Way forward for good governance

Institute of Directors reveal conclusions of the closed-door meeting following Pramuka debacle

The Sri Lanka Institute of Directors (SLID), took up for discussion the recent problems associated with the closure of a deposit taking financial institution. The Institute felt obliged to discuss the issue since the closure of such an institution shakes the confidence of the public in the very functioning of the corporate sector and more particularly on the role and responsibility of directors in a deposit taking institution. However, in view of the sensitivity of the issue and the need to follow the sub-judice principles, the discussion was held "closed door" with the participation of an experienced panel of professionals drawn from the Institute's membership.

The discussion centered on trying to identify to what extent if any governance issues contributed to the problems and eventual closure of the particular financial institution.

After much deliberation, the following conclusions and initiatives were agreed upon as a way forward strategy.

1. Early action, in association with Institute of Chartered Accountants of Sri Lanka (ICASL), to publish a Code of Governance and support its adoption and implementation by members of SLID and thereafter by the business community in general.

2. To propose that all deposit taking Institutions of a specified asset size, preferably be listed companies (or at least voluntarily adopting the codes of transparency, disclosure and governance applicable to listed companies), so as to improve fiscal and transparency obligations.

Deposit taking institutions with assets over a specified amount, pending the implementation of the process of public listing to be invited to register with the Sri Lanka Accounting and Auditing Standards Monitoring Board as supervised institutions.

3. Request the Central Bank and other Regulatory Institutions to take early action against the management and or the Board of Directors of deposit taking institutions, which continue to flout directions given to them, long before such institutions become unviable and/or insolvent. It was duly recognised that, it was a poor consolation to inform not so well informed depositors, that they could not warn them before, since such notice could have itself triggered a run on the deposit taking institutions. The Directors and Management of a public deposit taking institution be required to call up a meeting of shareholders and depositors no sooner -

a) the company is unable to comply within a reasonable time the solvency

and other key financial stability criteria set by the supervising authority; or

b) the company is unable to comply within a reasonable time with

specific directions issued by the supervising authority.

As depositors have the right to expect appropriate conduct on the part of an institution duly licensed by the Central Bank or other regulatory authority to carry on the business of a deposit taking, the relevant Regulatory Authority to take strict action against the management and/or the Board of Directors of an institution that repeatedly flouts its directions, long before such institutions become unviable.

4. It is of critical importance that persons in the positions of Directors and Senior Managers of public deposit taking institutions be "fit and proper persons". SLID will in due course issue a guideline defining broadly a fit and proper person. In this connection SLID is examining the "fit and proper person" definition in the amendment to the Banking Act and the definition of the Bank for International settlement.

These guidelines need to ensure that supervisors of entities within a financial conglomerate are able to exercise their responsibilities to assess whether those entities are soundly and prudently managed and directed and whether key shareholders are not a source of weakness to those entities. The objective is to ensure that those in these positions possess a high degree of integrity and adequate experience, education,

training, commitment and competence to offer a better protection to depositors and shareholders.

In order that stakeholders understand the profile of the directors and that they fit the criteria of "fit and proper persons" as described earlier, all listed companies, appointing a director of a company taking in public deposits, will be required to advertise the profile in

newspapers and also publish same in Annual Reports. In these instances, it is imperative that the existing directors nominating a new director express the firm view of the board that such appointees pass the test of "fit and proper persons".

SLID appreciates the difficulties in defining the term "fit and proper person" since a person who may answer some predetermined criteria may change his conduct in the future. Accordingly, the real test of a "fit and proper person" is future actions. After having approved an individual as eligible for appointment as a director of a financial institution, the relevant Regulator should act on the premise that such person ceases to be a "fit and proper person", the moment he/she violates directions given by the Regulator.

5. Grant statutory powers to auditors to report to the regulators and the shareholders, the non-submission of signed accounts to the auditors by the Board of Directors after a specified period of the closure of the financial year and where they believe the institution does not comply with solvency criteria set by the Regulation or is likely to face issues

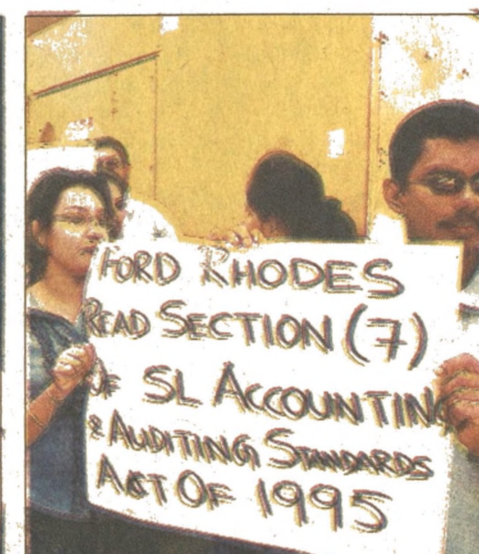
connected with being duly classified as a going concern.

6. Encourage the conduct of a vigorous public awareness campaign on the relationship between risk and reward, short vs. long term returns, auditor's comments, etc. SLID will also encourage all institutions seeking public deposits to state in advertisements -

a) whether the institution is duly licensed/registered and regulated by

an appropriate regulatory authority;

b) the basis and conditions governing the computation of the advertised return to depositors.



Pramuka Chairman and CEO Rohan Perera (top) mobbed by depositors soon after the suspension of the operations of the specialised bank and before he left the country. Below left a security officer of Central Bank guarding the closed head office of Pramuka and on right Pramuka depositors protesting outside the offices of its auditors KPMG Ford Rhodes Thornton. (Library photos.)