

53. (1) It shall be a defence to a person in any civil or criminal proceedings to prove that in discharging his duties by virtue of delegation of powers under the default rules of a licensed clearing house in connection with any default proceeding in respect of anything done or omitted to be done that he exercised reasonable care and acted in good faith in the course of or in connection with the discharge or purported discharge of that duty.

Defences in
criminal or civil
liability

(2) The person referred to in subsection (1) shall include –

- (a) any member of the board of directors of the person;
and
- (b) any member of any committee established by such person.

(3) Where a relevant office holder takes action in relation to any property of any defaulter which is liable to be dealt with in accordance with the default rules of a licensed clearing house, and where the relevant office holder reasonably believes or has reasonable grounds for believing that he is entitled to take that action, the relevant office holder shall not be liable to any person for any loss or damage resulting from any action of the relevant office holder unless such loss or damage was caused by the negligence of the relevant office holder.

CHAPTER 3

CENTRAL DEPOSITORY

54. (1) A person shall not establish, operate or maintain a central depository for handling of securities, without obtaining a licence from the Commission whether such securities are listed or not listed on an exchange.

Prohibition
against
operating an
unlicensed
central
depository

(2) Any person who contravenes the provisions of subsection (1), commits an offence and shall on conviction

after summary trial before a Magistrate be liable to a fine not exceeding twenty five million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(3) Subsection (1) shall not apply to-

- (a) a central depository operated or established by the Central Bank of Sri Lanka;
- (b) a central depository operated in respect of securities issued by the Government of Sri Lanka or the Central Bank of Sri Lanka; or
- (c) any person providing a Central Depository for any issue of securities which have been exempted by the Commission.

Application to
operate a central
depository

55. (1) An application for a licence to establish or operate a central depository shall be made to the Commission in such manner and form as may be specified by the Commission and shall be accompanied by such fee as may be prescribed.

(2) An application for a licence to establish or operate a central depository shall only be made by a body corporate.

(3) The central depository shall make rules which have satisfactory provisions with regard to –

- (a) conditions under which securities may be deposited, held by, withdrawn from or transferred to and recorded in the register of securities;
- (b) the processing of dealings in deposited securities;
- (c) facilitating the settlement of deposited securities;

- (d) the protection of the interests of account holders and the protection and control of information on deposited securities and dealings therein;
- (e) transparent and non discriminatory criteria for the admission of depository participants and the categories of depository participants;
- (f) the monitoring and supervision of depository participants and for the enforcement of the rules of the applicant company;
- (g) the expulsion, suspension, imposition of penalties or disciplining of depository participants for failure to comply with the rules of the central depository;
- (h) the settlement of disputes between the central depository and the depository participants and between depository participants; and
- (i) ensuring the segregation of the securities belonging to investors from those of the depository participants.

(4) An applicant under subsection (1) shall provide such information as the Commission considers necessary in relation to the application.

(5) The proposed central depository shall at all times have sufficient financial, human and other resources to ensure the provision of –

- (a) adequately and properly equipped premises for the conduct of its business;
- (b) competent personnel for the conduct of its business; and
- (c) automated systems with adequate capacity, security arrangements and facilities to mitigate risks and to meet emergencies.

(6) Where the Commission is satisfied that it is appropriate to do so in the public interest or for the proper regulation of the securities market, it may, grant a licence to the applicant to establish or operate a central depository subject to such terms or conditions as the Commission thinks fit.

(7) Without limiting the generality of the terms and conditions attached to the licence referred to in subsection (6), the Commission, may amend or revoke any of the terms and conditions imposed or impose new terms and conditions, if the Commission is satisfied that it is appropriate to do so in the interest of the investors, or for the proper regulation of a central depository.

Duties of a
central
depository

56. (1) A central depository shall –

- (a) operate a safe, effective and efficient system for the handling of securities;
- (b) manage any risks associated with its business and operations prudently; and
- (c) act in the public interest having particular regard to the need for the protection of account holders.

(2) Notwithstanding the provisions of any other written law, it shall be the duty of a director of a central depository to act at all times in the public interest having particular regard to the need for the protection of account holders, and where there is a conflict between such duty and a director's duty under the provisions of any other written law the duty under this Act shall prevail.

Cancellation of a
licence of a
central
depository

57. (1) The Commission may by notice in writing -

- (a) cancel the licence granted under section 55 with effect from the date specified in the notice; or

- (b) direct the central depository to cease to provide or operate such facilities, or to cease to provide such services, as are specified in the notice, with effect from the date specified in the notice.

(2) The Commission shall not cancel a licence or issue a directive under subsection (1), unless the Commission is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the securities market where any of the following circumstances occur: -

- (a) the central depository ceases to operate a system for the central handling of securities;
- (b) the central depository is being wound up or otherwise dissolved, whether within or outside Sri Lanka;
- (c) the central depository has contravened any term or condition of its licence or is charged with any offence under this Act;
- (d) the central depository has failed to comply with a condition, requirement or directive that is issued under this Act;
- (e) any information provided for the purposes of section 55 was false or misleading in a material particular or from which there is a material omission;
- (f) a judgment debt against the central depository has not been satisfied in whole or in part;
- (g) a receiver, a receiver and manager, liquidator or an equivalent person has been appointed, whether within or outside Sri Lanka, in relation to or in respect of any property of the central depository;

- (h) the central depository has, whether within or outside Sri Lanka, entered into a compromise or scheme of arrangement with its creditors; or
- (i) the central depository has on its own accord applied to the Commission to cancel the licence granted to it and the Commission, thinks it fit to do so.

(3) For the purposes of paragraph (a) of subsection (2), the central depository shall be deemed to have ceased to operate a system for the central handling of securities if it has ceased to operate such system for a period exceeding two weeks without obtaining the prior written approval of the Commission.

(4) Notwithstanding the cancellation of a licence or the issuance of a directive under subsection (1), the Commission may permit the central depository to continue, on or after the date on which the cancellation or directive is to take effect, to carry on such activities affected by the cancellation or directive as the Commission may specify in the notice—

- (a) for the purpose of closing down the operations of the central depository or ceasing to provide the services specified in the notice;
- (b) for the purpose of protecting the depositors; or
- (c) in the public interest.

(5) Where the Commission acts under subsection (1), the Commission may where it deems necessary appoint an interim board of directors for a period of six months and be extended for a period of one year to manage the affairs of the central depository until a new board of directors is appointed.

(6) Where the Commission has granted permission to the central depository under subsection (4), the central depository shall not, by reason of its carrying on the activities

in accordance with the permission, be regarded as having contravened subsection (1).

(7) The Commission shall not take any action under subsection (1) without giving the central depository an opportunity of being heard.

(8) A central depository which is aggrieved by the decision of the Commission made under subsection (1) may, within fourteen days after the central depository is notified of the decision, appeal to the Minister.

(9) Notwithstanding the making of an appeal under subsection (8), any action taken by the Commission under this section shall continue to have effect pending the decision of the Minister.

(10) The Minister may, on an appeal made under subsection (8)-

- (a) allow the appeal and direct the Commission to revoke the cancellation of the licence or the directive; or
- (b) disallow the appeal.

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

(12) Subject to subsection (11), the Commission shall give public notice of any cancellation of the licence or any directive issued under this section.

58. Any cancellation of a licence or the issuance of a directive under subsection (1) of section 57 shall not operate so as to –

- (a) avoid or affect any agreement, transaction or arrangement entered into by the central depository,

Effect of
cancellation of
licence of a
central
depository

whether the agreement, transaction or arrangement was entered into before or, where subsection (4) of section 57 applies after the cancellation of the licence or issuance of the directive under subsection (1) of section 57; or

- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

Securities
account

59. A central depository may establish different types of securities accounts and every such securities account opened with a central depository shall be in the name of the beneficial owner of the deposited securities or in the name of a nominee. Where a securities account is opened in the name of a nominee, the name of the beneficial owner shall be disclosed to the central depository by the person opening such account.

Book entry
securities lodged
with the central
depository

60. All dealings of securities held in a central depository shall be made by means of book entries in the accounts of the central depository without the physical delivery of scrips.

Record of entry
in depositor's
account

61. A record of an entry in an account maintained by the central depository shall be prima facie evidence of the authenticity of such matter.

Effect of
securities held in
trust by the
central
depository

62. (1) Where the central depository holds securities in trust for its holders of securities, the person for whose benefit those securities are held in trust-

- (a) shall be deemed to be the holder of such securities; and
- (b) shall in respect of those securities, enjoy all such rights and privileges and be subject to all such duties and obligations in respect of, or arising from, such securities, under the Companies Act, No. 7 of 2007 as the case may be, as if he is the holder of those securities.

(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.