

(3) The Commission shall not exercise its powers under subsection (1) without giving the recognised market operator an opportunity of being heard.

Application of
the provisions of
the Act to
unlisted
securities

125. The rules relating to unlisted securities applicable to such trading platform made by the Commission or the recognised market operator under this Part shall prevail over any other rules relating to unlisted securities.

PART V

Market Misconduct

Object and
purpose of this
Part

126. The object and purpose of this Part shall be to facilitate for the deterrence and the taking of enforcement action against –

- (a) all types of market manipulation including false trading, market rigging and securities fraud; and
- (b) insider trading,

with a view to establishing a fair, orderly and transparent securities market.

Application of
this Part

127. This Part shall apply unless specified otherwise therein-

- (a) in respect of securities-
 - (i) to acts or omissions occurring within Sri Lanka in relation to securities of any listed public company or any unlisted company that has made a public offer of securities in accordance with section 80 which is established or is carrying on business within or outside Sri Lanka;
 - (ii) to acts or omissions occurring outside Sri Lanka in relation to securities of any listed public

company or any unlisted company that has made a public offer of securities in accordance with section 80 which is established or is carrying on business within Sri Lanka;

- (iii) to acts or omissions occurring in relation to any securities issued by any Government outside Sri Lanka which are traded using the facilities of an exchange licensed by the Commission; or
- (iv) to acts or omissions occurring in relation to securities traded on a platform operated by a recognised market operator; and

(b) in respect of derivatives-

- (i) to acts occurring within Sri Lanka in relation to derivatives, traded on an exchange licensed by the Commission; and
- (ii) to acts occurring outside Sri Lanka in relation to derivatives traded on an exchange licensed by the Commission.

CHAPTER 1

PROHIBITED CONDUCT

128. (1) A person shall not create or cause the creation of or do anything that is intended to create –

- (a) a false or misleading appearance of active trading of securities traded on an exchange licensed by the Commission or a platform operated by a recognised market operator; or

False trading
and market
rigging
transactions

- (b) a false or misleading appearance with respect to the market for or the price of any such securities referred to in paragraph (a).

(2) A person shall not maintain, inflate or depress or cause inflation in the market price for any such securities –

- (a) by means of any purchase or sale of any security that does not involve a change in the beneficial ownership of those securities; or
- (b) by means of any fictitious transaction or device.

(3) Without prejudice to 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 colluded with another or caused such collusion to be made with another or knows that a person associated with him has made with him or caused to be made with him an offer to purchase the same number or substantially the same number, of the same 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 such securities.

(4) In dealing with a contravention of subsection (1) it shall be a defence if the person establishes that the purpose or 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 such securities.

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

- (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 on an exchange or a platform operated by a recognised market operator; and
- (b) he did not act recklessly, whether or not he created a false or misleading appearance of active trading on an exchange or a platform operated by a recognised market operator.

(6) 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 such securities before the purchase or sale and continues to have an interest in such securities after the purchase or sale.

(7) The reference in paragraph (a) of subsection (3) to a 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 purchase securities.

129. (1) A person shall not carry out or be involved in carrying out, either directly or indirectly, one or more 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,

the price or volume of securities of that company traded on an exchange licensed by the Commission or a platform operated by a recognised market operator, for the purpose of inducing other persons whether or not such person is actually 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 traded on an exchange licensed by the Commission or a platform operated by a recognised market operator includes–

- (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.

False or
misleading
statements

130. A person shall not make a statement, or disseminate information that is false or misleading in a material particular and which is likely to have the effect of raising, lowering, maintaining or stabilizing the market price or volume of securities traded on an exchange licensed by the Commission or a platform operated by a recognised market operator,–

- (a) without taking reasonable care to check the accuracy of the statement or information; or
- (b) if he knows or could reasonably be expected to have known that the statement or information is false or misleading in a material particular.

131. (1) A person shall not induce or attempt to induce another person to trade in securities traded on an exchange licensed by the Commission or a platform operated by a recognised market operator, -

Fraudulently inducing persons to deal in securities

- (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
- (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.

(2) For the purposes of paragraph (d) of subsection (1), it shall be a defence if the person referred to therein 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 other person.

132. A person shall not directly or indirectly in connection with the subscription, purchase or sale of any securities traded on an exchange licensed by the Commission or a platform operated by a recognised market operator, -

Use of manipulative and deceptive devices

- (a) use any device, scheme or artifice to defraud;
- (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 omit to disclose in a statement a material fact which results in making such statement false or misleading.

CHAPTER 2

INSIDER TRADING

Information

133. In this Chapter unless otherwise provided, “information” includes –

- (a) information relating to listed public companies that are not sufficiently definite to warrant being made known to the public;
- (b) matters relating to the intended decisions, of a person;
- (c) matters relating to negotiations or proposals with respect to –
 - (i) commercial dealings; or
 - (ii) dealings in securities;
- (d) information relating to the financial performance of a company;
- (e) information that a person proposes to enter into or has 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 related to the listed public company that have been decided to be executed in the future.

Information
becoming
generally
available

134. (1) In this Chapter, information generally available means information-

- (a) that has been published or made known in a manner that would or would tend to bring it to the attention of a reasonable person who invests or trades in securities of a kind whose price or value might be affected by such information; and

- (b) which since it was made known a reasonable period for it to be disseminated among such persons has lapsed.

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

135. For the purpose of this Chapter, information which has a material effect on the price or value of securities means such information which would or would tend to, on becoming generally available influence a reasonable person who invests 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

136. For the purposes of section 137, a person is deemed to procure an act or omission to be done or omitted to be done by another person if the first named person incites, counsels, induces, encourages or directs the said act or omission by such other person.

Reference to
“procure”

137. (1) For the purpose of this Part, an ‘insider’ means a person, whether or not such person is connected to the respective company, if that person—

Prohibited
conduct of
persons in
possession of
information not
generally
available

- (a) possesses information that is not generally available which on becoming generally available a reasonable person would expect it to have a material effect on the price or the value of securities;
and

- (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 the information in subsection (1) relates -

- (a) sell or buy or enter into an agreement or transaction for the sale or purchase of such securities; or
- (b) procure directly or indirectly, an acquisition or disposal of or enter into an agreement or transaction 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 securities market of an exchange or a platform operated by a recognised market operator, 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 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 referred to in subsection (1) relates; or
- (b) procure or direct 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 referred to in subsection (1) relates.

138. (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-
 - (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;
- (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;
 - (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 subsections (2) and (3) of section 137; or

- (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.

(3) It shall be a defense for a company accused of contravening subsections (2) or (3) of section 137 by entering into a transaction or agreement if the company proves that-

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

- (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.

139. (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

- (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
- (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 who knows or possess the information, 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.

(2) It shall be a defense for a partnership which is accused of entering into a transaction in contravention of subsection (2) or (3) of section 137 to prove that -

- (a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by -
 - (i) a partner who was not 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 existence at that time agreements that could reasonably be expected to ensure that-
 - (i) the information was not communicated to the partner or employee who was or were involved in or made to enter into the transaction or agreement in question;
 - (ii) no advice with respect to the decision to enter into the transaction or agreement was tendered to that partner or employee by a partner or an employee who was 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 137 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.

140. (1) Subsection (2) of section 137 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
- (b) the acquisition of securities under an obligation to do so in an agreement referred to in paragraph (a).

(2) Subsection (3) of section 137 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–

- (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).

141. (1) Section 137 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, reconstruction and takeover of companies.

Exceptions in relation to schemes of arrangement, reconstruction and takeover of companies

(2) Subsection (2) of section 137 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 licensed clearing house.

(3) Subsection (2) of section 137 shall not apply to an exchange or a central depository in relation to a sale or purchase of securities where the exchange or central depository acts on an instruction from a licensed clearing house.

Exception for a
company with
knowledge

142. (1) A company does not contravene subsection (2) of section 137 by entering into a transaction or an agreement in relation to securities other than the securities of such 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.

(2) Subject to subsection (3), a company does not contravene subsection (2) of section 137 by entering into a transaction or an agreement in relation to securities other than the securities of such company because an officer of 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.

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

(4) Subject to subsection (5) a person does not contravene subsection (2) of section 137 by entering into a transaction or an agreement on behalf of a company in relation to securities other than the securities of such company merely because 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.

(5) Subsection (4) shall not apply unless the person becomes aware of the matters referred to that subsection 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.

Exception in
relation to an
individual

143. An individual does not contravene subsection (2) of section 137 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.

144. (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 137 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 –

Unsolicited
transaction by
market
intermediaries

- (a) the transaction or agreement is entered into under a specific instruction by the other person and was not solicited by a market intermediary or its representative carrying on the business of buying and selling of securities;
- (b) the market intermediary carrying on the business of buying and selling of 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
- (c) the other person is not associated with the market intermediary or its representatives carrying on the business of buying and selling of securities.

(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.

145. Subsection (2) of section 137 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 any reasonable charge for purchasing the units of the collective investment scheme.

Exception in
relation to
collective
investment
schemes

Parity of
information
defence

146. (1) A person does not contravene subsection (2) of section 137 if-

- (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 –
 - (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
 - (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) It shall be a defense for a person accused of a contravention of subsection (3) of section 137 to prove -

- (a) that 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 134; or
- (b) that the other party knew or could reasonably be expected to have known the information before the information was communicated.

147. (1) A person who contravenes sections 128, 129, 130, 131, 132 or subsections (2) and (3) of section 137 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.

Offences under
this Part and
punishment

(2) Any person who abets or conspires to commit an offence under subsection (1), commits an offence and shall be punishable in the same manner as provided for in subsection (1).

148. Every offence committed under this Part shall be triable upon indictment by the High Court.

Jurisdiction of
the Courts

149. Every prosecution in respect of an offence under this Part shall be instituted and conducted by the Attorney General.

Prosecution of
offences under
this Part

150. In a prosecution or in an action made by the Commission under section 152 against any person for an offence under section 137, 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 138, 139, 140, 141, 142, 143, 144, 145 and 146 preclude the act from constituting a contravention of subsections (2) and (3) of section 137.

Prosecution
need not
disprove the
defences

151. (1) A person who suffers loss or damage by reason of or by relying on the conduct of another person who has contravened sections 128, 129, 130, 131, 132 or subsections (2) and (3) of section 137 under this Part may recover the amount of loss or damage by instituting an action in the court 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.

Right of the
aggrieved party
to claim
damages

(2) This section shall not affect any liability under any other law in respect of the conduct constituting the contravention.

Right of the
Commission to
recover damages
and seek civil
penalties

152. (1) Whenever it appears to the Commission that any person has contravened sections 128, 129, 130, 131, 132 or subsections (2) and (3) of section 137 and where the Commission considers it necessary having taken into consideration the nature and manner of the contravention, the impact it has on the market and the extent of the loss caused to any investor, the Commission may institute Civil Proceedings in the court against that person.

(2) In a proceeding instituted by the Commission under subsection (1), the court may if it is satisfied on a balance of probabilities, that the person has contravened the provisions of sections 128, 129, 130, 131, 132 or subsections (2) and (3) of section 137, make an order against that person-

- (a) to pay to the Commission an amount equal to three times the gross amount of the pecuniary gain made or loss avoided by such person; and
- (b) for the payment of a civil penalty as the court considers appropriate having regard to the severity or gravity of the contravention, being an amount not less than ten million rupees and not exceeding one hundred million rupees.

(3) Notwithstanding anything to the contrary in any other written law, the court shall exercise jurisdiction in respect of the matters set out in subsection (2), and proceedings under subsection (2) shall be instituted by way of a plaint filed by the Commission and the provisions contained in the Civil Procedure Code (Chapter 101) shall apply *mutatis mutandis* regarding regular actions instituted by way of a plaint.

(4) Nothing in this section shall be construed to prevent the Commission from entering into an agreement with any person to pay with or without admission of liability an amount equal to three times the gross amount of the pecuniary gain made or the loss avoided by such person as determined by the Commission.

(5) An amount recovered by the Commission in an action under subsection (1) or in terms of the agreement referred to in subsection (4), each one third of that amount shall be -

- (a) applied to reimburse the Commission for all costs of the investigation and proceedings in respect of the contravention;
- (b) applied to compensate persons who have suffered loss or damage as a result of the contravention; and
- (c) credited to the Compensation Fund:

Provided that, if the Commission considers that it is not practicable to compensate the persons referred to in paragraph (b) in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons to 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) and credit such sums to the Compensation Fund of the Commission.

(6) If the person fails to pay the civil penalty imposed on him within the time specified in the order made by the court referred to in subsection (2) or the sum to be paid in terms of the agreement as referred to in subsection (4), the Commission may recover the civil penalty or such sum as the case may be, as if it were a judgment debt owing to the Commission.

153. An action under section 152 shall not be commenced after the expiration of six years from the date of the contravention of any of the provisions in this Part. Prescription

PART VI

Finance

Object and
purpose of this
Part

154. The object and purpose of this Part shall be-

- (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 remedy.

CHAPTER 1

FUNDS OF THE COMMISSION

Levy of a Cess

155. (1) There shall be charged, levied and paid a cess at such rates as may be prescribed by the Minister by 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.

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

Cess Fund

156. (1) There shall be established a fund called the “Cess Fund” to be administered by the Commission to which shall be credited the proceeds of the cess imposed under section 155.

(2) The monies lying to the credit of the Cess Fund shall only be utilized 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 established under this Part;