

(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 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 additional duties under this section.

Prohibition
against undue
influence

91. (1) A person shall not influence, coerce, mislead or authorise any person engaged in –

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

Prohibition
against holding
out as a market
intermediary

92. (1) A person shall not hold out as a market intermediary without obtaining a licence from the Commission.

(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.

93. (1) Any person who carries 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 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.

94. (1) An application for the purpose of a licence under this section or renewal of the licence under subsection (4) of this section shall be made to the Commission in such form together with such documents as may be specified by the Commission by way of rules accompanied by such fee as may prescribed.

Application for
a licence or
renewal of a
licence as a
market
intermediary

(2) The Commission may require an applicant –

- (a) to furnish further information in connection with an application 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 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.

(4) Where an application for renewal of a licence is made after the expiry of the 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.

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

Refusal to grant
or renew a
licence

95. (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:-

- (a) the application was not made in accordance with this Chapter;
- (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;
- (d) the applicant is in the course of being wound up or otherwise dissolved or is an undischarged bankrupt;
- (e) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (f) a liquidator or receiver or manager or an equivalent person has been appointed within or outside Sri Lanka in respect of any property of the applicant;
- (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—
 - (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;

- (ii) has been subjected to any administrative sanction under this Act;
- (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;
- (iv) has contravened any provision made 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 or against financial loss due to the conduct of discharged or undischarged bankrupts; or
- (v) is an undischarged bankrupt whether within or outside Sri Lanka;
- (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;
- (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;
- (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 -

80 *Securities and Exchange Commission of
Sri Lanka Act, No. 19 of 2021*

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

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

Minimum
financial
requirements

96. 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.

Requirement to
register with the
Commission

97. (1) The Commission may specify by way of rules that a person who deals with clients for and on behalf of a market intermediary to register with the Commission and for that purpose such person shall be known as a “registered person”.

(2) For the purposes of seeking registration under subsection (1), a market intermediary shall submit an application to the Commission on behalf of that person referred to in subsection (1) (hereinafter referred to as the “applicant”).

Application for
registration or
renewal of
registration

98. (1) An application for the purpose of registration or renewal of the registration as a registered person under section 97 shall be made to the Commission in such form accompanied by such documents as may be specified by the Commission by rules together with such fee as may be prescribed.

(2) The Commission may require an applicant—

- (a) to furnish further information in connection with an application 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.

(4) Where an application for renewal of registration is made 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.

(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.

99. (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 98;
- (b) the applicant has failed to comply with any requirement of section 98;
- (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;

- (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 –
 - (i) been convicted, whether within or outside Sri Lanka of an offence involving fraud or dishonesty or of an offence the conviction for which involves a finding that he had acted fraudulently or dishonestly;
 - (ii) been subjected to any administrative sanction under this Act;
 - (iii) been convicted or compounded in respect of an offence under this Act or under any laws governing securities outside Sri Lanka; or
 - (iv) contravened any provision made 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 against financial loss due to the conduct of discharged or undischarged bankrupts;
- (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;

- (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;
- (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.

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

100. The Commission may, at any time by notice in writing to a market intermediary and the 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

101. (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 prescribed licence fee.

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

False and
misleading
statements to the
Commission

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

- (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.

Duty to notify
the Commission

103. (1) Where a market intermediary proposes to alter material particulars already furnished or undergoes or intends to alter 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.

(2) Where a registered person proposes to alter any particulars already furnished or intends to change or alter the status specified in the application for registration or renewal of a registration as a registered person, 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.

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

Prohibition
against holding
out as an agent

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

Cancellation or
suspension of a
licence or a
registration

- (a) there exists any ground on which the Commission may refuse an application for a licence;
- (b) the market intermediary has contravened any 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 provision of this Act or any rule 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 of being heard.

(3) Where the licence granted to a market intermediary is 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) The Commission shall have the power to suspend or cancel the registration granted to a registered person under this Part –

- (a) if it transpires that there exists any ground that would disentitle him to registration;
- (b) if the registered person has contravened any condition or restriction in respect of its registration or any directive issued to him by the Commission under this Act; or
- (c) if the registered person has contravened any provision of this Act or any of the rule which are binding on him as the case may be.

(6) The provisions of subsections (2) 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.

Trading in
securities by
market
intermediaries

106. A market intermediary or registered person shall not –

- (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;
- (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
- (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.

Lending and
borrowing of
securities without
the consent of the
client

107. 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.

108. (1) If an auditor of a market intermediary, in the ordinary course of the performance of his duties as an auditor, is of the opinion that there has been a breach of or non compliance with any provision of this Act, regulations, rules or directives made thereunder or a breach of any rule 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

- (a) in the case of a contravention or non compliance with any provision of this Act, regulation, rule or directive made thereunder or any offence involving fraud or dishonesty, to the Commission;
- (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 to 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 to the Commission.

(2) No auditor shall be liable to be sued in any court for any report submitted by the auditor in good faith and in the performance of any duty imposed on the auditor under this section.

(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;
- (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 require;

- (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),

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.

(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.

CHAPTER 3

PROTECTION OF CLIENTS' ASSETS

Interpretation **109.** For the purposes of this Chapter, unless the context otherwise requires—

“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 to deal in securities;

“money or other assets” means money received or retained by, or any other asset deposited with a market intermediary in the course of its business for which it is liable to account to its client, and any money or other assets accruing therefrom.