

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

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any book, document or electronic record or accounts 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 exercise of any power under this Act,

commits an offence.

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

(3) All offences under this Act other than offences in Part V shall be triable in the Magistrate's court and 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 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 ten years or to both such fine and imprisonment.

(4) 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 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 case.

Acts applicable
to the criminal
process

176. (1) The Code of Criminal Procedure Act, No. 15 of 1979 shall be applicable in the conduct of all prosecutions made under this Act and except for offences under Part V, proceedings on behalf of the Commission shall be instituted by the Director-General.

(2) In prosecutions and in civil actions under this Act, 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.

177. 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 Compensation Fund of the Commission.

Compounding
of offences

178. (1) Except in relation to offences under Part V, if any person –

Power of the
Commission to
impose
administrative
sanctions

- (a) contravenes any provision of this Act or commits a breach of any regulation or rule made thereunder;
- (b) contravenes or fails to comply with any condition or restriction of a licence or registration granted under this Act;
- (c) fails to comply with any provision of the rules of a market institution; or
- (d) fails to comply with any written notice, guideline, directive or condition imposed by the Commission,

the Commission may, having regard to the nature and manner of the contravention, non-compliance or breach and the impact of such contravention, non-compliance or breach on the market referred to in paragraphs (a), (b), (c) and (d) of subsection (1), take any one or more of the following administrative actions: -

- (i) direct the person who has committed the contravention, non-compliance or breach to comply, observe, enforce or give effect to such provisions, regulations, rules, written notice, condition, directive or guideline;

- (ii) impose a penalty on the person who has committed the contravention, non-compliance or breach, in proportion to the severity or gravity of the contravention, non-compliance or breach and such penalty in any event shall not exceed fifty million rupees;
- (iii) reprimand the person who has committed the contravention, non-compliance or breach;
- (iv) require the person who has committed the contravention, non-compliance or breach to take such steps as the Commission may direct to remedy the contravention, non-compliance or breach to mitigate the effect of such contravention, non-compliance or breach, including making restitution to any other person aggrieved by the contravention, non-compliance or breach;
- (v) 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 (i) to (iv), the Commission may 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.

(2) The Commission shall not take any action under subsection (1) without giving the person in contravention, non-compliance or breach an opportunity of being heard.

(3) For the purposes of paragraph (iv) of subsection (1) in determining whether or not restitution is to be made by a person in contravention, non-compliance or breach, the Commission shall have regard to—

- (a) the profits that have accrued to such person in contravention, non-compliance or breach; or

- (b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention, non-compliance or breach.

(4) Where the Commission takes an action under subsection (1) against any person under the rules of a market institution the Commission shall notify the market institution of the action taken by the Commission.

(5) Nothing in this section shall preclude the Commission from—

- (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 the contravention, non-compliance or breach of the rules of the market institution including the imposition of a penalty; or
- (b) taking any other action that it is empowered to take under this Act against the person who has committed the contravention, non-compliance or breach.

(6) (a) Any person aggrieved by a decision made under paragraph (ii) of subsection (1) may within fourteen days of receipt of such decision may appeal to the Minister.

(b) Notwithstanding the making of an appeal to the Minister under paragraph (a), any administrative sanction imposed by the Commission shall continue to have effect until the Minister makes his decision.

(c) The Minister may, on an appeal made under paragraph (a), after hearing the Commission and the person who made the appeal under paragraph (a), within a period of one month after receipt of such appeal,—

- (i) allow the appeal and mitigate the penalty;
- (ii) disallow the appeal.

(d) The Commission shall give effect to the decision of the Minister.

(7) Where a person has failed to pay a penalty imposed by the Commission under subsection (2), the sum of money due as such 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 and notwithstanding the provision of any written law to the contrary the sum so recovered shall be paid to the Commission.

(8) Without prejudice to any other remedy, where an administrative sanction under paragraph (iv) of subsection (1) requires the person in contravention, non-compliance or breach to make restitution in the form of monetary payment and the person in contravention, non-compliance or breach fails to retribute, 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 and notwithstanding the provision of any written law to the contrary the sum so recovered shall be paid to the Commission.

(9) Where the monies received under subsection (1) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be—

- (a) credited to the Compensation 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.

Power of the
Commission to
protect
investors' assets

179. (1) The Commission may take one or more of the following actions where a market intermediary who handles or is entrusted with monies of clients or assets in the course of his business contravenes any 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 schemes are likely to be jeopardized, or are jeopardized—

- (a) 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 of such investors or its clients or any document or electronic record in relation to such monies or properties to any other person as may be specified by the Commission;
- (b) direct a trustee to transfer any document or electronic record in relation to monies or properties to any other person as may be specified by the Commission;
- (c) prohibit the market intermediary from entering into transactions, soliciting business from persons or require the market intermediary or trustee to engage in business in such manner as may be specified by the Commission; or
- (d) require a market intermediary or trustee to maintain property within Sri Lanka or at a place outside Sri Lanka as determined by the Commission.

(2) The Commission shall not take any action under this section without giving such market intermediary an opportunity of being heard prior to taking any action under subsection (1).

(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.

Power of the
Commission to
apply to court
for certain
orders

180. (1) On an application made to the court by the Commission, the court may on being satisfied that there is a reasonable likelihood that any person has contravened or is likely to contravene a provision of this Act, regulations or any rule made thereunder or that a person has failed or is likely to fail to comply with any directive issued by the Commission, the court may make an order—

- (a) restraining or requiring the cessation of the contravention;
- (b) restraining a person from dealing or trading in securities in respect of any class of securities mentioned in the order;
- (c) declaring a securities transaction to be void;
- (d) 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) directing a person to dispose of any securities that are specified in the order;
- (f) restraining the exercise of any voting or other rights attached to any securities that are specified in the order;
- (g) 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;
- (h) 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) vesting securities or such other property that is specified in the order in a trustee appointed by court;
- (j) requiring a person to do such act or comply with such directive where 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;
- (k) 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 aggrieved by such contravention;
- (l) 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;
- (m) directing a person to comply with a directive that is issued by the Commission;
- (n) on any ancillary matter deemed to be desirable in consequence of the making of an order under any of the preceding provision of this subsection.

(2) If an application is made to court for an order under subsection (1), the Court may, make an interim order *ex parte* pending the final determination of the application.

(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 authorised 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 him any property of which he has been appointed receiver or to give to him 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;
- (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.

(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 such person.

(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.

181. 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

182. (1) The Minister on the recommendation of the Commission may make regulations in respect of matters required by this Act to be prescribed or in respect of which regulations are authorised to be made.

Regulations

(2) Without prejudice to the generality of the provisions contained in subsection (1), the Minister may make regulations in regard to –

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- (a) the fees, terms and conditions to be satisfied for the purpose of granting a licence to a market institution;
- (b) giving 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;
- (c) product or class of products which are not classified as securities.

(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.

(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.

Rules

183. (1) The Commission may make rules on any matter in respect of which rules are authorised to be made under this Act or which is stated or required to be made under this Act including but not limited to the following:-

- (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 or delisting of such companies;
- (b) regulation of listed foreign entities in respect of listing and trading in an exchange and other related matters arising therefrom;

- (c) disclosures by market intermediaries about security transactions by persons who acquired or disposed of securities and by an exchange about security transactions;
- (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;
- (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;
- (g) regulation of takeovers or mergers where the target of such takeover or merger is a listed public company;
- (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;
- (j) the prudential requirements, fit and proper criteria, record keeping and other documentation systems to be followed by a market institution and market intermediary;
- (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;
- (m) the business affairs and activities of a market institution and market intermediaries, in relation to listed securities and exchange traded derivatives;
- (n) the 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) the rejection of applications for listing made to an exchange and the suspension and cancellation of listing by an exchange;
- (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 market makers, stock lenders and stock borrowers and on the regulation of short selling;
- (r) the establishment and operation of a fidelity fund or compensation fund for an exchange; and
- (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.

Derivatives not
gaming or
wagering
contracts

184. Notwithstanding anything to the contrary in any other law, a derivative contract traded through an exchange shall not be taken to be a gaming or wagering contract.

185. Notwithstanding anything to the contrary in this Act a market maker licensed as a market intermediary shall not be considered as committing an offence under section 128 or 129 of this Act when carrying out the functions relating to its licensed activity.

Market maker

186. Any person aggrieved by a decision of the Commission may invoke the Jurisdiction of the Court of Appeal conferred under Article 140 of the Constitution.

Recourse against
decisions of the
Commission

187. (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—

- (a) (i) the Commission established under the repealed Act and functioning as such on the day immediately preceding the date of operation 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
- (ii) the appointed members holding office immediately preceding the date of operation of this Act, 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;
- (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 preceding the date of operation of this Act, shall be deemed to be a licence issued by the Commission under this Act;

- (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 date of operation of this Act shall be deemed to be a licence issued by the Commission under this Act;
- (d) all regulations, rules and directives made, approvals granted and any other action taken or notices issued under the repealed Act and **which 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;
- (e) all contracts, agreements and other instruments made 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;
- (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;
- (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, shall be deemed to be rules made by such

market institutions under this Act until new rules are made by such market institutions under this Act;

- (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;
- (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;
- (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;
- (k) all offences 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;
- (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

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of commencement of this Act to be the interests, rights, assets, obligations, debts and liabilities of the Commission;

- (m) the Director-General, 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 be deemed with effect from the date of commencement of this Act to be Director-General, 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.

(3) Notwithstanding the repeal of the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987—

- (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
- (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.

Interpretation

188. In this Act, unless the context otherwise requires –

“accredited investor” includes-

- (a) an individual -
 - (i) 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

- (ii) 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
 - (iii) who makes a declaration on his experience, ability and sophistication to take on the investment risk;
- (b) a corporate entity with net assets exceeding one thousand million rupees in value as determined by-
- (i) the most recent audited balance sheet of the entity; or
 - (ii) 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;
- (c) the trustee of a trust as the Commission may specify when acting in that capacity; or
- (d) any entity licensed by the Commission under this Act or such other institution or entity as the Commission may specify by rules;

“Central Bank of Sri Lanka” means the Central Bank of Sri Lanka established by the Monetary Law Act (Chapter 422);

“central depository” means a body corporate licensed by the Commission under this Act in order to establish

and operate a system for the central handling of securities on an exchange –

- (a) whereby all such securities are deposited with and held in custody by, or registered in the name of the depositor or account holder or his or its nominee for the purpose of dealing in those securities or are effected by means of entries in securities, accounts without the physical delivery of scrips; or
- (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,

but does not include –

- (i) a central depository operated or established by the Central Bank of Sri Lanka;
- (ii) a central depository operated or established in respect of securities issued by the Government of Sri Lanka or the Central Bank of Sri Lanka; or
- (iii) any person providing, or holding out as providing, a central depository for exempted 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 securities transactions by which —

- (a) information relating to the terms of those securities transactions are verified by such person with a view to confirming such transactions;
- (b) parties to those securities transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;
- (c) the obligations of parties under those securities, transactions are calculated, whether or not such calculations include multilateral netting arrangements; or
- (d) parties to those securities transactions meet their obligations under such transactions, including the obligation to deliver securities or the transfer of funds or the transfer of title to securities between the parties,

but does not include -

- (i) the back office operations of a party to the securities transactions referred to in the above;
- (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 the securities; or
- (iii) any other services as may be specified by the Commission;

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

“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;
- (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;
- (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;
- (d) the property, contribution or investment forming part of the scheme or arrangement, whether identifiable or not, is managed on behalf of the investors; and
- (e) the investors do not have day to day control over the management and operation of the scheme or arrangement,

but does not include pools of funds relating to–

- (i) individual investment management arrangements;

- (ii) enterprise initiative schemes;
- (iii) pure deposit based schemes;
- (iv) schemes not operated by way of business;
- (v) debt issues, such as debentures, bonds and loan stock;
- (vi) employee share schemes;
- (vii) franchise arrangements;
- (viii) timeshare schemes;
- (ix) provision of clearing services;
- (x) contracts of insurance;
- (xi) individual pension accounts;
- (xii) occupational and personal pension schemes;
- (xiii) certain body corporates including building societies, cooperative societies, industrial and provident societies and registered friendly societies; or
- (xiv) any similar arrangement to the aforementioned schemes;

“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;

- (b) has the power to appoint or cause to be appointed a majority of the directors of such holder; or
- (c) has the power to make or cause to be made, decisions in respect of the business or administration of the market institution, collective investment scheme and market intermediary, and to give effect to such decisions or cause them to be given effect to;

“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;

“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;

“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 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;

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

“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;

“Insurance Regulatory Commission of Sri Lanka” means the Insurance Regulatory Commission of Sri Lanka established by the Regulations of Insurance Industry Act, No. 43 of 2000;

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

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

“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 licensed by the Commission under this Act by way of a secondary listing;

“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 licensed by the Commission under this Act;

“listed securities” mean, any security listed on an exchange licensed by the Commission under this Act;

“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 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;

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

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

“market intermediary” includes any person licensed as a credit rating agency, corporate finance advisor, derivatives broker, derivatives dealer, investment manager, managing company, margin provider, market maker, stock broker, stock dealer, underwriter or any other person who undertakes similar activity and described by rules for the purpose of issuing such licence by the Commission:

For the purposes of this definition-

- (a) “corporate finance advisor” means any person who for a fee or commission engages in the business of providing advice, on-
 - (i) compliance with or in respect of fund raising requirements as provided for under this Act;

- (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 takeovers of a listed public company, but shall not include –
 - (A) any attorney-at-law in practice who engages in giving advice in relation to any of the above solely incidental to the practice of his profession;
 - (B) any accountant in practice who engages in corporate finance advice solely incidental to the practice of his profession; or
 - (C) any company which engages in corporate finance advice solely for its benefit or for any of its related companies;
- (b) “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;
- (c) “derivatives broker” means any person engaged in the business of buying or selling of derivatives on behalf of investors in return for a commission;
- (d) “derivative dealer” means any person engaged in the business of trading in derivative contracts on his own account;

- (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;
- (f) “managing company” means a company by which a unit of a unit trust scheme, a real estate investment trust, an exchange traded fund or collective investment scheme –
 - (i) has been or is proposed to be issued or offered for subscription; or
 - (ii) in respect of which an invitation to subscribe or purchase has been made, and includes any person for the time being performing the functions of a managing company.
- (g) “margin provider” means a person who is in the business of providing credit to investors to purchase securities traded on an exchange licensed by the Commission under this Act;
- (h) “market maker” means a person who enters bid and offer prices in the order book maintained in the automated trading system of an exchange licensed by the Commission for a specified security based on the requirements or rules stipulated by such exchange;
- (i) “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;

- (j) “stock dealer” means a body corporate in the business of buying or selling of securities other than derivatives for his own account;
- (k) “underwriter” means any body corporate which in connection with a public offer of securities, guarantees to purchase unsubscribed portion of such securities for a fee or commission or who negotiates with an issuer of securities to purchase such securities in the event of the offer being not fully subscribed;

“market operator” means a person who establishes market infrastructure that facilitates trading, clearing or settlement of unlisted securities as provided in Part IV;

“Minister” means the Minister assigned the subject of Securities and Exchange Commission of Sri Lanka under Article 44 or 45 of the Constitution;

“Monetary Board of Sri Lanka” means the Monetary Board of the Central Bank of Sri Lanka established under the Monetary Law Act, (Chapter 422);

“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 to the public, but does not include a bona fide invitation to any person, to enter into an underwriting agreement in respect of 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 which is 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 shall 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 each of their associate companies, and any person who has provided financial assistance (other than a bank licensed or a finance company registered by the Central Bank of Sri Lanka in the ordinary course of business) to any of the aforesaid persons for the purchase of voting rights, all with each other;

For the purposes of this paragraph, an “associate company” is a company as defined in terms of the Sri Lanka Accounting and Auditing Standards made under Sri Lanka Accounting and Auditing Standards Act, No.15 of 1995;

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

For the purposes of this paragraph "relation" means a parent, spouse, child including step children, brother or sister including step brother or step sister of that person or the spouse of a child of that person;

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

"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, 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 this Act;

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

"rights issue" means an issue of any share 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;

“securities” include-

- (a) debentures, stocks, shares, funds, bonds, units in a collective investment scheme or any right, options or interests therein; or
- (b) derivatives including futures and options, whatever the nature of the underlying asset relied on; or
- (c) notes issued or proposed to be issued by any Government or any other incorporate or unincorporate body,

but does not include bills of exchange or promissory notes or certificates of deposits issued by a bank, securities issued by the Government of Sri Lanka or the Central Bank of Sri Lanka or such other product or class of products prescribed as not being securities under section 182;

“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 securities, are regularly made; or
- (c) information concerning the prices at which or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected to sell, purchase or exchange securities is regularly provided,

but shall not include a securities market regulated by the Central Bank of Sri Lanka for the purpose of this Act;

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

“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 by the Commission under this Act;

“supplementary service provider” includes an actuary, auditor, custodian, trustee, 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 or to a collective investment scheme;

“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 licensed by the Commission under this Act;

“whistleblower” means any individual or group of persons who provides, information relating to a violation or potential violation of the provisions of this Act, regulations, rules or directives made thereunder or any rule of a market institution.

189. 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

