

Central Bank's Mandatory Code of Corporate Governance for Licensed Banks - *Relevant Issues*

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- When the Central Bank imposes a Code of Corporate Governance on Licensed Banks, ought it not itself, in the first instance, set an example by adhering to and complying with conditions contained in the Code *vis-à-vis* the functioning of the Central Bank, itself ?
- Ought not rules / criteria, including qualifications to be a person 'fit and proper' to be a Director of a Licensed Bank, apply even more strictly to Members of the Monetary Board, setting an example, if the same are to be applied to Licensed Banks ?
- Attached copy of the damning 2005 COPE Report, discloses the 'shocking' functioning of the Central Bank, itself ! Ought not the Central Bank, in the first instance, put its own house in order, if it is to enforce compliance by Licensed Banks, it supervises ? Though the 2007 Cope Report got public 'exposure' because the Chairman COPE went public with it, the 2005 COPE Report is far worse and has gone unnoticed except for the recent appointment of a Presidential Commission to investigate into 'failed finance companies' reported therein !
- How did the Central Bank grant a Banking License to person/s, who were Directors of a 'failed finance company', which had borrowed from and defaulted very heavily to the Central Bank ?
- Thereafter, after a heavy 'fine' having been imposed by the Central Bank for violation of foreign exchange dealings by such Bank, how did a Secretary to the Treasury, a Member of the Monetary Board, 'ridiculously' compound such 'fine' ? Did the Central Bank grant another Banking License and permit collection, and/or disbursement of funds, prior to grant of such License to operate ?
- A Governor of the Central Bank once 'suppressed' the known facts and made an 'incorrect statement' on a matter of national economic importance to the former Prime Minister and other Ministers, in the presence of Secretary to the Treasury / Monetary Board Member, and the other Officials of the Central Bank ! Likewise did not the present Central Bank Governor been misled to repeat such 'incorrect statement' before the President, and thereafter plead 'unawareness' of an Exchange Controller's report, which had revealed otherwise ?
- Section 3.5 does not specify a Court of Law. Why ? Ought not both Sections 3.4 and 3.5 include a Court of Law, inasmuch as, it has a far graver level of gravity, above regulatory authorities, professional associations, commissions, tribunals, *et al*, since charges are either framed by a Magistrate or an indictment filed by the Attorney General ? Recently the Central Bank took refuge under this 'loophole', to questionably evade dealing with persons criminally charged before a Magistrate's Court !
- Would a person declared by a Court of Law to be, not a 'fit and proper' person, to be a Director of a specific Company in the background of financial manipulations, be disqualified in terms of Section 3.6 ? If not, how and why ? How could such person be permitted to be a Director of a Licensed Bank, when a High Court declares in the Judgment that such a person is not a 'fit and proper' person to be a Director of a specific Company, in the circumstances before Court ?
- Reliance is 'misplaced' on professionals, taken for granted that they all 'conform' to 'professional standards' of conduct expected of them ! In reality, this has proven to be otherwise! The 2005 and 2007 COPE Reports bear ample testimony to such fact.

- In fact, the Central bank at the time finance companies were failing published notifications in the media in the 1980s, specifically cautioning and/or warning audit firms auditing finance companies !
- Ought not the question of Audit Firms carrying out assignments for other Companies of a Director of a Bank, be also a factor to be taken into reckoning, where material, if such Audit Firm is also an Auditor of the Bank, *vis-à-vis*, Section 6 ?
- The Attorney General had been reluctant to permit the law enforcement authorities to arrest a Banker, on the premise that it may 'impact the national economy' ! Subsequently the Bank in fact crashed but it did not 'impact the national economy' ! However, the suspect decamped, with the law enforcement authorities now resorting to international endeavours to arrest !
- In another instance, the Exchange Controller was coerced intriguingly by the Attorney General to reluctantly issue a letter during the pendency of a Court Case, that 'special permission' had been given under the Exchange Control Act, whereas no such 'special permission' had been given. In fact the Exchange Controller had queried the very same matter previously, whilst the Monetary Board curiously remained passive !
- Does Section 9 imply that State Banks, such as Bank of Ceylon, People's Bank (are not several Co-operative Societies shareholders ?) and other Banks set-up under other Statutes are exempted from complying with the Code of Corporate Governance ? This should not be so, because there should be a 'level playing field', since all such Banks are competing in 'one market place', with identical business activities !
- Would not such unjust discrimination and unequal treatment be violative of the fundamental right to equality guaranteed under the Constitution, entitling a Licensed Bank to seek redress in Court ?
- Ought not State owned Banks also be subject to the mandatory code imposed on other Licensed Banks, particularly in relation to Board appointed Committees including a 'Nomination Committee' vide Section 6.4 and Related Party incidence vide Section 7, specially *vis-à-vis* political patronage, interference, influence and subservience ? Is this not a nationally important issue ? Is the Central Bank, an independent autonomous authority, unable to deal with the same ? Or is that the Central Bank too is subject to such political nuances ?
- The mere conversion of such Banks under Conversion Act No. 23 of 1987 to function as public companies under and in terms of Companies Act No. 7 of 2007, would subject such Banks and their Directors to comply with and conform to the statutory provisions *vis-à-vis* duties and responsibilities of Directors, including conflict of interest and related transactions.
- A General Manager of a State Bank was found guilty of corruption by the Commission to Investigate Allegations of Bribery or Corruption, with no action taken thereon by the Government on the intervention of the then Minister of Justice, resulting in the resignation forthwith of a respected retired Auditor General, as a Member of such Commission ! This was of no concern to the Central Bank, which now is propounding the enforcement of a mandatory Code of Corporate Governance !
- Whilst Shareholder interests are protected, and interests of Depositors are 'intended to be protected', ought not the Depositors also have the right to elect one or more Directors, depending on the Equity to Deposit base, to the Boards of Banks, as representatives of the Depositors ? Would this not be more 'cogent', than the concept of 'independent' Directors ?
- Similarly, ought not the Depositors be given the right to appoint a separate firm of Auditors to audit their respective Banks and afford them a report ? If not annually, at least once in three years ? After all, it is the Depositors, who are at the greatest risk, and who come forward 'crying for justice', when Banks crash !

- One ought to take cognizance of the social 'ground realities' prevalent in the country and have the courage to think and act 'innovatively', regardless of practices prevalent in other countries !
- Ought not a similar Code of Conduct be enforced on Licensed Finance Companies, who are also supervised by the Central Bank, and the Depositors thereof given similar rights, as above ?
- Ought not the Central Bank check and verify the correctness of colossal costs incurred by Licensed Banks in putting up buildings, particularly 'mega structures', and incurring capital expenditure, where in one instance, 'cost over runs' were alleged to be over 25% of the original costs ? Inasmuch as, non-performing debts of far less value is subject to 'probity' by the Central Bank, how is that the Central Bank turns a 'nelsonian eye' to such expenditure, without any question ?
- Have not Licensed Banks been raising Share Capital / Debentures to conform to Central Bank's stipulations, in certain instances affording Overdrafts / Loans to its own Customers, encouraging them to invest in its such Shares / Debentures, even incentivising its own Staff for such endeavours ? Ought not the Central Bank have monitored such instances ?
- Ought not 'write-off' of debts by a Bank due from a company, directly or indirectly controlled by a Director of a Bank be prohibited ?
- Ought not conflicts of interest under Section 7, also include situations, where a Bank Director would be participating in a decision pertaining to a 'competitor' of his other businesses ? What is the precaution to prevent a Bank Director from using to his 'advantage' a competitor's information obtained as a Director of a Bank and also surreptitiously 'stifling' the business through the decision making process of a Bank ? An instance reported to the Central Bank was evaded !
- A bank bifurcated one share portfolio lodged as security for an overdraft, with the General Manager giving a purported Proxy to the Chairman on one part of such Shareholding, and the Attorney of the Shareholding given the right to vote on the balance part, thereby recognizing the presence at the Meeting of the Attorney of the Shareholding, in violation of the *ex-facie* prohibition in Section 133 of the Companies Act No. 7 of 1982, where a Proxy can be present only when the Shareholder is absent, and a Shareholder cannot appoint more than one Proxy !
- In any case, could a Bank, exercise the 'voting right' of Shares lodged as security, inasmuch as a Bank would not have the right to occupy the building mortgaged ?
- Attention is drawn to the 'dicta' by a 5-Member Bench of the Supreme Court in SC / SD Nos. 22 and 23 of 2003 pertaining to Debt Recovery under Act No. 2 of 1990 and 'parate execution' under Act No. 4 of 1990. It was upheld that there was violation of the 'fundamental right to equality', and that Banks in violation of the Constitution, have usurped the right and denied access to the judiciary enshrined in Article 105 of the Constitution, referring to the said Laws as - "harsh, oppressive and unconscionable"! Ought not Central Bank have taken cognizance of the Supreme Court 'dicta' and have rectified the same ?
- Ought not the Central Bank monitor or cause the monitoring of the 'parate execution' of property by Banks, and as to how such properties are disposed of by Banks through 'private treaty', sometimes even affording loans to the buyers, and further as to whether, there has been any 'conflict of interest' between such buyer and Bank Official/s and/or Director/s ?
- A Code of Corporate Governance on mere paper without punitive action taken for breaches thereof, would be meaningless ! How many Licensed Banks supervised by the Central Bank, let alone having taken action against 'banking professionals', at least have investigated 'reckless lending' by 'banking professionals' ?