



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

SECURITIES EXCHANGE

**A
BILL**

to establish the Securities and Exchange Commission of Sri Lanka; to regulate market institutions, public offers of securities, market intermediaries; to deal with market misconduct; and to meet the challenges encountered by securities markets in an effective and efficient manner and to repeal the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987 and for matters connected therewith or incidental thereto.

*Presented by Prime Minister and Minister of National Policies and
Economic Affairs on 06th of December, 2017*

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Contents

<i>Section</i>	<i>Title</i>	<i>Page</i>
1.	Short title and date of operation	1
2.	Application of the Act	1
3.	Interpretation	2
PART I		
ESTABLISHMENT OF THE COMMISSION		
4.	Object and purpose of this Part	16
CHAPTER 1		
Securities and Exchange Commission of Sri Lanka		
5.	Establishment of the Securities and Exchange Commission of Sri Lanka	17
6.	Constitution of the Commission	17
7.	Term of office of appointed or nominated members	18
8.	Resignation, disqualifications from being a member of the Commission and removal	18
9.	Remuneration of members	20
10.	Meetings of the Commission	20
11.	Chairman of the Commission	21
12.	Members to disclose any interest	21
13.	Proceedings, acts or decisions not invalidated by reason of a vacancy	21
14.	Seal of the Commission	21
CHAPTER 2		
Powers, Duties and Functions of the Commission		
15.	Principal functions, powers and duties of the Commission	22
16.	Additional powers of the Commission	24
17.	Representation of the Commission in legal proceedings	25
CHAPTER 3		
Director-General and Staff of the Commission		
18.	Director-General	26
19.	Staff of the Commission	27

<i>Section</i>	<i>Title</i>	<i>Page</i>
20.	Appointment of officers of public corporations to the staff of the Commission	28
21.	Members, officers and servants of the Commission deemed to be public servants	29
22.	Commission deemed to be a Scheduled Institution within the meaning of the Bribery Act	29
PART II		
MARKETS AND MARKET INSTITUTIONS		
23.	Object and purpose of this Part	29
CHAPTER 1		
Exchanges		
24.	Prohibition against establishing an unlicensed exchange	30
25.	Application to operate an exchange	30
26.	Duties of the Exchange	33
27.	Cancellation of licence of an exchange	34
28.	Effect of cancellation of the licence of an exchange	37
29.	Closure of the exchange in an emergency	37
30.	Listing requirements of a licensed exchange	38
CHAPTER 2		
Clearing House		
31.	Interpretation	40
32.	Prohibition against establishing an unlicensed clearing house	41
33.	Application for a licence to establish or operate a clearinghouse	42
34.	Duties of a Clearing House	44
35.	Cancellation of licence of a clearing house	45
36.	Effect of cancellation of licence to a clearing house	48
37.	Default rules	49
38.	Default proceedings of a clearing house to take precedence	49
39.	Supplementary provisions relating to default proceedings	50
40.	Duty to report on completion of default proceedings	50
41.	Net sum payable on completion of default proceedings	51

<i>Section</i>	<i>Title</i>	<i>Page</i>
42.	Right of relevant office holder to recover certain amounts arising from certain transactions	51
43.	Clearing Member to be party to certain transactions as principal	53
44.	Market collateral delivered to a clearing house	54
45.	Application of collateral subject to a market charge	54
46.	Transfer of Securities in settlement	54
47.	Purchase and sale of securities	55
48.	Defences in criminal or civil liability	55

CHAPTER 3

Central Depository

49.	Prohibition against operating an unlicensed central depository	56
50.	Application to operate a central depository	56
51.	Duties of a central depository	58
52.	Cancellation of licence of a central depository	58
53.	Effect of cancellation of licence of a central depository	61
54.	Securities Account	62
55.	Book entry securities lodged with the central depository	62
56.	Record of entry in depositor's account	62
57.	Effect of securities held in trust by the central depository	62
58.	Validation	63

CHAPTER 4

General Provisions

59.	Rules of a market institution	63
60.	Power of Court to order observance or enforcement of rules of market institutions	65
61.	Control of substantial shareholders of a market institution	65
62.	Power of the Commission to make a preliminary order to impose prohibition	66
63.	Appointment of directors to a market institution	68
64.	Alteration of material particulars of a market institution	70
65.	Rights of an exchange or a clearing house	70
66.	Defence in criminal or civil liability	70
67.	Provision of assistance to the Commission	71

<i>Section</i>	<i>Title</i>	<i>Page</i>
68.	Annual reports	71
69.	Duties of an auditor of a market institution	72
70.	Obligation to submit periodic reports	74
71.	Payment of annual fee	74
72.	Prohibition against holding out	74
73.	Power of the Commission to review its own decision	74
 PART III 		
ISSUE OF SECURITIES		
74.	Object and purpose of this Part	74
 CHAPTER 1 		
Trade in Securities		
75.	Offer of Securities	75
76.	Approval of the Commission for issue of securities	76
77.	Prospectus or similar document	77
78.	Commission to issue stop orders	77
79.	Purchase, sale or transfer of securities	79
80.	Power of the Commission to require the production of documents	79
81.	Power of the Commission to issue directives to listed public companies	82
82.	Duty not to furnish false information to the Commission	82
83.	Duty not to make false statements to market institutions	83
84.	Appointing Directors or Chief Executive Officer	83
85.	Duties of an auditor of a listed public company	83
86.	Prohibition against undue influence	85
 CHAPTER 2 		
Market Intermediaries		
87.	Prohibition against holding out as a market intermediary	86
88.	Requirement to be licensed with the Commission	86
89.	Application for a licence or renewal of a licence as a market intermediary	86

<i>Section</i>	<i>Title</i>	<i>Page</i>
90.	Refusal to grant or renew a licence	87
91.	Minimum financial requirement	90
92.	Requirement to register with the Commission	90
93.	Application for registration or renewal of registration	90
94.	Grounds for refusal to register or renew registration	91
95.	Power to vary conditions or restrictions	93
96.	Duration of licence or registration	93
97.	False and misleading statements to the Commission	94
98.	Duty to notify the Commission	94
99.	Prohibition against holding out as an agent	95
100.	Cancellation or suspension of licence or registration	95
101.	Trading in securities by market intermediaries	96
102.	Lending and borrowing of securities without the consent of the client	96
103.	Duty of an auditor of a market intermediary	97

CHAPTER 3

Protection of Clients' Assets

104.	Interpretation	98
105.	Protection of client's assets	98
106.	Rules on business conduct	99
107.	Liability for unreasonable recommendations	100
108.	Disclose certain interests in securities	101
109.	Internal procedures and processes	103
110.	Register of market intermediaries and registered persons	103

PART IV

TRADE IN UNLISTED SECURITIES

111.	Object and purpose of this Part	104
------	---------------------------------	-----

CHAPTER 1

Establishment of a recognized Market Operator

112.	Establishment of a market operator	104
113.	Requirement to register a market operator	105
114.	Application for registration	105

<i>Section</i>	<i>Title</i>	<i>Page</i>
CHAPTER 2		
Role of a recognized Market Operator		
115.	Functions and duties of a recognized market operator	105
116.	Trading on a platform	106
117.	Rules to be made by the Commission	106
118.	Withdrawal of registration	107
119.	Review of the performance of a recognized market operator	108
120.	Exemption for market operator	108
121.	Application of the provisions of the Act to unlisted securities	108
PART V		
MARKET MISCONDUCT		
122.	Object and purpose of this Part	109
123.	Application of this Part	109
CHAPTER 1		
Prohibited Conduct		
124.	False trading and market rigging transactions	110
125.	Stock market manipulations	112
126.	False or misleading statements	112
127.	Fraudulently inducing persons to deal in securities	113
128.	Use of manipulative and deceptive devices	113
129.	Exempt certain class of transactions	114
130.	Penalty for offences	114
CHAPTER 2		
Insider Trading		
131.	Information	114
132.	Information generally available	115
133.	Material effect on price or value of securities	115
134.	Reference to “procure”	115
135.	Prohibited conduct of person in possession of inside information	115
136.	Information in possession of an officer of a company	117

<i>Section</i>	<i>Title</i>	<i>Page</i>
137.	Information in possession of a partner or an employee of partnership	119
138.	Exceptions in relation to underwriting and sub underwriting	121
139.	Exceptions in relation to schemes of arrangement	121
140.	Exception for a company with knowledge of its intention	122
141.	Exception in relation to an individual	122
142.	Unsolicited transaction by market intermediaries	123
143.	Exception in relation to collective investment schemes	123
144.	Parity of information defence	124
145.	Prosecution need not disprove the defences	125
146.	Jurisdiction of the Courts	125
147.	Who may prosecute	125
148.	Civil liability for contravention of certain sections	125
149.	Civil action by the Commission	125

PART VI

FINANCE

150.	Object and purpose of this Part	128
------	---------------------------------	-----

CHAPTER 1

Funds of the Commission

151.	Levy of a Cess	129
152.	Cess Fund	129
153.	Fund of the Commission	130
154.	Financial Year	130
155.	Audit of Accounts	131

CHAPTER 2

Fund to Provide Compensation to Investors

156.	Compensation Fund	131
157.	Appointment of Compensation Committee	131
158.	Application for Compensation	132
159.	Payment of Compensation	132

<i>Section</i>	<i>Title</i>	<i>Page</i>
PART VII		
GENERAL		
160.	Object and purpose of this Part	133
CHAPTER 1		
Provisions relating to the Institutional Framework		
161.	Production of documents and disclosure of information	133
162.	Inquiries and investigations	134
163.	Issue of freezing orders	136
164.	Inquiry by Complaints Management Committee	137
165.	Supplementary service providers	138
166.	Implementation of agreements or MOUs	139
167.	Sharing of information and cooperation	139
168.	Whistleblower protection	141
169.	Furnishing of information to the Minister	141
170.	Protection for action taken under the Act	142
CHAPTER 2		
Provisions relating to the Enforcement Mechanism		
171.	Offences	142
172.	Acts applicable to criminal process	144
173.	Compounding of offences	145
174.	Power of the Commission to impose administrative sanctions	145
175.	Power of the Commission to protect investors' assets	148
176.	Power of the Commission to apply to Court for certain orders	150
177.	Power of the Commission to recover damages on behalf of investors	153
178.	Power of the Commission to publish information	155
179.	Regulations made by the Minister	155
180.	Rules made by the Commission	156
181.	Derivatives not gaming or wagering contracts	158
182.	Repeals, savings and transitional provisions	158
183.	Sinhala text to prevail in case of inconsistency	162

Securities Exchange

L.D.—O. 8/2017

AN ACT TO ESTABLISH THE SECURITIES AND EXCHANGE COMMISSION OF SRI LANKA; TO REGULATE MARKET INSTITUTIONS, PUBLIC OFFERS OF SECURITIES, MARKET INTERMEDIARIES; TO DEAL WITH MARKET MISCONDUCT; AND TO MEET THE CHALLENGES ENCOUNTERED BY SECURITIES MARKETS IN AN EFFECTIVE AND EFFICIENT MANNER AND TO REPEAL THE SECURITIES AND EXCHANGE COMMISSION OF SRI LANKA ACT, NO. 36 OF 1987 AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

1. (1) This Act may be cited as the Securities Exchange Act, No . of 2017. Short title
and date of
operation.

5 (2) The provisions of this Act, other than this section, shall come into operation on such date or dates as the Minister may appoint by Order published in the *Gazette*. Different dates may be appointed by the Minister for the coming into operation of different Parts of this Act.

10 (3) The provisions of subsection (2) shall come into force on the date the certificate of the Speaker is endorsed in terms of Article 79 of the Constitution.

(4) In the interpretation of this Act, the objects and purposes stated at the beginning of each Part shall be taken
15 into account in a holistic manner and shall not be confined only to that Part.

2. This Act applies to listed public companies and listed foreign entities except as otherwise provided in this Act. Application
of the Act.

3. In this Act, unless the context otherwise requires – Interpretation.

“accredited investor” includes-

- (i) an individual -
 - 5 (a) whose net personal assets, excluding primary residential property, exceeds two hundred million rupees in value or a higher value as may be determined by the Commission; or
 - 10 (b) whose average annual income in the preceding three years is not less than thirty million rupees or a higher value as may be determined by the Commission; and
 - 15 (c) who makes a declaration on his experience, ability and sophistication to take on the investment risk;
- (ii) a corporate entity with net assets exceeding one thousand million rupees in value as determined by-
 - 20 (a) the most recent audited balance sheet of the entity; or
 - 25 (b) in the absence of the audited balance sheet, the most recent balance sheet of the corporate entity certified by the entity as giving a true and fair view of the state of affairs of the entity as of the date of the balance sheet, which date shall be within the preceding twelve months;
- 30 (iii) the trustee of a trust as the Commission may specify when acting in that capacity; or

- (iv) such other institution as the Commission may specify by way of rules;

5 “central depository” includes a body corporate licensed by the Commission under this Act in order to establish and operate a system for central handling of securities on an exchange: –

10 (a) whereby all such securities are deposited with and held in custody by, or registered in the name of the person or his nominee for the depositors and dealings in respect of those securities are effected by means of entries in accounts without the physical delivery of scrips; or

15 (b) which permits or facilitates the settlement of securities transactions or dealings in securities without the physical delivery of scrips; and

(c) to provide other facilities and services incidental thereto,

20 but does not include –

(i) a central depository established by the Central Bank of Sri Lanka; or

25 (ii) any person providing, or holding out as providing, a central depository for exempt securities;

“clearing facility” means a facility for the clearing or settlement of transactions in securities;

“clearing or settlement” in relation to a clearing facility includes any arrangement, process,

mechanism or service provided by a person in respect of transactions by which —

- 5 (a) information relating to the terms of those transactions are verified by such person with a view to confirming the transactions;
- 10 (b) parties to those transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;
- 15 (c) the obligations of parties under those transactions are calculated, whether or not such calculations include multilateral netting arrangements; or
- (d) parties to those transactions meet their obligations under such transactions, including the obligation to deliver the transfer of funds or the transfer of title to securities between the parties,
- 20 but does not include -
- (i) the back office operations of a party to the transactions referred to in the above;
- 25 (ii) the services provided by a person who has, under an arrangement with another person (hereinafter referred to as the “customer”), who is in possession or control of securities of the customer, where those services are solely incidental to the settlement of transactions relating to
- 30 the securities; or

- (iii) any other services as may be specified by the Commission.

5 “clearing house” means a body corporate licensed under this Act and whose activities or objectives include the provision of clearing facilities;

10 “clearing member” means a person who is admitted as a clearing member by the clearing house for clearing and settlement on his own behalf or on behalf of others under the rules of a clearing house;

15 “collective investment scheme” includes any scheme or arrangement that satisfies the conditions under which a scheme or arrangement made or offered to the public by a company for which:-

(a) the contribution or payments made by the investors, by whatever name called, are pooled and utilized solely for the purpose of the scheme or arrangement;

20 (b) the contributions or payments are made to such scheme or arrangement by investors with a view to receive profits, income, produce or property whether movable or immovable from such scheme or arrangement;

25

(c) the investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis as may be determined by the parties;

30

(d) the property, contribution or investment forming part of the scheme or

provident societies and registered friendly societies; or

(xiv) any similar arrangement to the aforementioned schemes;

5 “controller” means a person who –

(a) is entitled to exercise or control the exercise of not less than twenty per centum of the votes attached to the voting shares in the holder; or

10 (b) has the power to appoint or cause to be appointed a majority of the directors of such holder; or

15 (c) has the power to make or cause to be made, decisions in respect of the business or administration of the market institution and market intermediary, and to give effect to such decisions or cause them to be given effect to;

20 “Court” means a High Court established under Article 154P of the Constitution for a Province, empowered with civil jurisdiction by Order published in the *Gazette* under section 2 of the High Court of the Provinces (Special Provisions) Act, No.10 of 1996, within the Province for which such High Court is established, or where no such High Court vested with Civil jurisdiction is established for any Province, the High Court established for the Western Province;

30 “delist” means to remove listed securities from the official list of an exchange;

“depository participant” means a person who has access to the facilities of a central depository and is admitted as a depository participant under the rules of a central depository;

5 “derivatives” include futures contracts consisting of an adjustment agreement, futures, options and eligible exchange traded option or any other agreement in a class of agreements specified to be a derivative by the
10 Commission, but shall exclude an agreement which is specified to be a derivative agreement that is not traded on a futures market of a derivatives exchange;

15 “derivatives exchange” means a body corporate licensed as a derivatives exchange under this Act;

20 “electronic record” means a written document or other record created, stored, generated, received or communicated by electronic means;

“exchange” means a stock exchange or derivatives exchange licensed under this Act;

25 “issuer” means a person who issues or proposes to issue securities by way of a public offer for sale;

“listed foreign entity” means an entity which is not incorporated in Sri Lanka and has been admitted to the official list of a stock exchange by way of a secondary listing;

30 “listed public company” means any company which has its securities listed on a stock exchange, and includes any public

corporation which has its securities listed on a stock exchange;

“listed securities” means, any securities listed on an exchange;

5 “manager” in relation to a body corporate means
a person who is appointed by the body
corporate to manage any part of its business
and includes an employee of the body
10 corporate (other than the chief executive
officer) who under the immediate authority
of a director or chief executive officer of the
body corporate, exercises managerial
functions or is responsible for maintaining
accounts or other records of the body corporate;

15 “margin account” means, an account that allows
an investor to buy or sell listed securities
generally serving as collateral to purchase
listed securities;

20 “market institution” means, an exchange, clearing
house or central depository licensed under
Part II of this Act;

25 “market intermediary” includes any person
licensed under section 89 as a credit rating
agency, derivatives broker, financial planner,
investment analyst, investment manager,
managing company, margin provider, market
maker, placement agent, stock broker, or any
other person who undertakes similar activity
and described by rules for the purpose of
30 issuing such licence by the Commission. For
the purposes of this definition-

(a) “credit rating agency” means a body
corporate engaged in the business of

assessing and evaluating the credit-worthiness of any issuer or a specific issue of securities;

- 5 (b) “derivatives broker” means any person engaged in the business of buying or selling of derivatives on behalf of investors in return for a commission;
- 10 (c) “financial planner” means any person engaged in the business of analysing the financial circumstances of another person and providing a plan to meet that other person’s financial needs and objectives including any investment plan in securities for a fee or commission;
- 15 (d) “investment analyst” includes any person engaged in the business of advising others concerning securities or as part of business issues or promulgates, analyses or reports concerning securities other than proprietors of newspapers that the Commission may prescribe in the rules;
- 20
- 25 (e) “investment manager” includes a person who for a fee or commission engages in the business of managing a portfolio of securities on behalf of an investor but shall not include the manager of a collective investment scheme;
- 30 (f) “managing company” means a company by which a unit of a collective investment scheme –
- (i) has been proposed to be issued or offered for subscription or purchase; or

- (ii) in respect of which an invitation to subscribe or purchase has been made;
- 5 (g) “margin provider” means a person who is in the business of providing credit to investors to purchase securities traded on an exchange;
- 10 (h) “market maker” means a person who enters bid and offer prices in the order book maintained in the automated trading system for a specified security based on the requirements stipulated by an exchange;
- 15 (i) “placement agent” means a person who intermediates between an issuer and investors in facilitating investment in the primary market and includes any person who purchases such issue from the company specifically with a view to offering such securities to the public;

20
- 25 (j) “stock broker” means any person engaged in the business of buying or selling of securities other than derivatives on behalf of investors in return for a commission;
- “market operator” means a person who establishes market infrastructure that facilitates trading, clearing or settlement of unlisted securities as provided in Part IV;
- 30 “Minister” means the Minister to whom the implementation of the provisions of this Act is assigned;

“offer” or “offering” includes any attempt to sell or dispose of any securities or interest in such security for value by means of a prospectus or otherwise, but does not include a *bona fide* invitation to any person, to enter into an underwriting agreement with respect to any such securities;

“private placement” means, an issue of securities to an identified investor or category of investors other than by way of a rights issue offered pro-rata to the existing shareholders or a general offer to the public for subscription;

“persons acting in concert” means, persons who pursuant to an agreement or understanding, whether formal or informal, co-operate, through the acquisition by any of them of any interests in shares in a company, or any other company, or to frustrate the successful outcome of an offer for a company.

Without prejudice to the general application of this definition, the following persons will be presumed to be persons acting in concert with each other unless the contrary is established to the satisfaction of the Commission -

(a) a company, its parent, subsidiaries and fellow subsidiaries, and their associated companies, and companies of which such companies are associated companies, and any person who has provided financial assistance (other than a bank in the ordinary course of business) to any of the aforesaid persons for the purchase of voting rights, all with each other;

(b) a company with any of its directors (together with their close relatives,

related trusts as well as companies controlled by any of the directors, their close relatives and related trusts);

5 (c) a company with any of its pension funds and employee share schemes;

(d) a fund manager with any investment company, unit trust or other person whose investments such fund manager manages; and

10 (e) a person, a person's close relatives and the related trusts of any of them, all with each other;

“prospectus” shall have the same meaning as in the Companies Act, No. 7 of 2007;

15 “public notice” means a notice of any matter that is required to be given under this Act, which shall be given by publishing a notice of that matter in at least one issue of the *Gazette* and in at least one issue of a daily newspaper in Sinhala,
20 Tamil and English languages, circulating within Sri Lanka;

“registered person” means any person dealing with clients for and on behalf of a market intermediary and who is registered by the Commission under
25 this Act;

“related company” means any subsidiary, associate or holding company or a subsidiary of the holding company of a body corporate;

30 “rights issue” means an issue of any shares or shares to be issued in the future, of a listed public company to existing shareholders of such

company, howsoever such issue is described or referred to, for consideration, and in proportion to the class of securities held by them in such company on the date of such offer;

5 “securities” include debentures, stocks, shares,
funds, bonds, units in a collective investment
scheme, derivatives inclusive of futures and
options, whatever the nature of the underlying
10 asset relied on or notes issued, or proposed to
be issued, by any Government or any body
corporate, including any rights, options or
interests (whether described as units or
otherwise) therein or in respect thereof or such
15 other product or class of products as the
Commission may prescribe, but does not
include such other product or class of products
as the Commission may prescribe as not being
securities;

20 “securities market” means a market or other place
or facility where –

- (a) offers to sell, purchase or exchange of securities are regularly made or accepted;
- (b) offers or invitations that are intended, or may reasonably be expected to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange of securities, are regularly made; or
- 25
30 (c) information concerning the prices at which or the consideration for which, particular persons, or particular class of persons, propose, or may reasonably be expected to sell, purchase or exchange securities is regularly provided;

“share” shall have the same meaning as is given in the Companies Act, No.7 of 2007 or as recognized in another jurisdiction as a share under its laws;

5 “stock borrower” means a person who is engaged in the business of borrowing securities;

“stock exchange” means a body corporate licensed as a stock exchange under this Act;

10 “supplementary service provider” includes an actuary, auditor, corporate finance advisor, custodian, trustee, underwriter, valuer, or such person as may be specified by the Commission who provides professional services to a market institution, market intermediary or listed public company. For the purposes of this definition-

15 (a) “corporate finance advisor” means any person who for a fee or commission engages in the business of providing advice, *inter alia*, on-

20 (i) compliance with or in respect of fund raising requirements as provided for under this Act;

25 (ii) compliance with the listing requirements of an exchange licensed under this Act;

(iii) structuring of financial products; or

(iv) schemes of arrangement, schemes of restructuring or takeover of a listed public company;

- (b) “underwriter” means any person who in connection with a public issue of securities of a listed public company or a company which has applied for a listing, guarantees to purchase unsubscribed securities of such company for a fee or commission or who negotiates with such company to purchase such securities in the event of the offer being not fully subscribed;

“trading participant” means a person who has access to the facilities of an exchange and is admitted as a trading participant under the rules of an exchange.

PART I

ESTABLISHMENT OF THE COMMISSION

4. The object and purpose of this Part shall be – Object and purpose of this Part.
- (a) to establish the Securities and Exchange Commission of Sri Lanka for the creation and maintenance of a fair, efficient and transparent securities market;
- (b) to protect the interests of investors both local and foreign;
- (c) to ensure the maintenance of high professional standards in the provision of services under this Act; and
- (d) to mitigate systemic risks in the financial system.

CHAPTER I

Securities and Exchange Commission of Sri Lanka

5 **5.** (1) There shall be established a Commission which shall be called the Securities and Exchange Commission of Sri Lanka (hereinafter referred to as the “Commission”).

Establishment of the Securities and Exchange Commission of Sri Lanka.

(2) The Commission shall, by the name assigned to it by subsection (1), be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name.

10 **6.** (1) The Commission shall consist of –

Constitution of the Commission.

15 (a) six persons from the private sector possessing professional expertise and standing in respect of matters relating to the securities market, special knowledge or wide experience and proven competency in the fields of law, finance, accounting, economics, banking or business to be appointed by the Minister as members (hereinafter referred to as “appointed members”) in order to reflect the multidisciplinary character of the Commission;

20 (b) three nominated members -

25 (i) a Deputy Secretary to the Treasury nominated by the Secretary to the Treasury;

 (ii) a Deputy Governor of the Central Bank of Sri Lanka nominated by the Monetary Board of Sri Lanka; and

30 (iii) a fellow of the Institute of Chartered Accountants of Sri Lanka who is not

engaged in auditing as nominated by the Council of the Institute of Chartered Accountants of Sri Lanka;

- 5 (c) the Registrar-General of Companies, appointed under the Companies Act, No. 7 of 2007 as an ex-officio member.

(2) The Minister shall nominate from amongst the appointed members of the Commission, one member to be the Chairman of the Commission.

- 10 (3) In appointing persons under subsection (1), the Minister shall have regard to-

- (a) that person's integrity and standing; and
- (b) the likelihood of any conflict between the interests of the Commission and any interest which that person has or represents.
- 15

7. Every appointed or nominated member of the Commission shall, unless he vacates office earlier by death, by operation of law, resignation or removal, hold office for a term of three years and shall be eligible for reappointment subject to a maximum period of two successive terms of office.

20

Term of office of appointed or nominated members.

8. (1) Any appointed or nominated member of the Commission may at any time resign his office by letter addressed to the Minister and such resignation shall take effect upon it being accepted by the Minister in writing.

Resignation, disqualifications from being a member of the Commission and removal.

- 25 (2) A person shall be disqualified from being appointed or nominated or from continuing as a member of the Commission if he -

- (a) is or becomes a member of Parliament, or a member of any Provincial Council or any local authority;

- (b) is or becomes a director, partner or employee of an entity licensed or registered by the Commission;
 - (c) is or becomes of unsound mind or incapable of carrying out his duties;
 - 5 (d) is or has become an undischarged bankrupt;
 - (e) is guilty of serious misconduct in relation to his duties;
 - (f) has been convicted of an offence which involves moral turpitude;
 - 10 (g) abuses his position so as to render his continuation in office detrimental to the interest of the Commission;
 - (h) in the case of the Chairman, if absent for three consecutive meetings except on leave granted by
15 the Minister;
 - (i) fails to comply with his obligations under the provisions of this Act; or
 - (j) has been previously removed from office under this section.
- 20 (3) In the event of vacation of office of any member other than an ex-officio member by reason of death, resignation, removal or the operation of provisions of subsection (5) hereof, the Minister may appoint another person having regard to the provisions of subsection (3) of section 6 to
25 hold office for the unexpired period of the term of office of the member whom he succeeds.
- (4) If any member of the Commission other than the Chairman is temporarily unable to perform the duties of his office for a period exceeding three months due to ill health

or absence from Sri Lanka or for any other cause, the Minister may appoint some other person to act in his place during such period having regard to the provisions of subsection (3) of section 6.

5 (5) An appointed or nominated member of the Commission who, without leave of the Commission first being obtained, absents himself from three consecutive meetings of the Commission shall be deemed to have vacated his office.

10 (6) The Minister in consultation with the Commission shall remove any member other than the ex-officio member if he becomes subject to any of the disqualification as set out in subsection (2).

15 9. The members of the Commission may be paid such remuneration out of the Fund of the Commission as may be determined by the Minister, in consultation with the Minister assigned the subject of finance. Remuneration of members.

20 10. (1) The Chairman of the Commission shall, if present, preside at all meetings of the Commission. In the absence of the Chairman from any such meetings, the members present shall elect one of the members to preside at such meeting. Meetings of the Commission.

(2) The quorum for any meeting of the Commission shall be five members.

25 (3) The Commission may regulate the procedure in regard to the meetings of the Commission and the transaction of business at such meetings.

30 (4) All questions for decision at any meeting of the Commission shall be decided by the vote of the majority of the members present. In the case of an equality of votes the member presiding shall have a casting vote.

11. (1) If the Chairman of the Commission is, by reason of illness or absence from Sri Lanka, temporarily unable to perform the duties of his office the Minister shall nominate another member of the Commission to act in his place.

Chairman of the Commission.

5 (2) The Chairman may at any time resign from the office of Chairman by a letter addressed to the Minister.

(3) Subject to the provisions of subsection (2), the term of office of the Chairman shall be his period of membership of the Commission.

10 **12.** A member who is directly or indirectly interested in any decision that is to be taken on any matter by the Commission shall disclose the nature of such interest at the meeting of the Commission where such decision is being taken, and such disclosure shall be recorded in the
15 minutes of the meetings of the Commission and such member shall not take part in any deliberation or decision of the Commission with regard to that matter, and shall withdraw from such meeting while such deliberation is in progress or such decision is being made.

Members to disclose any interest.

20 **13.** No proceeding, act or decision of the Commission shall be invalidated by reason only of the existence of a vacancy among its members or of any defect in the appointment of a member thereof.

Proceedings, acts or decisions not invalidated by reason of a vacancy.

25 **14.** (1) The seal of the Commission shall be in the custody of the Commission.

Seal of the Commission.

(2) The seal of the Commission may be altered in such manner as may be determined by the Commission.

30 (3) The seal of the Commission shall not be affixed to any instrument or document except in the presence of one member of the Commission and the Director-General of the Commission or in the absence of the Director-General, in the presence of any two members of the Commission, who shall sign the instrument or document in token of their presence.

CHAPTER 2

Powers, Duties and Functions of the Commission

15. For the purpose of carrying out its objects the Commission may exercise, perform and discharge all or any 5 of the following powers, duties and functions:–
- Principal Functions, Powers and Duties of the Commission.
- (a) to advise the Government on the development of the securities market and to assist in the effective implementation of the policies and programmes of the Government with respect to the securities market; 10
- (b) to encourage and promote the development of securities markets in Sri Lanka including research and training in connection thereto;
- (c) to give general or specific directives to any person or persons including market institutions, market intermediaries, registered persons, clearing members, trading participants, depository participants, issuers, investors or recognized market operators from time to time; 15
- (d) to give general or specific directives to supplementary services providers of market institutions, market intermediaries or listed public companies from time to time; 20
- (e) to grant a licence to a body corporate to operate as a market institution and ensure its proper conduct; 25
- (f) to grant a licence to any person to operate as a market intermediary and ensure its proper conduct;
- (g) to register a person advising clients on sale or purchase of securities for and on behalf of a market intermediary as a registered person and to regulate their conduct in the discharge of their duties; 30

- (h) to issue general or specific directives to listed public companies or listed foreign entities from time to time;
- 5 (i) to issue general or specific directives to an acquirer, an offeror or persons acting in concert with an offeror or an offeree or a target company in relation to a takeover or a merger of a listed public company;
- 10 (j) to issue specific directives to any person to prevent the imminent infringement of this Act, regulations or rules and to restrain infringement;
- (k) to regulate the listing and trading of securities in an exchange;
- (l) to regulate the issuance of securities;
- 15 (m) to prohibit or suspend the listing of any securities or to delist the listed securities or to prohibit or suspend the trading of any securities or to take such steps as the Commission considers necessary or expedient for the protection of investors or for ensuring fair and orderly securities market or for

20 ensuring the integrity of the securities market;
- (n) to employ such officers as the Commission may consider necessary and to fix the salaries and wages or other remuneration and benefits of such officers for the purposes of carrying out the objectives and

25 functions of the Commission;
- (o) to acquire in any manner whatsoever and hold, take or give on lease or hire, mortgage, pledge, sell or otherwise dispose of any immovable or movable property;
- 30 (p) to regulate a takeover or merger of a listed public company or any matter connected therewith or incidental thereto;

- (*q*) to inquire and conduct investigations into any activity of a market institution, market intermediary, a registered person, a listed public company or a listed foreign entity;
- 5 (*r*) to conduct investigations into any alleged violation or contravention of the provisions of this Act or any regulation, rule, or directive made thereunder by any person and to enforce measures considered necessary by the Commission;
- 10 (*s*) to enter into agreements or memorandum of understanding with any organization or a foreign regulatory authority in relation to any matter which comes within the purview of this Act;
- 15 (*t*) to publish findings of wrongdoing by any market institution, market intermediary or registered person, supplementary service provider, any listed public company or any listed foreign entity;
- (*u*) to carry out surveillance of securities transactions;
- 20 (*v*) to levy fees or charges, for any services rendered by the Commission; and
- (*w*) to do all such other acts as may be necessary, incidental and ancillary to the performance of the Commission's objectives, powers, duties and functions under this Act.
- 25 **16.** The Commission shall in addition to the powers specified in section 15 also have the power to – Additional powers of the Commission.
- 30 (*a*) carry out inspections of the activities of market institutions or market intermediaries or registered persons or trustees of collective investment schemes in order to determine whether they are operating in conformity with the provisions of this Act,

- 5 regulations, rules or directives made thereunder and to charge the costs incurred in carrying out such inspections from the market institution or a market intermediaries or a registered persons or a trustees of a collective investment scheme as the case may be;
- 10 (b) require market institutions or market intermediaries to file with the Commission, audited financial statements and the interim financial statements, certified by a qualified auditor in the form and manner specified by the Commission;
- 15 (c) require the licensed managing company of a collective investment scheme to file reports with the Commission, in respect of every year and at least two reports of the activities of that collective investment scheme for that year. Every such report shall contain such particulars as may from time to time be determined by the Commission. The first report shall be filed not later than the thirtieth of September of that year and the second report shall be filed not later than the thirty-first of March of the subsequent year;
- 20 (d) to appoint experts as the Commission deems expedient; and
- 25 (e) to constitute a consultative panel to consult and review any matter relating to a takeover and merger of a listed public company.
- 30 **17.** The Chairman of the Commission may authorize any officer of the Commission who is an Attorney-at-Law or any other Attorney-at-Law to appear on behalf of the Commission, in any legal proceedings by or against the Commission or in any proceedings in which the Commission has a substantial interest.

Representation
of the
Commission
in legal
proceedings.

CHAPTER 3

Director-General and the Staff of the Commission

18. (1) The Commission shall appoint a Director-General of the Commission, who shall be its chief executive officer. Director-General.
 5 The conditions of employment including remuneration of the Director-General shall be determined by the Commission.

(2) The Commission shall not appoint any person as the Director-General of the Commission, if such person –

- 10 (a) has been found guilty of serious misconduct;
 (b) has been previously dismissed from office for malpractice; or
 (c) has committed a breach of the provisions of this Act, regulations, rules or directives made
 15 thereunder.

(3) The Director-General shall, subject to the general direction and control of the Commission, be charged with the direction of the affairs and transactions of the Commission, the exercise, discharge and performance of its
 20 powers, functions and duties, and the administration and control of the officers and servants of the Commission.

(4) The Director-General may, with the approval of the Commission, whenever he considers it necessary to do so, delegate to any officer and servant any power, function or
 25 duty conferred or imposed on or assigned to him by this Act and such officer or servant shall exercise, discharge and perform such power, function or duty subject to the general or special directions of the Director-General.

(5) The Commission may remove from office the Director-
 30 General appointed under subsection (1) by a two thirds majority having regard to any one of the following reasons -

- (a) that person's integrity or standing;

- (b) the likelihood of any financial or any other conflict of interests in the affairs between the Commission and the Director-General;
- 5 (c) that person becomes of unsound mind or incapable of carrying out his duties;
- (d) that person is guilty of serious misconduct in relation to his duties; or
- 10 (e) that person is involved in any activity which may interfere with his independence in discharging his duties:

Provided that the Commission shall grant an opportunity to the Director-General of being heard, prior to such removal.

15 **19.** (1) The Commission may appoint such other officers or servants as it considers necessary for the efficient discharge of its functions. Staff of the Commission.

(2) The Commission shall not appoint any person to the staff of the Commission where such person-

- (a) has been found guilty of serious misconduct;
- 20 (b) has been previously dismissed from office for malpractice; or
- (c) has committed a breach of the provisions of this Act, regulations, rules or directives made thereunder.

25 (3) The officers or servants appointed under subsection (1) shall be remunerated in such manner and at such rates notwithstanding anything to the contrary in any other law and shall be subject to such conditions of service as may be determined by the Commission.

(4) At the request of the Commission any officer in the public service may, with the consent of the officer and the Secretary to the Ministry of the Minister assigned the subject of Public Administration, be temporarily appointed to the
5 Commission for such period as may be determined by the Commission with like consent, or be permanently appointed to such staff.

(5) Where any officer in the public service is temporarily appointed to the staff of the Commission, the provisions of
10 subsection (2) of section 14 of the National Transport Commission Act, No. 37 of 1991, shall *mutatis mutandis*, apply to and in relation to such officer.

(6) Where any officer in the public service is permanently appointed to the staff of the Commission, the provisions of
15 subsection (3) of section 14 of the National Transport Commission Act, No. 37 of 1991, shall *mutatis mutandis*, apply to and in relation to such officer.

(7) Where the Commission employs any person who has agreed to serve the Government for a specified period, any
20 period of service to the Commission by that person shall be regarded as service to the Government for the purpose of discharging the obligations of such agreement.

(8) The Commission may propose secondment of its officers or servants to other state institutions or regulatory
25 authorities in Sri Lanka or abroad for a period determined by the Commission on an assignment agreed upon between such institution or the authority and the Commission.

20. (1) At the request of the Commission any officer or servant of a public corporation may, with the consent of
30 such officer or servant and the governing board of such corporation, be temporarily appointed to the staff of the Commission for such period as may be determined by the Commission or with like consent be permanently appointed

Appointment of officers of public corporations to the staff of the Commission.

to the staff of the Commission on such terms and conditions, including those relating to pension or provident fund rights, as may be agreed upon by the Commission and the governing board of such corporation.

5 (2) Where any person is appointed whether temporarily or permanently under subsection (1) to the staff of the Commission he shall be subject to the same disciplinary control as any other officers or servants of the Commission.

10 **21.** All members, officers and servants of the Commission shall be deemed to be public servants within the meaning and for the purposes of the Penal Code and of the Code of Criminal Procedure Act, No.15 of 1979.

Members, officers and servants of the Commission deemed to be public servants.

15 **22.** The Commission shall be deemed to be a Scheduled Institution within the meaning of the Bribery Act, and the provisions of that Act shall be construed accordingly.

Commission deemed to be a scheduled institution within the meaning of the Bribery Act.

PART II

MARKETS AND MARKET INSTITUTIONS

20 **23.** The object and purpose of this Part shall be –

Object and purpose of this Part.

(a) to promote a fair, orderly, transparent and efficient securities market in Sri Lanka through the establishment of market institutions;

(b) to enhance effective and efficient functioning of a securities market; and

25 (c) to reduce systemic risk associated with securities markets.

CHAPTER 1

Exchanges

24. (1) A person shall not establish, operate or maintain an exchange except with a licence granted by the Commission.

5

Prohibition against establishing an unlicensed exchange.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, after summary trial before a Magistrate be liable to a fine not exceeding twenty-five million rupees or to imprisonment for a term not exceeding

10 five years or to both such fine and imprisonment.

25. (1) An application for a licence to operate as an exchange shall be made to the Commission in such manner and form together with such documents and such fees as may be specified by the Commission.

Application to operate an exchange.

15 (2) For the purpose of subsection (1), an application shall be made by a body corporate only.

(3) The Commission may grant a licence to the applicant to operate as an exchange, subject to such terms and conditions as it thinks fit, where it is satisfied that -

- 20 (a) the applicant has the capacity to operate an orderly and fair market in relation to securities that are traded through its facilities;
- (b) the applicant has the necessary infrastructure to manage any risks associated with its business and
- 25 operations prudently;
- (c) the applicant, in discharging its obligations under paragraph (a), shall have the necessary governance structures to ensure that the exchange shall not act contrary to public interest;

- (d) the rules made by the applicant have provided—
- (i) for an orderly and fair market in relation to the securities that are traded through its facilities;
 - 5 (ii) for the admission of trading participants;
 - (iii) for the proper regulation and supervision of its trading participants;
 - (iv) for the exclusion of persons who are not of good character and high business integrity from being recognized as trading participants;
 - 10 (v) for the expulsion, suspension or disciplining including the imposition of fines on a trading participant and any person acting on behalf of such trading participant, for conduct that is inconsistent with just and equitable principles in the transaction of business or for a contravention of or failure to comply with the rules of the exchange or any provisions of this Act, regulations, rules or directives made thereunder;
 - 15 (vi) with respect to the conditions under which securities may be listed or delisted;
 - (vii) with respect to the conditions governing trading in securities by trading participants;
 - 20 (viii) with respect to the class or classes of securities that may be dealt in or traded on its facilities;
 - 25 (ix) with respect to the prohibition of market misconduct and the manner in which investigations are conducted;

- (x) for the suspension of trading of any given security for the protection of investors or for the conduct of orderly and fair trading;
 - 5 (xi) for the appointment of a disciplinary committee where majority of its members are not trading participants; and
 - (xii) generally for the carrying on of the business of the exchange with due regard to the need for the protection of investors;
 - 10 (e) the applicant has sufficient financial, human and other resources to ensure the provision of –
 - (i) an orderly and fair market in relation to securities that are traded through its facilities;
 - 15 (ii) adequate and properly equipped premises for the conduct of its business;
 - (iii) competent personnel for the conduct of its business; and
 - 20 (iv) automated systems with adequate capacity, security arrangements and facilities to meet emergencies; and
 - (f) the interest of the public or the proper regulation of the market shall be served by the granting of the licence.
- (4) An applicant under subsection (1) shall provide such
25 additional information as the Commission considers necessary in relation to the application.
- (5) Without limiting the generality of the terms and conditions specified in subsection (3), the Commission may amend, revoke or impose terms or conditions, if the

Commission is satisfied that it is appropriate to do so for the protection of investors or for the proper regulation of the securities market.

5 **26.** (1) It shall be the duty of an exchange to ensure, an Duties of the Exchange.
orderly and fair market in securities that are traded through
its facilities.

(2) In performing its duty under subsection (1), the exchange shall-

10 (a) act in the public interest having particular regard to the need for the protection of investors;

15 (b) ensure that where any interest that is required to be served under any law relating to companies conflict with the interest referred to in paragraph (a), the interest referred to in paragraph (a) shall prevail; and

(c) manage any risks associated with its business and operations prudently.

20 (3) Notwithstanding the provisions of any other law, a director of an exchange has a duty to act at all times in the public interest having particular regard to the need to protect investors and where there is a conflict between the duty under this Act and a director's duty under any other law, the duty under this Act shall prevail.

25 (4) It shall be the duty of the exchange to take appropriate action as may be provided for under its rules for the purpose of monitoring or securing compliance with its rules.

(5) An exchange shall immediately notify the Commission if it becomes aware of -

30 (a) any matter which adversely affects, or is likely to adversely affect the ability of any trading participant to meet its obligations in respect of its

licensed business, including the ability of any trading participant to comply with the minimum financial requirements as may be specified under this Act, regulations, rules or directives; or

- 5 (b) any irregularity, breach of any provision of this Act, regulations, rules, directives or any other matter which, in the opinion of the exchange, indicates or may indicate that the financial standing or financial integrity of any trading participant or of the chief executive officer or directors or the key management
10 personnel of the trading participant is in question or may reasonably be affected.

(6) Where an exchange issues a warning, imposes a fine, suspends, expels or imposes any other disciplinary measure
15 against any of its trading participants, on the occurrence of activities referred to in subsection (5), it shall, within seven days, give to the Commission in writing the following particulars -

- 20 (a) the name and address of the business of the trading participant;
- (b) the reason for and the nature of the action taken;
- (c) the period of suspension and the quantum of the fine, if any; and
- (d) any other disciplinary measure taken.

- 25 **27.** (1) The Commission may, by notice in writing - Cancellation of licence of an exchange.
- (a) cancel the licence granted under section 25 of this Act with effect from the date specified in the notice; or
- 30 (b) direct the exchange to cease to provide or operate such facilities, or to cease to provide such services, with effect from the date specified in the notice.

(2) The Commission shall not cancel the licence or issue a directive under subsection (1) unless the Commission is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the securities market, where any of the following circumstances occur –

- (a) the exchange ceases to operate its securities market;
- (b) the exchange is being wound up or otherwise dissolved, whether within or outside Sri Lanka;
- 10 (c) the exchange has contravened any term or condition of its licence or is charged with any offence under this Act;
- (d) the exchange has failed to comply with a condition, requirement or directive that is issued under this Act;
- 15 (e) any information provided for the purposes of section 25, was false or misleading in a material particular or from which there is a material omission;
- (f) a judgment debt against the exchange has not been satisfied in whole or in part;
- 20 (g) a receiver, a receiver and manager, liquidator or equivalent person has been appointed, whether within or outside Sri Lanka in relation to or in respect of any property of the exchange;
- 25 (h) the exchange has, whether within or outside Sri Lanka, entered into a compromise or scheme of arrangement with its creditors; or
- (i) the exchange on its own accord applies to the Commission to cancel its licence as an exchange, and the Commission thinks it fit to do so.
- 30

(3) For the purposes of paragraph (a) of subsection (2) where an exchange has ceased to operate its securities market for a period exceeding two weeks, it shall be deemed to have ceased to operate its securities market without obtaining the
5 prior written approval of the Commission.

(4) Notwithstanding the cancellation of a licence or the issuance of a directive under subsection (1), the Commission may permit the exchange to continue, on or after the date on which the cancellation or directive is to take effect, to carry
10 on such activities affected by the cancellation or directive as the Commission may specify in the notice-

(a) for the purpose of closing down the operations of the exchange or ceasing to provide the services specified in the notice;

15 (b) for the purpose of protecting the interest of investors; or

(c) in the interest of the public.

(5) Where the Commission acts under subsection (1), the Commission may, where it considers necessary, appoint an
20 interim board of directors for a period of six months which may be extended for a period of one year to manage the affairs of the exchange until a new board of directors is appointed.

(6) Where the Commission has granted permission to an exchange to continue under subsection (4), the exchange
25 shall not, by reason of its carrying on the activities in accordance with such permission, be regarded as having contravened subsection (1).

(7) The Commission shall not take any action under subsection (1) without giving the exchange an opportunity
30 to be heard.

(8) An exchange which is aggrieved by the decision of the Commission made under subsection (1) may, within fourteen days after the exchange is notified of the decision, appeal to the Minister.

(9) Notwithstanding the lodging of an appeal under subsection (8), any action taken by the Commission under this section shall continue to have effect pending the decision of the Minister.

5 (10) The Minister may, on an appeal made under subsection (8)-

(a) allow the appeal and direct the Commission to revoke the cancellation of the licence or the directive; or

10 (b) disallow the appeal.

(11) The Commission shall give effect to the directive of the Minister.

(12) Subject to subsection (11), the Commission shall give public notice of any cancellation of licence or any
15 directive issued under this section.

28. Any cancellation of a licence or the issuance of a directive issued under subsection (1) of section 27 shall not operate so as to –

Effect of cancellation of the licence of an exchange.

20 (a) avoid or affect any agreement, transaction or arrangement entered into on the securities market operated by the exchange, whether the agreement, transaction or arrangement was entered into before or, where subsection (4) of section 27 applies, after the cancellation of the licence or the issuance of
25 the directive under section 27; or

(b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

29. (1) The Commission may, after consultation with the exchange, direct the exchange to close its securities
30 market for a period not exceeding five business days if the Commission is of the opinion that an orderly and fair market

Closure of the exchange in an emergency.

for trading in securities on the securities market is being or is likely to be prevented because –

- (a) an emergency or natural disaster has occurred within Sri Lanka; or
- 5 (b) there exists an economic or financial crisis or any other circumstance within or outside Sri Lanka.

(2) The Commission may extend the closure of the securities market under subsection (1) for any further periods, each not exceeding five business days.

- 10 (3) The Commission shall specify the grounds for the closure in the directive given under subsection (1) and the grounds for any extension of closure under subsection (2).

- (4) The Commission shall, as soon as may be practicable, give a copy of the directive under subsection (1) or extension
- 15 under subsection (2) to the exchange and direct the exchange to do all that it is reasonably capable of doing to give effect to the directive under subsection (1) or extension under subsection (2) while the directive or extension remains in force.

- 20 (5) Where the Commission exercises its power under this section it shall forthwith give a report to the Minister setting out the reasons for the exercise of the power under this section.

(6) In this section –

- 25 “business day” means any day on which there is official trading on the exchange but for the closure;

“fair market” includes a market that reflects the forces of supply and demand.

- 30 **30.** (1) Where an exchange complies with the listing requirements, the Commission shall grant permission to list its securities on such exchange. On such permission being

Listing requirements of a licensed exchange.

granted, such exchange shall enter into an arrangement as the Commission may require-

- (a) for dealing with possible conflicts of interest that may arise from the listing on such exchange;
- 5 (b) for the purpose of ensuring the integrity of trading of securities of such exchange; and
- (c) for compliance with obligations as a listed company if such exchange was to become a listed company,

10 and such exchange shall comply with such requirements.

(2) The listing requirements of such exchange shall be deemed to allow the Commission, instead of such exchange to make decisions and to take action, relating to-

- 15 (a) the admission to or removal of the exchange from the official list of such exchange;
- (b) the stopping or suspension of the securities of the exchange from being listed or traded on such exchange; or
- 20 (c) such other matters as the Commission thinks fit for the purpose of subsection (1).

(3) An arrangement under subsection (1) may provide for the exchange to pay such fees to the Commission as the Commission may determine for services provided by the Commission under the arrangement or otherwise.

25 (4) Without prejudice to the powers of the Commission to approve or amend the rules of an exchange, the Commission may by notice in writing-

- 30 (a) modify the listing requirements of such exchange for the purpose of applying for a listing or trading of the securities of such exchange; or
- (b) exempt such exchange from any listing requirement.

CHAPTER 2

Clearing House

31. In this Chapter, unless the context otherwise requires – Interpretation.

- 5 “central counterparty” means a legal person who engages in clearing and settlement of trades on a securities market by becoming the buyer to every seller and the seller to every buyer by guaranteeing each trade;
- 10 “default proceedings” mean any proceedings or other action taken by a clearing house under its default rules;
- 15 “default rules”, in relation to a clearing house, mean such rules of the clearing house which provide for the initiation of default proceedings if a clearing member has failed to meet its obligations in respect of all or any unsettled market contracts to which the clearing member is a party;
- 20 “defaulter” means a clearing member who is the subject of any default proceedings;
- “market charge” means a charge, whether fixed or floating, granted in favour of a clearing house -
- 25 (a) over any property as specified in the rules of a clearing house which is held by or deposited with the clearing house; and
- (b) for the purpose of securing liabilities arising directly in connection with the clearing house ensuring the settlement of
- 30 “market collateral” means any property or guarantees given in any other form of collateral

5 as specified in the rules of a clearing house held by or deposited with a clearing house for the purpose of securing liabilities arising directly in connection with the clearing house ensuring the performance of market contracts by the clearing house;

“market contract” means -

10 (a) a contract which is subject to the rules of a clearing house and entered into by the clearing house with a clearing member pursuant to a novation for the purpose of clearing and settlement of transactions using the clearing facility of a clearing house; or

15 (b) a transaction which is or is to be cleared or settled using the clearing facility of a clearing house and in accordance with the rules of the clearing house, whether or not a novation referred to in paragraph (a) is to take place;

20

“relevant office holder” means –

25 (a) any person acting in relation to a company as its liquidator, provisional liquidator, receiver or manager or an equivalent person; or

(b) any person appointed pursuant to an order for the administration in bankruptcy of an insolvent estate of the deceased person.

30 **32.** (1) A person shall not establish, operate or maintain a clearing facility for the purpose of clearing or settlement unless the person has been licensed to establish or operate a clearing house under this section.

Prohibition against establishing an unlicensed clearing house.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction after a summary trial before a Magistrate, be liable to a fine not exceeding twenty five million rupees or to imprisonment for a term not
5 exceeding five years or to both such fine and imprisonment.

(3) Subsection (1) shall not apply to any person providing clearing facilities for securities exempted under this Act.

33. (1) An application for a licence to establish or
operate a clearing house, acting as a central counterparty to
10 guarantee clearance and settlement, or otherwise shall be
made to the Commission in such manner and form as may be
specified by the Commission and shall be accompanied by
a fee specified by the Commission. Application
for a licence
to establish
or operate a
clearing
house.

(2) An application for a licence to establish or operate a
15 clearing house shall only be made by a body corporate.

(3) An applicant shall provide all information necessary to satisfy the Commission that the applicant has established, at the time of authorization, all the necessary arrangements to comply with the requirements of this Act, or regulation or
20 rules made thereunder.

(4) The rules of the proposed clearing house shall subject to the satisfaction of the Commission provide for -

- (a) the efficient and effective clearing house facilities in relation to securities that are cleared through its
25 clearing facilities;
- (b) the regulation and supervision of its clearing members that use its clearing facilities;
- (c) the categories of admissible clearing members including the transparent and non discriminatory
30 criteria for admission of such clearing members to the clearing house;

- (d) the quick and fair settling of disputes -
 - (i) between the clearing house and its clearing members; and
 - (ii) between clearing members;
- 5 (e) the expulsion, suspension, imposition of fines or disciplining of clearing members for the failure to comply with the rules of the clearing house;
- (f) the specification of the class or the classes of securities that may be cleared on its facilities;
- 10 (g) the establishment and administration of a settlement guarantee fund;
- (h) the initiation of default proceedings if a clearing member has failed, and risk management procedures applicable in case a clearing member appears to be unable, or likely to become unable, to meet its obligations;
- 15 (i) the time for entering settlement orders into the settlement system and the time when such orders become final and irrevocable;
- 20 (j) the time of counterparty substitution in the netting arrangements, finality of settlement and any other duties and functions relevant to a central counterparty where the clearing house acts as a central counterparty;
- 25 (k) the inclusion of the default rules to facilitate the uninterrupted services of the clearing house where the clearing house suffers losses caused by the default of a clearing member or any other circumstances that threatens the solvency of a clearing house; and
- 30

- (l) the governing of collateral including the depositing and efficient creation and realization of collateral in the event of default or bankruptcy of a clearing member.

5 (5) Where the Commission is satisfied that it is appropriate to do so in the public interest or for the proper regulation of a clearing house, it may, grant a licence to the applicant to establish and operate a clearing house subject to such terms and conditions as the Commission thinks fit.

10 (6) The Commission, may amend, revoke or impose terms and conditions, if the Commission is satisfied that it is appropriate to do so for investor interest, or for the proper regulation of a clearing house.

34. (1) A clearing house shall –

Duties of a
Clearing
House.

- 15 (a) operate a safe, efficient and effective clearing facility for the purposes of clearing or settlement of transactions;
- (b) manage any risks associated with its business and operations prudently; and
- 20 (c) act in the public interest having particular regard to the need for the protection of investors.

(2) Notwithstanding the provisions of any other law, a director of a clearing house has a duty to act at all times in the public interest having particular regard to mitigation of systemic risk and where there is a conflict between the duty under this Act and a director's duty under any other law, the duty under this Act shall prevail.

25

(3) A clearing house shall at all times -

- 30 (a) have robust governance arrangements, which include a clear organizational structure with well-defined, transparent and consistent lines

- 5 of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures;
- 10 (b) adopt policies and procedures which are sufficiently effective so as to ensure compliance with this Act, regulations, rules or directives made thereunder;
- 15 (c) maintain and operate an organizational structure that ensures continuity and orderly functioning in the performance of its services and activities, and shall employ appropriate and proportionate systems, resources and procedures;
- 20 (d) maintain a clear separation between the reporting lines for risk management and those for the other operations of the clearing house;
- 25 (e) maintain information technology systems adequate to deal with the complexity, variety and type of services and activities performed so as to ensure high standards of security and the integrity and confidentiality of the information maintained; and
- 30 (f) make its governance arrangements, the rules governing the clearing house, and its admission criteria for clearing house membership and make those information available to the public free of charge.
- 35.** (1) The Commission may by notice in writing – Cancellation of licence of a clearing house.
- (a) cancel the licence granted under section 33 to a clearing house with effect from the date specified in the notice; or

- (b) direct the clearing house to cease to provide or operate such facilities or to cease to provide such services, with effect from the date specified in the notice.

5 (2) The Commission shall not cancel a licence or issue a directive under subsection (1) unless the Commission is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the clearing and settlement of transactions in securities,
10 where any of the following circumstances occur :-

- (a) the clearing house ceases to provide clearing facilities;
- (b) the clearing house is being wound up or otherwise dissolved, whether within or outside Sri Lanka;
- 15 (c) the clearing house has contravened any term or condition of its licence or is charged with any offence under this Act;
- (d) the clearing house has failed to comply with a condition, requirement or directive issued under
20 this Act;
- (e) any information provided for the purposes of section 33 was false or misleading in a material particular or from which there is a material omission;
- 25 (f) a judgment debt against the clearing house has not been satisfied in whole or in part;
- (g) a receiver, a receiver and manager, liquidator or an equivalent person has been appointed, whether within or outside Sri Lanka, in relation to or in respect of any property of the clearing house;
- 30 (h) the clearing house has, whether within or outside Sri Lanka, entered into a compromise or scheme of arrangement with its creditors; or

(i) the clearing house has on its own accord applied to the Commission to cancel the licence granted to it.

(3) For the purposes of paragraph (a) of subsection (2), the clearing house shall be deemed to have ceased to provide clearing facilities if it has ceased to provide such facilities for a period exceeding two weeks without obtaining the prior written approval of the Commission to do so.

(4) Notwithstanding the cancellation of a licence or the issuance of a directive under subsection (1), the Commission may permit the clearing house to continue, on or after the date on which the cancellation or directive is to take effect, to carry on such activities affected by the cancellation or directive as the Commission may specify in the notice for the purpose of –

(a) closing down the operations of the clearing house or ceasing to provide the services specified in the notice; or

(b) protecting investors or the public interest.

(5) Where the Commission acts under subsection (1), the Commission may, where it considers necessary, appoint an interim board of directors for a period of six months and which may be extended for a period of one year to manage the affairs of the clearing house until a new board of directors is appointed.

(6) Where the Commission has granted permission to a clearing house under subsection (4), the clearing house shall not, by reason of its carrying on the activities in accordance with such permission, be regarded as having contravened subsection (1).

(7) The Commission shall not take any action under subsection (1) without giving the clearing house an opportunity to be heard.

(8) A clearing house which is aggrieved by the decision of the Commission made under subsection (1), may, within fourteen days after the clearing house is notified of the decision, appeal to the Minister.

5 (9) Notwithstanding the lodging of an appeal under subsection (8), any action taken by the Commission under this section shall continue to have effect pending the decision of the Minister.

10 (10) The Minister may, on an appeal made under subsection (8)-

(a) allow the appeal and direct the Commission to revoke the cancellation of the licence or the directive; or

(b) disallow the appeal.

15 (11) The Commission shall give effect to the directive of the Minister.

(12) Subject to subsection (11), the Commission shall give public notice of any cancellation of a licence or any directive issued under this section.

20 **36.** Any cancellation of a licence or the issuance of a directive under subsection (1) of section 35 shall not operate as to –

Effect of cancellation of licence to a clearing house.

25 (a) avoid or affect any agreement, transaction or arrangement entered into through the clearing house whether the agreement, transaction or arrangement was entered into before, or where section 35 applies, after the cancellation of the licence or issuance of the directive under section 35; or

30 (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

37. A clearing house shall, for the purpose of risk management, initiate default proceedings under default rules if a clearing member is unable or likely to become unable to meet the obligations in respect of all or any unsettled market contracts to which the clearing member is a party.

Default rules.

38. (1) The following shall not be invalid to any extent in law by reason only of inconsistency with any written law relating to the distribution of the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of the receiver, a receiver and a manager or a person in an equivalent capacity over any of the assets of a person:–

Default proceedings of a clearing house to take precedence.

- (a) a market contract;
- (b) the rules of a clearing house relating to the settlement of a market contract;
- 15 (c) any proceedings or other action taken under the rules of a clearing house relating to the settlement of a market contract;
- (d) a market charge;
- (e) market collateral; or
- 20 (f) the default rules of a clearing house.

(2) Subject to subsection (1), the powers of a relevant office holder under the Companies Act, No.7 of 2007 shall not be exercised in such a way as to prevent or interfere with –

- 25 (a) the settlement of a market contract in accordance with the rules of a clearing house; or
- (b) any default proceedings.

39. (1) A court may on an application by a relevant office holder make such order as it thinks fit altering or dispensing from compliance with such of the functions of his office under the Companies Act, No. 7 of 2007 as are affected by the fact that default proceedings are pending or could be taken or have been or could have been taken and accordingly, such functions of the relevant office holder shall be construed subject to such order.

Supplementary provisions relating to default proceedings.

(2) Nothing in the Companies Act, No. 7 of 2007 shall prevent or interfere with the default proceedings instituted by a clearing house in the realization and disposition of any market collateral by the clearing house.

40. (1) Upon completion of any default proceedings, a clearing house shall provide a report in respect of each defaulter to those enumerated in subsection (2) in respect of the following:-

Duty to report on completion of default proceedings.

(a) the net sum, if any, certified by the clearing house to be payable by or to the defaulter;

(b) the fact that no sum is so payable; and

(c) such other particulars in respect of such default proceedings as it thinks fit.

(2) The report prepared under subsection (1) shall be provided forthwith-

(a) to the Commission;

(b) to the relevant office holder acting for the defaulter to whom the report relates or to the defaulter's estate; or

(c) when there is no relevant office holder referred to in paragraph (b), to the defaulter to whom the report relates.

(3) Where the Commission receives a report pursuant to subsection (2), it may publish a notice to bring it to the

attention of creditors of the defaulter to whom the report relates.

(4) Where a relevant office holder or defaulter receives a report pursuant to subsection (1), he shall, at the request of
5 any of his creditors-

(a) make the report available for inspection by the creditor within two days from the receipt of such request; or

10 (b) on payment of a relevant fee as determined by the relevant office holder or the defaulter, supply to the creditor all or any part of that report as requested.

(5) In subsections (2), (3) and (4), a report includes a copy of a report.

15 **41.** (1) Upon the completion of default proceedings, the net sum certified under paragraph (a) of subsection (1) of section 40 by a clearing house shall be payable by or to the defaulter. Net sum payable on completion of default proceedings.

20 (2) Notwithstanding any provision of the Companies Act, No. 7 of 2007, where an order for a receiver or winding up has been made or a resolution for voluntary winding up has been passed, the net sum referred to in subsection (1) if owing to the defaulter shall be taken into account in relation to winding up proceedings under the Companies Act, No. 7 of
25 2007.

30 **42.** (1) If a clearing member ("the first clearing member") sells securities at an overvalue to, or purchase securities at an undervalue from, another clearing member ("the second clearing member") in circumstances as described in subsection (3) and thereafter a relevant office holder acts for-

(a) the second clearing member;

Right of relevant office holder to recover certain amounts arising from certain transactions.

(b) the principal of the second clearing member in the sale or purchase; or

(c) the estate of the second clearing member or the person referred to in paragraph (b),

5 unless a court otherwise orders, the relevant office holder may recover, from the first clearing member, or the principal of the first clearing member, an amount equal to the identified gain obtained under the sale or purchase by the first clearing member, or the principal of the clearing member.

10 (2) The amount equal to the identified gain is recoverable even if the sale or purchase may have been discharged according to the rules of the clearing house and replaced by a market contract.

(3) The circumstances referred to in subsection (1) for a
15 sale or purchase shall be where-

(a) an identified event has occurred in relation to the second clearing member or the principal of the second clearing member; and

(b) either-

20 (i) the first clearing member knew, or could reasonably have known that an identified event was likely to occur in relation to the second clearing member or the principal of the second clearing member; or

25 (ii) the principal of the first clearing member knew or could reasonably have known that an identified event was likely to occur to the second clearing member or the principal of the second clearing member,

30 and the identified event occurs within the period of six months immediately following the date on which the sale or purchase was entered into.

(4) In this section-

- 5 (a) “identified event”, in relation to a second clearing member or a person who is or was in respect of a sale or purchase referred to in subsection (1) means-
- 10 (i) an act of bankruptcy committed by the second clearing member or the principal of the second clearing member, as the case may be;
- 15 (ii) a meeting of creditors summoned in relation to the second clearing member or the principal of the second clearing member, as the case may be, pursuant to the Companies Act, No.7 of 2007; or
- 20 (iii) the presentation of a petition for the winding up of the second clearing member or the principal of the second clearing member, as the case may be, by a court;
- 25 (b) “identified gain” in relation to a sale or purchase referred to in subsection (1), means the difference between –
- (i) the market value of the securities which is the subject of the sale or purchase; and
- (ii) the value of the consideration for the sale or purchase, as at the time the sale or purchase was entered into.
- 30 **43.** Notwithstanding the provisions of any other law, a clearing member who enters into any transaction including a market contract with a clearing house, notwithstanding the fact that he is party to that transaction as an agent shall for all purposes including any civil action, claim or demand as principal.

by or against a clearing house be deemed to be a party to that transaction as a principal and not as an agent.

5 **44.** Notwithstanding the provisions of any other law, where market collateral is delivered in settlement of a market contract or under a market charge to a clearing house by a clearing member in accordance with the rules of the clearing house, no civil action, claim or demand in respect of any right, title or interest in market collateral delivered to a clearing house shall be allowed against the clearing house.

Market collateral delivered to a clearing house.

10 **45.** The clearing house shall be entitled to execute the collateral subject to a market contract or market charge in accordance with the procedure specified in the rules of a clearing house.

Application of collateral subject to a market charge.

15 **46.** (1) A central depository shall give effect to an instruction from a clearing house to effect a transfer of securities into or out of a securities account of an account holder provided, such instruction shall be for the purposes of settlement of a market contract or otherwise dealing with a market contract in accordance with the rules of the clearing house.

Transfer of securities in settlement.

20 (2) An instruction under subsection (1) shall be given by a clearing house only in relation to a securities account which relates to an account holder who is a party to a market contract or an account holder who had instructed a clearing member to effect a trade which results in a market contract to which a clearing member has become a party.

25 (3) Where any transfer of securities pursuant to a market contract is effected by the central depository to or from a securities account of an account holder pursuant to subsection (1), no title in such securities shall pass to an account holder except as provided under the rules.

(4) Where a transfer of securities has been effected into or out of a securities account of an account holder pursuant to

subsection (1), a central depository shall not be subject to any action or claim by or be liable to any damages to that account holder.

5 **47.** (1) A clearing house may require an exchange to effect on behalf of the clearing house a sale or purchase of securities if such sale or purchase, as the case may be, is effected for the purposes of settlement of any market contract or to facilitate default proceedings or to enable the clearing house to realize any asset comprised in any market charge or provided as market collateral, and the exchange shall give effect to any such instruction. Purchase and sale of securities.

(2) Where a sale or purchase of securities has been effected on behalf of the clearing house pursuant to subsection (1) by an exchange, the exchange shall not be subject to any action or claim by or be liable to any damages to any person. Defences in criminal or civil liability.

48. (1) It shall be a defence in any criminal or civil proceeding for—

20 (a) a person discharging, by virtue of delegation of powers under the default rules of a clearing house in connection with any default proceedings; or

(b) any person acting on behalf of a person referred to in paragraph (a), including –

(i) any member of the board of directors of the person referred to in paragraph (a); and

25 (ii) any member of any Committee established by the person referred to in paragraph (a),

for anything done or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of that obligation.

30 (2) Where a relevant officeholder takes action in relation to any property of any defaulter which is liable to be dealt within accordance with the default rules of a licensed

clearing house, and the relevant office holder reasonably believes or has reasonable grounds for believing that he is entitled to take that action, the relevant office holder shall not be liable to any person in respect of any loss or damage
 5 resulting from any action of the relevant office holder except in so far as the loss or damage was caused by the negligence of the relevant office holder.

CHAPTER 3

Central Depository

- 10 **49.** (1) A person shall not establish, operate or maintain a central depository for handling of securities, whether or not such securities are listed on any exchange without obtaining a licence from the Commission. Prohibition against operating an unlicensed central depository.
- 15 (2) Any person who contravenes the provisions of subsection (1), shall be guilty of an offence under this Act and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding twentyfive million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.
- 20 **50.** (1) An application for a licence to establish or operate a central depository shall be made to the Commission in such manner and form as may be specified by the Commission and shall be accompanied by a fee specified by the Commission. Application to operate a central depository.
- 25 (2) An application for a licence to establish or operate a central depository shall only be made by a body corporate.
- (3) The central depository referred to in subsection (1) shall make rules which have satisfactory provisions with regard to -
- 30 (a) conditions under which securities may be deposited, held by, withdrawn from or transferred to and recorded in the register of securities;

- (b) the processing of dealings in deposited securities;
- (c) facilitating the settlement of deposited securities;
- (d) the protection of the interests of account holders and the protection and control of information on deposited securities and dealings therein;
- 5 (e) transparent and nondiscriminatory criteria for the admission of depository participants and the admissible categories of depository participants;
- 10 (f) the monitoring of conditions with, and for the enforcement of the rules of the applicant company;
- (g) the expulsion, suspension, imposition of fines or disciplining of depository participants for the failure to comply with the rules of the central depository;
- 15 (h) the settlement of disputes between the central depository and the depository participants and between depository participants; and
- 20 (i) ensuring the segregation of the securities belonging to investors from those of the depository participants.

(4) An applicant under subsection (1) shall provide such information as the Commission considers necessary in relation to the application.

25 (5) The proposed central depository shall at all times have sufficient financial, human and other resources to ensure the provision of –

- (a) adequately and properly equipped premises for the conduct of its business;
- 30 (b) competent personnel for the conduct of its business; and

- (c) automated systems with adequate capacity, security arrangements and facilities to meet emergencies.

(6) Where the Commission is satisfied that it is appropriate to do so in the public interest for the proper regulation of the securities market, it may, grant a licence to the applicant to establish or operate a central depository subject to such terms or conditions as the Commission thinks fit.

(7) Without limiting the generality of the terms and conditions referred to in subsection (6), the Commission, may amend, revoke or impose terms and conditions, if the Commission is satisfied that it is appropriate to do so in the interest of the investors, or for the proper regulation of a central depository.

51. (1) A central depository shall –

Duties of a central depository.

- (a) operate a safe, effective and efficient system for the handling of securities;
- (b) manage any risks associated with its business and operations prudently; and
- (c) act in the public interest having particular regard to the need for the protection of account holders.

(2) Notwithstanding the provisions of any other law, it shall be the duty of a director of a central depository to act at all times in the public interest having particular regard to the need for the protection of account holders, and where there is a conflict between this duty and a director's duty under the provisions of any other law the duty under this Act shall prevail.

52. (1) The Commission may by notice in writing –

Cancellation of licence of a central depository.

- (a) cancel the licence granted under section 50 with effect from the date specified in the notice; or

5 (b) direct the central depository to cease to provide or operate such facilities, or to cease to provide such services, as are specified in the notice, with effect from the date specified in the notice.

(2) The Commission shall not cancel a licence or issue a directive under subsection (1), unless the Commission is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation
10 of the securities market where any of the following circumstances occur :-

- (a) the central depository ceases to operate a system for the central handling of securities;
- 15 (b) the central depository is being wound up or otherwise dissolved, whether within or outside Sri Lanka;
- (c) the central depository has contravened any term or condition of its licence or is charged with any offence under this Act;
- 20 (d) the central depository has failed to comply with a condition, requirement or directive that is issued under this Act;
- (e) any information provided for the purposes of section 50 was false or misleading in a material particular or from which there is a material omission;
25
- (f) a judgment debt against the central depository has not been satisfied in whole or in part;
- (g) a receiver, a receiver and manager, liquidator or an equivalent person has been appointed, whether
30 within or outside Sri Lanka, in relation to or in respect of any property of the central depository;

(h) the central depository has, whether within or outside Sri Lanka, entered into a compromise or scheme of arrangement with its creditors; or

5 (i) the central depository has on its own accord applied to the Commission to cancel the licence granted to it and the Commission, thinks it fit to do so.

(3) For the purposes of paragraph (a) of subsection (2), the central depository shall be deemed to have ceased to operate a system for the central handling of securities if it
10 has ceased to operate such system for a period exceeding two weeks without obtaining the prior written approval of the Commission.

(4) Notwithstanding the cancellation of a licence or the issuance of a directive under subsection (1), the Commission
15 may permit the central depository to continue, on or after the date on which the cancellation or directive is to take effect, to carry on such activities affected by the cancellation or directive as the Commission may specify in the notice:-

20 (a) for the purpose of closing down the operations of the central depository or ceasing to provide the services specified in the notice;

(b) for the purpose of protecting the depositors; or

(c) in the public interest.

(5) Where the Commission acts under subsection (1), the
25 Commission may where it deems necessary appoint an interim board of directors for a period of six months and be extended for a period of one year to manage the affairs of the central depository until a new board of directors is appointed.

30 (6) Where the Commission has granted permission to the central depository under subsection (4), the central depository shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened subsection (1).

(7) The Commission shall not take any action under subsection (1) without giving the central depository an opportunity to be heard.

5 (8) A central depository which is aggrieved by the decision of the Commission made under subsection (1) may, within fourteen days after the central depository is notified of the decision, appeal to the Minister.

10 (9) Notwithstanding the lodging of an appeal under subsection (8), any action taken by the Commission under this section shall continue to have effect pending the decision of the Minister.

(10) The Minister may, on an appeal made under subsection (8)-

15 (a) allow the appeal and direct the Commission to revoke the cancellation of the licence or the directive; or

(b) disallow the appeal.

(11) The Commission shall give effect to the directive of the Minister.

20 (12) Subject to subsection (11), the Commission shall give public notice of any cancellation of the licence or any directive issued under this section.

25 **53.** Any cancellation of a licence or the issuance of a directive under subsection (1) of section 52 shall not operate so as to –

Effect of cancellation of licence of a central depository.

30 (a) avoid or affect any agreement, transaction or arrangement entered into on the computer system operated by the central depository, whether the agreement, transaction or arrangement was entered into before or, where subsection (4) of section 52

applies after the cancellation of the licence or issuance of the directive under subsection (1) of section 52; or

- 5 (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

10 **54.** A central depository may establish different types of securities accounts and every such securities account opened with a central depository shall be in the name of the beneficial owner of the deposited securities or in the name of the nominee. Securities Account.

55. All dealings of securities held in a central depository shall be made by means of book entries in the accounts of the central depository without the physical delivery of scrips. Book Entry securities lodged with the central depository.

15 **56.** A record of an entry in an account maintained by the central depository shall be *prima facie* evidence of the authenticity of such matter. Record of entry in depositor's account.

57. (1) Where the central depository holds securities in trust for its holders of securities, the person for whose benefit those securities are held in trust- Effect of securities held in trust by the central depository.

20 (a) shall be deemed to be the holder of such securities; and

25 (b) shall in respect of those securities, enjoy all such rights and privileges and be subject to all such duties and obligations in respect of, or arising from, such securities, under the Companies Act, No. 7 of 2007 as the case may be, as if he is the holder of those securities.

30 (2) The rights and duties attached to the securities maintained in the accounts of the central depository held by a nominee shall be exercised by the beneficial owner identified in the respective account held in the central depository as if he is the holder of those securities.

(3) The appointment of a receiver, a receiver or manager, liquidator or any equivalent person in respect of any insolvency or bankruptcy proceedings of a depository participant shall not affect the rights of holders of securities held in trust by the central depository of that depository participant.

58. Any registration of securities by the depository prior to the enactment of this Act shall not be invalid only for the reason that such registration has been done other than in accordance with the provisions of this Act, regulations, rules or directives made thereunder. Validation.

CHAPTER 4

General Provisions

59. (1) The rules of a market institution shall be approved by the Commission and such approved rules shall operate as a binding contract- Rules of a market institution.

(a) between the market institution and each issuer of securities;

(b) between the market institution and each trading participant, clearing member or depository participant as the case may be;

(c) between each issuer of securities and each trading participant; and

(d) between trading participants, clearing members or depository participants.

(2) The market institution, each issuer of securities, each trading participant, clearing member and depository participant respectively shall observe and perform the obligations under the provisions of the rules so far as those provisions are applicable to the market institution, issuer,

trading participant, clearing member or depository participant as the case may be.

(3) The rules of a market institution in so far as they have been approved by the Commission, shall not be amended, 5 varied or rescinded without the prior approval of the Commission.

(4) Where a market institution proposes to amend its rules, the market institution shall forward to the Commission in writing the proposed amendment.

10 (5) The Commission shall, after hearing the market institution within ninety days of receipt of the proposed amendment give written notice to the market institution as to whether such amendments to the rules-

(a) are allowed; or

15 (b) disallowed.

(6) Where the proposed amendment is disallowed, the Commission shall give reasons for such disapproval.

(7) Where the Commission fails to revert to the market institution within ninety days, proposed amendments to such 20 rules under subsection (4) shall take effect immediately on the expiration of ninety days.

(8) Upon receipt of notice under subsection (5), the market institution shall give immediate effect to such rule.

(9) Notwithstanding the provisions contained in 25 subsections (5) and (8), the Commission may amend the rules of any market institution at any time and such rules shall take effect with immediate effect or on such date as specified by the Commission.

60. (1) Where any person who is under a duty to comply, observe, enforce or give effect to the rules of a market institution fails to do so, the Commission shall require such person to give reasons for such failure.

Power of Court to order observance or enforcement of rules of market institutions.

5 (2) Where the Commission is not satisfied with the reasons given by such person, the Commission may make an application to Court for an order under subsection (3).

(3) The Court may, make an order directing the first mentioned person to comply, observe, enforce or give effect
10 to the rules of a market institution.

61. (1) A person other than a representative of the government, shall not enter into any agreement or arrangement to acquire any voting shares of a market institution either individually or together with any other
15 person acting in concert with him, exceeding five *per centum* or more of the aggregate of all the voting shares in a market institution, without obtaining the prior written approval of the Commission.

Control of substantial shareholders of a market institution.

(2) The Commission may impose restrictions on the
20 maximum proportion of voting shares that may be held directly or indirectly by a group of persons representing a particular interest as may be determined by the Commission by way of an Order published in the *Gazette*.

(3) The Commission may, at any time by publishing a
25 notification in the *Gazette*, vary the threshold referred to in subsection (1) after taking into consideration the stage of securities market development or the public interest.

(4) An application for the purpose of obtaining approval
30 under subsection (1) shall be made by the person intending to acquire voting shares referred to therein and shall be sent to the Commission in the form and manner as may be specified by the Commission.

(5) The Commission may require the applicant –

- (a) to give further information in connection with an application; and
- 5 (b) to have any information submitted in support of an application verified at the cost of the applicant,

in such manner and by such persons as it may specify.

(6) The Commission may grant its approval subject to such terms and conditions as it thinks fit to impose.

- 10 **62.** (1) Notwithstanding the provisions of the Companies Act, No. 7 of 2007, or any other law, but subject to the provisions of this Act, where the Commission is satisfied that any person has contravened the provisions of section 61, it may make a preliminary order in writing, imposing one or more of the following prohibitions as may be applicable or appropriate in the circumstances of the contravention in respect of any shares:-

Power of the Commission to make a preliminary order to impose prohibition.

- 20 (a) prohibit the buying of, or the carrying out of the agreement or arrangement to buy, such voting shares, or in the case of unissued shares, the carrying out of the agreement or arrangement to buy or the buying of the right to be issued with unissued shares;
- 25 (b) prohibit the exercise of any voting rights in respect of such shares;
- (c) prohibit the issue of any further shares in right of such shares or in pursuance of any offer made to the holder of such shares; or
- 30 (d) except in liquidation, prohibit the payment of any sums due from the market institution, on such shares, whether in respect of capital, dividends or otherwise.

(2) A preliminary order made under subsection (1) shall be served on the person in contravention of subsection (1) as soon as is practicable, and may be publicized in such manner as the Commission thinks fit, if in the opinion of the
5 Commission it needs to be publicized.

(3) A preliminary order shall be binding on the person who contravened subsection (1) or any person for the time being holding the voting shares to which such order applies and on any other person specified in the order or to whom
10 the order is directed.

(4) Any person against whom a preliminary order has been made under subsection (1), or any other person prejudicially affected by such order, may within fourteen days of the service of the order on the person in contravention
15 of subsection (1), make representations in writing to the Commission applying for the setting aside of the order on the ground that he had not contravened the provisions in relation to which the order has been made, or for a variation of the order on the ground that it would be just and proper to
20 vary it for reasons to be specified in the representations.

(5) The Commission may, after considering the representations made under subsection (4), either confirm, set aside or vary the preliminary order.

(6) Where the Commission confirms a preliminary order,
25 it may make an order to the holder of the shares to which the preliminary order applies to, directing such holder to dispose of the shares.

(7) The Commission may give any instruction or issue a directive to the directors or officers of the market institution,
30 as may be necessary or require giving effect to any order of the Commission under this section, or as may be incidental, ancillary or consequential to such order.

(8) Any transaction, including any agreement or arrangement in relation to any shares which is in

contravention of any preliminary order or of any order confirmed under subsection (5) or of any instruction given or directive issued by the Commission under subsection (7), shall be deemed to have no effect in law.

- 5 (9) A person who contravenes any preliminary order, any order confirmed under subsection (5), or any instruction given or directive issued under subsection (7), commits an offence and shall, on conviction after summary trial by a Magistrate, be liable to a fine not exceeding twenty five
10 million rupees or to imprisonment for a term not exceeding five years or to both such imprisonment and fine.

- 15 **63.** (1) Notwithstanding any provisions in the Companies Act, No. 7 of 2007, a person shall not accept appointment, reappointment, election or re-election as a director, chief executive officer or chief regulatory officer of a market institution unless the Commission's prior approval is obtained. Appointment of directors to a market institution.

- 20 (2) Where the approval of the Commission is required under subsection (1), the Commission shall not approve, as the case may be if -

- (a) any proposed director, chief executive officer or chief regulatory officer is an undischarged bankrupt, whether within or outside Sri Lanka;
- 25 (b) a judgment debt against the proposed director, chief executive or chief regulatory officer has not been satisfied in whole or in part;
- (c) the proposed director, chief executive officer or chief regulatory officer—
- 30 (i) has been convicted, whether within or outside Sri Lanka, of an offence, involving fraud or dishonesty or the conviction for which involved a finding that he has acted fraudulently or dishonestly;

- (ii) has been convicted of an offence under this Act;
 - (iii) has been subject to any administrative action taken by the Commission under this Act;
 - 5 (iv) has been convicted of an offence involving moral turpitude; or
 - (v) likely to have a conflict of interest;
 - 10 (d) the Commission is not satisfied that the proposed director, chief executive officer or chief regulatory officer is a person of integrity or standing and is fit and proper as defined in subsection (3) to be a director, chief executive officer or chief regulatory officer of a market institution.
- (3) The Commission in considering the approval of
- 15 appointment of a proposed director, chief executive or chief regulatory officer of the market institution *inter alia*, shall have regard to the following criteria-
- 20 (i) the person has a satisfactory past performance or expertise in the nature of the business being conducted;
 - (ii) the person has an appropriate range of skills and experience to understand, operate and manage the activities regulated by the Commission; and
 - 25 (iii) the person has the technical knowledge and ability to perform the specified duties for which they are engaged in including recognized professional qualification and membership of relevant professional institutions.
- (4) A person shall not hold office of director, chief
- 30 executive or chief regulatory officer where such person has contravened any provision of this Act, regulations, rules or directives made thereunder.

(5) The criteria specified in the appointment of directors in subsections (2) and (3) shall *mutatis mutandis* apply to the appointment of a manger or in the approval of a controller of a market institution by the Commission.

5 **64.** Where a market institution proposes to alter its Articles of Association or any other material particulars already furnished or undergo or intend to undergo a change from the state specified in the application or renewal of a licence, the market institution shall obtain the approval
10 of the Commission before such alteration or change is effected.

Alteration of material particulars of a market institution.

15 **65.** Nothing in any written law relating to contracts to the extent of its inconsistency with the provisions of this Act or any rules made thereunder, or the rules of a stock exchange, derivatives exchange or clearing house, shall render unenforceable-

Rights of an exchange or a clearing house.

20 (a) any rights to be conferred on an exchange or a clearing house in relation to securities as the case maybe under this Act, regulations, rules or directives made thereunder;

25 (b) any rights to be conferred on a party to securities transaction entered into by an exchange under this Act, regulations, rules or directives made thereunder, or the rules of an exchange or a licensed clearing house as the case may be; or

(c) anything done or omitted to be done under or in relation to securities transaction entered into by an exchange under this Act, regulations, rules or directives made thereunder, as the case may be.

30 **66.** It shall be a defence in any criminal or civil proceeding for anything done or omitted to be done by-

Defence in criminal or civil liability.

(a) an exchange; or

(b) any person acting on behalf of an exchange including-

(i) any director of the exchange; or

5 (ii) any member of any committee established by the exchange,

to prove that the exchange or the person under paragraph (b) took all reasonable care and acted in good faith in the course of or in connection with the discharge or purported discharge of its obligations under this Act, regulations, rules or
10 directives made thereunder or the rules of such exchange.

67. (1) A market institution shall provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires, including the furnishing of such
15 returns, and the provision of such information relating to the operations of the market institution as the Commission or such person may require for the proper administration of this Act. Provision of assistance to the Commission.

(2) A person acting on behalf of or authorized by the
20 Commission shall be entitled at all reasonable time to full and free access to the trading facility of an exchange for any of the purposes of this Act.

(3) A person who refuses or fails without lawful excuse to allow a person acting on behalf of or authorized by the
25 Commission access in accordance with subsection (2) to the trading facility of an exchange commits an offence under this Act.

68. (1) A market institution shall file with the
30 Commission an annual report, within five months of the date of its balance sheet, which shall include- Annual reports.

(a) a report on the corporate governance policy of the market institution and any other information required by the Commission;

- (b) audited financial statements prepared in accordance with Sri Lanka's Accounting Standards and such other requirements as may be specified in the rules; and
- 5 (c) consolidated financial statements, where the market institution is a holding company or a subsidiary where appropriate.
- (2) The financial statements to be included in an annual report under subsection (1) shall be audited in accordance
10 with Sri Lanka's Auditing Standards.
- (3) The annual report of a clearing house and a central depository shall also include an audited report on risk management procedures and their application and any other information required by the Commission.
- 15 (4) The annual report shall include the information required under the Companies Act, No.7 of 2007 in addition to the information required under subsections (2) and (3) of this section.
- 69.** (1) If an auditor of a market institution, in the
20 ordinary course of performing his duties, becomes aware of –
- Duties of an auditor of a market institution.
- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the market institution, to a material extent;
- 25 (b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act, regulations, rules or directives made thereunder or an offence involving fraud or dishonesty affecting the financial stability of the market institution to a material extent; or
- 30 (c) any irregularity that has or may have a material effect on the accounts of the market institution, including any irregularity that adversely affects or may adversely affect, the funds or property of investors in securities,

the auditor shall immediately send to the board of directors a written report of the matter or the irregularity with a copy to the Commission.

5 (2) An auditor of a market institution shall not be liable to any suit by any person in respect of any statement made in his report under subsection (1) provided the auditor has acted in good faith.

10 (3) Subsection (2) shall not restrict or affect any right, privilege or immunity that the auditor of a market institution, may have, apart from this section, as a defendant in an action for defamation.

(4) The Commission may impose all or any of the following duties on an auditor of a market institution:—

15 (a) a duty to submit such additional information and reports in relation to his audit as the Commission considers necessary;

(b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the market institution;

20 (c) a duty to carry out any other examination or establish any procedure in any particular case; or

25 (d) a duty to submit a report on any matter arising out of his audit, examination or establishment of procedure referred to in paragraph (b) or (c), and the auditor shall carry out such duties, as an extension to his ordinary audit scope for issuing an independent opinion on the financial statements.

30 (5) The market institution shall remunerate the auditor in terms of the fees schedule published by the Commission in respect of the discharge by him of all or any of the duties referred to in subsection (4) and in circumstances where further investigation is necessary remuneration to auditors shall be paid by the Fund of the Commission.

- 70.** A market institution, shall submit to the Commission such reports including a risk management audit in such form, manner and frequency as may be specified by the Commission. Obligation to submit periodic reports.
- 5 **71.** A market institution shall pay to the Commission an annual fee as may be prescribed by the Commission. Payment of annual fee.
- 72.** (1) A person shall not hold out as a stock exchange, a derivatives exchange, a clearing house or a central depository and shall not take or use or by inference adopt Prohibition against holding out.
- 10 the name, title or description of “stock exchange”, “derivatives exchange”, “futures exchange”, “stock market”, “derivatives market”, “futures market”, “clearing house”, “clearing facility”, “central depository”, “securities trading market”, “derivatives trading market” or “ futures trading
- 15 market”, or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is a stock exchange , derivatives exchange, clearing house or a central depository.
- (2) A person who contravenes the provisions of
- 20 subsection (1) shall commit an offence.
- 73.** (1) A person who is aggrieved by a decision of the Commission may make an application to the Commission to review its decision within thirty days after the aggrieved person is notified of such decision. Power of the Commission to review its own decision.
- 25 (2) The Commission shall communicate its decision to the applicant in writing not later than ninety days from the date the application is received.

PART III

ISSUE OF SECURITIES

- 30 **74.** The object and purpose of this Part shall be— Object and purpose of this Part.
- (a) to regulate the issue of securities;

- (b) to ensure the disclosure of financial information by listed public companies;
- (c) to require auditors to disclose financial irregularities;
- 5 (d) to licence market intermediaries and register their representatives; and
- (e) to protect clients' assets.

CHAPTER I

Trade in Securities

10 **75.** (1) A corporate entity listed or unlisted shall not make a public offer of securities either directly or through a third party by way of a prospectus or a similar document or otherwise for the purposes of solicitation of funds from the public unless approved by the Commission or a person
15 authorized by the Commission. Offer of Securities.

(2) A public offer means an offer made to the public in terms of the criteria provided in subsection (3) other than an offer made to an accredited investor. Such accredited investor shall be prohibited from making a subsequent sale of such
20 securities to the public.

(3) The Commission shall specify, the type of public offers under subsection (1) by reference to the volume of securities, class of securities, the number and type of investors, the type and nature of the issuer, type of securities
25 market or whether such public offer is regulated by a comparative regulator by way of rules published in the *Gazette*.

(4) The Commission may subject to such terms and conditions published by way of rules in the *Gazette* exempt,
30 any securities or any class of securities by reference to type,

volume, value, limited character or nature from the provisions of this Act except securities of listed public companies and listed foreign entities.

5 **76.** (1) Any person other than a listed public company, prior to making a public offer of securities shall obtain the approval of the Commission or any person authorized by the Commission.

Approval of
the
Commission
for issue of
securities.

10 (2) A listed public company shall obtain the approval of the Commission or any person authorized by the Commission in respect of -

(a) any new issue or offer for sale of securities to the public, whether such issues or offers for sale are by way of a public offer or otherwise;

(b) private placement of securities;

15 (c) rights issues of securities;

(d) bonus issues of securities; or

(e) schemes of arrangements, schemes of reconstruction, take over schemes, share option schemes and acquisition of assets by way of issues of securities.

20 (3) Any approval of such offer of securities shall be communicated within a period not exceeding twenty calendar days unless otherwise communicated in writing.

25 (4) A listed foreign entity shall obtain the approval of the Commission or any person authorized by the Commission for a public offer of securities at the time of listing on an exchange.

30 (5) The board of directors of every listed public company and listed foreign entity shall ensure that the company or the entity shall comply with the rules and requirements of the exchange in which it is listed at all times so long as the company or the entity remains listed on the exchange.

5 **77.** (1) The prospectus or similar document prepared by a person making an offer to the public shall comply with the requirements specified in the Companies Act, No. 7 of 2007, and any other requirements specified by the Commission and in the rules of an exchange. Prospectus or similar document.

10 (2) A person making an issue of securities to the public shall lodge a copy of the prospectus or the similar document with the Commission or with any person authorized by the Commission for that purpose prior to registration of the prospectus as required under the Companies Act, No. 7 of 2007.

15 (3) The Commission shall have the power to examine any prospectus or similar document when a person makes a public offer of securities for the purpose of solicitation of funds from the public.

20 **78.** (1) The Commission may issue an order to the issuer not to allot, issue, offer or make an invitation to subscribe for or purchase or sell further securities relating to public offers, if the Commission is of the opinion that— Commission to issue stop orders.

25 (a) a prospectus or similar document does not comply with or is not prepared as specified in subsection (1) of section 77 of this Act;

 (b) a prospectus or similar document contains a statement or information that is false or misleading or constitutes a material omission; or

 (c) an issuer has not complied with the requirements imposed under this Act, any regulations, rules or directives made thereunder or rules of an exchange or the Companies Act, No.7 of 2007.

30 (2) The Commission may make an interim order if the Commission considers that any delay in making such an order under subsection (1) would be prejudicial to the interest of investors.

(3) Subject to subsections (2) and (4), the Commission shall not make an order under subsection (1) unless the Commission has given a reasonable opportunity to be heard to any affected person as to whether such an order should be made.

(4) An interim order under subsection (2) shall, unless previously revoked have effect until the end of twenty one days after the day on which it is made or the conclusion of the hearing in subsection (3), whichever date is later.

(5) An interim order made under subsection (2) may be revoked by the Commission by way of a directive if the Commission becomes satisfied that the circumstances that resulted in the making of the order no longer exist.

(6) Where applications to subscribe for or purchase securities to which the prospectus or similar document relates have been made prior to the stop order made under subsection (1) –

(a) where the securities have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the issuer or such other person who receives the monies, shall, forthwith repay without interest all monies received from the applicants and if the money is not repaid within fourteen days of the stop order, the issuer shall be liable to repay the monies with interest as may be specified by the Commission from the expiration of that period; or

(b) where the securities have been issued to the applicants, the issue of securities shall be deemed to be void and the issuer or any other person shall forthwith repay without interest all monies received from the applicants and if such money is not repaid

within fourteen days of the date of service of the stop order the issuer shall be liable to repay such monies with interest at the rate as may be specified by the Commission from the expiration of that period.

5 (7) Provisions of this section shall not apply in respect of any issuer if any of the securities to which the prospectus or similar document relates have been listed on an exchange and trading in them has commenced.

10 **79.** (1) A person holding securities in a company listed on a stock exchange shall not buy, sell, gift or otherwise deal in such securities off the trading floor without the prior approval of the Commission except in compliance with the trading procedure adopted by such stock exchange. Purchase, sale or transfer of securities.

15 (2) A person as referred to in subsection (1) may gift any such securities to a relation otherwise than in compliance with such trading procedure if he gives prior notice to the Commission and the exchange of the particulars relating to the proposed gift.

20 (3) In this section “relation” means a parent, spouse, child (including step children) or sibling (including step brother or step sister) of that person or the spouse of a child of that person.

80. (1) Where it appears to the Commission that - Power of the Commission to require the production of documents.

25 (a) there exist circumstances suggesting from the disclosures made to the public that the business of a listed public company has been conducted—

(i) for a fraudulent or unlawful purpose;

30 (ii) in a manner that contravenes the provisions of this Act, regulations, rules or directives made thereunder or rules of a market institution; or

- (iii) in a manner, prejudicial to the interest of investors;
- (b) there exist circumstances suggesting that a company was listed for a fraudulent or unlawful purpose;
- (c) there exist circumstances suggesting that the persons concerned with the listing of a company or the management of its affairs in relation to the listing or management of its affairs have been guilty of fraud, wrongdoing or other misconduct; or
- (d) there exist circumstances suggesting that the director or management of a listed public company have intentionally suppressed information with respect to the affairs of the company that is required to be provided under this Act, regulations, rules or directives made thereunder or as may reasonably be expected to be released to the public,

the Commission may issue directives to the listed public company requiring such company to produce the documents, electronic records or other information specified in the directive at a specified time and place.

- (2) The Commission may delegate its authority under subsection (1) to any person to require the submission of documents, electronic records or any other information for the purposes of subsection (1).

- (3) The Commission or an authorized person may require the production of documents and electronic records from a listed public company under this section.

(4) The Commission or an authorized person may also require production of such documents and electronic records from a person who appears to the Commission or authorized person to be in possession of them and where the Commission
5 or the authorized person is of the opinion that a person is in possession of such documents and records, the Commission or the authorized officer may require such person to produce such documents or electronic records.

(5) Where such documents or electronic records referred
10 to in subsections (1), (2) and (3) are produced, the Commission or the authorized officer shall require the listed public company—

(a) to take copies of them or extracts from them; and

(b) to require that person or any other person who is a
15 present or past officer of the listed public company or was at any time employed by the listed public company to provide an explanation of such documents and electronic records;

(c) where the records and documents and electronic
20 records are not produced, the person required to produce to give reasons for failure to produce such documents and records; or

(d) where the documents and electronic records are not
25 produced, the person required to produce them shall disclose its location to the best of his knowledge and belief.

(6) Where any listed public company fails to comply with this section, the Commission shall issue a directive to the listed public company under section 81 of this Act.

5 **81.** Where it appears to the Commission that a listed public company has contravened or failed to comply with any provision of the Act, regulations, rules or directives in purported compliance with such provisions of the Act, regulations, rules or directives or has furnished the Commission with information that is false, inaccurate or misleading, the Commission may issue a directive to the listed public company-

Power of the Commission to issue directives to listed public companies.

10 (a) to cease and desist from any contravention of this Act, regulations, rules or directives made thereunder;

(b) to do or refrain from doing any matter as specified under this Act, regulations, rules or directives made thereunder; or

15 (c) to carry out any other matter that the Commission considers necessary in the exercise of its powers under this Act, regulations, rules or directives made thereunder.

20 **82.** (1) A person who furnishes information or cause information to be furnished to the Commission under this Act, regulations, rules or directives made thereunder shall exercise due care to ensure that the information is not false or misleading in any material particular.

Duty not to furnish false information to the Commission.

(2) A person who -

(a) signs a document lodged with the Commission; or

25 (b) submits to the Commission a document by electronic means using any identification or other authentication method or procedure assigned to him by the Commission,

30 shall exercise due care to ensure that the document is not false or misleading in a material particular.

(3) A person who contravenes subsection (1) or (2) commits an offence under this Act.

5 **83.** A person with intent to deceive, makes or furnishes, or knowingly and willfully authorizes or permits the making or furnishing of any misleading statement or report to a market institution licensed under this Act in relation to any information that a listed public company is required to furnish under this Act, regulations, rules or directives made thereunder commits an offence under this Act.

Duty not to make false statements to market institutions.

10 **84.** (1) A listed public company shall maintain the status of a listed public company on the exchange as specified in the rules of an exchange.

Appointing Directors or Chief Executive Officer.

15 (2) The directors or chief executive officer of the listed public company shall comply with the fit and proper criteria specified by the Commission or in the rules of an exchange in appointing or maintaining directors or chief executive officer to the listed public company.

20 **85.** (1) If an auditor of a listed public company in the ordinary course of the performance of his duties is of the professional opinion that there has been a contravention or non compliance with any requirement or provision of this Act, regulations, rules or directives made thereunder or a breach of any of the rules of an exchange or any matter which may adversely affect the financial position of the listed public company to a material extent, the auditor shall immediately report such matter or non compliance to the audit committee in writing to rectify and if no remedial measure is taken within two weeks thereof , refer the matter to the board of directors in writing to rectify the breach or deter the commission of a breach where it has not yet happened.

Duties of an auditor of a listed public company.

(2) If no action is taken under subsection (1) by the board of directors to rectify the breach or non compliance within two weeks, the auditor shall submit a written report on the matter immediately thereupon—

- 5 (a) in the case of a breach or non compliance with any requirement or provision of this Act, regulations, rules or directives issued thereunder, to the Commission;
- 10 (b) in the case of a breach or non compliance with the rules of an exchange, to the relevant exchange and the Commission; or
- 15 (c) where an auditor becomes aware of actual or intended conduct of the company which the auditor has reason to believe would constitute an imminent breach of a law or regulation or commission of a fraudulent act which may cause substantial harm to the financial position of the listed public company to a material extent, to the relevant exchange and the Commission.
- 20 (3) No auditor shall be liable to be sued in any court of law for any report submitted by the auditor in good faith and on the intended performance of any duty imposed on the auditor under this section.
- 25 (4) The Commission may at any time during or after an audit, require an auditor of a listed public company to—
- (a) submit such additional information in relation to his audit as the Commission may specify;
- 30 (b) enlarge or extend the scope of his audit of the business and affairs of the listed public company in such manner or to such extent as the Commission may specify;

(c) carry out any specific examination or establish any procedure in any particular case; or

(d) submit a report including an interim report on any matter referred to in paragraphs (a) to (c),

5 and the Commission may specify the time within which such requirements shall be complied with by the auditor.

(5) The auditor shall comply with any requirement of the Commission under subsection (4) and the listed public company shall remunerate the auditor at the rates specified
10 by the Commission in respect of the discharge by him of all additional duties under this section.

(6) The listed public company shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all of the
15 additional duties under this section.

86. (1) A person shall not influence, coerce, mislead or authorize any person engaged in – Prohibition
against undue
influence.

(a) the preparation of the financial statements of a listed public company or any of its related companies; or

20 (b) the performance of an audit of the financial statements of a listed public company or any of its related companies,

to do anything which he knows or could reasonably have known may cause the financial statements or audited
25 financial statements to be false or misleading in a material particular.

(2) Any person who contravenes subsection (1) commits an offence.

CHAPTER 2

Market Intermediaries

87. (1) A person shall not hold out as a market intermediary without obtaining a licence from the Commission. Prohibition against holding out as a market intermediary.
- 5 (2) Any person who contravenes subsection (1) commits an offence and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding twenty five million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.
- 10 88. (1) Any person who carries on or intends to carry on business as a market intermediary shall hold a licence issued for that purpose by the Commission. Requirement to be licensed with the Commission.
- (2) Any person who contravenes subsection (1) commits an offence and shall on conviction after summary trial by a
15 Magistrate be liable to a fine not exceeding twenty five million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.
89. (1) An application for the purpose of a licence under this section or renewal of the licence under subsection (4) of
20 this section shall be made to the Commission in such form together with such documents and such fee as may be specified by the Commission. Application for a licence or renewal of a licence as a market intermediary.
- (2) The Commission may require an applicant –
- 25 (a) to furnish further information in connection with an application in such form and manner as it may specify; and
- (b) to have any information submitted in support of an application verified at the cost of the applicant in such manner and by such persons
30 as it may specify.

(3) An application for renewal of a licence under this section shall be made three months prior to the expiry of the licence, accompanied by the renewal fee as may be prescribed by the Commission.

5 (4) Where an applicant submits an application for renewal of a licence after the expiry of its licence, the Commission may in addition to the renewal fee, impose a late fee not exceeding five *per centum* of the licensing fee as may be prescribed for each day of delay until the renewal is made.

10 (5) The Commission may grant or renew a licence for the purposes of this Chapter, subject to such conditions or restrictions as it thinks fit.

15 **90.** (1) Where an application is made for the grant or renewal of a licence to act as a market intermediary, the Commission may refuse the application on any of the following grounds:- Refusal to grant or renew a licence.

- (a) the application was not made in accordance with this Chapter;
- 20 (b) the applicant has failed to comply with any requirement of this Act, regulations and the rules made thereunder;
- (c) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission;
- 25 (d) the applicant is in the course of being wound up or otherwise dissolved or an undischarged bankrupt;
- (e) execution against the applicant in respect of a judgement debt has been returned unsatisfied in whole or in part;

- (f) a receiver, a receiver and manager or an equivalent person has been appointed within or outside Sri Lanka in respect of any property of the applicant;
- 5 (g) the applicant has, whether within or outside Sri Lanka entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
- (h) the applicant or any of its directors, chief executive officer, managers or controller—
- 10 (i) has been convicted, whether within or outside Sri Lanka of an offence involving fraud or dishonesty or the conviction of which involved a finding that he acted fraudulently or dishonestly;
- 15 (ii) has been subjected to any administrative action taken by the Commission under this Act;
- 20 (iii) has been convicted or has been compounded of an offence for which he has been charged under this Act or under the laws governing securities outside Sri Lanka;
- 25 (iv) has contravened any provision made by or under any law whether within or outside Sri Lanka enacted for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies;
- 30 (v) has engaged in any business practices that may be deceitful or oppressive or otherwise improper or reflect discredit on its method of conducting business;

- 5 (vi) has engaged in or has been associated with any other business practices or otherwise conducted itself or himself in such a way as to cast doubt on its or his competence and integrity; or
- (vii) is an undischarged bankrupt whether within or outside Sri Lanka;
- 10 (i) the Commission has reason to believe that the applicant or any of its directors, chief executive officer or controller may not be able to act in the best interest of its clients having regard to their reputation, character, financial integrity and reliability;
- 15 (j) the Commission is not satisfied as to the financial standing of the applicant or the manner in which the applicant's business is to be conducted;
- 20 (k) the Commission is not satisfied as to the record of past performance or expertise of the applicant, having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence and there exists circumstances which are likely to -
- 25 (i) lead to the improper conduct of business by the applicant or by any of its directors, chief executive officer or controller; or
- (ii) reflect discredit on the manner of conducting the business of the applicant;
- 30 (l) the Commission has reason to believe that the applicant or any of its directors, chief executive officer or controller will not carry on the business efficiently, honestly or fairly; or

(m) the Commission is of the opinion that it would be contrary to the interests of the investors to grant or renew the licence.

5 (2) The Commission shall not refuse to grant or renew a licence without giving the applicant an opportunity to be heard.

10 **91.** A market intermediary shall not carry on business for which it is licensed under this Chapter, without the written consent of the Commission if it does not meet the minimum financial requirements as may be specified by the Commission or as may be provided in the rules of an exchange. Minimum financial requirements.

92. (1) A person who deals with clients for and on behalf of a market intermediary shall register with the Commission and shall be known as the registered person for that purpose. Requirement to register with the Commission.

15 (2) For the purposes of seeking registration under subsection (1), a market intermediary shall make an application to the Commission on behalf of that person.

20 **93.** (1) An application of a person for the purpose of registration or renewal of the registration shall be made to the Commission in such form together with such documents and such fee as may be specified by the Commission. Application for registration or renewal of registration.

(2) The Commission may require an applicant—

25 (a) to furnish further information in connection with an application in such form and manner as it may specify; and

(b) to have any information submitted in support of an application verified at the cost of the applicant in such manner and by such persons as it may specify.

(3) An application for renewal of registration under this section shall be made three months prior to the expiry of the registration.

5 (4) Where an applicant submits an application for renewal of registration after the expiry of its registration, the Commission may in addition to the renewal fee impose a late fee not exceeding five *per centum* of the registration fee as may be prescribed for each day of delay until the renewal is made.

10 (5) The Commission may grant or renew a registration for the purposes of this Chapter, subject to such conditions or restrictions as it thinks fit.

15 **94.** (1) Where an application is made for the grant or renewal of registration as a registered person under this Part, the Commission may refuse the application on any of the following grounds:—

Grounds for refusal to register or renew registration.

- (a) the application was not made in accordance with section 93;
- 20 (b) the applicant has failed to comply with any requirement of section 93;
- (c) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission;
- 25 (d) the applicant is an undischarged insolvent or an undischarged bankrupt whether within or outside Sri Lanka;
- (e) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;

- (f) the applicant has –
- 5 (i) been convicted, whether within or outside Sri Lanka of an offence involving fraud or other dishonesty or the conviction of which involved a finding that he acted fraudulently or dishonestly;
 - (ii) been subjected to any administrative action taken by the Commission under this Act;
 - 10 (iii) been convicted or compounded of an offence under this Act or under the laws governing securities outside Sri Lanka;
 - 15 (iv) contravened any provision made by or under any written law whether within or outside Sri Lanka appearing to the Commission to be enacted for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies or
20 against financial loss due to the conduct of discharged or undischarged bankrupts;
 - 25 (v) engaged in any business practice appearing to the Commission to be deceitful or otherwise improper, whether unlawful or not or otherwise reflect discredit on the method of conducting business; or
 - 30 (vi) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on the competence and soundness of judgment;

5 (g) the Commission is not satisfied as to the educational or other qualification or experience of the applicant having regard to the nature of the duties to be performed for and on behalf of the market intermediary;

10 (h) the Commission has reason to believe that the applicant may not be able to act in the best interests of the clients of the market intermediary having regard to his reputation, character, financial integrity and reliability;

(i) the Commission is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the duties to be performed for and on behalf of the market intermediary;

15 (j) the Commission has reason to believe that the applicant has not acted honestly or fairly; or

(k) the Commission is of the opinion that it would be contrary to the interests of investors to grant or renew the registration.

20 (2) The Commission shall not refuse to grant or renew the registration without giving the applicant an opportunity to be heard.

25 **95.** The Commission may, at any time by notice in writing to a market intermediary or registered person, vary any condition or restriction or impose such further condition or restriction as it considers necessary for the protection of investors. Power to vary conditions or restrictions.

30 **96.** (1) A licence that has been granted under this Part shall be valid for a period of twelve months from the date of issue of the licence. Duration of licence or registration.

(2) A licence that has been renewed under this Part shall continue to be in force for a further period of twelve months or such later date as may be specified by the Commission commencing on the date upon which it would have expired but for its renewal.

(3) Where a licence is renewed for a period of more than twelve months, in terms of subsection (2), the market intermediary shall pay to the Commission the specified licence fee in the manner specified by the Commission.

(4) The provisions of subsections (1) to (3) of this section shall, *mutadis mutandis*, apply to, and in relation to the duration of the registration granted to a registered person under this Part.

97. (1) A person shall not, in connection with an application submitted to the Commission under this Part –

False and misleading statements to the Commission.

(a) make or procure the making of a statement to the Commission which he knows or could reasonably be expected to know is false or misleading; or

(b) omit to state any matter to the Commission where he knows or could reasonably be expected to know that because of the omission, the statement is misleading in a material respect.

(2) Any person who contravenes subsection (1) commits an offence.

98. (1) Where a market intermediary proposes to alter material particulars already furnished or undergoes or intend to undergo a change from the particulars specified in the application for a licence or the renewal of a licence, it shall be the duty of such market intermediary to inform the Commission and obtain its prior consent before such alteration or change is effected.

Duty to notify the Commission.

(2) Where a registered person proposes to alter any particulars already furnished or undergo or intend to undergo a change from the state specified in the application for registration or renewal of a registration as a registered person,
 5 it shall be the duty of such registered person and the market intermediary for whom the registered person is acting for or employed, to forthwith inform the Commission of such alteration or change.

99. A person shall not act as an agent in carrying on the
 10 business of a licensed market intermediary or hold himself out as doing so unless he is duly authorized by the Commission or a person authorized by the Commission to act as an agent of a market intermediary to carry on such activity.

Prohibition against holding out as an agent.

100. (1) The Commission shall, cancel or suspend a
 15 licence granted to a market intermediary under this Part, where the Commission is satisfied that-

Cancellation or suspension of licence or registration.

(a) there exists a ground on which the Commission may refuse an application for a licence;

(b) the market intermediary has contravened any
 20 condition or restriction in respect of its licence or any directive issued to him by the Commission under this Act; or

(c) the market intermediary has contravened any rules binding upon him as the case may be.

(2) Before the cancellation or suspension of a licence granted to a market intermediary in terms of subsection (1) of this section, the market intermediary shall be given an opportunity to be heard.

(3) Where the licence granted to a market intermediary is
 30 cancelled, it shall be the duty of the market intermediary to forthwith surrender its licence to the Commission.

(4) The cancellation of a licence by the Commission under subsection (1) shall not affect or prejudice the institution or maintenance of any action against such market intermediary under this Act.

5 (5) The Commission shall have the power to suspend or cancel the registration granted to a registered person under this Part in accordance with the rules specified by the Commission.

10 (6) The provisions of subsections (1) to (4) of this section shall, *mutatis mutandis*, apply to, and in relation to, any suspension or cancellation as the case may be, of a registration granted to a registered person under this Part.

101. A market intermediary or registered person shall not –

Trading in securities by market intermediaries.

15 (a) trade in or otherwise deal in securities outside the exchange of which he is a trading participant without the prior approval of the Commission;

(b) trade in securities in contravention of such rules of the Commission or the rules of a market institution;

20 (c) effect any transaction in a margin account in a manner contrary to the requirements set out by the market institution of which he is a trading participant; or

25 (d) effect any transaction by means of any manipulative, deceptive or other fraudulent device or contrivance in order to induce or attempt to induce the purchase or sale of any securities.

102. A market intermediary shall not lend or arrange for lending of any securities carried for the account of any client without the client's written consent or borrow or arrange to borrow, using the securities carried for the account of any client as collateral without the client's written consent.

Lending and borrowing of securities without the consent of the client.

- 103.** (1) If an auditor of a market intermediary, in the ordinary course of the performance of his duties as an auditor, is of the professional opinion that there has been a breach or non compliance of any requirement or provision of this Act, regulations, rules or directives made thereunder or a breach of any of the rules of a market institution or any matter which may adversely affect the financial position of the market intermediary to a material extent, the auditor shall immediately submit a written report to the board of directors on the matter with a copy to—
- Duty of an auditor of a market intermediary.
- 5
- 10
- (a) in the case of a breach or non compliance of any requirement or provision of this Act, regulations, rules or directives made thereunder, to the Commission;
- 15
- (b) in the case of a breach or non compliance of any of the rules of a market institution, to the relevant market institution and the Commission; or
- (c) in any other case, which adversely affects the financial position of the market intermediary to a material extent, to the relevant market institution and the Commission.
- 20
- (2) No auditor shall be liable to be sued in any court for any report submitted by the auditor in good faith and on the intended performance of any duty imposed on the auditor under this section.
- 25
- (3) The Commission may at any time during or after an audit, require an auditor of a market intermediary to—
- (a) submit such additional information in relation to his audit as the Commission may specify;
- 30
- (b) enlarge or extend the scope of his audit of the business and affairs of the market intermediary in such manner or to such extent as the Commission may specify;

- (c) carry out any specific examination or establish any procedure in any particular case; or
 - (d) submit a report or an interim report as the case may be on any matter referred to in paragraphs (a) to (c),
- 5 and the Commission may specify the time within which such requirements shall be complied with by the auditor.

(4) The auditor shall comply with any requirement of the Commission under subsection (3) and the market intermediary shall remunerate the auditor at the rates specified by the Commission in respect of the discharge by him of all additional duties under this section.

10

(5) The market intermediary shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all of the additional duties under this section.

15

CHAPTER 3

Protection of Clients' Assets

104. For the purposes of this Chapter, unless the context otherwise requires— Interpretation.

20 “client” in relation to a market intermediary means a person on behalf of whom the market intermediary trades or from whom the market intermediary accepts instructions from, to deal in securities.

105. (1) A market intermediary shall, to the extent that it receives money or other assets from or on account of a client – Protection of client's assets.

(a) do so on the basis that the money or other assets shall be applied solely for such purpose as may be agreed to by the client when or before it receives the money or other assets;

30

- (b) hold money and other assets received on account of a client in trust for the benefit of such client;
- (c) shall not commingle money received on account of a client with its own funds or use such money as margin or guarantee for, or to secure any transaction of or to extend credit of any person other than the client without his written consent;
- (d) record and maintain a separate book entry for each client in accordance with the provisions of this Part or any rules that may be specified under subsection (2) in relation to that client's money or other assets.
- (2) The Commission may, make rules in respect of all or any of the matters in subsection (1), including the handling of money or other assets by a market intermediary.
- (3) Except as otherwise provided in this section or the rules made under subsection (2), all money or other assets received from or on account of clients or deposited with a market intermediary-
- (a) shall not be available for payment of debts of the market intermediary; and
- (b) shall not be liable to be paid or taken in execution under an order or a process of any court in respect of any liability of that market intermediary.
- (4) Any market intermediary who, contravenes subsection (1), subsection (3) or any rule made under subsection (2), shall be guilty of an offence.
- 106.** (1) The Commission may make rules regulating the business conduct of a market intermediary or a registered person as the Commission considers necessary in the interest of client protection and for the purpose of raising professional standards of a market intermediary and a registered person.

Rules on
business
conduct.

(2) Any person who contravenes the rules made under subsection (1) commits an offence.

107. (1) A market intermediary or a registered person shall not make a recommendation with respect to any securities to a person other than an accredited investor where such person may reasonably be expected to rely on the recommendation, if the market intermediary or registered person does not have a reasonable basis for making the recommendation to the person and also caution that the value of securities may fluctuate.

Liability for unreasonable recommendations.

(2) For the purposes of subsection (1), a market intermediary or registered person does not have a reasonable basis for making a recommendation to a person unless—

- (a) he has, for the purposes of ascertaining that the recommendation is appropriate, had regard to the information possessed by him concerning the investment objectives, financial situation and particular needs of the person is accurate and complete; and
- (b) he has exercised due diligence into the subject matter of the recommendation as is reasonable in all the circumstances and made the recommendations accordingly.

(3) Where a market intermediary or registered person violates subsection (1), the market intermediary or registered person is liable to compensate any direct loss or damage to a person where—

- (a) the person in reliance on the recommendation does a particular act or refrains from doing a particular act;
- (b) it is rational, having regard to the recommendation and all other relevant circumstances, for the person to do that act or to refrain from doing that act in reliance on the recommendation; and

(c) the person suffers loss or damage as a result of doing that act or refraining from doing that act, as the case may be without prejudice to any other remedy available to that person.

5 (4) The Commission may exempt any market intermediary or class of market intermediaries from the application of this section under such conditions as may be specified by the Commission.

10 (5) A market intermediary or a registered person shall not be liable under subsection (3), if it is proved that the person in the circumstances would have done or omitted to do that act disregarding the recommendation made by the market intermediary or the registered person under subsection (1).

15 (6) In the case of a contravention of subsection (1), a market intermediary or a registered person shall not be liable if it is proved that the recommendation was in all circumstances, appropriate having regard to the information that the market intermediary or the registered person had
20 about the client's investment objectives, financial situation and particular needs when the market intermediary or the registered person makes the recommendation.

25 **108.** (1) Where a market intermediary sends a circular or other similar written communication in which he makes a recommendation, with respect to any securities, he shall include in the circular or other communication a concise statement of the nature of any interest in the acquisition or disposal of the securities that he or a person associated with or connected to him, has at the date on which the circular or
30 other communication is sent.

Disclose certain interests in securities.

(2) Where a market intermediary contravenes subsection (1), he shall be charged with an offence in respect of a

contravention of subsection (1), it shall be a defence for the market intermediary to prove that at the time the circular or other communication was sent, he was not aware and could not reasonably be expected to have been aware —

- 5 (a) that he had an interest in the acquisition or disposal of the securities; or
- (b) that the person associated with or connected to him had an interest in the acquisition or disposal of the securities as the case may be.
- 10 (3) For the purposes of subsections (1) and (2) -
- (a) an interest of a person in the acquisition or disposal of any securities includes any financial benefit or advantage that will or is likely to accrue directly or indirectly to the person upon or arising out of the
- 15 acquisition or disposal of the securities;
- (b) without limiting the generality of paragraph (a), a person who has entered into an underwriting agreement in respect of any securities shall be deemed to have an interest in the acquisition or
- 20 disposal of the securities; and
- (c) notwithstanding subsection (1) or paragraph (b) of subsection (2), a person is not connected to or associated with another person unless the person and the other person are acting jointly or otherwise
- 25 acting under or in accordance with an arrangement made between them, in relation to the sending of the circular or other communication.
- (4) When a market intermediary sends to a person a circular or other communication to which subsection (1) applies, the
- 30 market intermediary shall preserve a copy of the circular or other communication for six years.

(5) For the purposes of this section, a circular or other communication sent to a person shall, if it is signed by an officer of a market intermediary, be deemed to have been sent by the market intermediary.

5 (6) Any person who contravenes this section commits an offence under this Act.

10 **109.** A market intermediary shall establish and maintain reasonable procedures and processes in writing for the purpose of monitoring compliance with the Act, regulations, rules or directives made thereunder which will enable the market intermediary to monitor risk to its business.

Internal procedures and processes.

15 **110.** (1) The Commission shall keep in such form and manner as it may determine, a register of market intermediaries and registered persons which shall be made available for public inspection in such manner as the Commission may determine.

Register of market intermediaries and registered persons.

(2) The register shall be in electronic form and the Commission shall update the register at all times.

20 (3) The register for the market intermediary and the registered person shall contain –

- (a) the name of the market intermediary or the registered person;
- (b) the business address of the market intermediary or the registered person;
- 25 (c) the type of licence held by the market intermediary or the type of registration held by the registered person;
- (d) the date the licence was granted to the market intermediary or the date the registration was granted to the registered person;
- 30

- (e) the names of registered persons acting for or employed by the market intermediary; and
- (f) any other matter that the Commission considers appropriate.

5 (4) The Commission may make necessary amendments in the register with respect to a market intermediary or a registered person where the licence held by the market intermediary is cancelled or suspended or where the registration held by the registered person is cancelled or
 10 suspended under this Act.

PART IV

TRADE IN UNLISTED SECURITIES

111. The object and purpose of this Part shall be – Object and purpose of this Part.

15 (a) to provide a platform through a recognized market operator for sale and purchase of unlisted securities in Sri Lanka to local and overseas investors in a transparent manner; and

20 (b) to facilitate the disclosure of information relating to unlisted securities to local and overseas investors through a recognized market operator in a transparent manner.

CHAPTER 1

Establishment of a Recognized Market Operator

25 **112.** A person shall not operate as a market operator under this Part unless such person is registered or exempted from registration with the Commission. Establishment of a recognized market operator.

113. (1) For the purposes of section 112, the Commission may upon application made by a person, register the person as a recognized market operator subject to any terms and conditions as the Commission considers necessary.

Requirement to register a market operator.

5 (2) The Commission may, from time to time, vary, amend or revoke any terms and conditions imposed under subsection (1).

114. (1) An application to be registered as a recognized market operator shall be accompanied by such documents and information and in such manner as the Commission may specify.

Application for registration.

15 (2) An application by such person for registration under this section shall provide documents evidencing that such person has experience in trades executed on a platform to the satisfaction of the Commission.

20 (3) An application by such person for registration under this Chapter shall provide documents evidencing that the arrangements are made by such platform for the clearance and settlement of the trades executed on the platform to the satisfaction of the Commission.

CHAPTER 2

Role of a Recognized Market Operator

115. The functions and duties of a recognized market operator shall be -

Functions and duties of a recognized market operator.

25 (a) to provide a platform for the sale and purchase of unlisted securities in Sri Lanka;

(b) to provide information relating to unlisted securities in Sri Lanka to the local and international financial community;

- (c) to provide criteria for admission and regulatory standards of its trading members;
- (d) to comply with any directive issued by the Commission, whether of a general or specific nature;
5 and
- (e) to provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires.
- 10 **116.** Any person buying and selling securities on a platform shall execute their orders through trading members admitted by the platform. Trading on a platform.
- 117.** The Commission shall make rules - Rules to be made by the Commission.
- 15 (a) to determine the type of unlisted securities that can be traded on a platform;
- (b) to determine the type of issuers who can report trades to a platform;
- (c) to determine the type of investors that may trade on the platform;
- 20 (d) to determine the type of trading members that may trade on the platform;
- (e) for the admission of trading members on the platform;
- 25 (f) to determine the level of disclosures required to be made by the platform; and
- (g) to determine the standards of business conduct in the sale or purchase of unlisted securities.

5 **118.** (1) Subject to subsection (3), where the Commission is satisfied that it is appropriate to do so in the interest of the investors or for the maintenance of an orderly and fair market, the Commission may, by notice in writing, withdraw the registration with effect from a date that is specified in the notice. Withdrawal
of
registration.

(2) Such notice referred to in subsection (1) shall state the grounds for the withdrawal of the registration.

10 (3) Notwithstanding the withdrawal under subsection (1), the Commission may permit the person to continue on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the withdrawal as the Commission may specify in the notice for the purpose of –

15 (a) closing down the operations of the recognized market operator to which the withdrawal relates; or

(b) protecting the interest of the investors.

20 (4) Where the Commission has granted permission to a person under subsection (3), such person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened any provision of this Act.

25 (5) The Commission shall not exercise its power under subsection (1) in relation to a recognized market operator unless it has given the recognized market operator an opportunity to be heard.

(6) Any withdrawal of registration made under this section shall not operate so as to –

30 (a) avoid or affect any agreement, transaction or arrangement entered into by the recognized market operator whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the registration under subsection (1);
or

- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

5 **119.** (1) The Commission may from time to time review the performance of a recognized market operator under this Part.

Review of the performance of a recognized market operator.

(2) The Commission may have regard to the following in reviewing the status of the recognized market operator:-

- (a) the systemic risk inherent in a platform;
- (b) the public interest;
- 10 (c) the size and structure of the platform;
- (d) the class of unlisted securities traded on the platform; and
- (e) the nature of the investors and the participants using the platform.

15 (3) The Commission shall not exercise its powers under subsection (1) without giving the recognized market operator an opportunity to be heard.

20 **120.** The Commission may exempt a market operator from registration under section 114 having regard to the criteria specified under section 117 subject to such terms and conditions as may be specified by the Commission.

Exemption for Market Operator.

25 **121.** (1) The provisions of this Act shall not apply to a sale, purchase and transfer of unlisted securities taking into consideration the criteria specified by subsection (3) of section 75 established on a platform by a recognized market operator and for securities exempted under subsection (4) of section 75 as may be specified by way of rules published in the *Gazette*.

Application of the provisions of the Act to unlisted securities.

(2) The rules relating to unlisted securities applicable to this trading platform made by the Commission under this Part shall prevail over any other rules relating to unlisted securities.

5

PART V

MARKET MISCONDUCT

122. The objects and purpose of this Part shall be – Object and purpose of this Part.

10

(a) to prevent false trading, market rigging and market manipulation with a view to establishing a fair, orderly and transparent securities market; and

(b) to prevent insiders trading with a view to establishing a fair, orderly and transparent securities market.

15

123. This Part shall apply:– Application of this Part.

(a) in respect of securities-

20

(i) acts or omissions occurring within Sri Lanka in relation to securities of any corporate entity which is formed or is carrying on business or is listed within or outside Sri Lanka; and

25

(ii) acts or omissions occurring outside Sri Lanka in relation to securities of any corporate entity which is formed or is carrying on business within Sri Lanka;

(b) in respect of derivatives-

(i) acts occurring within Sri Lanka in relation to derivatives, whether traded within or outside Sri Lanka; and

- (ii) acts occurring outside Sri Lanka in relation to derivatives traded within Sri Lanka.

CHAPTER 1

5

Prohibited Conduct

124. (1) Subject to section 129, a person shall not create or cause to create or do anything that is intended to create a false or misleading appearance of active trading in securities on an exchange within Sri Lanka or a false or misleading appearance with respect to the market for or the price of any such securities. False trading and market rigging transactions.

(2) A person shall not, by means of any purchase or sale of any security that does not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress, or cause fluctuations in the market price of any securities.

(3) Without affecting the generality of subsection (1), a person who –

(a) effects, takes part in, is concerned in or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities; or

(b) makes or causes to be made an offer to buy or sell such number of securities at a specified price where he has made or caused to be made or knows that a person associated with him has made or caused to be made an offer to purchase the same number or substantially the same number, of securities at a price that is substantially the same as the first mentioned price,

shall be deemed to have created a false or misleading appearance of active trading in securities on a stock market.

(4) For the purposes of subsection (3), it is a defence for a person to establish that—

- 5 (a) the purpose for which he did the act was not or did not include, the purpose of creating a false or misleading appearance of active trading in an exchange; and
- (b) he did not act recklessly, whether or not he created a false or misleading appearance of active trading in an exchange.

10 (5) For the purposes of this section, a purchase or sale of securities does not involve a change in the beneficial ownership, if a person or a person associated with such person had an interest in the securities before the purchase or sale and continues to have an interest in the securities after the
15 purchase or sale.

 (6) In dealing with a contravention of subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the person establishes that the purpose or
20 purposes for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for or the price of securities.

 (7) The reference in paragraph (a) of subsection (3) to a
25 transaction of sale or purchase of securities includes -

- (a) the making of an offer to sell or purchase securities; and
- (b) the making of an invitation, that expressly or impliedly invites a person to offer to sell or
30 purchase securities.

5 **125.** (1) Subject to section 129, a person shall not carry out or be involved in carrying out, either directly or indirectly, any number of transactions in securities of a company being transactions that have or are likely to have the effect of artificially—

Stock market manipulations.

(a) raising;

(b) lowering; or

(c) pegging, fixing, maintaining or stabilizing,

10 the price or volume of securities of that company in Sri Lanka, for the purpose of inducing other persons whether or not such person is induced to acquire or dispose of the securities of the company or of a related company.

(2) A reference in this section to a transaction in relation to securities of a company includes—

15 (a) the making of an offer to sell or purchase such securities of the company; and

(b) the making of an invitation, that expressly or impliedly invites a person to offer to sell or purchase such securities of the company.

20 **126.** A person shall not make a statement, or disseminate information that is false or misleading in a material particular and is likely to have the effect of raising, lowering, maintaining or stabilizing the market price or volume of securities, if —

False or misleading statements.

25 (a) he does not take reasonable care to check the accuracy of the statement or information; or

(b) he knows or could reasonably be expected to have known that the statement or information is false or misleading in a material particular.

127. (1) A person shall not induce or attempt to induce another person to trade in securities—

Fraudulently inducing persons to deal in securities.

- 5 (a) by making or publishing any statement or by making any forecast that he knows to be misleading, false or deceptive;
- (b) by any dishonest concealment of material facts;
- (c) by the reckless making or publishing, dishonestly or otherwise of any statement or forecast that is misleading, false or deceptive; or
- 10 (d) by recording or storing in, or by means of, any mechanical, electronic or other device, information that he knows to be false or misleading in a material particular.

15 (2) For the purposes of paragraph (d) of subsection (1), it shall be a defence if the person referred to in paragraph (d) of subsection (1) establishes that when the information was recorded or stored, that such person had no reasonable grounds for believing that the information would be available to any person.

20 **128.** A person shall not directly or indirectly in connection with the subscription, purchase or sale of any securities –

Use of manipulative and deceptive devices.

- (a) use any device, scheme or artifice to defraud;
- 25 (b) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or
- (c) make any false statement of a material fact or to omit to state a material fact necessary in order to make the statements.

5 **129.** The Commission may make rules to exempt any particular class, category or description of persons or any particular class, category or description of transactions relating to securities to which section 124 or 125 does not apply. Exempt certain class of transactions.

10 **130.** A person who contravenes section 124, 125, 126, 127 or 128 commits an offence and shall be liable on conviction to a fine of not less than ten million rupees or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment. Penalty for offences.

CHAPTER 2

Insider Trading

15 **131.** In this Chapter, “information” includes – Information.

(a) matters of supposition and other matters relating to listed public companies that are insufficiently definite to warrant being made known to the public;

(b) matters relating to the intentions, or likely intentions of a person;

20 (c) matters relating to negotiations or proposals with respect to –

(i) commercial dealings; or

(ii) dealings in securities;

25 (d) information relating to the financial performance of a company;

(e) information that a person proposes to enter into or has previously entered into one or more transactions or agreements in relation

to securities or has prepared or proposes to issue a statement relating to such securities; and

(f) matters relating to the future.

5 **132.** (1) In this Chapter, information is generally available if such information has been made known in a manner that would or would tend to bring it to the attention of reasonable persons who invest in securities whose price or value might be affected by such information and a reasonable period has lapsed in the dissemination of such information for it to have been assimilated by any such person.

Information generally available.

15 (2) The information referred to in subsection (1) includes information that consists of deductions or conclusions made or drawn from such information.

20 **133.** In this Chapter, information on becoming generally available would or would tend to have a material effect on the price or value of securities refers to such information which would or would tend to, on becoming generally available influence reasonable persons who invest in securities in deciding whether or not to acquire or dispose of such securities or enter into an agreement with a view to acquire or dispose of such securities.

Material effect on price or value of securities.

25 **134.** For the purposes of section 135, a person is deemed to procure an act or omission by another person if the first named person induces, encourages or directs the said act or omission by such other person.

Reference to "procure".

30 **135.** (1) A person is an "insider", whether such person is connected to the respective company or not, if that person—
 (a) possesses information that is not generally available and if it were generally available a reasonable person would expect it to have a material effect on the price or the value of securities; and

Prohibited conduct of person in possession of inside information.

(b) knows or could reasonably be expected to know that the information is not generally available.

(2) An insider shall not whether as principal or agent in respect of any securities to which information in subsection 5 (1) relates –

(a) acquire or dispose of or enter into an agreement for or with a view to the acquisition or disposal of such securities; or

10 (b) procure, directly or indirectly, an acquisition or disposal of or the entering into an agreement for or with a view to the acquisition or disposal of such securities.

(3) Where trading in the securities to which the information in subsection (1) relates is permitted on a 15 securities market of an exchange, the insider shall not directly or indirectly, communicate the information referred to in subsection (1) or cause such information to be communicated to another person, if the insider knows or could reasonably be expected to know that the other person would or would 20 tend to –

(a) acquire, dispose of or enter into an agreement with a view to the acquisition or disposal of any securities to which the information in subsection (1) relates; or

25 (b) procure a third person to acquire, dispose of or enter into an agreement with a view to the acquisition or disposal of any securities to which the information in subsection (1) relates.

(4) A person who contravenes subsections (2) or (3) 30 commits an offence and shall be liable on conviction to a fine of not less than ten million rupees or to imprisonment of either description for a term not exceeding ten years or to both such fine and imprisonment.

5 (5) The Commission may make rules in respect of any particular class, category or description of persons or any particular class, category or description of transactions, relating to securities, to whom or which this section does not apply.

136. (1) In this Chapter, a company is deemed to possess any information-

Information in possession of an officer of a company.

(a) which an officer of the company-

10 (i) possesses and which came into his possession in the course of his duties as an officer of the company; or

(ii) knows or could reasonably be expected to know because he is an officer of the company;

15 (b) which an officer of the company possesses and which came into his possession in the course of his duties as an officer of a related company of the first mentioned company where-

(i) the officer is an insider by reason of being in possession of the information;

20 (ii) the officer is involved in the decision, transaction or agreement of the first mentioned company in acquiring or disposing of securities in relation to which the officer is an insider or entering into an agreement to acquire or dispose of such securities, procuring another person to acquire or dispose of such securities or enter into an agreement to do so or communicating the information in circumstances referred to in subsection (3) of section 135; or

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5 (iii) it is reasonable to expect that the officer would communicate the information to another officer of the first mentioned company acting in his capacity as such unless it is proved that the information was not in fact so communicated;

(2) In this section “information” refers to information which a company is deemed to possess and “insider” means a person in possession of such information.

10 (3) A company does not contravene subsection (2) of section 135 by entering into a transaction or agreement at any time merely because of information in the possession of the company if-

15 (a) the decision to enter into the transaction or agreement was taken on behalf of the company by a person or persons other than an officer of the company in possession of the information;

20 (b) the company had in operation at that time arrangements that could reasonably be expected to ensure that-

25 (i) the information was not communicated to a person or one of the persons who was involved in or made the decision to enter into or be involved in the transaction or agreement;

(ii) no advice with respect to the decision to enter into or be involved in the transaction or agreement was given to that person by the person in possession of the information; or

30 (iii) the person in possession of the information would not be involved in the decision to enter into or be involved in the transaction or agreement; and

- 5 (c) the information was not communicated, no such advice was given and the person in possession of the information was not involved in the decision to enter into or be involved in the transaction or agreement.

137. (1) In this Chapter, a partner of a partnership is deemed to possess any information –

Information in possession of a partner or an employee of partnership.

- 10 (a) if a partner possesses information and it came into another partner's possession in his capacity as a partner of the partnership;
- (b) if an employee of the partnership possesses such information and it came into the employee's possession in the course of his duties; or
- 15 (c) if a partner or an employee of a partnership knows or could reasonably be expected to know any matter or thing because of another partner or employee, it is presumed, unless the contrary is proved that every partner of the partnership knows or could reasonably be expected to know that matter or thing.

20 (2) A partner of a partnership does not contravene subsection (2) of section 135 by entering into a transaction or agreement referred to in that subsection at any time merely because one or more but not all of the partners, or an employee or employees of the partnership were in actual

25 possession of information at the time if-

- (a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:-
- 30 (i) a partner who is taken to possess the information merely because another partner or an employee of the partnership was in possession of the information; or

- (ii) an employee of the partnership who was not in possession of the information;
 - (b) the partnership had in operation at that time agreements that could reasonably be expected to ensure that-
 - (i) the information was not communicated to a partner or an employee or one of the partners or employees who was or were involved in or made the decision with respect to entering into the transaction or agreement in question;
 - (ii) no advice with respect to the decision to enter into the transaction or agreement was given to that partner or employee by a partner or an employee in possession of the information; or
 - (iii) the partner or employee in possession of the information would not be involved in the decision to enter into or be involved in the transaction or agreement; and
 - (c) the information was not communicated, no advice was given and the partner or employee in possession of the information was not involved in the decision to enter into or be involved in the transaction or agreement.
- (3) A partner of a partnership does not contravene subsection (2) of section 135 by entering into the transaction or agreement referred to in that subsection otherwise than on behalf of the partnership merely because the partner is deemed to possess information that is in possession of another partner or employee of the partnership.

(4) In this section “information” refers to information which a partnership is deemed to possess and where a partner or an employee of the partnership in possession of that information is an insider.

5 **138.** (1) Subsection (2) of section 135 shall not apply in respect of – Exceptions in relation to underwriting and sub underwriting.

 (a) the entering into of an underwriting agreement or a sub underwriting agreement; or

10 (b) the acquisition of securities under an obligation to do so in an agreement referred to in paragraph (a).

(2) Subsection (3) of section 135 shall not apply in respect of the communication of information in relation to securities to a person solely for the purpose of procuring the person–

15 (a) to enter into an underwriting agreement or a sub underwriting agreement in relation to such securities; or

 (b) to acquire such securities under an obligation to do so in an agreement referred to in paragraph (a).

20 **139.** (1) Section 135 shall not apply to an acquisition or disposal of securities or the communication of information that is carried out under any other written law relating to schemes of arrangement, reconstructions and take over of companies. Exceptions in relation to schemes of arrangement.

25 (2) Subsection (2) of section 135 shall not apply to a clearing house which acquires or disposes of securities for the purpose of settlement of a market contract or in relation to any proceedings or other action relating to the settlement of a market contract where the acquisition or disposal of securities is made in accordance with the rules of a clearing house.

30

(3) Subsection (2) of section 135 shall not apply to an exchange in relation to a sale or purchase of securities where the exchange acts on an instruction from a clearing house.

5 **140.** (1) A company does not contravene subsection (2) of section 135 by entering into a transaction or an agreement in relation to securities other than those of the company merely because the company is aware that it proposes to enter into or has previously entered into one or more transactions or agreements in relation to those securities. Exception for a company with knowledge of its intention.

10 (2) Subject to subsection (3), a company does not contravene subsection (2) of section 135 by entering into a transaction or an agreement in relation to securities other than those of the company because an officer of the company is aware that it proposes to enter into or has previously entered
15 into one or more transactions or agreements in relation to those securities.

(3) Subsection (2) shall not apply unless the officer of the company became aware of the matter referred to in that subsection in the course of his duties.

20 (4) Subject to subsection (5) a person does not contravene subsection (2) of section 135 by entering into a transaction or an agreement on behalf of a company in relation to securities other than those of the company merely because
25 the person is aware that the company proposes to enter into or has previously entered into one or more transactions or agreements in relation to those securities.

30 (5) Subsection (4) shall not apply unless the person became aware of the matters referred to in the course of his duties as an officer of the first mentioned company or in the course of acting as an agent of the first mentioned company.

35 **141.** An individual does not contravene subsection (2) of section 135 by entering into a transaction or an agreement in relation to securities merely because he is aware that he proposes to enter into or has previously entered into one or more transactions or agreements in relation to those securities. Exception in relation to an individual.

- 5 **142.** (1) A market intermediary who carries on the business of buying and selling of securities on behalf of investors or its representative shall not contravene subsection (2) of section 135 by entering into a transaction or an agreement as an agent for another person, being a transaction or an agreement entered into on the securities market of an exchange if –
- 10 (a) the transaction or agreement is entered into under a specific instruction by the other person and was not solicited by a market intermediary carrying on the business of buying and selling securities or its representative;
- 15 (b) the market intermediary carrying on the business of buying and selling securities or its representative has not given any advice to the other person in relation to the transaction or agreement or otherwise sought to procure the other person’s instructions to enter into the transaction or agreement; and
- 20 (c) the other person is not associated with the market intermediary carrying on the business of buying and selling securities or its representatives.
- 25 (2) Nothing in this section shall affect the responsibility of the market intermediary in relation to subsection (1) of this section with respect to the business of buying and selling of securities in his capacity as the principal.
- 30 **143.** Subsection (2) of section 135 shall not apply in respect of the redemption by a trustee under a trust deed relating to a collective investment scheme in accordance with a buyback covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets less any liabilities of the collective investment scheme to which the units of the collective investment scheme relates and less
- 35 any reasonable charge for purchasing the units of the collective investment scheme.

Unsolicited transaction by market intermediaries.

Exception in relation to collective investment schemes.

144. (1) A person does not contravene subsection (2) of section 135 if – Parity of information defence.

5 (a) the other party to the transaction or agreement knew, or could reasonably have known, of the information before entering into the transaction or agreement; and

(b) that person acquires or disposes of such securities on such terms and in such circumstances, that –

10 (i) he does not obtain any gain or avoid any loss, including an unrealized gain or unrealized avoidance of loss in price or value of the securities, as the case may be, for himself or any other person by reason of the effect that the information is likely to have when it becomes generally available; and

15

20 (ii) the purpose of the acquisition or disposal of the securities does not include any purpose of securing a gain or avoiding a loss, as the case may be, for himself or any other person by reason of the effect that the information is likely to have when it becomes generally available.

(2) A contravention of subsection (3) of section 135 where the person communicated information or caused information to be communicated to another person, it shall be a defence-

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30 (a) if the information came into the possession of the person so communicating the information solely as a result of it being made known in a manner likely to make it generally available pursuant to section 132; or

(b) if the other party knew or could reasonably be expected to have known the information before the information was communicated.

- 5 **145.** In a prosecution or civil enforcement action by the Commission against any person for an offence under section 135, it is not necessary for the prosecution or the Commission to prove the non-existence of facts or circumstances which, if existed would by virtue of sections 136, 137, 138, 139, 140, 141, 142, 143 and 144 or any rules made under subsection (5) of section 135 preclude the act from constituting a contravention of subsections (2) and (3) of section 135. Prosecution need not disprove the defences.
- 10 **146.** Notwithstanding anything to the contrary in the Judicature Act, No. 2 of 1978, every offence committed under this Part shall be triable by the High Court sitting in any judicial zone of Sri Lanka and shall have jurisdiction to impose the maximum penalty provided by this Act. Jurisdiction of the Courts.
- 15 **147.** Every prosecution in respect of an offence under this Part of this Act shall be conducted by the Attorney General or by any other officer specially authorized in writing by the Attorney General. Who may prosecute.
- 20 **148.** (1) A person who suffers loss or damage by reason of or by relying on the conduct of another person who has contravened sections 124, 125, 126, 127, 128 or 135 may recover the amount of loss or damage by instituting civil proceedings against the other person whether or not the other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution. Civil liability for contravention of certain sections.
- 25 (2) This section shall not affect any liability under any other law in respect of the conduct constituting the contravention.
- 30 **149.** (1) Where it appears to the Commission that any person has contravened sections 124, 125, 126, 127 and 128, the Commission may institute civil proceedings in the Civil action by the Commission.

Court against that person to seek an order for a civil penalty, in respect of the contravention where it considers it necessary in the public interest-

5 (a) to recover an amount which shall not exceed three times the gross amount of pecuniary gain made or loss avoided by such person; or

10 (b) in an amount not less than ten million rupees and not exceeding hundred million rupees as Court considers appropriate having regard to the severity or gravity of the contravention.

(2) An amount recovered by the Commission in an action under subsection (1) shall be applied -

15 (a) to reimburse the Commission for all costs of the investigation and proceedings in respect of the contravention; and

 (b) to compensate persons who have suffered loss or damage as a result of the contravention.

20 (3) If the Commission considers that it is not practicable to compensate the persons referred to in paragraph (b) of subsection (2) in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in paragraph (b) of
25 subsection (2) and credit such sums to the Fund of the Commission.

30 (4) The Commission may in the public interest take all or any of the following actions against an insider, if such insider has acquired or agreed to acquire securities or procured another person to acquire or agree to acquire securities in contravention of subsection (2) of section 135 or such insider communicated information referred to in

subsection (1) of section 135 to another person, in
contravention of subsection (3) of section 135 and such
securities were permitted to be traded on an exchange, to
seek an order for a civil penalty in respect of the
5 contravention-

(a) to recover an amount equal to three times the
amount being the difference between the price at
which the securities were acquired or agreed to be
acquired by the insider or the other person and the
10 price at which they would likely to have been
acquired at the time of the acquisition or agreement
as the case may be if the information had been
generally available; or

(b) in an amount and not more than hundred million
15 rupees as the Court considers appropriate having
regard to the seriousness of the contravention.

(5) The Commission may in the public interest take all or
any of the following actions against the insider, if such
insider has disposed of or agreed to dispose of securities or
20 procured another person to dispose of or agree to dispose of
securities in contravention of subsection (2) of section 135
or an insider communicated information referred to in
subsection (1) of section 135 to another person in
contravention of subsection (3) of section 135, and such
25 securities were permitted to be traded on an exchange to
seek an order for a civil penalty in respect of the
contravention-

(a) to recover an amount equal to three times the
amount being the difference between the price at
30 which the securities were disposed of, or agreed to
be disposed of by the insider or the other person
and the price at which they would likely to have
been disposed of at the time of the disposal or
agreement, as the case may be, if the information
35 had been generally available; or

(b) in an amount not more than hundred million rupees as the Court considers appropriate having regard to the seriousness of the contravention.

5 (6) (a) Nothing in this section shall be construed to prevent the Commission from entering into an agreement with any person on the basis of an admission of liability to pay an amount not exceeding three times the gross amount of the pecuniary gain made or loss avoided calculated for each offence on the basis provided for under this section for
10 a contravention of any provision of this Part; and

(b) if the parties fail to enter into an agreement or fail to perform the obligations under the agreement, any admission of liability referred to in paragraph (a) above shall not be admissible in a subsequent action instituted in a court of
15 law by the Commission.

(7) Subsections (2) and (3) shall *mutatis mutandis* apply in relation to sums of money recovered by the Commission under subsections (4), (5) and (6) of this section.

20 (8) Any right of action that is conferred under this section shall not affect the right of action that is conferred on a person who has suffered loss or damage referred to in any other section of this Act or under any other law.

PART VI

FINANCE

25 **150.** The object and purpose of this Part shall be – Object and purpose of this Part.

(a) to establish various funds for the proper functioning of the Commission; and

(b) to establish a fund to provide limited compensation to investors who have no other
30 remedy.

CHAPTER I

Funds of the Commission

5 **151.** (1) There shall be charged, levied and paid a cess Levy of a Cess. at such rates as may be prescribed by the Minister by way of regulations published in the *Gazette* on every purchase and sale of securities recorded in an exchange or notified to it under its rules by both the purchaser and the seller. Different rates may be prescribed in respect of different classes of securities.

10 (2) The cess imposed under this section shall be in addition to any other tax or cess levied under any other law.

152. (1) There shall be established a fund called the Cess Fund. Cess Fund to which shall be credited the proceeds of the cess imposed under section 151.

15 (2) There shall be paid out of the Cess Fund such sums as may be authorized by the Commission for the purpose of –

 (a) developing the securities market;

 (b) enhancing monies lying to the credit of the Compensation Fund or the Fund of the Commission
20 established under this Part; and

 (c) exercising, performing and discharging the powers, duties and functions of the Commission for the purpose of achieving its objectives.

25 (3) The money lying to the credit of the Cess Fund may be invested by the Commission in such manner as may be determined by the Commission for the purpose of conserving the Cess Fund.

153. (1) The Commission shall have its own Fund. Fund of the Commission.

(2) There shall be paid into the Fund –

- 5 (a) all such sums of money as may be voted upon from time to time by Parliament for the use of the Commission;
- (b) all sums of money as may be charged as costs incurred in carrying out all inspections under the provisions of this Act or paid as fees under the provisions of this Act;
- 10 (c) such sums of money as may be credited to the Fund under the provisions of this Act;
- (d) all such sums of money as may be received by the Commission by way of donations, gifts or grants from any source whatsoever, whether within or outside Sri Lanka; and
- 15 (e) such sums of money as may be credited from the Cess Fund.

(3) There shall be paid out of the Fund all such sums of money required to defray the expenditure incurred by the Commission in the exercise, discharge and performance of its powers, functions and duties.

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(4) Monies belonging to the Fund of the Commission may be invested by the Commission in such manner as may be determined by the Commission.

25 **154.** The financial year of the Commission shall be the period of twelve months commencing on the first day of January each year. Financial Year.

155. (1) The Commission shall cause proper books of accounts to be kept of the income and expenditure, assets and liabilities and all other transactions of the Commission. Audit of Accounts.

5 (2) The provisions of Article 154 of the Constitution relating to the audit of accounts of public corporations shall apply to the audit of the accounts of the Commission.

CHAPTER 2

Fund to provide Compensation to Investors

10 156. (1) There shall be established a fund called the Compensation Fund, for the purpose of granting limited compensation to any investor who suffers pecuniary loss as a result of any fraudulent or negligent act of a market intermediary if the investor has no other remedy. Compensation Fund.

(2) The Compensation Fund shall consist of -

15 (a) such sums of money as may be voted upon by Parliament;

(b) such sums of money as may be credited to the fund under the provisions of this Act; and

20 (c) such sums of money as may be credited from the Cess Fund as approved by the Commission.

(3) Monies belonging to the Compensation Fund may be invested by the Commission in such manner as may be determined by the Commission.

25 157. (1) The Commission shall appoint from among the members of the Commission, three members who shall comprise the Compensation Committee (hereinafter referred to as the "Committee") of the Commission. Appointment of Compensation Committee.

(2) The Committee appointed under subsection (1) shall be responsible for assessing and awarding compensation in respect of any application made under section 158 and the decision of such Committee on any such assessment or award shall be final and conclusive for the purpose of this Act.

158. (1) Any investor who has suffered pecuniary loss as a result of any market intermediary being found incapable of meeting his contractual obligation towards such investor may make an application to the Committee in the specified form claiming compensation from the Compensation Fund.

Application
for
Compensation.

(2) The Committee may from time to time, require an applicant to produce any document or other evidence in support of his claim for compensation. Where the applicant fails to comply with such request, the Committee may disallow his claim.

(3) If at any time the Committee considers it necessary so to do, it may hold an inquiry into the claim of the applicant and shall by notice in writing, inform the applicant to be present on such date, and at such time and place as may be specified in the notice. Where the applicant fails to appear for such inquiry on the date set out in the notice, the Committee may disallow his claim.

159. (1) The Committee may, after examination of the documents and other evidence produced in support of the claim by an applicant or in any case where an inquiry was held on the conclusion of such inquiry allow or disallow such claim for compensation.

Payment of
compensation.

(2) Where the Committee allows any claim it shall make an assessment of the limited compensation payable and shall make an award in relation thereto. Notice of such award shall be given in writing to the applicant.

which he is prohibited from doing under any law, such disclosure or production shall notwithstanding anything to the contrary in such law not be deemed to be a contravention of the provisions of such law.

- 5 (3) Any information furnished or the contents of a document or an electronic record produced in compliance with a notice issued under this section shall not be published or communicated by the Commission to any other person except –
- 10 (a) in accordance with the provisions of this Act;
- (b) in a court proceeding where the Commission is a party;
- (c) in the course of the discharge of the functions of the Commission; or
- 15 (d) with the consent of the person furnishing such information, document or electronic record.

- (4) The consent under paragraph (d) of subsection (3) is not required when the person furnishing the information, document or electronic record is being investigated by the
- 20 Commission for a breach of any provision of this Act or any regulation, rule or directive made thereunder.

- 162.** (1) The Commission or any person duly authorized by the Commission, may carry out investigations or hold inquiries and investigations.
- 25 inquiries as it may consider necessary or expedient for the exercise, performance and discharge of the powers, duties and functions of the Commission under this Act and for such purpose, summon and call upon any person to appear before it or him to give evidence or to produce any books or documents in the possession or control of such person as are

required for the purpose of such investigation or inquiry, where the Commission has reasonable grounds to believe that—

- 5 (a) the transactions in securities are being dealt with in a manner detrimental to investors or the securities market by any person; or
- (b) any market institution, market intermediary, investor or any other person has violated any of the provisions of this Act, regulations or the rules made thereunder or the directives issued by the Commission.
- 10

(2) Any person summoned or called upon to appear before the Commission or any person duly authorized by the Commission under subsection (1) may be examined orally and any statement made by the person so examined may be reduced to writing. Every such statement reduced to writing shall be signed by the person so examined provided that prior to signing the same, such statement shall be read to such person or if he does not understand the language in which it is written it shall be interpreted to him in a language he understands and he shall be at liberty to explain or add to such statement.

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(3) Every person who fails to appear before the Commission or the person authorized, when required to do so under subsection (1) or who refuses to answer any question put to him by the Commission or a person duly authorized by the Commission or who refuses to produce or taking of copies of any book , document or electronic record in his possession or control when required to do so or knowingly gives any false answer to any question put to him by the Commission or a person duly authorized by the Commission shall be guilty of an offence.

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(4) For the purpose of carrying out an investigation or inquiry under subsection (1), the Commission may authorize

in writing any officer and any expert recognized under the Computer Crimes Act, No. 24 of 2007, as may be required to enter at all reasonable hours of the day any premises of a market institution or market intermediary or listed public
 5 company to inspect and take copies of any document or electronic record required to be kept under this Act or under any regulation or rule or directive made thereunder or any other law in respect of such business and where the Commission has reasonable grounds to believe that such
 10 information may be required in discharging its duties under the Act, to access their computer systems to collect evidence.

(5) Every authorized officer under subsection (1) shall be deemed to be a peace officer within the meaning and for the purposes of the Code of Criminal Procedure Act, No. 15 of
 15 1979.

(6) The provisions of the Computer Crimes Act, No. 24 of 2007 shall *mutatis mutandis* apply in carrying out an investigation or inquiry under subsection (4) or any other section (4) in this Act relating to electronic records or documents.

20 **163.** (1) On reasonable suspicion of a contravention of any provision of this Act, regulations, rules or directives made thereunder, the Commission may, at any time where a person is being investigated or an inquiry is being carried out in terms of section 162, issue a directive (hereinafter
 25 referred to as a “freezing order”)-

Issue of freezing orders.

- (a) prohibiting a person from disposing assets of such person or any part thereof;
- (b) prohibiting a person from entering into any transaction or a class of transactions as may be
 30 determined by the Commission; or
- (c) prohibiting a person from soliciting funds from the public.

(2) A freezing order made under subsection (1) shall not be in force for a period exceeding seven market days from the date of issue of such order.

5 (3) The Commission after issuing a freezing order under subsection (1) shall within the period during which the freezing order is in force, make an application to Court seeking confirmation of such freezing order and also if circumstances so necessitates, request an extension thereto as required after giving the aggrieved person an opportunity
10 to be heard.

(4) Where the Court is satisfied that there are sufficient reasons for issuance of such freezing order, the Court may confirm the freezing order and if it is satisfied that there are sufficient reasons for extension thereof may, grant extensions
15 for such periods as it considers appropriate.

(5) On an application made by the Commission to Court in terms of subsection (3), the Court shall make an appropriate order in respect of the management of the asset under a freezing order.

20 **164.** (1) The Commission may establish a Complaints Management Committee to hear and determine complaints by any person relating to the professional misconduct or the breach of any provision of this Act, regulations, rules made thereunder or the directives issued by the Commission to a
25 market institution, market intermediary, listed public company or a registered person.

Inquiry by
Complaints
Management
Committee.

(2) The Commission or any person duly authorized by the Commission may hold such inquiries as it or he may consider necessary or expedient for the exercise, performance
30 and discharge of the powers, duties and functions of the Commission under this Act and for such purpose summon and call upon any person to appear before the Committee to give evidence or to produce any books or documents in the possession or control of such person as are required for the
35 purpose of such inquiry.

(3) The Commission shall establish appropriate processes and procedures for handling complaints, determination of complaints and all matters related thereto by way of rules.

5 (4) The Complaints Management Committee may on receipt of any written complaint made by a person, examine the evidence produced and determine whether any provision of this Act, regulations, rules or directives made thereunder or any rules of a market institution has been contravened.

10 (5) The Complaints Management Committee shall not make any determination without affording such market institution, market intermediary, listed public company or registered person an opportunity of being heard.

15 (6) Where the Complaints Management Committee determines that a market institution, market intermediary, listed public company or registered person has contravened a provision under this Act, regulation, rule or directive issued thereunder or rules of a market institution, the Commission shall have the discretion to either take appropriate action to give effect to such recommendations or to refer the matter
20 for further investigation to the appropriate authority.

(7) A party aggrieved by the decision of the Complaints Management Committee may appeal to the Commission for review of the decision.

25 **165.** (1) The Commission shall be entitled to seek information, clarification or explanation from supplementary service providers in relation to professional services carried out in respect of a market institution, market intermediary or listed public company. Supplementary service providers.

30 (2) Where the Commission is of the view that the services rendered to a market institution, market intermediary or listed public company causes or is likely to cause harm to the interest of investors, the Commission may issue a directive to such supplementary service provider to take corrective action as may be determined by the Commission.

(3) The Commission may make guidelines or rules to provide for the duties and obligations of supplementary service providers where it considers necessary.

5 **166.** The Commission may enter into agreements or memoranda of understanding with such other organizations in connection with the sharing of information on regulatory functions relating to securities and investors in securities markets. Implementation of agreements or MOUs.

10 **167.** (1) The Commission may on its own initiative or at the request of a public officer or by a police officer by way of an order issued by a competent court of law - Sharing of information and cooperation.

15 (a) allow a police officer or any public officer to have access to and inspect any property, book, document, article, thing or electronic record or otherwise in any form whatsoever which have been produced before, seized, detained or taken possession of by an investigating officer under this Act; or

20 (b) provide to a police officer or any public officer a copy of any book, document or electronic record or otherwise in any form whatsoever seized, detained or taken possession of by an investigating officer or by any officer of the Commission in the course of any inspection carried out by the Commission in the exercise of his powers or in the discharge of his duties in respect of any person.

(2) The Commission may, where it deems necessary, enter into regulatory arrangements to cooperate with any domestic or foreign supervisory authority which may include –

30 (a) obtaining any information or document or electronic record from any domestic or foreign supervisory authority; and

(b) share any information or document or electronic record with any domestic or foreign supervisory authority.

(3) The Commission may, upon receiving a written request from a foreign supervisory authority for assistance to investigate into an alleged breach of a legal or regulatory requirement which the foreign supervisory authority enforces or administers, provide assistance to the foreign supervisory authority by carrying out investigation of the alleged breach or provide such assistance to the foreign supervisory authority as the Commission thinks fit for the purpose.

(4) In determining whether it is in the public interest to render assistance under subsection (3), the Commission shall have regard to—

(a) whether the foreign supervisory authority shall pay the Commission any cost and expenses incurred for providing the foreign supervisory authority with the assistance; and

(b) whether the foreign supervisory authority shall be able and willing to provide reciprocal assistance in response to a comparable request for assistance from the Commission.

(5) In this section –

“domestic supervisory authority” means the Central Bank of Sri Lanka established under the Monetary Law Act, No. 58 of 1949, Registrar of Companies appointed under the Companies Act, No. 7 of 2007, the Police and any other regulatory authority;

“foreign supervisory authority” means a foreign authority which exercises functions corresponding to the functions of the Commission under this Act or any person or international organization outside Sri Lanka exercising regulatory functions and in respect of which the Commission considers desirable

and necessary in the interest of the public to enter into such arrangement or to render such assistance; and

5 “Public Officer” shall have the meaning assigned to that expression by Article 170 of the Constitution.

10 **168.** (1) An employer shall not discharge, terminate, demote or cause harassment to a person in employment who provides information to the Commission concerning violations or potential violations of this Act, regulations, rules or directives made thereunder or any rule of a market institution. Whistleblower protection.

15 (2) Any employer who retaliates against such person that provides or has provided information to the Commission or to any officer authorized by the Commission under subsection (1) may be subjected to administrative penalty, after giving such person an opportunity to be heard.

20 (3) For the purposes of this section, a “person in employment” includes a director, partner, chief executive officer, chief financial officer, company secretary, internal auditor or any other employee.

25 (4) The Commission may grant a reward to a whistleblower that provides information which leads to a successful enforcement action on the basis of guidelines issued relating to the grant of such reward.

30 **169.** The Minister may, from time to time, request in writing from the Commission to furnish to him in such form as he may require returns, accounts and other information with respect to the work of the Commission other than information deemed confidential by the Commission and the Commission shall furnish such information. Furnishing of information to the Minister.

170. (1) No suit or prosecution shall be instituted against any member of the Commission or against any of the officers of the Commission for any acts done or purported to be done or omitted to be done in good faith under this Act or on the direction of the Commission.

Protection
for action
taken under
the Act.

(2) Any expense incurred by the Commission in any suit or prosecution brought by or against it before any court shall be paid out of the Fund of the Commission and any cost paid to or recovered by the Commission in any such suit or prosecution shall be credited to such Fund of the Commission.

(3) Any expenses incurred by any such person as is referred to in subsection (1) in any suit or prosecution brought against him before any court in respect of any act which is done or purported to be done by him under this Act or on the direction of the Commission shall, if the court holds that such act was done in good faith be paid out of the Fund of the Commission unless such expenses are recovered by him in such suit or prosecution.

20

CHAPTER 2

Provisions Relating to the Enforcement Mechanism

171. (1) Any person who— Offences.

(a) contravenes any provision of this Act or any requirement imposed under the provisions of this Act or any regulations or rules or directives made thereunder;

(b) furnishes or produces, for the purposes of this Act or any requirement imposed under the provisions of this Act or any regulation, or any rule or directive made thereunder, any information or any return, document or electronic record or

statement, the contents of which are, to his knowledge, untrue, incorrect or misleading;

5 (c) willfully obstructs any member of the Commission or an officer of the Commission or any person with whom the Commission has entered into an agreement in the performance of his duties under the provisions of this Act;

10 (d) in any manner falsify any information or electronic record or store any misleading or false information in any books or electronic record in relation to the business of a market institution, market intermediary
15 or a listed public company or any of its related companies; or

(e) destroys, conceals, mutilates, alters, sends or attempts to send or conspires with any other person to remove from its premises or send out of Sri Lanka any book, document or electronic record or accounts
20 required to be kept or maintained under this Act, regulations, rules or directives made thereunder with intent to defraud any person, or to prevent, delay or obstruct the
25 exercise of any power under this Act,

shall be guilty of an offence as provided in the subsequent subsections of this section.

30 (2) Any person who is found guilty of an offence under this Act for which no penalty is expressly provided for under this Act, shall be liable on conviction after summary trial by a Magistrate to a fine not less than ten million rupees and not exceeding one hundred million rupees or to imprisonment of either description for a period not exceeding
35 ten years or to both such fine and imprisonment.

(3) Where any offence under this Act is committed by a body corporate, any person who is at the time of the commission of the offence, a director, manager or other similar officer of the body corporate shall be deemed to be
5 guilty of that offence unless he proves that such offence was committed without his knowledge or connivance or that he exercised all due diligence to prevent the commission of that offence as he ought to have exercised having regard to the nature of his functions and all the circumstances of the
10 case.

(4) Where a person who is an employee or acting on behalf of a body corporate contravenes any provision of this Act, or any regulation, rule or directive made thereunder, the body corporate or on whose behalf the employee is acting
15 shall be deemed to have contravened such provision unless the body corporate proves that such offence was committed without its knowledge or connivance or that it exercised all due diligence to prevent the commission of that offence as it ought to have exercised having regard to the circumstances
20 of the case.

(5) In any legal or administrative proceedings instituted under this Act in respect of any contravention of any provision of this Act, regulation, rule or directive by any person, due regard shall be had to any other legal or
25 administrative proceeding instituted in respect of such contravention and any sanction imposed thereunder against such person.

172. (1) The Criminal Procedure Code Act, No. 15 of 1979 shall be applicable in respect of all prosecutions made
30 under this Act. Acts applicable to the criminal process.

(2) The provisions of the Electronic Transactions Act, No. 19 of 2006 shall apply to and in relation to the admissibility of evidence of electronic records or other documents.

5 **173.** Other than offences listed in Part V of this Act, the Commission 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 imposable for such offence and all such sums of money received by the Commission in the compounding of an offence under this section shall be credited to the Fund of the Commission.

Compounding
of offences.

10 **174.** (1) The Commission may enter into an enforceable settlement agreement with any person with respect to any undertaking between the parties with a view to ensuring compliance with the provisions of this Act, regulations, rules or directives issued thereunder except for offences listed in Part V of this Act, in pursuance of its objectives.

Power of the
Commission
to impose
administrative
sanctions.

15 (2) The person referred to in subsection (1) may withdraw or vary the terms of the settlement agreement anytime with the consent of the Commission.

20 (3) If the Commission considers that the person referred to in subsection (1) has breached any term of the settlement agreement, the Commission may apply to Court for an order under subsection (4).

(4) If the Court is satisfied that the person referred to in subsection (1) has breached a term of the settlement agreement the Court may issue-

25 (a) an order directing such person to comply with that term of the settlement agreement;

30 (b) an order directing such person to pay to any person or to the Commission an amount up to any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the Court considers appropriate directing such person to compensate any other person who has suffered loss or damage as a result of the breach; or

5 (d) any other order that the Court considers appropriate.

(5) Except in relation to offences listed in Part V if any person contravenes a provision of this Act or regulations made thereunder or contravenes or fails to comply with any condition or restriction of a licence or registration granted
10 under this Act or fails to comply with any provision of the rules of a market institution, any written notice, guideline, directive issued or condition imposed by the Commission or any rule issued by the Commission, the Commission may impose administrative penalties or may take the following
15 administrative actions:—

(a) direct the person in breach to comply, observe, enforce or give effect to such provisions, regulations, rules, written notice, condition, directive or guideline;

20 (b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach but in any event not exceeding fifty million rupees;

(c) reprimand the person in breach;

25 (d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach;

30 (e) in the case of a promoter or a director of a listed public company, in addition to the actions that may

be taken under paragraphs (a) to (d) above, the following actions may be taken by the Commission—

- 5 (i) impose a moratorium on or prohibit any trading of or any dealing in, the listed public company's securities or in any other securities which the Commission thinks fit, by the promoter or director or any person connected with the promoter or director; or
- 10 (ii) issue a public statement to the effect that, in the Commission's opinion, the retention of office by the director is prejudicial to the public interest.

15 (6) The Commission shall not take any action under subsection (5) without giving the person in breach an opportunity to be heard.

(7) For the purposes of paragraph (d) of subsection (5) in determining whether or not restitution is to be made by a person in breach, the Commission shall have regard to—

- 20 (a) the profits that have accrued to such person in breach; or
- (b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.

25 (8) Where the Commission takes an action under subsection (5) against any person under the rules of a market institution the Commission shall notify the market institution of the action taken by the Commission.

(9) Nothing in this section shall preclude the Commission from—

- 30 (a) directing a market institution to take any disciplinary action against its trading participants,

clearing members or depository participants, a listed public company and a director of a listed public company for breach of the rules of the market institution including the imposition of a fine; or

- 5 (b) taking any action that it is empowered to take under this Act against the person in breach.

(10) Where a person has failed to pay a penalty imposed by the Commission under subsection (5), such person shall be guilty of an offence under this Act and the sum of money due as penalty may, on application being made by the Commission to the Magistrate's Court, be recovered in like manner as a fine imposed by such court, notwithstanding that such sum may exceed the amount of a fine which that court may, in the exercise of its ordinary jurisdiction impose.

10

(11) Without prejudice to any other remedy, where a directive under subsection (5) had required the person in breach to make restitution in the form of monetary payment and the person in breach fails to retribute, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.

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(12) To the extent that any of the amounts obtained under subsection (5) or subsection (11) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be—

- 25 (a) paid to the Fund of the Commission maintained under Part VI; or

(b) retained by the Commission to defray the costs of regulating the securities market as the Commission may determine.

30 **175.** (1) The Commission may take one or more of the following actions outlined hereinbelow where a market intermediary who handles or is entrusted with monies of clients or assets in the course of his business contravenes any

Power of the Commission to protect investors' assets.

provision of this Act, regulation rule or directive issued thereunder or is no longer fit and proper and the Commission is of the view that interests of investors, the clients of a market intermediary or unit holders of collective investment
5 schemes are likely to be jeopardized, or are jeopardized—

(i) direct the market intermediary not to deal with monies and properties of any investor or its clients in such manner as the Commission thinks appropriate or to transfer the monies and properties
10 of such investors or its clients or any documents or electronic record in relation to such monies or properties to any other person as may be specified by the Commission;

(ii) direct a trustee to transfer any documents or electronic records in relation to monies or properties to any other person as may be specified by the
15 Commission;

(iii) prohibit the market intermediary from entering into transactions, soliciting business from persons or require the market intermediary or trustee to carry
20 on business in a manner as may be specified by the Commission; or

(iv) require a market intermediary or trustee to maintain property within Sri Lanka or at a place outside Sri Lanka as determined by the Commission.
25

(2) The Commission shall not take any action under this section without giving such market intermediary an opportunity to be heard prior to taking any action under subsection (1).

30 (3) Subsection (2) shall not apply if the Commission considers that any delay in taking an action under this section would be prejudicial to the interest of investors, the interest of clients of the market intermediary or the public interest.

- 5 **176.** (1) On an application made by the Commission, if it appears to Court that there is a reasonable likelihood that any person will, or has contravened a provision of this Act, regulations or any rule made thereunder or that a person has failed or is failing to comply with any directive issued by the Commission, the Court may make—
- Power of the Commission to apply to Court for certain orders.
- (a) an order restraining or requiring the cessation of the contravention;
 - 10 (b) an order restraining a person from dealing or trading in securities in respect of any class of securities mentioned in the order;
 - (c) an order declaring a securities transaction to be void;
 - 15 (d) an order restraining the person from acquiring, disposing of or otherwise dealing with assets which the Court is satisfied that such person is reasonably likely to acquire, dispose of or otherwise deal with;
 - (e) an order directing a person to dispose of any securities that are specified in the order;
 - 20 (f) an order restraining the exercise of any voting or other rights attached to any securities that are specified in the order;
 - 25 (g) an order restraining a person from making available, offering for subscription or purchase or issuing an invitation to subscribe for or purchase or allotting any securities that are specified in the order;
 - 30 (h) an order appointing a receiver or liquidator over the property of a market intermediary or the property that is held by such person for or on behalf of another person whether on trust or otherwise;

- (i) an order vesting securities or such other property that is specified in the order in a trustee appointed by Court;
- 5 (j) an order requiring a person to do such act or comply with such directive where such a person has refused or failed or is refusing or failing or is proposing to refuse or fail to do any act or comply with any directive that such person is required to do under this Act;
- 10 (k) an order requiring that person or any other person who appears to have been knowingly involved in the contravention to take such steps as the Court may direct to remedy it or to mitigate its effect including making restitution to any other person
- 15 aggrieved by such contravention;
- (l) an order directing a person to do or refrain from doing a specified act for the purpose of securing compliance with any other order under this section;
- 20 (m) an order directing a person to comply with a directive that is issued by the Commission;
- (n) an order imposing a travel ban on any person in contravention of any provision of the Act; or
- (o) any ancillary order deemed to be desirable in consequence of the making of an order under any
- 25 of the preceding provision of this subsection.

(2) If an application is made to a Court for an order under subsection (1), the Court may, make an interim order *ex parte* pending the determination of the application.

30 (3) The Court may before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit or both.

(4) Where an application for an order under subsection (1) is made by the Commission or any person duly authorized by the Commission the Court shall not as a condition of the grant of the order require any undertaking as to damages to be given by or on behalf of the Commission.

(5) A person appointed by order of the Court under subsection (1) as a receiver of the property of a market intermediary—

(a) may require the market intermediary to deliver to the receiver any property of which he has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;

(b) may acquire and take possession of any property of which he has been appointed receiver;

(c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the holder might lawfully have dealt with the property; and

(d) has such other powers in respect of the property as the Court specifies in the order.

(6) In this section, “property”, in relation to a market intermediary includes monies, securities or other property and documents of title to securities or other property entrusted to or received on behalf of any other person by the market intermediary or another person in the course of or in connection with the business of the market intermediary.

(7) The trustee appointed by an order of the Court under this section—

(a) may require any person to deliver to the trustee any security or such other property specified in the order

or to give to the trustee all information concerning the securities that may reasonably be required;

(b) may acquire and take possession of the securities or such other property;

5

(c) may deal with the securities or such other property in any manner as it thinks fit; and

(d) shall have such other powers in respect of the securities or such other property as may be specified by the Court in the order.

10

(8) The proceeds of the dealing in or disposal of securities under subsection (1) shall be paid to Court and any person claiming to be beneficially entitled to the whole or any part of such proceeds may within thirty days of such payment to Court apply to the Court for payment out of the proceeds due to him.

15

(9) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order on the application of a party aggrieved by such order with prior notice to the Commission of such application of an aggrieved party.

20

177. (1) The Commission may, if it considers that it is in the public interest to do so, recover on behalf of a person who suffers loss or damage by reason of, or by relying on the conduct of another person who has contravened any provision relating to issue of securities, the amount of the loss or damage by instituting civil proceedings against the other person whether or not that other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.

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Power of the Commission to recover damages on behalf of investors.

(2) Notwithstanding the provisions of any law, relating to limitation of time, an action under subsection (1) may be instituted within six years from the date on which the Commission became aware of the contravention.

5 (3) Any loss or damage recovered by the Commission shall be paid into the Fund of the Commission and be applied—

(a) to reimburse the Commission for all costs of the investigation and proceedings in respect of the
10 contravention; and

(b) to compensate persons who suffer loss or damage by reason of, or by relying on, the conduct of another person who has contravened the provisions relating to the issuance of securities under this Act.

15 (4) Where to the extent that any amount recovered or obtained in a civil action under subsection (1) has not been distributed pursuant to subsection (3), it shall be retained by the Commission to defray the costs of regulating the market, as the Commission may determine.

20 (5) Subject to subsection (1), any person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened the provisions relating to the issuance of securities, may recover the amount of the loss or damage by instituting civil proceedings against the
25 other person whether or not that other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.

(6) Any right of action that is conferred under this section
30 is in addition to any right that such person has under any other law.

5 **178.** The Commission may, where it thinks necessary or expedient in the interest of the public or for the protection of investors and in such form or manner as it thinks fit, publish any information in relation to any decision made or any action taken by the Commission under this Act, regulations, rules or directives.

Power of the Commission to publish information.

179. (1) The Minister may make regulations to give effect to the principles and provisions of this Act.

Regulations made by the Minister.

10 (2) In particular, the Minister may make regulations in regard to –

- (a) the terms and conditions to be satisfied for the purpose of granting of licence to a market institution;
- 15 (b) the terms and conditions to be complied with for the purpose of granting a licence to a market intermediary;
- (c) the purpose for which the Cess Fund could be used for developing the securities market in Sri Lanka;
- 20 (d) give effect to any memorandum of understanding between the Commission and its foreign counterpart or any other organization in respect of listing of a foreign entity in Sri Lanka or sharing of information; and
- (e) in respect of all matters prescribed by this Act.

25 (3) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

30 (4) Every regulation made by the Minister shall, as soon as it is convenient after its publication in the *Gazette* be

brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder.

- 5 (5) Notification of the date on which any regulation is deemed to be rescinded shall be published in the *Gazette*.

10 **180.** (1) The Commission may make rules as may be required from time to time for the purpose of giving full effect to the provisions of this Act or in carrying out the powers, objectives and functions under this Act including but not limited to the following:—

Rules made
by the
Commission.

- 15 (a) listing and trading of securities in an exchange and the subsequent issue of any additional securities by way of rights or bonus or otherwise by listed public companies;
- (b) regulation of listed foreign entities in respect of listing and trading in an exchange and other related matters arising therefrom;
- 20 (c) disclosures by market intermediaries about security transactions by persons who acquired or disposed of securities and by an exchange about security transactions;
- 25 (d) proper maintenance of books, records, accounts and audits by a market institution, market intermediary and regular reporting by such market institution and market intermediary to the Commission of their affairs;
- 30 (e) the procedure to be followed in the cancellation or suspension of a licence issued or a registration granted under this Act;

- (f) the annual audit of the books, records, accounts and the preparation of financial statements by a market institution and market intermediary;
- 5 (g) regulation of take over or mergers where the target of such take over or merger is a listed public company;
- 10 (h) a code of conduct to be observed by the trustee and an issuer of securities and a managing company of a collective investment scheme and a code on the operation and approval of a collective investment scheme;
- (i) matters in respect of which rules are required by this Act to be made;
- 15 (j) the prudential requirements, fit and proper criteria, record keeping and other documentation systems to be followed by a market institution and market intermediary;
- 20 (k) the form and contents of prospectus proposed to be issued by a listed public company or a public company which has applied for a listing or a listed foreign entity;
- (l) the operation of securities in a margin account by a stock broker or by a margin provider;
- 25 (m) the business affairs and activities of a market institution and market intermediaries, in relation to listed securities and exchange traded derivatives;
- 30 (n) disclosure and reporting and the provision of information by listed public companies, listed foreign entities and other unlisted companies coming within the purview of this Act;

- (o) rejection of applications for listing made to an exchange and the suspension and cancellation of listing by an exchange;
- 5 (p) in relation to the trading of derivative contracts carried out by utilizing the facilities of a licensed derivatives exchange;
- (q) the regulation of the activities of stock lenders and stock borrowers and on the regulation of short selling;
- 10 (r) the establishment and operation of a fidelity fund or compensation fund for a derivatives exchange; and
- 15 (s) provision for settlement of disputes between client and market intermediary and between the respective participants or members and market institutions.

(2) Every rule made under subsection (1) shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified therein.

20 **181.** Notwithstanding any other law, a derivative contract traded through an exchange shall not be taken to be a gaming or wagering contract. Derivatives not gaming or wagering contracts.

25 **182.** (1) The Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987 is hereby repealed (hereinafter referred to as the “repealed Act”). Repeals, savings and transitional provisions.

(2) Notwithstanding the repeal of the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987—

- 30 (a) (i) the Commission established under the repealed Act and functioning as such on the day immediately prior to the date of operation of

Part I of this Act shall be deemed to be the Commission for the purposes of this Act until a new Commission is established under Part I of this Act and continue accordingly; and

- 5 (ii) the appointed members holding office immediately prior to the date of operation of Part I shall be deemed to have been appointed as such under this Act and continue to hold office until the end of their tenure or until new members are appointed under this Act;
- 10
- (b) every licence issued to any exchange, stock broker or stock dealer or a managing company for the purpose of operating an unit trust under the repealed Act and which is in force immediately prior to the dates of operation of Part II and Part III of this Act, shall be deemed to be a licence issued by the Commission under this Act;
- 15
- (c) every certificate of registration issued to any clearing house or any market intermediary under the repealed Act and which is in force immediately prior to the dates of operation of Part II and Part III of this Act shall be deemed to be a licence issued by the Commission under this Act;
- 20
- (d) all regulations, rules and directives made, approvals granted and any other action taken or notices issued under the repealed Act and are in force on the day immediately prior to the date of commencement of this Act and not inconsistent with the provisions of this Act shall be deemed to be regulations, rules and directives made, approvals granted and any other action taken or notices issued by the Commission under this Act and shall continue to be valid;
- 25
- 30

- 5 (e) all contracts, agreements and other instruments under the repealed Act and subsisting on the day immediately prior to the date of commencement of this Act shall be deemed to be contracts, agreements or other instruments entered into by the Commission under this Act;
- 10 (f) all suits, actions, and other legal proceedings instituted by or against the Securities and Exchange Commission of Sri Lanka established under the repealed Act and pending on the day, immediately prior to the date of commencement of this Act, shall be deemed to be suits, actions and other legal proceedings instituted by or against the Commission under this Act;
- 15 (g) all rules of the market institutions made under the repealed Act and are in force on the day immediately prior to the date of commencement of this Act and not inconsistent with the provisions of this Act, deemed to be rules made by such market institutions under this Act until new rules are made by such market institutions under this Act;
- 20
- 25 (h) every application for a licence made under the provisions of the repealed Act shall with effect from the date of commencement of this Act be deemed to be an application made to the Commission established under this Act and shall be dealt with accordingly;
- 30 (i) all movable and immovable property vested in the Securities and Exchange Commission of Sri Lanka established under the repealed Act and existing on the day immediately preceding the date of commencement of this Act, shall, with effect from the date of commencement of this Act, be vested with the Commission;

- 5 (j) all sums of money lying to the credit of the funds of the Securities and Exchange Commission of Sri Lanka established under the repealed Act and existing on the day immediately preceding the date of commencement of this Act, shall stand transferred, with effect from the date of commencement of this Act, to the respective funds of the Commission established under Part VI of this Act;
- 10 (k) all contraventions or proceedings initiated under the provisions of the repealed Act, regulations, rules or directives made thereunder prior to the commencement of this Act, shall be offences committed or proceedings initiated under the repealed Act and be tried accordingly;
- 15
- 20 (l) all interests, rights, assets, obligations, debts and liabilities of the Securities and Exchange Commission of Sri Lanka established under the repealed Act prior to the date of commencement of this Act, shall be deemed with effect from the date of commencement of this Act to be the interests, rights, assets, obligations, debts and liabilities of the Commission;
- 25 (m) all officers and servants of the Securities and Exchange Commission of Sri Lanka established under the repealed Act holding office prior to the date of commencement of this Act, shall, with the consent of the officer or servant concerned, deemed with effect from the date of commencement of this Act to be the officers and servants of the Commission, on terms not less favourable than the terms and conditions of employment to which they were entitled under the repealed Act.
- 30

(3) Notwithstanding the repeal of the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987—

5 (a) every reference to Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987 in any other written law shall be construed as a reference to this Act; and

10 (b) every reference to the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987 in any other written law shall be construed as referring to the corresponding provisions contained in this Act.

183. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of inconsistency.

