

(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.

**63.** Any registration of securities by the central 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

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rules of a market institution in so far as they have been approved by the Commission, shall not be amended, varied or rescinded without the prior approval of the Commission.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

(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 are-

- (a) allowed;
- (b) disallowed; or
- (c) allowed with amendments, variations or modifications.

(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 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 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.

**65.** (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 direct such person to comply with such rules or to give reasons for such failure upon the market institution referring such matter to the Commission.

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

(2) Where the Commission is not satisfied with the reasons given by such person, the Commission may direct such person referred to in subsection (1) to comply with the rules and any other direction given by the Commission which the Commission deems necessary.

(3) Any person who violates a directive of the Commission issued under subsection (2) commits an offence.

(4) Where any person fails to comply with a directive issued by the Commission under subsection (1), the Commission may proceed as provided for under subsection (2) or make an application to court for an order under subsection (5).

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

**66.** (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 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 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 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 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
- (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.

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

**67.** (1) Where the Commission is satisfied that any person has contravened the provisions of section 66, the Commission may issue a directive 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:-

- (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;
- (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
- (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 directive issued under subsection (1) shall be served on the person who contravenes subsection (1) as soon as is practicable, and may be publicised in such manner as the Commission thinks fit.

(3) A directive issued under subsection (1) shall be binding on the person who contravenes subsection (1) or any person for the time being holding the voting shares to which such directive relates and on any other person specified in the directive.

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

(5) The Commission may, within forty five days of receiving an application under subsection (4) after considering the appeal made by such application either confirm, set aside or vary the directive issued under subsection (1).

(6) Where the Commission confirms the directive made under subsection (1) the Commission may direct the holder of the shares to which the directive applies to dispose of the shares.

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

(8) Any transaction, including any agreement or arrangement in relation to any shares which is in contravention of any directive issued or of any decision made 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.

(9) A person who contravenes any directive or decision made 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 million rupees or to imprisonment for a term not exceeding five years or to both such imprisonment and fine.

Appointment of  
directors to a  
market  
institution

**68.** (1) Notwithstanding the provisions of 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 except with the prior approval of the Commission.

(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;
- (b) a judgment debt against the proposed director, chief executive officer or chief regulatory officer has not been satisfied in whole or in part;
- (c) the proposed director, chief executive officer or chief regulatory officer—
  - (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) during a period of three years immediately preceding such appointment has been subject to any administrative sanction by the Commission under this Act;
  - (iv) has been convicted of an offence involving moral turpitude; or
  - (v) is likely to have a conflict of interest.

Alteration of  
material  
particulars of a  
market  
institution

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

Rights of an  
exchange or a  
clearing house

**70.** 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 shall affect -

- (a) any rights to be conferred on an exchange or a clearing house in relation to securities under this Act, regulations, rules or directives made thereunder;
- (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 or a licensed central depository 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 or a licensed clearing house or a licensed central depository under this Act, regulations, rules or directives made thereunder, as the case may be.

Defence in  
criminal or civil  
liability

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

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



- (i) any director of the exchange; or
- (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 of its obligations under this Act, regulations, rules or directives made thereunder or the rules of such exchange.

**72.** (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 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 authorised by the 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 a person who is authorised by the Commission access in accordance with subsection (2) to the trading facility of an exchange commits an offence under this Act.

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

Annual reports

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Sri Lanka Act, No. 19 of 2021*

- (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
- (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 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.

(4) The information required under subsections (2) and (3) which is required to be included in an annual report shall be in addition to the requirements imposed under the Companies Act, No.7 of 2007.

Duties of an  
auditor of a  
market  
institution

**74.** (1) If an auditor of a market institution, in the ordinary course of performing his duties, becomes aware of-

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the market institution, to a material extent;

- (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
- (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.

(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.

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

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

- (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.

(4) The market institution shall remunerate the auditor in terms of the schedule of fees published by the Commission in respect of the discharge by him of all or any of the duties referred to in subsection (3) and in circumstances where further investigation is necessary, remuneration to auditors shall be paid out of the Fund of the Commission.

Obligation to  
submit periodic  
reports

**75.** 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. The Commission in addition shall subject the market institution to supervision and an annual audit by the Commission to ascertain compliance by the market institution with the provisions of this Act and of rules, regulations, directives that may be issued by the Commission from time to time.

Payment of  
annual fee

**76.** A market institution shall pay to the Commission an annual fee as may be prescribed.

Prohibition  
against holding  
out

**77.** (1) A person shall not hold out as a stock exchange, a derivatives exchange, a licensed clearing house or a central depository and shall not take or use or by inference adopt the name, title or description of “stock exchange”, “derivatives exchange”, “futures exchange”, “stock market”,

“derivatives market”, “futures market”, “licensed clearing house”, “clearing facility”, “central depository”, “securities trading market”, “derivatives trading market” or “ futures trading 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, licensed clearing house or a central depository.

(2) A person who contravenes the provisions of subsection (1) commits an offence.

**78.** (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

(2) The Commission shall communicate its decision to the applicant in writing not later than ninety days from the date of the receipt of the application.

### **PART III**

#### **Issue of Securities**

**79.** The object and purpose of this Part shall be—

Object and  
purpose of this  
Part

- (a) to regulate the issue of securities by way of public offers;
- (b) to ensure the disclosure of financial information by listed public companies;