

CHAPTER 1

PROVISIONS RELATING TO IMPLEMENTATION

165. (1) The Commission or a person authorised by the Commission may by notice in writing require any person within such period as specified in the notice to furnish any information or produce any document or electronic record (other than any information or document which is prohibited from being disclosed or produced under any law relating to the imposition and recovery of any tax) as specified in such notice and as the Commission may consider necessary for the proper exercise of its powers or the discharge of its functions under this Act.

Production of documents and disclosure of information

(2) It shall be the duty of any person who receives a notice under subsection (1) to comply with the requirements of such notice within the period specified therein and, where in compliance with such notice such person discloses any information or produces any document or electronic record 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.

(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the contents of a document or an electronic record produced in compliance with a notice issued under this section shall not be published or communicated by the Commission to any other person except—

- (a) by an order of court; or
- (b) in the course of the discharge of the functions of the Commission; or
- (c) with the consent of the person furnishing such information, document or electronic record.

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

Inquiries and
investigations

166. (1) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure Act, No. 15 of 1979, the Commission or any person duly authorised by the Commission, may hold inquiries or carry out investigations 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.

(2) For the purposes of subsection (1), the Commission or any person authorised by the Commission may, summon and call upon any person to appear before it or him to give evidence or to produce any book or document 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—

- (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.

(3) Any person summoned or called upon to appear before the Commission or any person duly authorised by the Commission under subsection (2) may be examined orally and any statement made by the person so examined may be in writing. Every such statement in writing shall be signed by the person so examined provided that prior to signing the same, such person shall be required to read such statement 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.

(4) Every person who fails to appear before the Commission or the person authorised, when required to do so under subsection (2) or who refuses to answer any question put to him by the Commission or a person duly authorised by the Commission or any person who refuses to produce or allow the Commission or any person duly authorised to take 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 authorised by the Commission commits an offence.

(5) (a) For the purpose of carrying out an inquiry or investigation under subsection (1), the Commission may authorise in writing any officer and any expert recognised 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 company to inspect and take copies of any document or electronic record or take into possession any electronic device 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 information may be required in discharging its duties under the Act, to access their computer systems to collect evidence.

(b) For the purpose of carrying out an inquiry or an investigation under subsection (1), it shall be lawful for the Commission or any person authorised by the Commission upon an order issued by Magistrate's court to have access to any other premises not specified in paragraph (a) and inspect any property, book, document, article, thing or electronic record or device or otherwise in any form whatsoever and seize or take possession of the copies of such book, document, article, thing or electronic record or otherwise in any form whatsoever provided it is deemed by such authorised persons to be material evidence for a successful investigation or inquiry under subsection (1).

(6) Every authorised 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 1979.

(7) The provisions of the Computer Crimes Act, No. 24 of 2007 shall *mutatis mutandis* apply in carrying out an inquiry or investigation under subsection (5) or any other section in this Act relating to electronic records or documents.

(8) Notwithstanding anything to the contrary in any other written law where the Commission on a consideration of material collected in the course of an investigation or inquiry or both an inquiry and investigation as the case may be is satisfied that any person has committed an offence under this Act other than an offence under Part V, it may authorise the Director General to initiate criminal proceedings against such person or to take any other enforcement action as provided for under this Act.

(9) Notwithstanding anything to the contrary in any other written law the Commission may if it deems appropriate forward the material collected and received under this Part to the Attorney General or any other authority to take any appropriate action under any other written law.

Issue of freezing
orders

167. (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 an inquiry is being carried out or a person is being investigated in terms of section 165, issue a directive (hereinafter referred to as a “freezing order”)-

- (a) prohibiting a person from disposing assets of such person or any part thereof which is related to the matter under inquiry or investigation; or
- (b) prohibiting a person from entering into any transaction or a class of transactions as may be determined by the Commission.

(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.

(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 of being 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 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.

168. (1) The Commission shall establish a Complaints Resolution Committee to hear complaints by any person relating to the professional misconduct or the breach of any provision of this Act, regulations, rules made thereunder or directives issued on a market institution, market intermediary, listed public company or a registered person or any other person who comes under the regulatory purview of the Commission.

Inquiry by
Complaints
Resolution
Committee

(2) The Commission or any person duly authorised by the Commission may hold such inquiries as it or he 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 the Complaints Resolution Committee 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 inquiries.

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

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

(5) Where the Committee finds 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 Complaints Resolution Committee shall convey such finding with a recommendation to the Commission and the Commission shall have the discretion to either give effect to such recommendation or take any other action as it may deem expedient.

(6) The Commission shall not take any action under this section without affording such market institution, market intermediary, listed public company or registered person an opportunity of being heard.

Supplementary
Service
Providers

169. (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 or an unlisted company which has made a public offer of securities in accordance with section 81.

(2) Where the Commission is of the view that the services rendered in terms of subsection (1) 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 the Commission considers it necessary.

170. The Commission may enter into agreements or memoranda of understanding with such other organisations in connection with the sharing of information on regulatory functions relating to securities and investors in securities markets.

Implementation
of agreements or
memoranda of
understanding

171. (1) The Commission may on its own motion or upon an order issued by a competent court of law-

Sharing of
information and
cooperation

- (a) permit 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 has been produced before, seized, detained or taken possession of by the Commission under this Act; or
- (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 its 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 –

- (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 in respect of any regulatory matter which the foreign supervisory authority enforces or administers, provide such assistance to such foreign supervisory authority as the Commission deems fit for the purpose.

(4) In determining whether 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, Registrar General of
Companies appointed under the
Companies Act, No. 7 of 2007, the
Police and any other regulatory
authority under any written law;

“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
organisation 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

“Public Officer” shall have the meaning assigned to that expression by Article 170 of the Constitution.

172. (1) An employer shall not discharge, terminate, demote or cause harassment to a person in employment on account of having provided 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

(2) Any employer who retaliates against such person for providing information to the Commission in terms of subsection (1) may be subjected to such administrative penalty as may be determined by the Commission by rules, after affording such person an opportunity of being heard.

(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.

(4) The Commission may grant a reward in terms of rules made in that regard, to a whistleblower who is the first to provide such information which leads to the successful prosecution or any other sanction by the Commission against a person for a contravention of the provisions of this Act.

173. The Minister may, from time to time, request the Commission in writing to furnish to him in such form as he may require returns, accounts and other information with

Furnishing of information to the Minister

respect to the work of the Commission and the Commission may furnish such information other than information deemed confidential by the Commission, on the grounds that providing such information –

- (a) would cause grave prejudice to an ongoing investigation under the Act;
- (b) would cause grave prejudice to the prevention or detection of any offence under the Act; or
- (c) expose the identity of a confidential source of information in relation to any inquiries or investigations that are being conducted by the Commission under the Act.

Protection for
action taken
under the Act

174. (1) No suit or prosecution shall be instituted against any member of the Commission or against any officer 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.

(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 a person 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.

CHAPTER 2

PROVISIONS RELATING TO PUNISHMENTS AND ENFORCEMENT
MECHANISMS

175. (1) Other than offences under Part V, any person Offences
who—

- (a) contravenes any provision of this Act or any requirement imposed under the provisions of this Act or any regulation or rule or directive 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;
- (c) threatens or intimidates or willfully obstructs, makes any derogatory remarks and publishes any statement with a view to bringing disrepute or defaming any member of the Commission or the Director-General or an officer or servant of the Commission or any person with whom the Commission has entered into an agreement in the course of discharging his duties under this Act or under any regulation or rule made thereunder;
- (d) in any manner falsify any information or electronic record or store any misleading or false information in any book or electronic record in relation to the business of a market institution, market intermediary 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