

“Central Bank of Sri Lanka”

BEFORE: Priyantha Jayawardena PC - Judge of the Supreme Court
Kumudini Wickremasinghe - Judge of the Supreme Court
Arjuna Obeyesekere - Judge of the Supreme Court

S.C. (S.D.) No. 06/2023

Petitioner : Anil S. Amarasekara

Counsel : Manohara De Silva PC with Harithriya Kumarage

Intervent Petitioners : Ajit Damon Gunewardene

Murtaza Jafferjee

Dumindra Rajith Ratnayaka

Counsel : Shivaan Coorey with Amanda Coorey, Dinithi Panambara,
Damithu Surasena and Chamath Surasena.

S.C. (S.D.) No. 07/202

Petitioner : Jehan Hameed

Counsel : Canishka Witharana with Sawani Rajakaruna

Intervent Petitioner : L.Y. Dharmasena

Counsel : Nilshantha Sirimanne with Deshara Goonetilleke

Intervenant Petitioners : Ajit Damon Gunewardene

Murtaza Jafferjee

Dumindra Rajith Ratnayaka

Counsel : Shivaan Coorey with Amanda Coorey, Dinithi Panambara,
Damithu Surasena and Chamath Surasena.

Intervenant Petitioner : Chandra Jayaratne

Counsel : Chandaka Jayasundere PC with Viran Corea, S.A. Beling, Sayuri
Liyanasuriya and Imaz Imtiyaz

S.C. (S.D.) No. 08/2023

Petitioner : Anura Dharshana Perera Abeyasekera

Counsel : Canishka Witharana with Sawani Rajakaruna

Intervenant Petitioners : Ajit Damon Gunewardene

Murtaza Jafferjee

Dumindra Rajith Ratnayaka

Counsel : Shivaan Coorey with Amanda Coorey, Dinithi Panambara,
Damithu Surasena and Chamath Surasena.

S.C. (S.D.) No. 09/2023

Petitioner : Udaya Prabhath Gammanpila

Counsel : Manohara De Silva PC with Harithriya Kumarage

Intervient Petitioners : Ajit Damon Gunewardene

Murtaza Jafferjee

Dumindra Rajith Ratnayaka

Counsel : Shivaan Coorey with Amanda Coorey, Dinithi Panambara,
Damithu Surasena and Chamath Surasena.

S.C. (S.D.) No. 10/2023

Petitioner : Gunadasa Suriyarachchi Amarasekera

Counsel : Manohara De Silva PC with Harithriya Kumarage

Intervient Petitioners : Ajit Damon Gunewardene

Murtaza Jafferjee

Dumindra Rajith Ratnayaka

Counsel : Shivaan Coorey with Amanda Coorey, Dinithi Panambara,
Damithu Surasena and Chamath Surasena.

S.C. (S.D.) No. 11/2023

Petitioner : Reverend Athuruliye Rathana Thero

Counsel : did not make representations in court

S.C. (S.D.) No. 12/2023

Petitioner : Herath Mudiyansele Wasantha Samarasinghe

Counsel : Chamara Nanayakkarawasam with Dimuthu Fernando and
Patali Abayarathna

Respondent : Hon. Attorney General

Counsel : Viraj Dayaratne PC, ASG with Mahen Gopallawa SDSG,
Nirmalan Wigneswaran DSG, Sureka Ahmed SSC, Amasara
Gajadeera SC and Indumini Randeny SC

Dr. Nandalal Weerasinghe, the Governor of the Central Bank, was heard in terms of Article 134(3) of the Constitution.

Court assembled for hearing at 10:00 a.m. on the 23rd and 24th of March, 2023.

A Bill titled “Central Bank of Sri Lanka” was published in the Government Gazette on the 23rd of February, 2023 and placed on the Order Paper of Parliament on the 7th of March, 2023.

The aforementioned petitioners have, by forwarding their petitions to this court between the 13th and the 17th of March, 2023 invoked the jurisdiction of this court in terms of Article 121(1) of the Constitution to determine whether the Bill or any of the Clauses therein are inconsistent with the provisions of the Constitution.

The Attorney General was noticed in terms of Article 134(1) of the Constitution. The learned Additional Solicitor General who appeared for the Attorney General assisted the court in considering the constitutionality of the Bill and the Clauses therein.

The long title of the Bill states –

“An Act to provide for the establishment of the Central Bank of Sri Lanka; for the repeal of the Monetary Law Act (Chapter 422); and to provide for the matters connected therewith or incidental thereto.”

The Bill consists of the following Chapters:

Part I – Establishment of the Central Bank

Part II – Governing Board, Monetary Policy Board, Governors and Deputy Governors

Part III – Employees of the Central Bank

Part IV – Inflation Target

Part V – Monetary and Other Operations

Part VI – Foreign Exchange Operations and International Reserves

Part VII – Currency and Legal Tender

Part VIII – Payment and Settlement Systems

Part IX – Supervision and Resolution of Financial Institutions

Part X – Macroprudential Authority

Part XI – Financial System Oversight Committee

Part XII – Information Exchange with Financial Sector Authorities

Part XIII – Statistics and Information

Part XIV – Relationship with the Parliament, the Government and the Public

Part XV – Credit Operations

Part XVI – Financial Provisions

Part XVII – Internal and External Audits

Part XVIII – General Provisions

Part XIX – Repeals and Savings

The learned Additional Solicitor General furnished to court a draft of the proposed amendments to the Bill along with the written submissions and submitted that steps would be taken to amend the said Clauses in the Bill at the Committee Stage of Parliament. The said amendments would be considered later in this determination.

Executive control over the Central Bank

Counsel for the petitioners submitted that, in terms of Article 43(1) of the Constitution, the “direction and control of the Government of the Republic” are vested with the Cabinet of Ministers. Therefore, the Central Bank cannot be made independent of the Executive to formulate the monetary policy without infringing Articles 3, 4, 43, and 48 of the Constitution.

It was further submitted that giving such independence and/or autonomy to the Central Bank is a violation of the said Articles of the Constitution. Moreover, the attention of court was drawn to Article 148 of the Constitution, which reads as follows;

“Parliament shall have full control over public finance. No tax, rate or any other levy shall be imposed by any local authority or any other public authority, except by or under the authority of a law passed by Parliament or of any existing law.”

Thus, it was submitted that the Parliament has full control over public finance and therefore, has the power of overseeing and supervising all matters relating to public finance. Furthermore, whilst Standing Orders 114, 119, 121, 122, 123, 124, and 133 deal with the appointment and functioning of the Special Purposes Committee of Selection, Committee on Public Accounts, Committee on Public Finance, Committee on Banking and Financial Services, Committee on Economic Stabilization and Committee on Ways and Means, Standing Orders 134 and 136 provide for Excesses and Public Money. Specific attention was drawn to Standing Order 121(7), where the Parliament can summon or call for any document.

It was further submitted that the provisions relating to confidentiality and the restrictions imposed on any person giving instructions to the Bank or the Bank seeking instructions from any person would be a violation of the legislative power of the people as set out in Articles 4(a) and 148 of the Constitution in as much as the members of the Committees of Parliament are entitled to get information from the Central Bank, call for documents, and give guidelines and directions.

Moreover, the counsel for the petitioners submitted that no government institution or holder of public office can be independent from the Executive.

In the circumstances, it was submitted that the Bill violates Articles 3, 4, 43 and 48 of the Constitution.

Accordingly, counsel for the intervenient-petitioners submitted that no constitutional provisions have been violated by the proposed Bill. Further, the proposed Central Bank Act has explicitly provided for the financial stability, economic development, and accountability of the Central Bank.

In this regard, it was submitted that the Central Bank should inform the public every six months about the implementation of the monetary policy, which includes macroeconomic projections. Additionally, the Governor of the Central Bank should be summoned to the Committees of the Parliament, where it is imperative that he explains the specific actions taken for particular matters, related outcomes, and the way forward.

It was further submitted that the main objective of the modern Central Banks around the world is to maintain stable and low-price levels while supporting the country's economic growth and ensuring that a stable financial system is in place.

Furthermore, there is a major difference that can be seen between the proposed Central Bank Act and the current Monetary Law Act. In the proposed Central Bank Act, its prime objective is to maintain domestic price stability, while the current Monetary Law Act ensures that they have both price stability and financial system stability.

Moreover, it was submitted that another significant difference under the proposed Central Bank Act is that the Central Bank will support the general economic policy framework of the Government and work towards stabilization of output towards potential levels of the economy. Therefore, the changes in the proposed Act can be identified as remarkable. Thus, they strengthen the autonomy of the Central Bank significantly.

Further, in the absence of the Secretary to the Treasury participating in decision-making in the Central Bank, a Coordination Council would be established in order to coordinate fiscal, monetary, and financial stability policies and to share information and exchange views. Accordingly, the Council is comprised of the Governor (Chairman), the Secretary to the Minister of Finance, and the Secretary to the Ministry of Economic Policy (if different from the Minister of Finance).

It was further submitted that, when it comes to the fiscal, monetary, and financial stability policies, the Coordination Council will not have any decision-making authority. Moreover, the proposed Central Bank Act prohibits monetary financing through purchases of government securities in the primary market. However, in the current Monetary Law Act, purchasing of Treasury Bills is permitted.

The Central Bank is required to adopt a flexible inflation target as its monetary policy framework, by the proposed Central Bank Act. However, the current Monetary Law Act does not specify any monetary policy framework. Hence, the purpose of having a fully-fledged flexible inflation targeting framework is to ensure that the Central Bank of Sri Lanka will deliver low and stable inflation in the future.

According to the proposed Central Bank Act, if there is a breach in the inflation target for two consecutive quarters, a report has to be submitted to the Parliament through the Minister of Finance setting out the reasons for the failure to achieve the given target. Further, reasons must be provided in this said report, such as remedial actions proposed to be taken by the Central Bank and an estimate of the period within which the inflation target shall be achieved. Moreover, the said report must be available to the public.

It was further submitted that the Central Bank will be exclusively responsible, as per the proposed law, for the regulation, licensing, registration, and supervision of financial institutions. Moreover, the Central Bank is the authority for the resolution of issues of the financial institutions.

Though the Central Bank carries out the duties of a macroprudential authority under the Monetary Law Act, direct provisions have not been incorporated. Hence, being the macroprudential authority, the Central Bank should take steps to develop and periodically update the overall approach to the use of macroprudential tools and publish such approaches with a view to informing the public of the role of the Central Bank in macroprudential policy.

Accordingly, the Central Bank should -

- a) maintain the resilience of the financial system in a manner that supports the provision of financial services,
- b) contain risks from unsustainable increases in credit and leverage, and
- c) contain risks from interconnectedness within the financial system.

Moreover, the function of public debt management has been excluded from the proposed Central Bank Act. This is for the purpose of separating monetary policy and public debt management. However, the proposed Central Bank Act contains a transitional provision for continuing public debt management until a public debt management agency or office is set up.

In the circumstances, it was submitted that the main objective of the new Act is to improve the autonomy, accountability and governance of the Central Bank. Such a change will improve the economic outcomes of the country as well as the well-being of its people.

Further, it was submitted that the Bill does not violate any of the provisions in the Constitution.

The learned Additional Solicitor General submitted that the monetary policy is not a matter exclusively falling within the Executive.

However, Article 4 does not contemplate a situation where the People's power is assigned to a body or an institution that has no link with Article 4(b) of the Constitution. Therefore, the proposed arrangement of executive power among bodies/persons within the Executive arm of the Government is in accordance with the Constitution.

He further submitted that restricting the role of the Government in relation to monetary policy would not amount to alienation of the executive power, as the necessary link between the Executive and the governing bodies of the Central Bank is preserved.

Under Clause 11 of the Bill, the Monetary Policy Board is *“charged with the formulation of monetary policy of the Central Bank and implementation of a flexible exchange rate regime in line with the flexible inflation targeting framework in order to achieve and maintain domestic price stability.”*

Further, in terms of Clause 12(1) of the Bill, the Monetary Policy Board consists of 11 members, out of whom 9 members will be persons appointed on the nomination of the President in terms of Clause 15(1) read with Clauses 8(2)(b) and 12(1)(c) of the Bill. It is the said appointees who would eventually come to make decisions regarding the monetary policy.

The Bill therefore preserves the link between Article 4(b) of the Constitution and the persons appointed to decide on monetary policy, and therefore, it does not amount to alienation of executive power and is not inconsistent with Article 3 read with Article 4 of the Constitution.

The numerous instances of cooperation as well as the 'checks and balances' and accountability make it clear that the Executive is able to monitor the actions of the Central Bank effectively.

The power to charge the policy stems from Article 43(1) of the Constitution, which makes the Cabinet of Ministers the sole authority that is "*charged with the direction and control of the Government of the Republic*".

It was submitted that the Bill seeks to clearly demarcate the spheres of control over policy and technicality between the Cabinet of Ministers and the Central Bank. The allegation that the Bill seeks to *alienate* matters of policy from the Cabinet of Ministers is incorrect. On the contrary, the Bill actually seeks to remove broader policy aspects from the Central Bank and not from the Cabinet of Ministers. The powers that are thus removed from the ambit of the Central Bank will continue to remain with the Cabinet of Ministers. As such, there is no 'alienation' of executive power.

Further, the Bill does not envisage a complete severance of the link between the Central Bank and the Minister. This is borne out by Clause 6, read together with Clause 26 of the Bill.

Furthermore, it was submitted that, under Clause 6 of the Bill, the Central Bank has the main objective of achieving and maintaining domestic price stability. It is intrinsically connected to the inflation target.

Moreover, under Clause 26 of the Bill, the determination of the inflation target is not a matter that is solely left to the Central Bank but mandatorily requires the concurrence of the Minister. Therefore, the input of the Minister, as a member of the Cabinet of Ministers is preserved within the framework of the Bill. This concurrence also leaves room for the Minister to factor in values contained in the Directive Principles of State Policy, where necessary.

The learned Additional Solicitor General submitted that, under Clause 6(3) of the Bill, the Central Bank is required to support the general economic policy framework of the Government without prejudice to its objectives. Under Clause 104 of the Bill, when supporting the Government's general economic policy framework, the Central Bank is required to be mindful of the "*development of the productive resources of Sri Lanka*".

Therefore, the Bill does not create a situation where the Central Bank shall function in a vacuum of policy consideration. It will give effect to the policies of the Government. The only instances in which the Central Bank can resist such policies are when a policy interferes with the Bank's

objective of achieving domestic price stability and financial system stability, the two technical spheres that fall within the competence of the Central Bank.

In the circumstances, it was submitted that, the Bill does not alienate the executive power;

- (a) as the monetary policy is not a matter that exclusively falls within the executive,
- (b) transferring the power to the Central Bank amounts to a restriction only, and not alienation as there is a direct link between Article 4(b) of the Constitution and the governing bodies of the Central Bank, and
- (c) the Bill only seeks to remove 'policy' from the ambit of the Central Bank and not from the Cabinet of Ministers.

The learned Additional Solicitor General further submitted that the Bill enhances the accountability and transparency of the Central Bank. Furthermore, under Part XVII, the entirety of the Central Bank's financial management is subject to review by an auditor and the Auditor General. In this regard, the attention of court was drawn to Clause 101(4) of the Bill, which confers power and also imposes an obligation on the Auditor General to submit his opinion on the accounts of the Central Bank. Consequently, the Auditor General is empowered to scrutinise the accounts of the Central Bank and present them before the Parliament through the Minister. Additionally, the Auditor General is empowered to identify material weaknesses in internal controls pertaining to the Central Bank's financial reporting process. Moreover, under Clause 98 of the Bill, the Central Bank is required to publish a general balance sheet monthly showing its volume and composition of assets.

It was further submitted that, under Clause 99(2) of the Bill, the Bank shall, within four months after the close of each financial year, submit to the Minister financial statements approved by the Governing Board, signed by the Governor of the Central Bank and the Chief Accountant, and audited by the Auditor-General. These financial statements in turn are placed before the Parliament under Clause 99(3) of the Bill and thereafter published for the information of the public.

Moreover, the Central Bank is required to publish a report once in six months explaining the recent movements in inflation, sources of inflation and medium-term projections for inflation.

Further, after the close of each financial year, the Central Bank is required to publish and lay before Parliament a report on the state of the economy during such financial year, which also includes a review and an assessment of the policies followed by the Central Bank during such financial year.

Furthermore, it is essential to note that, even though the independence of the Central Bank has increased, care has been taken to ensure that there is adequate cooperation and harmonisation in the manner in which the Central Bank interacts with the Government. In this regard, the learned Additional Solicitor General drew the attention of court to the following;

- (a) in terms of Clause 26, the Minister enters into an agreement with the Central Bank to set out the inflation target of the Government. Thus, the inflation target is decided by the Government,
- (b) in terms of Clause 26(3), the Government and the Central Bank are empowered to revise the inflation target as and when necessary,
- (c) in terms of Clause 28, when the Monetary Policy Board anticipates an economic disturbance or there are abnormal movements in the price levels which endangers domestic price stability, the Central Bank is required to tender reports to the Minister,
- (d) in terms of Clause 83, a Coordination Council is established consisting of the Governor, Secretary to the Treasury and Secretary to the Ministry of Finance, which is assigned the subject of Economic Policy,
- (e) in terms of Clause 84(2), the Central Bank and the Minister are required to keep each other fully informed of all matters that affect the functions of the Central Bank and the Ministry of Finance,
- (f) Clause 6(3) provides that without prejudice to the attainment of its objects and subject to the provisions of this Act, the Central Bank shall support the general economic policy framework of the Government as provided for in any law,

- (g) Clause 7 would be amended at the Committee Stage, by creating an obligation on the part of the Central Bank to coordinate with the Government,
- (h) Clause 104 provides that the Central Bank shall, without prejudice to the provisions of Clause 6, support the general economic policy framework of the Government as provided for in any law with a view to encouraging and promoting the development of the productive resources of Sri Lanka,
- (i) in terms of Clause 40(3), in the event the Central Bank anticipates that there is a decline or a likelihood of decline in the international reserves, or such reserves may reach to a level that could jeopardize the objects of the Central Bank, and that the Central Bank is unable to remedy such decline by its own measures, the Central Bank shall report to the Minister in writing of such decline including reasons for and recommendations to remedy such decline,
- (j) in terms of Clause 62, despite the Central Bank being the authority responsible for the resolution of financial institutions, where the resolution involves public funds, such decisions shall be taken in consultation with the Minister in charge of the subject,
- (k) Clause 63(4)(a) provides that, without prejudice to the provisions of Clauses 5 and 6, the Central Bank shall, on the request of the Minister, provide the Minister with information regarding the exercise, performance and discharge of the powers, duties and functions of the Central Bank,
- (l) in terms of Clause 87(3), the Central Bank may, in consultation with the Minister, prescribe the terms and conditions subject to which loans or advances will be made available to credit institutions out of the funds provided by the Government, for the purposes for which their loans in general are destined, or relating to any other matters affecting or connected with the credit policy of such institutions,

- (m) in terms of Clause 96(1)(c), before the expiration of sixty days after the end of each financial year, the Governing Board shall, based on the income statement, statement of financial position, statement of cash flows and statement of changes in equity of such financial year, subject to the allocations specified in sub sections (1) and (2) allocate the distributable earnings, as determined by the Governing Board in consultation with the Minister, either be applied in liquidation of any outstanding Government obligations to the Central Bank due as at the end of the financial year or be paid and credited to the Consolidated Fund,
- (n) Clause 97 provides that despite the financial independence guaranteed to the Central Bank, in situations where its capital has been eroded, the Central Bank can seek assistance from the Government,
- (o) Clause 99(2) provides that within four months after the close of each financial year, the Central Bank shall submit to the Minister, financial statements approved by the Governing Board, signed by the Governor of the Central Bank and the Chief Accountant, and audited by the Auditor-General, and
- (p) Clause 73 provides for the participation of representatives of other regulatory bodies in the Financial System Oversight Committee.

Further, it was submitted that Clause 28 of the Bill should be amended at the Committee Stage by adding the following sub-Clause;

“(3) The Minister shall place the reports referred to in this section before the Cabinet of Ministers and the Cabinet of Ministers shall determine the remedial action that should be taken by the Central Bank.”

In view of the above, he submitted that there are sufficient safeguards incorporated in the bill to have executive control over the proposed Central Bank Act.

Does the Bill create an autonomous and independent institution which is not subject to executive and parliamentary control

Article 3 of the Constitution states that in the Republic, the Sovereignty is in the People and is inalienable. It further states that **Sovereignty includes the powers of government**, fundamental rights and the franchise.

Further, Article 4 of the Constitution states that the **executive power of the People**, including the defence of Sri Lanka, shall be exercised by the President of the Republic elected by the People.

Accordingly, the Sovereignty of the People vested in the executive, legislature, and judiciary is held in trust by the said organs of the State, and such power is exercised by the said organs for and on behalf of the People.

Hence, the executive, legislature, and judiciary hold the powers conferred by Article 3 read with Article 4 of the Constitution in trust for and on behalf of the People, and the persons who hold positions in the said organs shall not alienate the said power without the approval of Parliament by a special majority and at a Referendum, as required in Articles 83 and 84 of the Constitution. Furthermore, the Sovereignty conferred on the said organs cannot be alienated, even on their own, without the approval of the People at a Referendum.

Therefore, it is not possible to create an autonomous institution or an organ independent from the Government or contrary to the framework of the Constitution.

The learned counsel for the petitioners further submitted that certain Clauses of the Bill are inconsistent with the Constitution. Those submissions were taken into consideration when making the determination of the Bill.

Does the Bill violate Articles 3, 4 and 43 of the Constitution

Clause 2 of the Bill establishes the Central Bank of Sri Lanka. Further, the Post of the Governor, the Governing Board and the Monetary Policy Board of the Central Bank are created by Clauses 14, 8 and 11 of the Bill, respectively.

The Monetary Policy Board referred to in Clause 11 of the Bill is conferred with the power to formulate the monetary policy of the Central Bank and implement a flexible exchange rate regime

in line with the flexible inflation targeting framework in order to achieve and maintain domestic price stability. Further, the Monetary Policy Board shall regulate the supply, availability, and cost of money, taking into account the macroeconomic and financial condition of Sri Lanka.

Clause 26 of the Bill states;

“(1) The Minister and the Central Bank shall sign a monetary policy framework agreement with regard to setting out the inflation target to be achieved by the Central Bank.

(2) The Minister shall publish the monetary policy framework agreement including the inflation target and other parameters relating thereto in the Gazette within a period of one week from the date of such agreement.

(3) The Minister and the Central Bank may review the inflation target and any other parameters relating thereto, once in every three years or in such other intervals, if exceptional circumstances so warranted. The Minister shall, upon such review, publish in the Gazette the inflation target and other parameters relating thereto so reviewed and the exceptional circumstances that warranted such review.

(4) If the Central Bank fails to meet the inflation target by a margin determined in terms of subsections (1) and (3) of this section for two consecutive quarters, the Monetary Policy Board shall submit a report to the Parliament through the Minister, which shall also be made available to the public, setting out-

(a) the reasons for the failure to achieve the inflation target;

(b) the remedial actions proposed to be taken by the Central Bank; and

(c) an estimate of the time-period within which the inflation target shall be achieved.

(5) The Monetary Policy Board shall determine the monetary policy and other instruments relating to the implementation of the monetary policy of the Central Bank and shall have the authority to adjust such instruments for the purpose of implementing the monetary policy.”

The above Clause is central to Clause 6 of the Bill, which stipulates the objects of the Central Bank and to Clauses 7 and 11. However, Clause 26(1) does not set out a criterion to resolve a possible

deadlock situation between the Central Bank and the Minister. Thus, as Clause 26(1) of the Bill does not provide for a proper criterion to address a possible situation where a difference of opinion arises between the Minister and the Central Bank, the said Clause is arbitrary and capricious.

Clause 27 of the Bill states:

“The Central Bank shall publish a report once in six months explaining recent movements in inflation, sources of inflation and medium-term projections for inflation and key risks to such projections.”

Clause 28 of the Bill states:

“(1) Where the Monetary Policy Board anticipates economic disturbances that are likely to threaten the domestic price stability in Sri Lanka or there are abnormal movements in the price level that are actually endangering such domestic price stability, it shall be the duty of the Monetary Policy Board –

(a) to adopt such policies, and to cause such remedial measures to be taken, as are appropriate in the circumstances and authorized by this Act;

(b) to submit to the Minister and, if it is not prejudicial to the public interest, publish, a detailed report which shall include, as a minimum, an analysis of –

(i) the causes of the anticipated economic disturbances, or of the actual abnormal movements of the price level;

(ii) the probable effects of such disturbances or movements on the level of production, employment, and income in Sri Lanka; and

(iii) the measures which the Monetary Policy Board has already taken, and monetary, fiscal, or administrative measures that it proposes to take or recommends for adoption by the Government.

(2) The Monetary Policy Board shall continue to submit further reports periodically so long as the circumstances which occasioned the submission of the first report constitute a threat to domestic price stability.”

Clause 28 of the Bill sets out the criteria that should be followed by the Monetary Policy Board if it anticipates an economic disturbance that is likely to threaten the domestic price stability in Sri Lanka or if there are abnormal movements in the price levels that are actually endangering such domestic price stability. Further, the said Clause places a duty on the Monetary Policy Board to inform the Minister if it anticipates any of the situations set out in Clause 28(1) of the Bill.

However, the said Clause is silent on the action/steps that should be taken by the Minister. The drafters of the Bill should have included such a procedure in the said Clause with the expectation that such situations warrant the intervention of the Government. In the circumstances, the omission to include a provision for the Government to intervene in such instances makes Clause 28 of the Bill arbitrary and capricious.

Clause 6 of the Bill states as follows;

“(1) The primary object of the Central Bank shall be to achieve and maintain domestic price stability.

(2) The other object of the Central Bank shall be to secure the financial system stability.

(3) Without prejudice to the attainment of its objects and subject to the provisions of this Act, the Central Bank shall support the general economic policy framework of the Government as provided for in any law.

(4) In pursuing the primary object referred to in subsection (1), the Central Bank shall take into account, inter alia, the stabilization of output towards its potential level.

(5) In pursuing the object referred to in subsection (2), the Central Bank shall take into account, inter alia, the development and efficiency of the financial system.”

Clause 7 of the Bill states that, subject to the provisions of the Act, the powers, duties, and functions of the Central Bank shall, *inter alia*, be to determine and implement the monetary policy and promote financial inclusion in Sri Lanka.

Furthermore, Clause 104 of the Bill states;

“The Central Bank shall, without prejudice to the provisions of section 6, support the general economic policy framework of the Government as provided for in any law with a view to encouraging and promoting the development of the productive resources of Sri Lanka.”

The Constitution has conferred power on the executive to make decisions on the economic and monetary policy of the Government. As at present, the link between the Central Bank and the executive and thereby the formulation of the monetary policy is established through the presence of the Secretary to the Treasury being a member of the Monetary Board. However, the Bill has removed the participation of the Secretary in the decision-making process of the Central Bank. A careful consideration of the submissions made by the learned counsel for the petitioners, intervenient-petitioners, and the learned Additional Solicitor General shows that the Bill does not contain sufficient provisions to have executive control over the Central Bank. Thus, the Bill is inconsistent with Articles 3 and 4(b) of the Constitution, and thereby should be passed in Parliament by a special majority as required by Article 84(2) and approved by the People at a Referendum in terms of Article 83 of the Constitution.

However, the said inconsistency will cease;

- (a) if Clause 26 is amended as proposed by the learned Additional Solicitor General by the insertion of the following sub-Clause;

“In the even the Minister and the Central Bank are unable to reach an agreement with regard to the inflation target as referred to in subsection (1), the Minister shall place his proposal for the inflation target and that of the Central Bank before the Cabinet of Ministers and the Cabinet of Ministers shall determine the inflation target to be achieved by the Central Bank.”

- (b) by the addition of the following sub-Clause to Clause 28 of the Bill to the following effect;

‘The Minister shall submit such report/reports sent to him by the Monetary Policy Board to the Cabinet of Ministers to consider the same and take appropriate decisions to avert such an occurrence.’

Consideration of the Clauses in the Bill

Clause 3

Clause 3 of the Bill states;

“The Central Bank shall have its principal place of business in Colombo, and may have such branches, agencies, and correspondents in other places in Sri Lanka or abroad, as may be necessary for the proper conduct of its business.”

Though the said Clause provides for the Central Bank to have *“branches, agencies and correspondents in other places in Sri Lanka or abroad, as may be necessary for the proper conduct of its business.”* a careful consideration of the Bill does not show the need for such branches or agencies in other parts of Sri Lanka or overseas. Thus, the words *“and may have such branches, agencies, and correspondents in other places in Sri Lanka or abroad, as may be necessary for the proper conduct of its business.”* in the said Clause are unwarranted and unjustified. Therefore, Clause 3 of the Bill is inconsistent with Article 12(1) of the Constitution.

In view of the above, the said Clause should be passed in Parliament by a special majority in terms of Article 84(2) of the Constitution.

However, the said inconsistency will cease if the words *“and may have such branches, agencies, and correspondents in other places in Sri Lanka or abroad, as may be necessary for the proper conduct of its business”* are deleted.

Clause 5

Clause 5 of the Bill states as follows;

“(1) The Central Bank shall have administrative and financial autonomy.

(2) The Central Bank shall be autonomous and accountable as provided for in this Act,

(3)

(4)”

Autonomy entails operational freedom in carrying out its functions, whereas accountability requires the Central Bank to act in a transparent manner and to be accountable for their actions and inactions. Thus, the Central Bank shall not only be accountable to the Executive and the Parliament but also to the People of the country.

Further, the words “*as provided for in this Act*” in Clause 5(2) of the Bill restrict the accountability of the Central Bank only to the matters specified in the Bill. Thus, the said phrase effectively excludes the accountability of the Central Bank under the common law and other laws of the country. Thus, Clause 5(2) is arbitrary, capricious, and therefore inconsistent with Article 12(1) of the Constitution.

Hence, the said Clause should be passed in Parliament by a special majority required under the provisions of Article 84(2) of the Constitution.

However, the said inconsistency will cease if the words “*as provided for in this Act*” in Clause 5(2) of the Bill are deleted.

Clause 8

The learned Additional Solicitor General submitted that the Governing Board is to be charged with the responsibility of overseeing the administration and management of the affairs of the Central Bank and determining the general policy of the Bank other than the monetary policy. The Governing Board shall comprise of the Governor and six members who shall have expertise in economics, banking, finance, accounting and auditing, law or risk management. The powers and functions of the Governing Board specifically provide for taking general policy decisions other than monetary policy.

Further, the learned Additional Solicitor General informed court that the following amendments would be made to Clause 8 of the Bill at the Committee Stage.

Clause 8(5)(n) of the Bill shall be deleted.

Furthermore, Clause 8(6) of the Bill is amended in the following manner:

“(6) The Governing Board may, in writing, delegate the functions”;

Moreover, the learned Additional Solicitor General submitted that the following amendments would be made to the Bill at the Committee Stage;

(a) Clause 9

Clause 9(4) of the Bill will be amended by increasing the quorum to “*five members*”.

(b) Clause 10

Clause 10(1) will be amended to include “*Governing Board shall be confidential to the extent permitted under the Right to Information Act, No. 12 of 2016. The Governing Board*”.

A new sub-Clause will be inserted to Clause 10 as “*(3) The minutes of each meeting of the Governing Board shall be kept in writing, and retained at least for a period of twelve years.*”;

Clause 13

Clause 13(10) of the Bill provides for the making of ‘rules of procedure’ by the Monetary Policy Board. The learned counsel for the petitioners state, however, that the said Bill does not require placing before Parliament the said rules made by the Monetary Policy Board. Therefore, Clause 13(10) of the said Bill is in violation of Article 76(1) of the Constitution. This submission shall be considered when examining Clause 106.

The learned Additional Solicitor General informed court that the following amendments will be made to Clause 13 of the Bill at the Committee Stage;

Clause 13(1) - the Board shall be required to meet once in every two months,

Clause 13(5) - the quorum of the Board shall be increased to eight members,

Clause 13(8) - the Board “shall be confidential to the extent permitted under the Right to Information Act, No. 12 of 2016”.

Clause 14

This Clause provides the powers and functions of the Governor and Deputy Governors of the Central Bank. It states, *inter alia*;

- (a) the Governor of the Central Bank shall be the Chief Executive Officer and the principal representative of the Central Bank,
- (b) the Governor of the Central Bank, in consultation with the Deputy Governors, shall be responsible for
 - (a) the day-to-day operations of the Central Bank; and
 - (b) implementing policy decisions adopted by the Governing Board and the Monetary Policy Board,
- (c) the Governor of the Central Bank shall discharge such other functions of the Central Bank expressly assigned to the Governor of the Central Bank by the Governing Board or the Monetary Policy Board,
- (d) the Governor of the Central Bank shall devote his full professional time to the business of the Central Bank, and
- (e) the Governor of the Central Bank shall not accept or hold any other office or employment whatsoever, whether public or private, and whether remunerated or not.

The proviso to the said Clause states;

“Provided however, nothing in the provisions of this subsection shall be deemed to prevent the Governor of the Central Bank-

- (a) from accepting or holding any academic office or position or any office or position in an institution or organization, established for the purpose of carrying on research in the subject of economics, money, banking, statistics, or finance;*

(b) from being appointed or acting as a member of any commission constituted under the Commissions of Inquiry Act (Chapter 393) for the purposes of any inquiry relating to any monetary, banking, financial or general economic matter or question affecting the national welfare of Sri Lanka; or

(c) from being appointed or acting as a member of any council, committee, or other body investigating or examining, or advising upon, any such matter or question.”

(f)

(g)

(h) Where both the Governor of the Central Bank and the Senior Deputy Governor of the Central Bank are temporarily absent from duty or are temporarily unable to exercise, perform and discharge their powers, duties and functions, the Governing Board shall appoint the next most senior Deputy Governor of the Central Bank to act as the Chief Executive Officer of the Central Bank.

(i)

(j)

(l) The office of the Governor of the Central Bank shall not remain vacant for a period of more than forty-five days.

Although Clause 14(6) of the Bill states that the Governor of the Central Bank shall not accept or hold any other office or employment whatsoever, whether public or private, and whether remunerated or not, the proviso to Clause 14(16) of the Bill enables the Governor of the Central Bank to accept and hold other positions. Taking into consideration the duties and functions that are required to be performed by the Governor of the Central Bank, such a proviso is unwarranted, arbitrary, and capricious, and thereby violates Article 12(1) of the Constitution. Therefore, Clause 14(6) shall be passed in Parliament by a special majority required under the provisions of Article

84(2) of the Constitution. However, the said inconsistency in Clause 14(6) will cease if the proviso to the said Clause is deleted.

Further, Clause 14(12) of the Bill states that the office of the Governor shall not remain vacant for a period of more than forty-five days.

The learned Additional Solicitor General informed court that the aforementioned Clause 14(12) will be deleted at the Committee Stage. However, the deletion of the said Clause is unwarranted, unnecessary and arbitrary. Thus, the said Clause shall remain, as it is essential for the proper discharge of the functions of the office of the Governor.

The learned Additional Solicitor General suggested that Clause 14(2)(b) shall be amended at the Committee Stage to read as –

“(b) implementing policy decisions of the Governing Board and the Monetary Policy Board.”

Furthermore, Clause 14(11)(a) will be amended at the Committee Stage to read as;

“(11) (a) Where the Governor of the Central Bank vacates or ceases to hold office for any reason, the Senior Deputy Governor of the Central Bank designated in terms of subsection (7) of section 15 shall act as the Chief Executive Officer of the Central Bank”

Clause 15

Clause 15(4) of the Bill states;

“Upon the receipt of approval of the Constitutional Council under subsection (3), the President shall appoint such persons as the Governor of the Central Bank and the other members of the Governing Board and the Monetary Policy Board.”

However, there is no provision in the Bill to address an instance where the Constitutional Council declines to approve the name of a person recommended by the President.

Hence, it is necessary to provide for a provision to address a situation where the Constitutional Council declines to approve a name forwarded by the President.

Clause 15(7) states;

“The Minister shall, with the concurrence of the Governing Board-

(a) determine the number of Deputy Governors of the Central Bank to be appointed and appoint such number of Deputy Governors who shall exercise, perform and discharge such powers, duties and functions assigned to them by this Act or the Governing Board; and

(b) designate one Deputy Governor appointed under paragraph (a) as the Senior Deputy Governor of the Central Bank.”

Further, Clause 15(9) states;

“The Deputy Governors of the Central Bank shall be employees of the Central Bank and shall be subject to such age of retirement, as may be determined by the Governing Board: Provided however, one of the Deputy Governors of the Central Bank may be appointed from among persons other than the employees of the Central Bank and shall be subject to such terms and conditions as may be specified by the Governing Board.”

The proviso to Clause 15(9) of the Bill enables the appointment of a Deputy Governor other than an employee of the Central Bank. However, the said Clause does not state the requirement to appoint such a person, nor does it specify the criteria that should be followed in appointing such a Deputy Governor.

Thus, Clause 15(9) is unreasonable, arbitrary, capricious, and inconsistent with Article 12(1) of the Constitution. Hence, the said Clause should be passed in Parliament by a special majority required under provisions of Article 84(2) of the Constitution. However, such inconsistency will cease if the proviso to sub-Clause 9 of the Bill is deleted.

Clause 15(10) states;

“The appointment of the Deputy Governors of the Central Bank and the designation of the Senior Deputy Governor of the Central Bank shall be made in a transparent manner.”

Further, Clause 15(12) states;

“In the event of the President failing to appoint any person approved by the Constitutional Council under subsection (4) within a period of thirty days from the date of approval of the Constitutional Council, such person shall be deemed to have been appointed as the Governor of the Central Bank, a member of the Governing Board or an expert of the Monetary Policy Board, as the case may be, with effect from the date of expiry of such period.”

The learned Additional Solicitor General informed court that the following amendments to Clause 15 shall be moved at the Committee Stage;

(a) Clause 15(5)

By the insertion of a new sub-Clause;

“(5) Where the Constitutional Council refuses to approve a name of a person referred to in subsection (3), the Minister shall make fresh nominations, and the provisions of subsections (2), (3) and (4) shall apply to such nomination accordingly.”;

(b) Clause 15(7)

“By substituting the word “concurrence” with the word “recommendation”:

(c) Clause 15(7)(b)

“(b) designate the most senior Deputy Governor appointed under paragraph (a) as the Senior Deputy Governor of the Central Bank.”

(d) Clause 15(9);

“Clause 15(9) as it presently stands shall be deleted, and will be substituted as follows:

“The Deputy Governors of the Central Bank shall be employees of the Central Bank.”

(e) Clause 15(10) shall be amended as follows;

“The appointment of the Deputy Governors of the Central Bank and the designation

of the Senior Deputy Governor of the Central Bank shall be made in accordance with the criteria prescribed by rules of the Governing Board”.

(f) Clause 15(11) shall be amended as follows;

“The appointments referred to in subsection (1) shall be finalized not more than a period of thirty days prior to the expiration of the term of office of the previously appointed member.”

Clause 16

Clause 16 of the Bill provides that the term of office of a member of the Governing Board and experts on the Monetary Policy Board shall be six years, and such members will be eligible to be re-appointed for an aggregate period not exceeding twelve years.

The learned Additional Solicitor General submitted that the following amendments would be made at the Committee Stage;

(a) *“marginal note of Clause 16 shall be deleted and replaced with the words “Term of office of the Governor of the Central Bank and an appointed member.”*

(b) Clause 16(1) will be amended in the following manner:

“(1) The term of office of the Governor of the Central Bank and an appointed member shall be a period of six years commencing on the date of his appointment.”

(c) Clause 16(2) will be amended as:

“(2) Where the Governor of the Central Bank and any appointed member vacates office before the expiration of their term of office, another person shall be appointed in terms of section 15 in his place to hold office during the unexpired period of the term of office of the appointed member so vacating the office.”

It was observed that although the amendment is to apply to the Governor of the Central Bank, it does not provide to appoint a successor in the event the Governor vacates his office before the expiration of his term.

(d) Clause 16(3) will be amended as:

“(3) The Governor of the Central Bank and any appointed member who vacates office by effluxion of time shall be eligible for reappointment”.

Clause 17

The eligibility criteria and disqualifications to be appointed as Governor, an appointed member or Deputy Governor are set out in Clause 17 of the Bill.

Clause 17(2)(m) states that a person shall be disqualified from being appointed if such person;

“is or become a director, officer or employee of an entity regulated by the Central Bank or a financial institution operating through officers in Sri Lanka, a beneficial owner of an equity interest in a financial institution or a beneficial owner of five percent or more of an equity interest in any other financial institution.”

Permitting a Governor or any other person referred to therein to be the beneficial owner of five percent or more of an equity interest in any other financial institution is contrary to the corresponding duties that will arise from the accountability incorporated into Clause 5(2) of the Bill and the other provisions of the Bill, which require to maintain a high degree of honesty, integrity and transparency expected not only from the Governor, Deputy Governor and appointed members but also from all the employees of the Central Bank. Hence, the said sub-Clause is arbitrary, capricious, and inconsistent with Article 12(1) of the Constitution. Accordingly, the said Clause and the proposed Act should be passed by a special majority in Parliament as required in Article 84(2) of the Constitution.

However, the said inconsistency shall cease if the said Clause is amended as follows as proposed by the learned Additional Solicitor General;

“is or becomes a director, officer or employee of an entity regulated by the Central Bank or a financial institution operating through offices in Sri Lanka a beneficial owner of an equity interest in a financial institution”

Clause 19

Clause 19 of the Bill sets out the disqualifications of the Governor, an appointed member or a Deputy Governor which will lead to removal from office.

The counsel for the petitioners stated that Clause 19 of the Bill provides for the manner in which the members of the Governing Board and the Monetary Policy Board can be removed from office. The provisions contained in Clauses 19(2), 19(5) and 19(6) have placed a fetter on the executive power of the President. Therefore, Clauses 19(2), 19(5) and 19(6) are in violation of Articles 3, 4, and 12(1) of the Constitution.

The learned Additional Solicitor General informed court that Clause 19(1) will be deleted and Clause 19(2) will be renumbered and amended as Clause 19(1) at the Committee Stage in the following manner:

“(1) Any person appointed under subsection (4) of section 15 may be removed by the President, on the recommendation of the Minister and subject to the approval of the Constitutional Council following a hearing of the relevant appointed person that such person—”

Further, it was informed that Clause 19(3) shall be amended as follows;

“(3) Upon the receipt of the approval of the Constitutional Council, the President shall, in writing, remove any person appointed under subsection (4) of section 15, and shall state”

Moreover, Clause 19(4) will be deleted at the Committee Stage and the following new sub-Clause will be introduced as Clause 19(5)(d);

“(d) is disqualified in terms of the provisions of subsection (2) of section 17”

A careful consideration of the provisions of the Bill shows that the Governor of the Central Bank and the appointed members are appointed by the President on the recommendation of the Minister and subject to the approval of the Constitutional Council. It is pertinent to note that the Bill does not set out a procedure as to how the Minister should select a person prior to recommending his name to the President.

Notwithstanding the above, the removal process of such persons is a long and protracted procedure. Further, during such a process the person can continue to participate in the decision-making process of the Central Bank and attend to day-to-day affairs of the Central Bank. This should be considered in light of the serious offences set out in Clause 110 of the Bill, which will give rise to the removal of the Governor and the appointed members of the Central Bank.

The Establishment Code stipulates a procedure to address such an instance. Similarly, the Central Bank Disciplinary Code applicable to employees has a similar procedure, particularly for suspending an employee or an office bearer pending an inquiry. Thus, the absence of a provision in the Bill to suspend the Governor and the appointed members pending an inquiry under Clause 19 is arbitrary and capricious.

Thus, the removal process stipulated in Clause 19 of the Bill is arbitrary and capricious, and therefore, is inconsistent with Article 12(1) of the Constitution.

Hence, the removal process of the Governor and the appointed members shall be approved by a special majority in Parliament and as required by Article 84(2) of the Constitution.

However, the said inconsistency will cease if a provision is introduced conferring the power on the President to suspend the Governor or an appointed member pending an inquiry referred to in Clause 19.

Clause 20

Clause 20 states;

“Any person who ceases to be a member of the Governing Board or the Monetary Policy Board shall not serve in any capacity whatsoever, in or for, any financial institution until the expiration of a period of one year from the date of such cessation.”

Clause 20 of the Bill places a restriction on the members of the Governing Board or the Monetary Policy Board serving in any capacity for any financial institution until the expiration of a period of **one year** from the date of such cessation.

However, the said Clause does not include the Governor of the Central Bank, Deputy Governors, or the employees of the Bank.

As a large number of financial institutions are coming under the Central Bank, such persons may come across confidential and sensitive information during their tenure at the Central Bank. Further, such a restriction is essential to maintaining the impartiality and integrity of the persons working at the Central Bank. Hence, the absence of such a provision is arbitrary and capricious.

Furthermore, there is no rationale for imposing such a restriction only on the appointed members.

Thus, it is imperative to have a Clause that restricts the Governor of the Central Bank, Deputy Governors, and employees of the Bank from serving in any capacity for any financial institution until the expiration of a period of three years from the date of such cessation.

Moreover, the period of one year set out in Clause 20 of the Bill is insufficient and thereby, the restriction for a period of one year is unreasonable, arbitrary, and capricious.

Thus, the inadequacy of the period of restriction and the omission to include the Governor of the Central Bank, Deputy Governors, and employees of the Bank violate Article 12(1) of the Constitution.

However, the said inconsistency will cease if Clause 20 of the Bill is amended to apply to the Governor of the Central Bank, Deputy Governors, and employees of the Bank and extend the restriction to three years.

Clause 23

Clause 23(1) of the Bill stipulates the criteria for the appointment and removal of employees of the Central Bank. The said Clause states as follows;

“Notwithstanding anything to the contrary in any other written law, the Governing Board may appoint and remove employees of the Central Bank, and may prescribe by rules the terms and conditions of their employment, including the remuneration.

However, Clause 17(2) of the Bill stipulates the eligibility and disqualification of the Governor, the other appointed members, and the Deputy Governors. Though the Governor of the Central Bank and other appointed members are not employees of the Central Bank, the Deputy Governors are employees of the Central Bank.

Thus, there cannot be two different types of disciplinary rules applicable to the members of the senior management and the rest of the employees of the Central Bank. However, there can be slight variations in the disciplinary rules depending on the nature of the work performed by the senior staff and the other employees of the Central Bank. Thus, there should not be a substantial departure from each other’s disciplinary procedure.

Further, it is not possible to exclude the employees of the Central Bank from the applicability of the laws of the country and make rules that are only applicable to the employees of the Central Bank.

Thus, the phrase *“Notwithstanding anything to the contrary in any other written law, the Governing Board may appoint and remove employees of the Central Bank”* is inconsistent with the ‘equal protection of the law’ enshrined in Article 12(1) of the Constitution, and therefore, Clause 23(1) of the Bill should be passed in Parliament by a special majority required under the provisions of Article 84(2) of the Constitution.

In this regard, the learned Additional Solicitor General informed court that Clause 23(1) will be amended at the Committee Stage as follows;

“(1) The Governing Board may appoint and remove employees of the Central Bank and may determine the terms and conditions of their employment, including the remuneration.”

If the aforementioned amendment is made and also adheres to the general disciplinary procedure applicable to senior staff members and the other staff of the Central Bank, the aforementioned inconsistency will cease.

Clause 23(3) states;

“The Governing Board may establish and regulate pensions or provident funds or schemes for the benefit of employees and their dependents and nominees, and may make contributions to any such fund or scheme.”

The learned Additional Solicitor General submitted that a new sub-Clause 23(5) will be inserted to the said Clause in the following manner;

“(5) The compulsory age of retirement for every employee of the Central Bank shall be sixty years and the optional age of retirement for every employee of the Central Bank shall be fifty-five years.”;

However, such inconsistency will cease if;

- (a) the phrase “Notwithstanding anything to the contrary in any other written law, the Governing Board may appoint and remove employees of the Central Bank” in Clause 9 of the Bill is deleted,
- (b) have a common procedure for disciplinary control for all the employees of the Central Bank with necessary amendments applicable to Senior officers and the other staff, and
- (c) the disciplinary code shall be made as rules of the Central Bank.

Clause 24

Clause 24 of the Bill states;

“(1) The employees of the Central Bank shall devote their professional services to the Central Bank, and shall not accept or hold any other office or employment, whether public or private, or whether remunerated or not, except as a nominee of the Central Bank or for educational or academic purposes, which are not in conflict with or which will not prevent the ability of any employee to devote his professional services to the Central Bank, and are within the limits determined by the Governing Board in that regard.

(2) *The Governing Board may, at the request of any Ministry, Department, public international financial institution or a public corporation which is not a financial institution, temporarily release any officer of the Central Bank with the consent of such officer, to serve any office or position in such Ministry, Department, public international financial institution or public corporation, subject to such terms and conditions as may be determined by the Governing Board.*

(3) *Any officer of the Central Bank who is released to serve any office or position in terms of subsection (2), shall be deemed to be removed from such office or position, if such officer is removed from his office in the Central Bank under the provisions of this Act.”*

A careful consideration of Clauses 24(1) and 24(2) shows that they contradict each other, as invoking sub-Clause 24(2) violates Clause 24(1) and Clauses 5(3) and 5(4), though it is not inconsistent with the Constitution.

Further, Clause 24(2) states, “*temporary release any officer*”. However, the said Clause does not specify the period on which an officer can be released, though it has used the word “*temporary*”.

Thus, the absence of a period where an officer can be released is arbitrary and capricious. Moreover, other employees of the State organs, such as public servants and corporation employees are allowed to obtain no-pay leave for a maximum of five years for such purposes.

Thus, the failure to specify a period on which an officer can be “*temporarily released*” is inconsistent with Article 12(1) of the Constitution.

However, the said inconsistency will cease if Clause 24 is amended by adding a proviso to the said Clause -

- (a) Limiting the “*temporary release of any officer*” by the Governing Board to a maximum period of five years, and
- (b) Any extension beyond five years shall be subject to the approval of the Cabinet of Ministers.

Clause 25

Clause 25 of the Bill states;

“The Governing Board shall adopt codes of conduct applicable to employees of the Central Bank.”

The word “*adopt*” in the said Clause allows the Governing Board to adopt the existing codes of conduct applicable to the employees of the Central Bank. However, there is no provision in the Bill to make codes of conduct applicable to employees. Thus, the Central bank and its employees will be governed by an archaic set of code of conduct in time to come.

Thus, there should be a provision which will enable the Governing Board to make rules that are suitable for the needs of the Central Bank and its employees.

In this regard, the learned Solicitor General submitted that Clause 25 of the Bill will be amended as follows;

“The Governing Board shall make codes of conduct applicable to employees of the Central Bank”

It is prudent to make the codes of conduct applicable to employees, as it would protect their rights

Clause 31

The learned Additional Solicitor General submitted that Clause 31(2) will be amended at the Committee Stage in the following manner:

“(2) The Monetary Policy Board shall make rules”

Clause 40

The learned Additional Solicitor General submitted that the words “guideline issued” in Clause 40(1) of the Bill will be replaced with the words “the rules made”;

Clause 43

Clause 43(2) of the Bill provides for the abolition of the use of cents in Sri Lanka. However, Clause 43(1) of the Bill states that the currency of Sri Lanka shall be the Sri Lanka rupee. The Sri Lanka rupee shall be divided into one hundred units, each of which shall be called a “cent”.

In this regard, the learned Additional Solicitor General suggested the deletion of Clause 43(2) at the Committee Stage.

Clause 47

Clause 47 of the Bill states;

“(1) All currency notes and coins issued by the Central Bank shall be legal tender in Sri Lanka for the payment of any amount.

(2) Any transaction executed or liquidated between or among residents in Sri Lanka shall, unless otherwise authorized by the Central Bank, be in Sri Lanka rupees.”

Clause 47(2) of the Bill confers power on the Central Bank to allow the residents of Sri Lanka to use currencies other than the Sri Lanka rupee for any transaction executed between residents.

It is pertinent to note that the Foreign Exchange Act No. 12 of 2017 stipulates the criteria for such authorization of transactions. However, the Bill does not repeal the provisions in the Foreign Exchange Act relevant to the above, and thus, Clause 47(2) of the Bill will lead to confusion and ambiguity.

Further, though the Foreign Exchange Act sets out a procedure for such authorization of using foreign currency in Sri Lanka, Clause 47(2) of the Bill does not stipulate a procedure/criterion that should be followed by the Central Bank in authorising the use of currencies in Sri Lanka other than the Sri Lanka rupee. Thus, the said Clause 47(2) of the Bill is vague and therefore, inconsistent with Article 12(1) of the Constitution. Hence, Clause 47(2) should be passed in Parliament by a special majority stipulated in Article 84(2) of the Constitution. However, the said inconsistency will cease if a Committee Stage amendment is made by conferring power on the Central Bank to take steps in terms of the Foreign Exchange Act No. 12 of 2017.

Clause 59

Clause 59(6) of the Bill states;

“A payment or transfer made through a system established under subsection (1), is final and irrevocable –

(a) in the case of a transaction involving funds transfer only, upon the settlement account of the participant requesting the funds transfer being debited;

(b) in the case of a transaction involving a securities transfer only, upon the securities account of the participant requesting the securities transfer being debited;

(c) in the case of a transaction involving both a funds transfer and a securities transfer, upon debiting the settlement account or the securities account of a participant requesting the funds transfer or the securities transfer as the case may be, whichever occurs earlier,

and notwithstanding anything to the contrary in any other written law, such payment or transfer shall not be required to be reversed, repaid or set aside and no court shall order such payment or transfer to be rectified or stayed.”

The words -

“and notwithstanding anything to the contrary in any other written law, such payment or transfer shall not be required to be reversed, repaid or set aside and no court shall order such payment or transfer to be rectified or stayed.”

in Clause 59(6) of the Bill ousts the jurisdiction of the courts with regard to the matters referred to in the said sub-Clause. However, as held in ***Sirisena Cooray v Bandaranaike [1999] 1 SLR 1*** it must be emphasised that the jurisdiction conferred by Articles 126 and 140 of the Constitution cannot be restricted by the provisions of ordinary legislation.

In this regard, the learned Additional Solicitor General submitted that appropriate amendments would be made to the said sub-Clause to confer jurisdiction on the Court of Appeal and the Supreme Court to exercise jurisdiction over the matters referred to in the said sub-Clause.

Accordingly, he informed the court that Clause 59(6) of the Bill will be amended at the Committee Stage as follows;

*“and notwithstanding anything to the contrary in any other written law, such payment or transfer shall not be required to **be reversed, repaid or set aside, and subject to the provisions of Articles 126 and 140 of the Constitution, no court shall order such payment or transfer to be rectified or stayed.**”*

Clause 73

The learned Additional Solicitor General submitted that Clause 73 shall be amended by the insertion of a new sub-Clause (3);

“(3) The Secretary to the Financial System Oversight Committee who shall be an employee of the Central Bank shall be nominated by the Governor of the Central Bank.”

The present Clause 73(3) of the Bill will be renumbered as sub-Clause (4) at the Committee Stage.

Further, the present Clause 73(6) of the Bill will also be renumbered as sub-Clause (7) at the Committee Stage.

Clause 73(8) states;

“The minutes of each meeting of the Financial System Oversight Committee shall be kept at least for a period of twelve years.”

The learned Additional Solicitor General further submitted that Clause 73(8) of the Bill will be amended at the Committee Stage as follows:

“(8) The secretary to the Financial System Oversight Committee shall keep the minutes of each meeting of the Financial System Oversight Committee at least for a period of twelve years.”

Clause 80

The learned Additional Solicitor General submitted that Clause 80 of the Bill will be amended at the Committee Stage by the deletion of Clause 80(2) and by substituting in its place with the following:

“(2)(a) The Governor of the Central Bank, the members of the Governing Board and the Monetary Policy Board and every Deputy Governor of the Central Bank shall, at the request of Parliament, be heard by Parliament or any of its committees once in every four months, regarding the functions of the Central Bank.

(b) The Governor of the Central Bank, the members of the Governing Board and the Monetary Policy Board and every Deputy Governor of the Central Bank may, on their own initiative, seek an opportunity to apprise of the functions of the Central Bank or to submit any document or report of the Central Bank to Parliament.”;

Further, Clause 80(3) of the Bill will be amended to read:

“(3) The Governor of the Central Bank shall ensure that the Central Bank shall, within a period of four months after the close of each financial year, publish, and lay before the Parliament through the Minister, a report approved by the Governing Board, on the state of the economy during such financial year emphasizing its policy objectives and the condition of the financial system. The report shall include a review and an assessment of the policies of the Central Bank followed during such financial year.

In order to enhance accountability on the part of the Central Bank, the Governor of the Central Bank, the members of the Governing Board and the Monetary Policy Board, and every Deputy Governor of the Central Bank, and increase Parliamentary control over the affairs of the Central Bank, the Parliament may insert the following provision to Clause 80 of the Bill;

- (a) to make it mandatory for the Governor of the Central Bank, the members of the Governing Board and the Monetary Policy Board of the Central Bank, and the Deputy Governors to be present in Parliament after one month from the release of the quarterly reports of the Central Bank. A similar provision can be found in other jurisdictions. For example, the Federal Reserve Act of 1913.

Clauses 84 and 85

Clause 84 states;

“(1) Without prejudice to the provisions of sections 5 and 6, the Central Bank shall-

(a) cooperate with the Government and any other public authority; and

(b) exchange views with the Government and any other public authority on policies relating to monetary, foreign exchange operations, financial system stability, crisis prevention and crisis management and fiscal matters.

(2) The Central Bank and the Minister shall keep each other fully informed of all matters that affect the functions of the Central Bank and the Ministry.

(3) The Central Bank may advise the Government on any matter which, in its opinion, is likely to affect the achievement of the objects of the Central Bank under this Act.”

Clause 85 states;

“The Central Bank may, in order to achieve its objects and in the exercise, performance and discharge of its powers, duties and functions under this Act, cooperate with domestic or foreign regulatory, supervisory or monetary authorities, or with public international financial institutions, with a view to sharing information, coordinating activities, or arranging any other form of cooperation as it may deem necessary.”

The counsel for the petitioners submitted that Clause 85 of the Bill confers wide discretionary powers to cooperate with foreign regulatory, supervisory or monetary authorities or public international financial institutions.

However, in Clause 84 of the Bill, a restriction has been placed on the Central Bank to cooperate with the Government and any other public authority.

A careful consideration of Clause 84(2) of the Bill shows that it requires the Central Bank and the Minister to keep each other fully informed of all matters that affect the functions of the Central Bank and the Ministry. Thus, there is no discrepancy between the aforementioned two Clauses.

However, the Parliament may consider including the words “*Without prejudice to the provisions of sections 5 and 6*” in Clause 85 of the Bill to avoid any issues of interpretation in the future.

Clause 86

Clause 86 of the Bill states;

“(1) The Central Bank shall not, directly or indirectly, grant credits to the Government or any public authority owned by the Government or to any other public entity.

(2) The Central Bank shall not incur any cost on behalf of the Government, except for expenses related to the functions of the Central Bank under subsection (3) of section 112 of this Act.

(3) The prohibition laid down in subsection (1) shall not apply to such Government-owned or publicly-owned banks and other financial institutions as may be determined by the Governing Board.

(4) The Central Bank shall not purchase securities issued by the Government, any Government-owned entity, or any other public entity in the primary market. The Central Bank may purchase such securities in the secondary market provided that such purchases do not circumvent the prohibition laid down in subsection (1).”

The learned counsel for the petitioners submitted that, in terms of Clause 86(1) of the Bill, the Central Bank shall not directly or indirectly grant credits to the Government or any public authority owned by the Government. Thus, the said Clause prohibits the Central Bank from engaging in monetary financing.

However, the Central Bank has the overarching duty to ensure liquidity in the market. Therefore, even though the Bank is prohibited from directly granting credit to the Government, by ensuring liquidity, the Central Bank will provide avenues for the Government to raise the necessary money through the banking system.

Further, the above does not capture a situation where assistance is needed to cope with a national crisis. e.g., liquidity issues that arose during the COVID – 19 pandemic or Easter Sunday attacks.

Further, there can be a situation in which the banks in the country may face liquidity issues due to reasons beyond the control of the Central Bank and the Government.

Though there is a provision for the Central Bank to assist financial institutions there is a prohibition for monetary financing of the Government in similar circumstances.

Thus, the total prohibition on the Central Bank assisting the Government to maintain liquidity in the market violates the equal protection of the law enshrined in Article 12(1) of the Constitution. Therefore, it should be passed by a special majority in Parliament as required by Article 84(2) of the Constitution.

However, the said inconsistency will cease if the said Clause is amended by requiring the Central Bank to assist the Government in exceptional circumstances where liquidity issues have arisen due to unforeseen circumstances. However, such assistance shall be provided by the Central Bank only for a limited period, and the Government shall take immediate measures to remedy the situation in consultation with the Central Bank.

Clause 100(3)

Clause 100(3) of the Bill states;

“The Governing Board may make rules for the implementation of the annual budget.”

The Additional Solicitor-General submitted that Clause 100(3) of the Bill will be amended at the Committee Stage to read as follows:

“The Governing Board shall make rules for the implementation of the annual budget”

Clause 102

Clause 102(2) of the Bill states;

“The Chief Internal Auditor shall be a person with substantive professional experience in the field of accounting or audit.”

The Additional Solicitor-General submitted that Clause 102(2) of the Bill will be amended at the Committee Stage to read as follows;

“The Chief Internal Auditor shall be a person with substantive professional qualifications and experience in the field of accounting or audit.”

Clause 103(5)

Clause 103(5) of the Bill states;

“The Audit Committee shall periodically report to the Governing Board.”

The words “*periodically report*” are too vague, and thus it violates Article 12(1) of the Constitution. Thus, the said Clause of the Bill should be approved by the special majority of the Parliament as required in terms of Article 84(2) of the Constitution.

However, the said inconsistency will cease if the word “*periodically*” is substituted with the words “once in four months”.

Clause 106

Clause 106 of the Bill states;

“(1) The rules made by the Central Bank shall be published in the Gazette and shall take effect on the date of such publication or on such later date as such rules shall specify.

(2) The Central Bank may decide on the publication of its directions.

(3) The Central Bank shall maintain a public register of its published rules and directions.”

While Article 76(1) of the Constitution provides that, “*Parliament shall not abdicate or in any manner alienate its legislative power and shall not set up any authority with any legislative power*”, Article 76(3) provides further that, “*it shall not be a contravention of the provisions of paragraph (1) of this Article for Parliament to make any law containing any provisions empowering any person or body to make subordinate legislation for prescribed purposes*”

The Bill however does not contain any provision which requires such Rules to be placed before Parliament, for its approval, and is therefore arbitrary and inconsistent with Article 12(1).

The Additional Solicitor-General submitted that Clause 106 will be deleted and substituted with the following Clause 106(1) – (4);

“(1) The rules or orders made by the Central Bank under this Act shall be published in the Gazette and shall take effect on the date of such publication or on such later date as such rules or orders shall specify.”

“(2) Upon the publication under subsection (1), every rule or order, the contravention of, or failure to comply with which entails criminal sanction shall, within three months from the date of publication, be placed before Parliament for approval.”

“(3) Any rule, or order which is not so approved shall be deemed to be rescinded as from the date of such disapproval, but without prejudice to anything duly previously done thereunder.

(4) Notification of the date on which any rule or order is deemed to be rescinded shall be published in the Gazette.”;

The effect of the proposed Clause 106(3) is to create an offence with retrospective effect. Any rule or order placed before Parliament in terms of the proposed Clause 106(2) must come into effect only upon such rule or order being approved by Parliament.

Therefore, the proposed sub-clauses 3 and 4 must be deleted.

In addition, the sentence, ‘Such rule or order shall become effective only upon it being approved by Parliament’ must be added at the end of the proposed Clause 106(2). If Clause 106 as proposed by the learned Additional Solicitor General is amended in the above manner, Clause 106 shall cease to be inconsistent and the clause may be passed with the simple majority of Parliament.

Clause 107

Clause 107 states;

“(1) The Central Bank may take administrative measures on any person who contravenes any of the provisions of this Act or any rule, direction or decision made or issued thereunder.

(2) The Central Bank shall, before taking any administrative measures against a person, afford such person an adequate opportunity to be heard providing all material facts pertaining to the contravention referred to in subsection (1).

(3) (a) The Central Bank may make rules specifying the procedure to be followed in respect of the imposition of administrative measures.

(b) In the case of administrative fines, the amount of administrative fines shall be prescribed by the Governing Board.

(4) In determining whether to impose administrative measures, and the extent of such measures, the Central Bank shall take into consideration-

(a) the severity of the contravention and whether such contravention is recurring;

(b) whether any loss or damage is caused to the depositors or any other person due to such contravention;

(c) whether the person against whom a penalty is to be imposed is unduly benefitted from such contravention;

(d) the financial resources of such person;

(e) any mitigating factors; and

(f) such other matters as it considers to be relevant.

(5) Notwithstanding anything in any written or other law, no person shall 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

other person by reason of any act or thing done or omitted to be done by such person in carrying out or complying with any provision of this Act or any rule, order or direction made or issued under this Act.

(6) For the purpose of this section, "administrative measures" includes administrative fines, written warnings or orders, suspension and dismissal of administrators of financial institutions, revocation of licences and other measures, as specified in this Act or in any other relevant law."

The Additional Solicitor-General submitted that Clause 107(3)(a) will be amended as follows:

"The Central Bank shall make rules specifying the procedure to be followed in respect of the imposition of administrative measures."

However, neither Clause 106 nor Clause 107 require any Rule that empowers the Central Bank to impose a penalty as part of the administrative measures it could take be placed before Parliament. Clause 107(3) is therefore arbitrary and inconsistent with Article 12(1).

The said inconsistency shall however cease if Rules made under Clause 107(3)(a) are placed before Parliament for its approval and such rules becoming effective only upon it being approved by Parliament. Clause 106 shall therefore be amended accordingly.

Clause 108

Clause 108 of the Bill *inter alia* states;

"(8) 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 mutatis mutandis apply in the case of any such appeal: Provided however, an order under paragraph (a) of subsection (7) shall be final and shall not be subject to appeal.

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

(10) In this section, “competent court”, in relation to any banking institution, means the District Court of Colombo or, the District Court of the district in which the principal office in Sri Lanka of the banking institution is maintained”.

The learned Additional Solicitor-General submitted that the following amendments will be made to Clause 108 of the Bill at the Committee Stage.

Clause 108(3) will be amended to read as follows:

“(3) Subject to the provisions of Articles 126 and 140 of the Constitution, 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 (2) or in respect of any loss or damage incurred, or likely to be or alleged to be incurred, by reason of such order.”

Clause 108(10) shall be deleted and substituted with the following;

“(10) In this section, “competent court”, in relation to any banking institution, means the High Court established by Article 154P of the Constitution and exercising civil jurisdiction under the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996.”;

In terms of the above proposed amendment, an application for winding up shall be heard before the High Court established by Article 154P of the Constitution exercising civil jurisdiction. Clause 108(3) shall therefore have to be accordingly amended to provide for an appeal to the Supreme Court.

Clause 110

Clause 110 of the Bill states;

*“(1) Any person who contravenes or fails to comply with any provision of this Act or any rule, **order** or direction made or issued thereunder commits an offence under this Act.*

(2) Where an offence under this Act is committed by a body corporate, then every person who at the time of the commission of the offence was a director or an officer of such body corporate shall be deemed to have committed that offence unless such

person proves that the offence was committed without such person's knowledge, or that such person exercised all due diligence to prevent the commission of such offence."

This Clause sets out the offences and certain ancillary powers of the Central Bank in that regard.

The Additional Solicitor General submitted that the following amendments will be made to Clause 110 at the Committee Stage.

Clause 110(1) shall be deleted and substituted with the following:

"(1) Any person who contravenes or fails to comply with any provision of this Act commits an offence under this Act."

A new sub-Clause (2) shall be added:

"(2) Any person who contravenes or fails to comply with any provision of any rule or order made or issued thereunder contravention of, or failure to comply with which entails criminal sanction, commits an offence under this Act.";

Clause 111

The learned Additional Solicitor-General submitted that the following amendments will be made to Clause 111 at the Committee Stage.

By the insertion of the following new sub-Clause:

"111. Any person who commits an offence under this Act shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding twenty-five million rupees or to imprisonment of either description for a term not exceeding three years, or to both such fine and imprisonment"

By the amendment of Clause 111(1) in the following manner:

"(1) The Governing Board may, having regard to the circumstances in which the offence under this Act was committed, compound such offence for a sum of money not exceeding one half of the maximum fine specified under this Act for such offence."

Further, Clause 111(2) states that the Central Bank has the power to compound offences and such compounding of offences shall have the effect of an acquittal.

It is pertinent to note that compounding an offence which has the effect of an acquittal can be done by a competent court. Thus, the Central Bank which has no judicial power cannot compound an offence which has the effect of an acquittal.

Thus, compounding of an offence under Clause 111(2) which has the effect of an acquittal is inconsistent with Articles 3 and 4(c) of the Constitution. Hence, Clause 111(2) shall be approved by a special majority in Parliament as required by Article 84(2) and by the People at a Referendum in terms of Clause 83 of the Constitution. However, the said inconsistency will cease if the words “shall have the effect of an acquittal of the accused” is deleted.

Clause 112

The learned Additional Solicitor-General submitted that Clause 112(3) will be deleted and substituted with the following;

“(3) The Central Bank shall be reimbursed at market rates any expenditure incurred by it at the request of or on behalf of the Government, for rendering any service other than those specifically provided for in this Act”

Clause 113(2)(b)

The word “credit” in Clause 113(2)(b) of the Bill should be deleted and substituted with the word “loan”.

Clauses 119 and 120

Clause 119 of the Bill states;

“The Governor of the Central Bank, other members of the Governing Board and Monetary Policy Board or any employee of the Central Bank, including a person who previously held such a position shall not be liable for any damage or otherwise

liable for any act or omission done pursuant to and in the course of the exercise, performance and discharge of the powers, duties and functions on behalf of the Central Bank unless it has been proved that such damage, act or omission has been done without good faith or has constituted intentional wrongful misconduct or willful default.”

The learned Additional Solicitor-General submitted that Clause 119 of the Bill including the current marginal note shall be deleted, and substituted with the following at the Committee Stage.

“Protection from action”

“119. No civil or criminal proceedings shall be instituted against the Governor of the Central Bank, members of the Governing Board and Monetary Policy Board or any employee of the Central Bank, including a person who previously held such a position, for any act which in good faith is done or purported to be done by him under this Act pursuant to and in the course of the exercise, performance and discharge of the powers, duties and functions on behalf of the Central Bank, if he proves that he acted in good faith and exercised all due diligence, reasonable care and skill.”;

Clause 120 of the Bill states;

“(1) The Governor of the Central Bank, other members of the Governing Board and Monetary Policy Board, employees of the Central Bank, every person who has been a member of any of such Board or an employee of the Central Bank shall be indemnified by the Central Bank for all losses and expenses incurred by him in or about the exercise, performance and discharge of his powers, duties and functions under this Act, other than such losses and expenses as the Governing Board may deem to have been constituted due to his misconduct or willful default.

(2) For the purpose of subsection (1), every person who has the benefit of such indemnity shall be entitled to seek legal advice or obtain legal representation in respect of any inquiry or investigation conducted by any statutory authority or any legal proceedings instituted against such person. The Central Bank shall pay such cost as may be reasonably incurred in respect of such inquiry or investigation or proceedings, as and when such cost is incurred.

Provided however, where it is held that a person is not entitled to be indemnified by the Central Bank due to misconduct or willful default on the part of such person, he shall be forthwith required to reimburse the Central bank on demand, the total cost so incurred by the Central Bank. The amount so demanded shall constitute a debt due from such person to the Central Bank until reimbursed.

[emphasis added]

The phrase “every person who has been a member of any of such Board or an employee of the Central Bank” does not specify whether it applies to existing cases. Thus, the said Clause is vague and therefore, violates Article 12(1) of the Constitution. Therefore, the said Clause should be passed with a special majority in Parliament in terms of Article 84(2) of the Constitution. However, the said inconsistency will cease if the said Clause is amended to state that the said indemnity will come into operation after the enactment of the Bill.

Clause 123

Clause 123 of the Bill states;

“bank” means any commercial bank or specialized bank licensed under the Banking Act, No. 30 of 1988;

The learned Additional Solicitor-General submitted that the following amendments will be made to Clause 123 at the Committee Stage:

(1) *“the definition of ‘bank’ shall be deleted;”*

(2) *“‘resident’ means –*

(d) a branch, subsidiary, affiliate, extension, office or any other unit of a company or other judicial person established by or under the law of any foreign country and operating in Sri Lanka;”

(3) Sub-Clause (c) under the definition of “banking institution” will be deleted and sub-Clause (d) under the same definition shall be amended to read as follows:

“(d) any other person or body of persons 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 this Act”

- (4) Clauses (k), (l), (m), (n) under the definition of the term “financial sector participant” shall be amended in the following manner:

“(k) any stock exchange within the meaning of the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021;”

(l) any stock broker or stock dealer within the meaning of the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021;

(m) any managing company operating a unit trust within the meaning of the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021;

(n) any person who carries on business as a market intermediary within the meaning of the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021; or”

- (5) Clause (d) under the definition of the term “resident” shall be amended to read as:

“(d) a branch, subsidiary, affiliate, extension, office or any other unit of a company or other legal person established by or under the law of any foreign country and operating in Sri Lanka”

Clause 133

The Additional Solicitor-General submitted that Clause 133(k)(i) will be amended at the Committee Stage to read as follows:

“(k) (i) all property immovable and movable, and tangible and intangible, of the Central Bank (including cash balances, reserve funds, investments, intellectual property, and deposits);

Determination

We have examined the other provisions of the Bill and are of the opinion that, subject to the above, none of the provisions in the Bill are inconsistent with the Constitution.

Therefore, we make our determination that the Bill can be passed by a simple majority in Parliament, subject to the amendments stated above.

We wish to place on record our sincere appreciation for the assistance given by the learned Additional Solicitor General and the learned counsel for the petitioners and the intervenient-petitioners in the consideration of the Bill.

We also wish to place on record our sincere appreciation to Dr. Nandalal Weerasinghe, Governor of the Central Bank for assisting court in making this determination.

Priyantha Jayawardena PC
Judge of the Supreme Court

Kumudini Wickremasinghe
Judge of the Supreme Court

Arjuna Obeyesekere
Judge of the Supreme Court