

CHAPTER 329

CONTROL OF FINANCE COMPANIES

Act AN ACT TO CONTROL AND REGULATE NON-BANKING FINANCIAL INSTITUTIONS AND TO
 No. 27 of 1979. ENSURE THE LIQUIDITY AND SOLVENCY OF SUCH INSTITUTIONS IN ORDER TO
 PROTECT THE INTERESTS OF DEPOSITORS AND TO PROVIDE FOR MATTERS CONNECTED
 THEREWITH OR INCIDENTAL THERETO.

[6th December, 1979]

Short title. **1.** This Act may be cited as the Control of Finance Companies Act.

(2) Notwithstanding the provisions of subsection (1), this Act shall not apply to any banking institution within the meaning of section 127 of the Monetary Law Act or to any co-operative society registered under the Co-operative Societies Law.

PART I

REGISTRATION AND LICENSING OF INSTITUTIONS

Application of this Act. **2.** (1) This Part of this Act shall apply to-

3. No Institution to which this Part of this Act applies shall, on or after the appointed date, carry on business unless it has been registered with the Board as hereinafter provided : Registration of Institutions.

(a) every Institution which is a limited liability company with capital of not less than one hundred thousand rupees;

Provided, however, that any such Institution which was carrying on business prior to the appointed date, may, without being so registered, carry on business for a period not exceeding six months from the appointed date;

(b) every Institution with deposits in excess of five hundred thousand rupees;

Provided further that the Board may in its sole discretion grant to any Institution referred to in the foregoing proviso, one, and not more than one, extension of the period, specified therein for carrying on business without being so registered.

(c) any two or more affiliated or connected Institutions which are limited liability companies- whose capital when aggregated is not less than one hundred thousand rupees ;

4. (1) Every application for registration of an Institution to which this Part of this Act applies shall be made to the Board in the prescribed form and shall contain a declaration by the applicant that the particulars stated in the application are to the best of his knowledge and belief true and accurate. Particulars prior regulation.

(d) any two or more affiliated or connected Institutions whose total deposits when aggregated are in excess of five hundred thousand rupees; and

(e) any group or category of Institutions declared by the Minister on the recommendation of the Monetary Board of the Central Bank of Ceylon (hereinafter referred to as the " Board ") by Order published in the Gazette to be Institutions to which this Part of this Act shall apply.

(2) Every person who makes any declaration or furnishes any information under subsection (1) knowing the same to be false in any material particular shall be guilty of an offence under this Act.

Board to refuse registration in certain instances,

5 (1).Where an application has been made to the Board for the registration of any Institution to which this Part of this Act applies, the Board may—

- (a) examine, or cause to be examined by the Director of Bank Supervision of the Central Bank of Ceylon or any officer authorized in writing in that behalf by such Director, the books of accounts and other documents of such Institution;
- (b) determine whether any sum of money accepted, borrowed or solicited by such Institution is a deposit and whether the affairs of such Institution are being conducted in a manner detrimental to its present or future depositors.

(2) Where the Board is of opinion that such Institution is not liable to registration under section 3 or that the affairs of such Institution are being conducted in a manner detrimental to its present or future depositors, the Board shall refuse to register such Institution.

(3) Where the Board is of opinion that such Institution is liable to registration under section 3, and that its affairs are not being conducted in a manner detrimental to its present or future depositors, the Board shall register the Institution.

(4) The decision of the Board under subsection (1) or subsection (2) shall be final and conclusive and shall not be questioned in any court.

Register for the registration of Institutions.

6. The Board shall keep and maintain in the prescribed form a register for the registration of every Institution to which this Part of this Act applies.

Issue of licence.

7. Where any Institution has been registered under this Act the Board shall, in the prescribed form, issue to such Institution a licence subject to such conditions as the Board may impose in accordance with rules made under this Act. Such licence shall be exhibited at all times in the principal office or place of business in Sri Lanka of such Institution.

8. (1) Where any Institution registered under this Act has ceased to carry on business, a notice of such cessation shall be given to the Board within three months of such cessation—

- (a) where such Institution is a body corporate, by the director, manager or secretary thereof;
- (b) where such Institution is an unincorporate body of persons, by every individual constituting that body; or
- (c) where such Institution is an individual, by such individual or if he is dead by his legal representatives.

(2) The Board shall, on receipt of a notice under subsection (1), remove the name of the Institution from the register and shall cancel its licence.

9. (1) Where the Board has reasonable grounds to believe that any Institution registered under this Act is not carrying on business the Board may send to such Institution a notice by registered post requiring such Institution to furnish proof within one month from the date of such notice that it has not ceased to carry on business. Where such Institution fails to furnish such proof within such period the Board shall remove the name of such Institution from the register and shall cancel its licence.

(2) Where any Institution whose name has been removed from the register in terms of subsection (1) thereafter applies to the Board to be registered under this Act the Board may treat such application as a fresh application for registration and may register such Institution, having satisfied itself that the provisions of section 5 have been complied with and that such Institution has not been guilty of the breach of any of the provisions of this Act or of any rule or direction made thereunder. The refusal of the Board to register any such Institution shall be final and shall not be questioned in any court.

(3) Where an order has been made by a competent court for the winding up of an

Cessation of business by Institution.

Removal of name from register and cancellation of licence.

Institution registered under this Act the Board shall remove the name of such Institution from the register and shall cancel its licence.

Transfer of dormant deposit accounts to special account in Central Bank of Ceylon.

10. (I) Where a deposit account with any Institution registered under this Act has lain dormant, that is to say, where there has been no withdrawal from or addition to such deposit (or where there has been no receipt by the Institution of any written correspondence from the depositor or his lawful representative in relation to the deposit) for a period exceeding ten years, the moneys lying in deposit together with interest thereon accrued, if any, shall, if the Board so directs, be transferred notwithstanding anything in any other law, by such Institution to a special account in the Central Bank of Ceylon.

(2) Any person who furnishes proof to the satisfaction of the Board that any moneys lying to his credit in his name with any Institution registered under this Act or in the name of a person from whom he derives title have been transferred to a special account in the Central Bank of Ceylon under subsection (1) shall, subject to such terms, conditions or restrictions as may be imposed in respect of such moneys by or under any written law, be entitled to repayment of such moneys by the Central Bank of Ceylon together with the interest payable on such moneys up to the date of repayment at such rate as the Board may, from time to time, determine, or, without such interest if the Board so decides.

(3) Any moneys transferred to a special account under subsection (1) may be utilized for such purposes as may be determined by the Board after consultation with the Minister in charge of the subject of Finance.

PART II

POWERS, FUNCTIONS AND DUTIES OF THE BOARD IN RELATION TO INSTITUTIONS

Part II and III of this Act to apply to Institutions, whether registered or not.

11. The provisions of this Part and of Part III shall apply to Institutions whether or not registered under this Act.

12. (1) For the purposes of this Act the Board may give directions to Institutions, or to any group or category of Institutions regarding the form and manner in which any aspect of the business of such Institutions is to be conducted.

Board to give directions.

(2) Without prejudice to the generality of the powers conferred by subsection (1) directions may be given by the Board to Institutions, or to any group or category of Institutions in respect of—

- (a) the terms and conditions under which deposits may be accepted by such Institutions, the maximum amount that may be deposited with an Institution in the name of one person in one or more accounts, the maximum rates of interest payable on such deposits, and the maximum periods for which deposits may be received;
- (b) the form and manner in which books of account or other records or documents are to be maintained by such Institutions;
- (c) the terms and conditions under which any loan may be granted by such Institutions;
- (d) the maximum rate of interest that may be charged by such Institutions in respect of any loan;
- (e) the maximum rates which may be paid to or charged by such Institutions by way of commissions, discounts, fees or other payments whatsoever;
- (f) the terms and conditions under which investments may be made by such Institutions;
- (g) the minimum ratio which the capital of such Institutions should bear to the total deposit liabilities of such Institutions;
- (h) the minimum ratio which the liquid assets of such Institutions should bear to the total deposit liabilities of such Institutions and the

categories of liquid assets that should be taken into account in calculating such ratio;

(i) the minimum initial payment a prospective hirer should make on any hire-purchase agreement and specific different initial payments for different classes of transactions ; such minimum initial payment may be expressed as a percentage of the value of the goods; and

(j) the maximum permissible maturities for loans and investments made by such Institutions and the nature and amount of the security that may be required or permitted for various types of credit operations.

(3) The maximum rate of interest fixed by any direction under paragraphs (a), (c) or (d) of subsection (2) shall apply in respect of any deposit accepted or in respect of any loan taken before the date of such direction:

Provided, however, that nothing in any such direction shall—

(a) apply to any interest accrued before the date of such direction in respect of any such deposit or loan ; or

(b) require the reduction of the rate of interest payable on any deposit accepted before the date of such direction if such reduction would constitute a breach of the contract or agreement relating to such deposit.

(4) For the purposes of this Act the Board" may give directions where necessary to any institution in particular on such matters as are specified in subsection (1) and subsection (2) and in the manner set out therein;

Provided, however, the competent court may on any application made to it in that behalf by that particular Institution, at any time while any such direction is in force make a declaration permitting that Institution to carry on its business without being subject to such direction, or may vary

or alter such direction in such manner as the court may determine and any declaration by the court as aforesaid shall have effect notwithstanding anything to the contrary in the direction made by the Board.

13. The Board may require any proprietor, partner, director, manager, secretary or employee of any Institution to furnish all such information as may be necessary to ascertain whether any sum of money accepted, borrowed or solicited by such Institution is a deposit.

Board may require Institution to furnish information.

14. (1) The Board may from time to time by directions—

Limitation of loans and investments of Institutions.

(a) prohibit Institutions in general or any group or category of Institutions from increasing the amount of their or its loans and investments; or

(b) fix limits to the rate at which the amount of loans and investments made by Institutions specified in paragraph (a) may be increased within specified periods;

Provided, however, that nothing in any such direction shall be deemed to require such Institutions to reduce the amount of their loans and investments below the amount outstanding at the date of the direction.

(2) A direction under subsection (1) may be applicable to all the loans and investments of any Institution referred to in that subsection or any specified class or classes of such loans and investments; so however, that such direction shall be applicable uniformly and without discrimination to all Institutions generally or to any group or category of such Institution.

15. (1) The Director of Bank Supervision of the Central Bank of Ceylon may at any time examine, or authorize any officer of his department to examine, the books and accounts of any Institution.

Examination of books of accounts of Institutions.

(2) The report on any such examination shall be furnished to the Governor of the

Central Bank of Ceylon by the Director of Bank Supervision as soon as such examination is completed. The Director of Bank Supervision may recover the cost of such examination from the Institutions.

(3) It shall be lawful for the Director of Bank Supervision or any officer authorized by him—

- (a) to administer in accordance with the Oaths Ordinance, oaths or affirmations to any proprietor, partner, director, manager, secretary or employee of any Institution;
- (b) to require any proprietor, partner, director, manager, secretary or employee of any Institution to furnish all such information as the Director or any officer authorized by him may consider necessary to ascertain the true condition of the affairs of such Institution and whether such Institution is being conducted in a manner detrimental to its present or future depositors; and
- (c) to require any proprietor, partner, director, manager, secretary or employee of any Institution to produce for inspection any books, records or other documents in his possession containing or likely to contain any necessary information.

(4) It shall be the duty of every proprietor, partner, director, manager, secretary or employee of any Institution to afford to the Director of Bank Supervision or any officer authorized by such Director access to all books and records of that Institution including its cash balances, its assets and liabilities whenever so requested by such Director.

16. (I) In any case where the Director of Bank Supervision of the Central Bank of Ceylon is satisfied, after the examination by himself or by any officer authorized by him, of the affairs of any Institution, or upon information received from the Institution, that the Institution 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 creditors, the Director shall make a report accordingly to the Governor of the Central Bank of Ceylon 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 order directing the Institution forthwith to suspend business in Sri Lanka and directing the Director to take charge of all books, records and assets of the Institution and to take such measures as may be necessary to prevent the continuance of business by the Institution.

(2) Notwithstanding anything in any written or other law, no action or proceeding may be instituted in any court for the purpose of securing the review or revocation of any order made under subsection (1) or in respect of any loss or damage incurred, or likely to be or alleged to be incurred, by reason of such order.

(3) An order made by the Board under subsection (1) in respect of any Institution shall cease to have effect upon the expiration of a period of thirty days from the date on which it is made ; and it shall be the duty of the Board, as soon as practicable and in any event before the expiration of the said period, to—

- (a) make order permitting the Institution to resume business, either unconditionally or subject to such conditions as the Board may consider necessary in the public interest or in the interests of the depositors and other creditors of the Institution; or
- (b) to cause the Director of Bank Supervision to make application as hereinafter provided to the competent court for the winding up of the Institution.

(4) The competent court may, on any application made by the Director of Bank Supervision, order the winding up of—

- (a) any Institution which is a company, and accordingly, the provisions of

Power of Board to suspend, restrict business or wind up an Institution.

the Companies Ordinance* relating to the winding up of companies subject to the supervision of court shall apply *mutatis mutandis* to the winding up of such Institution; or

- (b) any Institution which is a person (other than a company) or an unincorporate body of persons and in any such winding up where the assets of the Institution are not sufficient to meet its liabilities, the court may order that the assets of that person or of every individual constituting that body be made available to the liquidator for the purpose of the winding up of such Institution.

(5) In the winding up of an Institution under paragraph (&) of subsection (4) the value of the assets and liabilities of the Institution 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 papers in his hands to which the Institution is entitled. A scheme for the purpose of the winding up of the Institution shall be prepared by the liquidator and submitted for confirmation to the competent court and the winding up of the Institution shall be carried out according to such scheme.

(6) In any case where an order is made, whether in pursuance of an application under this section or otherwise, for the winding up of any Institution, then, notwithstanding anything in any other written law, the Director of Bank Supervision or any person authorized in that behalf by the Board shall be appointed to be the liquidator for the purposes of such winding up.

(7) Where an order is made to wind up an Institution other than a company, the remuneration of the liquidator appointed

under subsection (6) and all costs, charges and expenses properly incurred in the winding up shall be payable in priority to all other claims, notwithstanding anything in any other written law to the contrary, out of the assets of the Institution that is being wound up.

(8) Where an order has been made by the Board under subsection (3) permitting the resumption of business by any Institution subject to such conditions as may be specified in the order, the competent court may, on application made to it in that behalf by the Institution at any time while the order is in force, make a declaration permitting the Institution to resume business unconditionally, or varying or altering, in such manner as the court may determine, all or any of the conditions specified by the Board; and any such declaration shall have effect notwithstanding anything in the order made by the Board under subsection (3).

The Director of Bank Supervision shall be named respondent to any such application and shall be entitled on behalf of the Board to be heard and to adduce evidence at the hearing thereof.

(9) In any case where application is made by the Director as provided in subsection (3) for the winding up of any Institution—

- (a) the Institution shall not carry on business during the pendency of the application unless it is authorized so to do by the court and except in accordance with such conditions, if any, as may be specified by the court; and

- (b) the court, if it is of opinion after such inquiry as it may consider necessary, that the Institution is not insolvent, may make a declaration permitting the Institution to resume business either

* Repealed and replaced by the Companies Act, No. 17 of 1982.

unconditionally or subject to such conditions as the court may consider necessary in the public interest or in the interests of the depositors and other creditors of the Institution.

(10) Every order made by a competent court under this section shall be subject to an appeal to the Court of Appeal and the provisions of the Civil Procedure Code relating to appeals in civil actions shall apply *mutatis mutandis* in the case of any such appeal;

Provided that an order under paragraph (a) of subsection (9) shall be final and shall not be subject to appeal.

(11) Every application to a competent court under this section shall be deemed to be an action of the value of five thousand rupees.

(12) In this section, "competent court", in relation to any Institution means the District Court of Colombo or of the district in which the principal office in Sri Lanka of the Institution is maintained.

(13) (a) Any proprietor, partner, director, manager, secretary or employee of any Institution who fails to furnish any information or to produce any book, record or other document when required so to do by the Director of Bank Supervision or by any officer authorized by such Director, or who obstructs or fails to permit the Director of Bank Supervision or any officer authorized by such Director to make any examination under this section or under section 15, shall be guilty of an offence.

(b) Any person who in any report or information furnished to the Director of Bank Supervision, or to any officer authorized by the Director of Bank Supervision under this section or under section 15 makes any statement which he knows to be false, shall be guilty of an offence.

Offences and penalties,

17. (1) Any person who contravenes or fails to comply with any provisions of this Act or of any rule, or direction made or given thereunder shall be guilty of an offence under this Act.

(2) In the case of any offence under this Act committed by a body of persons—

(a) where the body of persons is a body corporate, every director, manager or secretary of that body corporate ; and

(b) where the body of persons is an unincorporate body, every individual who is a member of such body,

shall be guilty of an offence:

Provided, however, that no such 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.

(3) Every person who is guilty of an offence under this Act by reason of the contravention of or failure to comply with the provisions of section 3, section 15 or section 16 shall be liable on conviction after trial before the High Court to imprisonment of either description for a term not exceeding three years or to a fine not exceeding ten thousand rupees or to both such imprisonment and fine.

(4) Every person who is guilty of an offence other than an offence under section 3, section 15 or section 16 shall be liable on conviction after trial before a Magistrate Court to imprisonment of either description for a term not exceeding six months or to a fine not exceeding two thousand five hundred rupees or to both such imprisonment and fine.

PART III

GENERAL

18. (1) The Board may make rules for the purpose of carrying out or giving effect to the principles and provisions of this Act. The Board to make rules-

(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) the registration of Institutions and the fees payable to the Board for such registration;

- (b) the forms to be used under this Act;
- (c) the regulation or prohibition of the issue by any Institution or any group or category of Institutions of any prospectus or advertisement soliciting the deposit of moneys from the public and the conditions subject to which such prospectus or advertisement may be issued.

the weekly, fortnightly or monthly payments as rentals, instalments, hire or otherwise), but does not include any agreement —

- (a) whereby property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods; or
- (b) under which a person by whom goods are being hired or purchased is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement;

Delegation of powers of the Board.

19. Subject to and in accordance with such rules, if any, as may be made by the Board in that behalf the Board may in writing delegate to any officer of the Central Bank of Ceylon its authority to represent the Board for any of the purposes of 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.

Powers of the Minister in relation to the Board.

20. The Minister may give to the Board general or 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.

This Act to prevail over other laws.

21. The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law.

Interpretation.

22. In this Act unless the context otherwise requires—

"appointed date" means the 6th day of December, 1979;

"capital" means paid-up capital and permanent free reserves, and shall include, 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 the Institution, or the return or reduction of capital, shall rank after and be subordinated to deposits and other borrowings of the Institution and which shall not be reduced or repaid except with the consent of the Board ;

"goods" have the same meaning as in the Sale of Goods Ordinance ;

"hire-purchase agreement" means an agreement for the letting of goods with an option to purchase (whether the agreement describes

"hirer" means a person to whom the goods are let, hired or agreed to be sold under a hire-purchase agreement and includes a person to whom the rights or liabilities of the hirer under such agreement have passed by assignment or operation of law;

"Institution" means any person or body of persons, corporate or unincorporate, whose business or part of whose business consists in the acceptance of money by way of deposit, the payment of interest thereon and—

- (a) the lending of money on interest; or
- (b) the investment of money in any manner whatsoever; or
- (c) the lending of money on interest and the investment of money in any manner whatsoever;

"loan" includes any advance or the deferment of payment in any sale or the deferment of payment in a transaction relating to a hire-purchase agreement;

"prescribed" means prescribed by rules made under this Act.