance company within

the meaning of this Act and a person

exempted from the licensing requirement of

the said Acts;

(iii) a person specifically authorized to lend

money under any written law;

(iv) the Government, a Provincial Council or a

local authority;

(v) any other source where repayment is

guaranteed by the Government;

(vi) a foreign government;

(vii) the International Bank for Reconstruction

and Development, the International

Development Association, the International

Finance Corporation, the Asian Development

Bank, or any other multilateral lending

institution; and

Finance Business Act, No. 42 of 2011 81

(viii) any other institution that may be specified

by the Board in this regard.

(b) a sum of money paid by way of a loan or

subscription to shares by one company to another

at a time when the first mentioned company is a

subsidiary of the other or both are subsidiaries of

another company or the first mentioned company

is the holding company of the other or the same

individual is the majority shareholder controller of

both of them;

(c) a sum of money which is paid by a person who, at

the time when it is paid, is a relative of the person

receiving it or is a director of the person receiving

it or is a relative of a director of the person

receiving it:

Provided however, that a sum of money

received, other than by way of borrowings or

subscription to shares, by a finance company within

the meaning of this Act shall amount to a deposit;

For the purpose of this paragraph, “a relative”

in relation to any individual means the spouse, the

children, or the parent of such individuals;

(d) a sum of money paid to a person authorised to carry

on insurance business under the Regulation of

Insurance Industry Act, No. 43 of 2000, for the

purpose of carrying on authorized insurance

business;

(e) subject to subsection (3), a sum of money paid as

subscription to shares;

(f) a sum of money subscribed to bonds or debentures

secured by the mortgage of any asset of a company

provided that the total value of such bonds or

debentures shall not exceed the market value of

such asset of the company;

82 Finance Business Act, No. 42 of 2011

(g) a sum of money subscribed to hybrid debt or

subordinated debt, provided that the underlying

debt instrument is a security listed on a stock

exchange licensed under the Securities and

Exchange Commission of Sri Lanka Act, No. 36 of

1987;

(h) subject to subsection (3), a sum of money paid by

way of security for the performance of a contract or

by way of security in respect of loss which may

result from the non-performance of a contract;

(i) subject to subsection (3), a sum of money subscribed

to hybrid debt or subordinated debt, the minimum

maturity period of which is not less than sixty

months;

(j) subject to subsection (3), a sum of money paid to a

person only on particular occasions on terms

specified in subsection (1); and

(k) a sum of money paid in a transaction, the nature of

which may be as specified by the Board by

notification in the Gazette.

(3) The Board may determine whether a sum of money

transacted as specified in paragraphs (e), (h), (i) and (j) of

subsection (2), is a deposit for the purposes of this Act, having

regard to the frequency of those occasions and to the

characteristics thereof.

Interpretation. 74. In this Act, unless the context otherwise requires-

“associate company” when used in relation to a

particular company means a company in which

such particular company holds not less than

twenty per centum and not more than fifty per

centum of the paid up ordinary share capital;

Finance Business Act, No. 42 of 2011 83

“Board” means the Monetary Board of the Central

Bank of Sri Lanka established under the

Monetary Law Act, (Chapter 422);

“capital” means the paid up capital of a company;

“capital funds” in relation to a finance company means

paid up capital and permanent free reserves and

includes, if so determined by the Board, the face

value of unsecured debentures and other loan

bonds, which in the event of the winding up of a

finance company or the return or reduction of

capital shall rank after and be subordinated to

deposits and other borrowings of the finance

company;

“Central Bank” means the Central Bank of Sri Lanka

established under the Monetary Law Act,

(Chapter 422);

“commercial bank” means a licensed commercial bank

within the meaning of the Banking Act, No. 30

of 1988;

“core capital” means the aggregate of the following:-

(a) issued and fully paid up ordinary shares or

common stock and in the case of partly paid

shares or stock the paid up amount:

Provided however, any shares issued

against reserves, surpluses, retained profits

which are not eligible to be included in core

capital in terms of directions issued by the

Board from time to time shall not be included

in core capital:

Provided further, in calculating core

capital in regard to a company applying for a

84 Finance Business Act, No. 42 of 2011

licence under this Act issued ordinary shares

shall be considered as paid up only if they

are issued for cash;

(b) issued and fully paid up non-cumulative, non

redeemable preference shares where the

payment of dividends could be reduced or

waived off permanently in the event of profit

being inadequate to support such payment

in part or full:

Provided however, in deciding core

capital in regard to a company applying for a

licence under this Act, issued non-

cumulative, non redeemable preference shares

shall be considered as paid up only if they

are issued for cash;

(c) the excess of issue price over the par value of

the ordinary shares, common stock or non-

cumulative, non-redeemable preference

shares, if applicable;

(d) amount lying to the credit of a reserve fund

maintained in terms of subsection (1) of

section 18 of this Act;

(e) disclosed reserves in the form of general or

other free reserves created or increased by

appropriation of retained earnings, share

premia or other realized surpluses as shown

in the last audited statement of accounts;

(f) accumulated profit or loss as shown in the

last audited statement of accounts:

Provided however, retained profits

arising from the revaluation of investment

properties, shall not be included;

Finance Business Act, No. 42 of 2011 85

(g) subject to any direction that may be issued

by the Board any profit earned or loss

incurred since the closing date of the last

audited accounts including any surplus or

loss after tax, arising from the sale of fixed

and long term investments; and

(h) any other capital element that meets the

requirements stipulated by the Board from

time to time;

“dependent child” shall mean a child who is under the

age of eighteen years; or a child under the age of

twenty five years who is unmarried and

unemployed, or a child, irrespective of age, who

suffers from a physical or mental disability that

renders him incapable of earning his livelihood;

“Director” means the head of the department of the

Central Bank to which the subject of finance

companies has been assigned and includes an

acting director;

“finance business” means the business of acceptance

of deposits, and

(a) the lending of money; or

(b) the investment of money in any manner

whatsoever; or

(c) the lending of money and the investment of

money in any manner whatsoever;

“finance company” means a company licensed under

this Act to carry on finance business;

“holding company” shall have the same meaning

assigned to the term in the Companies Act,

No. 7 of 2007;

86 Finance Business Act, No. 42 of 2011

“key management personnel” means a person having

authority and responsibility for planning,

directing and controlling the activities of any

finance company directly or indirectly

including any director (whether executive or

otherwise) of such company;

“legal age of majority” shall have the meaning

assigned to it under the Age of Majority

Ordinance (Chapter 66);

“liquid assets” means-

(a) cash in hand;

(b) balances in a current or deposit account in a

commercial bank, free from any bankers’ lien

or charge;

(c) Sri Lanka Government Treasury Bills and

Treasury Bonds, maturing within one year,

free from any lien or charge;

(d) Sri Lanka Government Securities maturing

within one year and free from any lien or

charge;

(e) Central Bank of Sri Lanka securities maturing

within one year and free from any lien or

charge;

(f) cash balance, if any, maintained with the

Central Bank of Sri Lanka; and

(g) such other assets as may be determined by

the Monetary Board of the Central Bank of

Sri Lanka;

“loan” includes any advance or the deferment of

payment on any sale or the deferment of payment

in a transaction relating to a hire purchase

agreement or a leasing agreement;

Finance Business Act, No. 42 of 2011 87

“Provincial Council” means a Provincial Council

established for a Province by virtue of Article

154A of the Constitution;

“qualified auditor” means—

(i) an individual who being a member of the

Institute of Chartered Accountants of Sri

Lanka or of any other Institute established

by law, possesses a certificate to practice as

an Accountant issued by the Council of such

Institute; or

(ii) a firm of Accountants of which each of the

resident partners being a member of the

Institute of Chartered Accountants of Sri

Lanka or of any other Institute established

by law possesses a certificate to practice as

an Accountant issued by the council of such

Institute;

“relative” in relation to an individual means spouse

or dependent child of such individual;

“subsidiary company” shall have the same meaning

assigned to the term in the Companies Act,

No. 7 of 2007;

“substantial interest” –

(a) in relation to a company, the holding of a

beneficial interest by another company or an

individual or his relative, whether singly or

taken together, in the shares thereof, the paid

up value of which exceeds ten per centum of

the paid up capital of the company or the

existence of a guarantee or indemnity for a

sum not less than ten per centum of the paid

up capital given by an individual or his

relative or by another company on behalf of

such company;

88 Finance Business Act, No. 42 of 2011

(b) in relation to a firm, the beneficial interest

held therein by an individual or his relative,

whether singly or taken together, which

represents more than ten per centum of the

total capital subscribed by all partners of the

firm or the existence of a guarantee or

indemnity for a sum not less than ten

per centum of that capital given by an

individual or the spouse, parent or child of

the individual on behalf of such firm;

“wrongful gain” means gain by dishonest, fraudulent

or unlawful means of property to which the

person gaining is not legally entitled;

“wrongful loss” means the loss by dishonest, fraudulent

or unlawful means of property to which the

person losing it is legally entitled.

Sinhala text to 75. In the event of any inconsistency between the

prevail in case Sinhala and Tamil texts of this Act the Sinhala text shall

of inconsistency.

prevail.

Finance Business Act, No. 42 of 2011 89

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