

**PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF**   
**SRI LANKA**

**SECURITIES AND EXCHANGE COMMISSION OF SRI LANKA ACT, No. 19 OF 2021**

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| *Securities and Exchange Commission of* | 1 |

*Sri Lanka Act, No. 19 of 2021*

[Certified on 21st of September, 2021]

L.D.—O. 8/2017

AN ACTTOESTABLISHTHE SECURITIESAND EXCHANGE COMMISSIONOF SRI LANKA; TOREGULATEMARKETINSTITUTIONS, CERTAINPUBLIC OFFERSOFSECURITIES, MARKETINTERMEDIARIES; TOPROTECT INVESTORSANDTOPROVIDEFORENFORCEMENTMEASURES; TODEAL WITHMARKETMISCONDUCT; ANDTOOVERCOMETHECHALLENGES

ENCOUNTEREDBYSECURITIESMARKETREGULATORSANDTOREPEAL THE SECURITIESAND EXCHANGE COMMISSIONOF SRI LANKA ACT, NO. 36 OF 1987 ANDFORMATTERSCONNECTEDTHEREWITHOR INCIDENTALTHERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows: -

|  |  |  |
| --- | --- | --- |
| **1.** | This Act may be cited as the Securities and Exchange | Short title |

Commission of Sri Lanka Act, No. 19 of 2021.

**PART I**

CHAPTER 1

PRELIMINARY

|  |  |  |
| --- | --- | --- |
| **2.** | This Act applies to securities, securities markets and | Application of the Act  Object and  purpose of this Act |
| related matters except as otherwise provided in this Act. | |
| **3.** | The object and purpose of this Act shall be – |
| (*a*) | to establish the Securities and Exchange |

Commission of Sri Lanka;

(*b*) to create, maintain and regulate a fair, orderly,   
 efficient and transparent securities market;

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 *Sri Lanka Act, No. 19 of 2021*

(*c*) to protect the interests of local and foreign investors;   
 and

(*d*) to ensure the maintenance of high professional   
 standards in the provision of services in relation to   
 securities markets.

CHAPTER 2

SECURITIESAND EXCHANGE COMMISSIONOF SRI LANKA

|  |  |  |
| --- | --- | --- |
| Establishment of the Securities  and Exchange  Commission of  Sri Lanka | **4.** | (1) There shall be established a Commission which |
| shall be called the Securities and Exchange Commission of Sri Lanka (hereinafter referred to as the “Commission”) to administer the provisions of this Act. | |

(2) The Commission shall, by the name assigned to it by subsection (1), be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name.

|  |  |  |
| --- | --- | --- |
| Constitution of | **5.** | (1) The Commission shall consist of – |
| the Commission | (*a*) | six persons possessing professional expertise and |

standing in respect of matters relating to the   
securities market, and possessing special knowledge   
or wide experience and proven competency in the   
fields of law, finance, accounting, economics,   
banking or business to be appointed by the Minister   
as members (hereinafter referred to as “appointed   
members”) in order to reflect the multidisciplinary   
character of the Commission, of whom at least   
five persons shall be from the private sector;

*Securities and Exchange Commission of*  3

*Sri Lanka Act, No. 19 of 2021*

(*b*) two nominated members, -

(i) a Deputy Secretary to the Treasury nominated

by the Secretary to the Treasury; and

(ii) a Deputy Governor of the Central Bank of Sri

Lanka nominated by the Monetary Board of

Sri Lanka; and

(*c*) two *ex-officio* members, -

(i) the Registrar-General of Companies,

appointed under the Companies Act, No. 7 of

2007; and

(ii) the President of the Institute of Chartered

Accountants of Sri Lanka established by the

Institute of Chartered Accountants Act, No.

23 of 1959.

(2) The Minister shall nominate from amongst the

appointed members of the Commission, one member to be

the Chairman of the Commission.

(3) In appointing persons under subsection (1), the

Minister shall have regard to-

(*a*) that person’s integrity and standing; and

(*b*) the likelihood of any conflict between the interests

of the Commission and any interest which that

person has or represents.

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 *Sri Lanka Act, No. 19 of 2021*

|  |  |  |
| --- | --- | --- |
| Conflict of  interest | **6.** | Every appointed or nominated member of the |
| Commission when being appointed shall be required to make | |

a declaration to the Minister on any conflict of interests he may have at the time of his appointment.

|  |  |  |
| --- | --- | --- |
| Term of office of appointed or nominated  members | **7.** | Every appointed or nominated member of the |
| Commission, unless he vacates office earlier by death, by operation of law, resignation or removal, shall hold office | |

for a term of three years and shall be eligible for reappointment subject to a maximum period of any two terms of office whether consecutive or otherwise.

|  |  |  |
| --- | --- | --- |
| Resignation of members of the Commission | **8.** | (1) Any appointed or nominated member of the |
| Commission may at any time resign his office by letter | |

addressed to the Minister and such resignation shall take effect upon it being accepted by the Minister.

(2) In the event of vacation of office of any member other than an *ex-officio* member by reason of death, resignation, removal or the operation of provisions of subsection (4) or (5), the Minister may appoint another person having regard to the provisions of subsection (3) of section 5 to hold office for the unexpired period of the term of office of the member whom he succeeds.

(3) If any member of the Commission other than the Chairman is temporarily unable to perform the duties of his office for a period exceeding three months due to ill health or absence from Sri Lanka or for any other cause, the Minister may appoint some other person to act in his place during such period having regard to the provisions of subsection (3) of section 5.

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 *Sri Lanka Act, No. 19 of 2021*

(4) An appointed or nominated member of the Commission who, without leave of the Commission first being obtained, absents himself from three consecutive meetings of the Commission shall be deemed to have vacated his office.

(5) A member of the Commission being the Chairman, is absent for three consecutive meetings of the Commission shall be deemed to have vacated his office.

|  |  |  |
| --- | --- | --- |
| **9.** | (1) A person shall be disqualified from being | Disqualifications and grounds for removal |
| appointed or nominated or from continuing as a member of the Commission if he - | |
| (*a*) | is or becomes a member of Parliament, or a member |

of any Provincial Council or any local authority;

(*b*) is or becomes a director, partner or employee of an   
 entity licensed or registered by the Commission;

(*c*) is or becomes of unsound mind or incapable of   
 carrying out his duties;

(*d*) is or has become an undischarged bankrupt;

(*e*) is or has been convicted of an offence which   
 involves moral turpitude;

(*f*) has been previously removed from office.

(2) The Minister may by Order published in the *Gazette* remove a member of the Commission from continuing as a member if his continuation in the office is detrimental to the interests of the Commission.

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 *Sri Lanka Act, No. 19 of 2021*

|  |  |  |
| --- | --- | --- |
| Meetings of the Commission | **10.** | (1) The Chairman of the Commission shall, if |
| present, preside at all meetings of the Commission. In the | |

absence of the Chairman from any such meeting~~s~~, the members present shall elect one amongst themselves to preside at such meeting.

(2) The quorum for any meeting of the Commission shall be five members.

(3) The Commission may regulate the procedure in regard to the meetings of the Commission and the transaction of business at such meetings.

(4) All questions for decision at any meeting of the Commission shall be decided by the vote of the majority of the members present. In the case of an equality of votes the member presiding shall have a casting vote.

|  |  |  |
| --- | --- | --- |
| Remuneration of members | **11.** | The members of the Commission may be paid such |
| remuneration out of the Fund of the Commission as may be | |

determined by the Minister, in consultation with the Minister assigned the subject of finance.

|  |  |  |
| --- | --- | --- |
| Chairman of the Commission | **12.** | (1) If the Chairman of the Commission is, by reason |
| of illness or absence from Sri Lanka temporarily unable to | |

perform the duties of his office the Minister shall nominate another member of the Commission to act in his place.

(2) The Chairman may at any time resign from the office of Chairman by a letter addressed to the Minister.

(3) Subject to the provisions of subsection (2), the term of office of the Chairman shall be his period of membership of the Commission.

|  |  |  |
| --- | --- | --- |
| Members to  disclose any  interest | **13.** | A member who is directly or indirectly interested in |
| any decision that is to be taken on any matter by the Commission shall disclose the nature of such interest at the | |

meeting of the Commission where such decision is being

*Securities and Exchange Commission of*  7   
 *Sri Lanka Act, No. 19 of 2021*

taken, and such disclosure shall be recorded in the minutes of the meetings of the Commission and such member shall not take part in any deliberation or decision of the Commission with regard to that matter, and shall withdraw from such meeting while such deliberation is in progress or such decision is being made.

|  |  |  |
| --- | --- | --- |
| **14.** | No proceeding, act or decision of the Commission | Proceedings,  acts or decisions not invalidated by reason of a  vacancy  Seal of the  Commission |
| shall be invalidated by reason only of the existence of a vacancy among its members or of any defect in the appointment of a member thereof. | |
| **15.** | (1) The seal of the Commission shall be in the |
| custody of the Commission. | |

(2) The seal of the Commission may be altered in such manner as may be determined by the Commission.

(3) The seal of the Commission shall not be affixed to any instrument or document except in the presence of one member of the Commission and the Director-General of the Commission or in the absence of the Director-General, in the presence of any two members of the Commission, who shall sign the instrument or document in token of their presence.

CHAPTER 3

POWERS, DUTIESAND FUNCTIONSOFTHE COMMISSION

|  |  |  |
| --- | --- | --- |
| **16.** | The powers, duties and functions of the Commission | Principal  functions,  powers and  duties of the  Commission |
| shall be- | |
| (*a*) | to advise the Government on the development of |
| the securities market and to assist in the effective | |

implementation of the policies and programmes of   
the Government with respect to the securities   
market;

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 *Sri Lanka Act, No. 19 of 2021*

(*b*) to encourage and promote the development of   
 securities markets in Sri Lanka including research   
 and training in connection therewith;

(*c*) to give general or specific directives or instructions   
 to market institutions, market intermediaries,   
 registered persons, clearing members, trading   
 participants, depository participants, issuers,   
 investors, recognized market operators or such other   
 person or persons as may be necessary to give effect   
 to the provisions of this Act from time to time;

(*d*) to give general or specific directives or instructions   
 to supplementary service providers of market   
 institutions, market intermediaries, collective   
 investment schemes or listed public companies from   
 time to time;

(*e*) to grant a licence to a body corporate to operate as   
 a market institution and to ensure its proper conduct;

(*f*) to grant a licence to any person to operate as a market   
 intermediary and to ensure its proper conduct;

(*g*) to register a person advising clients on sale or   
 purchase of securities for and on behalf of a market   
 intermediary as a registered person and to regulate   
 their conduct in the discharge of their duties;

(*h*) to register any person as a market operator;

(*i*) to issue general or specific directives to listed   
 public companies or listed foreign entities from   
 time to time;

(*j*) to issue general or specific directives to an acquirer,   
 an offeror or persons acting in concert with an offeror   
 or an offeree or a target company in relation to a   
 takeover or a merger of a listed public company;

*Securities and Exchange Commission of*  9   
 *Sri Lanka Act, No. 19 of 2021*

(*k*) to issue specific directives to any person to prevent   
 the imminent infringement of this Act, regulations   
 or rules and to restrain infringement;

(*l*) to regulate the listing and trading of securities in   
 an exchange;

(*m*) to regulate the issuance of securities;

(*n*) to prohibit or suspend the listing of any securities   
 or to delist the listed securities or to prohibit or   
 suspend the trading of any securities or to take such   
 steps as the Commission considers necessary or   
 expedient for the protection of investors or for   
 ensuring fair and orderly securities market or for   
 ensuring the integrity of the securities market;

(*o*) to employ such officers and servants as the   
 Commission may consider necessary and to fix the   
 salaries and wages or other remuneration and   
 benefits of such officers and servants for the   
 purposes of carrying out the objectives and   
 functions of the Commission;

(*p*) to acquire in any manner whatsoever and hold, take   
 or give on lease or hire, mortgage, pledge, sell or   
 otherwise dispose of any immovable or movable   
 property;

(*q*) to regulate a takeover or merger of a listed public   
 company or any matter connected therewith or   
 incidental thereto;

(*r*) to inquire and conduct investigations into any   
 activity of a market institution, market intermediary,   
 a registered person, a listed public company or a   
 listed foreign entity;

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(*s*) to conduct investigations into any alleged violation   
 or contravention of the provisions of this Act or   
 any regulation or any rule or directive made or any   
 instruction given thereunder or by any person and   
 to take any enforcement measures provided under   
 this Act as considered necessary by the Commission;

(*t*) to enter into agreements or memoranda of   
 understanding with any organization or a foreign   
 regulatory authority in relation to any matter which   
 comes within the purview of this Act;

(*u*) to publish findings of wrongdoing by any market   
 institution, market intermediary or registered   
 person, supplementary service provider, any listed   
 public company or any listed foreign entity;

(*v*) to carry out surveillance of securities transactions;

(*w*) to levy fees or charges, for any services rendered by the Commission;

(*x*) to take such steps as the Commission may deem   
 necessary to mitigate systemic risk to the financial   
 system;

(*y*) to give specific or general directions to companies   
 that have made an offer to the public to subscribe   
 for securities;

(*z*) to exempt certain public offers or issues from the   
 provisions of this Act;

(*aa*) to appoint experts as the Commission deems expedient for the purposes of this Act; and

(*ba*) to do all such other acts as may be considered necessary, incidental and ancillary to the performance of the Commission’s objects, duties and functions under this Act.

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| **17.** | The Commission shall in addition to the powers | Additional  powers of the Commission |
| specified in section 16 also have the power to – | |
| (*a*) | carry out supervision or inspections of the activities |

of market institutions or market intermediaries or   
registered persons or trustees of collective   
investment schemes in order to ascertain and   
determine whether they are operating in conformity   
with the provisions of this Act, regulations, rules or   
directives made thereunder and to charge the costs   
incurred in carrying out such inspections from the   
market institution or a market intermediary or a   
registered person or a trustee of a collective   
investment scheme as the case may be;

(*b*) require market institutions or market intermediaries   
 to file with the Commission, audited financial   
 statements and the interim financial statements,   
 certified by a qualified auditor in the form and   
 manner specified by the Commission; and

(*c*) require the licensed managing company of a   
 collective investment scheme to file reports with   
 the Commission, in respect of every year and at   
 least two reports of the activities of that collective   
 investment scheme for that year. Every such report   
 shall contain such particulars as may from time to   
 time be determined by the Commission. The first   
 report shall be filed not later than the thirtieth of   
 September of that year and the second report shall   
 be filed not later than the thirty-first of March of   
 the subsequent year.

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| **18.** | The Chairman of the Commission may authorise | Representation of the  Commission in legal  proceedings |
| any officer of the Commission who is an Attorney-at-Law or any officer of the Attorney-General’s Department to appear on behalf of the Commission in any legal proceedings by or against the Commission or in any proceedings in which the | |

Commission has a substantial interest.

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CHAPTER 4

DIRECTOR-GENERALANDTHE STAFFOFTHE COMMISSION

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| Director-General | **19.** | (1) The Minister shall on the recommendation of |

the Commission, appoint a Director-General of the Commission, who shall be its chief executive officer. The conditions of employment including remuneration of the Director-General shall be determined by the Commission.

(2) The Commission shall not recommend the appointment of any person as the Director-General of the Commission, if such person-

(*a*) has been previously found guilty of serious   
 misconduct by a court or tribunal or has been subject   
 to a disciplinary action by a regulatory body;

(*b*) has been previously dismissedfrom office; or

(*c*) has committed a breach of the provisions of this   
 Act, regulations, rules or directives made thereunder.

(3) The Director-General shall, subject to the general direction and control of the Commission, be charged with the direction of the affairs and transactions of the Commission, the exercise, discharge and performance of its powers, functions and duties, and the administration and control of the officers and servants of the Commission.

(4) The Director-General may, with the approval of the Commission, whenever he considers it necessary to do so, delegate to any officer and servant any power, function or duty conferred or imposed on or assigned to him by this Act and such officer or servant shall exercise, discharge and perform such power, function or duty subject to the general or special directions of the Director-General.

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(5) The Minister may on the recommendation of the Commission remove the Director-General appointed under subsection (1), from office if his continuation in office is detrimental to the interests of the Commission:

Provided, that the Commission shall grant an opportunity to the Director-General of being heard, prior to such removal.

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| **20.** | (1) Notwithstanding anything to the contrary in any | Staff of the  Commission |
| other written law, the Commission may create cadre positions | |

and employ officers and servants as it considers necessary for the efficient discharge of its functions and may fix their salaries and wages or other remuneration, benefits and pensions of such servants and officers for the purposes of carrying out its functions and duties under the provisions of this Act.

(2) The Commission may establish and regulate pension and provident funds and schemes for the benefit of the Director-General and its officers and servants and their dependents and nominees with the concurrence of the Minister assigned the subject of finance and may make contributions to any such fund or scheme.

(3) The Commission shall promote and sponsor the training of technical personnel on the subjects of securities markets, finance, law, money economics and other subjects and for this purpose, the Commission shall be authorised to defray the costs of study, in Sri Lanka or abroad of the officers and servants of the Commission who are of proven merit as determined by the Commission.

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(4) The Commission shall establish a code of conduct which shall be applicable to the officers and servants of the Commission.

(5) The Commission shall not appoint any person to the staff of the Commission where such person-

(*a*) has been previously found guilty of serious   
 misconduct by a court or tribunal or has been subject   
 to a disciplinary action by a regulatory body;

(*b*) has been previously dismissed from office; or

(*c*) has committed a breach of the provisions of this   
 Act, regulations, rules or directives made thereunder.

(6) At the request of the Commission any officer in the public service may, with the consent of the officer and the Public Service Commission established by the Constitution be temporarily appointed to the Commission for such period as may be determined by the Commission or with like consent, be permanently appointed to such staff.

(7) Where any officer in the public service is temporarily appointed to the staff of the Commission, the provisions of subsection (2) of section 14 of the National Transport Commission Act, No. 37 of 1991, shall *mutatis mutandis*, apply to and in relation to such officer.

(8) Where any officer in the public service is permanently appointed to the staff of the Commission, the provisions of subsection (3) of section 14 of the National Transport Commission Act, No. 37 of 1991, shall *mutatis mutandis,* apply to and in relation to such officer.

(9) Where the Commission employs any person who has agreed to serve the Government for a specified period, any period of service to the Commission by that person shall be regarded as service to the Government for the purpose of discharging the obligations of such agreement.

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(10) The Commission may with the consent of such officer or servant propose secondment of its officers or servants to other state institutions or regulatory authorities in Sri Lanka or abroad for a period not exceeding three years on an assignment agreed upon between such institution or the authority and the Commission. The period of secondment shall be deemed to be considered as service to the Commission.

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| **21.** | (1) At the request of the Commission any officer or | Appointment of officers of  public  corporations to the staff of the Commission |
| servant of a public corporation may, with the consent of such officer or servant and the governing board of such corporation, be temporarily appointed to the staff of the | |

Commission for such period as may be determined by the Commission or with like consent be permanently appointed to the staff of the Commission on such terms and conditions, including those relating to pension or provident fund rights, as may be agreed upon by the Commission and the governing board of such corporation.

(2) Where any person is appointed whether temporarily or permanently under subsection (1) to the staff of the Commission he shall be subject to the same disciplinary control as any other officers or servants of the Commission.

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| **22.** | All members, the Director General, officers and | Members,  officers and  servants of the Commission  deemed to be  public servants |
| servants of the Commission shall be deemed to be public servants within the meaning and for the purposes of the Penal Code (Chapter 19) and of the Code of Criminal | |

Procedure Act, No.15 of 1979.

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| Commission  deemed to be a Scheduled  Institution  within the | **23.** | The Commission shall be deemed to be a Scheduled |
| Institution within the meaning of the Bribery Act (Chapter 26), and the provisions of that Act shall be construed accordingly. | |

meaning of the   
Bribery Act **PART II**   
 **Markets and Market Institutions**

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| Object and | **24.** | The object and purpose of this Part shall be – |
| purpose of this |
| (*a*) | to promote a fair, orderly, transparent and efficient |
| Part |

securities market in Sri Lanka through the   
 establishment of market institutions;   
(*b*) to enhance effective and efficient functioning of a   
 securities market; and   
(*c*) to mitigate systemic risk associated with securities   
 markets.

CHAPTER 1   
EXCHANGES

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| Prohibition  against  establishing an unlicensed  exchange | **25.** | (1) A person shall not establish, operate or maintain |
| an exchange except by authority of a licence granted by the Commission.  (2) A person who contravenes 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.

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| Application to operate an  exchange | **26.** | (1) An application for a licence to operate as an |
| exchange shall be made to the Commission in such manner and form together with such documents as may be specified | |

by rules made by the Commission accompanied by such fees as may be prescribed.

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(2) For the purpose of subsection (1), an application shall be made by a body corporate only.

(3) The Commission may grant a licence to the applicant to operate as an exchange, subject to such terms and conditions as it thinks fit, where it is satisfied that –

(*a*) the applicant has the capacity to operate an orderly   
 and fair market in relation to securities that are   
 traded through its facilities;

(*b*) the applicant has the necessary infrastructure to   
 manage any risks associated with its business and   
 operations prudently;

(*c*) the applicant, in discharging its obligations under   
 paragraph (*a*), shall have the necessary governance   
 structures to ensure that the exchange shall not act   
 contrary to public interest;

(*d*) the applicant has sufficient financial, human,   
 automated systems and other resources to ensure   
 the provision of –

(i) an orderly and fair market in relation to   
 securities that are traded through its facilities;

(ii) adequate and properly equipped premises for   
 the conduct of its business;

(iii) competent personnel for the conduct of its   
 business; and

(iv) automated systems with adequate capacity,   
 security arrangements and facilities to   
 manage risks and to meet emergencies;

(*e*) that the applicant, by rules provide-

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(i) for an orderly and fair market in relation to   
 the securities that are traded through its   
 facilities;

(ii) for the admission of trading participants;

(iii) for the proper regulation and supervision of   
 the business conduct of its trading   
 participants when dealing with clients;

(iv) for the exclusion of persons who are not of   
 good character and high business integrity   
 from being recognized as trading participants;

(v) for the expulsion, suspension or disciplining   
 including the imposition of fines on a trading   
 participant and any person acting on behalf   
 of such trading participant, for conduct that   
 is inconsistent with just and equitable   
 principles in the transaction of business or   
 for a contravention of or failure to comply   
 with the rules of the exchange or any   
 provisions of this Act, regulations, rules or   
 directives made thereunder;

(vi) for the conditions under which securities may   
 be listed or delisted;

(vii) for the conditions governing trading of such   
 listed securities and rules to be followed by   
 companies or other entities that have listed   
 their securities on the exchange;

(viii) for the class or classes of securities that may   
 be dealt in or traded on its facilities;

(ix) for the prohibition of market misconduct and   
 the manner in which investigations are   
 conducted;

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(x) for the conduct of inquiries or investigations   
 into the business conduct of its trading   
 participants;

(xi) for the suspension of trading of any given   
 security for the protection of investors or for   
 the conduct of orderly and fair trading;

(xii) for the appointment of a disciplinary   
 committee of which the majority of its   
 members are independent of the trading   
 participants or the exchange, to hear and   
 determine disputes-

(A) between trading participants and their   
 clients;

(B) between trading participants;

(C) between trading participants and an   
 exchange, a central depository or a   
 licensed clearing house;

(D) between entities listed on the exchange   
 and the exchange;

(xiii) generally for the carrying on of the business   
 of the exchange with due regard to the need   
 for the protection of investors; and

(*f*) the interests of the public or the proper regulation   
 of the market shall be served by the granting of the   
 licence.

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

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(5) Notwithstanding the provisions of subsection (3), the Commission may amend, revoke or impose additional terms or conditions, if the Commission is satisfied that it is appropriate to do so for the protection of investors or for the proper regulation of the securities market.

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| Duties of an  exchange | **27.** | (1) It shall be the duty of an exchange to ensure, an |
| orderly and fair market in securities that are traded through | |

its facilities.

(2) In performing its duty under subsection (1), the exchange shall-

(*a*) act in the public interest having particular regard   
 to the need for the protection of investors;

(*b*) ensure that where any interest that is required to be   
 served under any law relating to companies conflict   
 with the interest referred to in paragraph (*a*), the   
 interest referred to in paragraph (*a*) shall prevail;   
 and

(*c*) manage any risks associated with its business and   
 operations prudently.

(3) Notwithstanding the provisions of any other law, a director of an exchange has a duty to act at all times in the public interest having particular regard to the need to protect investors and where there is a conflict between the duty under this Act and a director’s duty under any other law, the duty under this Act shall prevail.

(4) It shall be the duty of the exchange to take appropriate action as may be provided for under its rules for the purpose of monitoring or securing compliance with its rules.

(5) An exchange shall immediately notify the Commission if it becomes aware of -

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(*a*) any matter which adversely affects, or is likely to   
 adversely affect the ability of any trading   
 participant to meet its obligations in respect of its   
 licensed business, including the ability of any   
 trading participant to comply with the minimum   
 financial requirements as may be specified under   
 this Act or regulations, rules or directives made   
 thereunder; or

(*b*) any irregularity, breach of any provision of this   
 Act, regulations, rules, directives or any other matter   
 which, in the opinion of the exchange, indicates or   
 may indicate that the financial standing or financial   
 integrity of any trading participant or of the chief   
 executive officer or directors or the key management   
 personnel of the trading participant in question may   
 reasonably be affected.

(6) Where an exchange issues a warning, imposes a penalty, suspends, expels or imposes any other disciplinary measure against any of its trading participants, on the occurrence of activities referred to in subsection (5), it shall, within seven days, give to the Commission in writing the following particulars :-

(*a*) the name and address of the business of the trading   
 participant;

(*b*) the reason for and the nature of the action taken;

(*c*) the period of suspension and the quantum of the   
 penalty, if any; and

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| (*d*) | any other disciplinary measure taken. | Cancellation of |
| **28.** | (1) The Commission may, - |
| licence of an |
| (*a*) | by notice in writing cancel the licence granted | exchange |

under section 26 with effect from the date specified   
in such notice; or

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(*b*) by notice in writing direct the exchange to cease to   
 provide or operate such facilities, or to cease to   
 provide such services, with effect from the date   
 specified in the notice.

(2) The Commission shall not cancel the 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, in the public interest or for the proper regulation of the securities market, where any of the following circumstances occur :–

(*a*) the exchange ceases to operate its securities market;

(*b*) the exchange is being wound up or otherwise   
 dissolved, whether within or outside Sri Lanka;

(*c*) the exchange has contravened any term or condition   
 of its licence or is charged with any offence under   
 this Act;

(*d*) the exchange has failed to comply with a term or   
 condition of its license or directive issued under   
 this Act or otherwise fails to comply with any   
 provision or requirement under this Act;

(*e*) any information provided for the purposes of section   
 26, was false or misleading in a material particular   
 or from which there is a material omission;

(*f*) a judgment debt against the exchange has not been   
 satisfied in whole or in part;

(*g*) a receiver, a receiver and manager, liquidator or   
 equivalent person has been appointed, whether   
 within or outside Sri Lanka in relation to or in   
 respect of any property of the exchange;

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(*h*) the exchange has, whether within or outside Sri   
 Lanka, entered into a compromise or scheme of   
 arrangement with its creditors which has not been   
 satisfied; or

(*i*) the exchange on its own accord applies to the   
 Commission to cancel its licence as an exchange,   
 and the Commission thinks it fit to do so.

(3) For the purposes of paragraph (a) of subsection (2) where an exchange has ceased to operate its securities market for a period exceeding two weeks, it shall be deemed to have ceased to operate its securities market 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 exchange 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 exchange or ceasing to provide the services   
 specified in the notice;

(*b*) for the purpose of protecting the interest of   
 investors; or

(*c*) in the interest of the public.

(5) Where the Commission has granted permission to an exchange to continue under subsection (4), the exchange shall not, by reason of its carrying on the activities in accordance with such permission, be regarded as having contravened subsection (1).

(6) Where the Commission acts under paragraph (a) of subsection (1), the Commission may, take any steps deemed necessary to ensure the protection of investors or to uphold the interests of the public with notice to the Minister.

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

(8) An exchange which is aggrieved by the decision of the Commission made under subsection (1) may, within fourteen days of receipt of such notice, 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) after hearing the Commission and the exchange within a period of three months after the receipt of such appeal -

(*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 licence or any directive issued under this section.

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| Effect of  cancellation of  the licence of an exchange | **29.** | Any cancellation of a licence or the issuance of a |
| directive under subsection (1) of section 28 shall not operate so as to – | |
| (*a*) | avoid or affect any agreement, transaction or |

arrangement entered into on the securities market   
operated by the exchange, whether the agreement,   
transaction or arrangement was entered into before

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or, where subsection (4) of section 28 applies, after   
the cancellation of the licence or the issuance of   
the directive under section 28; or

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

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| **30.** | (1) The Commission may, after consultation with | Closure of the exchange in an emergency |
| the exchange, direct the exchange to close its securities market for a period not exceeding five business days if the | |

Commission is of the opinion that an orderly and fair market for trading in securities on the securities market is being or is likely to be prevented because –

(*a*) an emergency or natural disaster has occurred   
 within Sri Lanka; or

(*b*) there exists an economic or financial crisis or any   
 other similar circumstance within or outside   
 Sri Lanka.

(2) The Commission may extend the closure of the securities market under subsection (1) for any further periods, each not exceeding five business days at a time.

(3) The Commission shall specify the grounds for the closure in the directive given under subsection (1) and the grounds for any extension of closure under subsection (2).

(4) The Commission shall, as soon as may be practicable, give a copy of the directive under subsection (1) or extension under subsection (2) to the exchange and direct the exchange to do all that it is reasonably capable of doing to give effect to the directive under subsection (1) or extension under subsection (2) while the directive or extension remains in force.

(5) Where the Commission exercises its power under this section it shall notify the Minister setting out the reasons for the exercise of the power under this section.

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(6) In this section –

“business day” means any day on which there is official trading on the exchange but for the closure;

“fair market” includes a market that reflects the forces of supply and demand.

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| Listing  requirements of a licensed  exchange | **31.** | (1) Where an exchange decides to list its own |
| securities on such exchange, it shall obtain the prior approval of the Commission and the Ministry of Finance. | |

(2) The Commission shall grant approval to the exchange to list its securities on such exchange on being satisfied that the exchange has complied with all the necessary listing requirements of the exchange.

(3) On such approval being granted, such exchange shall enter into an arrangement as the Commission may require-

(*a*) for dealing with possible conflicts of interest that   
 may arise from the listing on such exchange;

(*b*) for the purpose of ensuring the integrity of trading   
 of securities of such exchange; and

(*c*) for compliance with obligations as a listed   
 company if such exchange was to become a listed   
 company,

and such exchange shall comply with such requirements.

(4) The listing requirements of such exchange shall be deemed to allow the Commission, instead of such exchange to make decisions and to take action, relating to-

(*a*) the admission to or removal of the exchange from   
 the official list of such exchange;

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| (*b*) | the stopping or suspension of the securities of the exchange from being listed or traded on such |

exchange; or

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(*c*) the continuing listing requirements or such other   
 matters as the Commission deems fit for the purpose   
 of subsection (1).

(5) An arrangement under subsection (3) may provide for the exchange to pay such fees to the Commission as the Commission may determine for services provided by the Commission under the arrangement or otherwise.

(6) Without prejudice to the powers of the Commission to approve or amend the rules of an exchange, the Commission may by notice in writing-

(*a*) modify the listing requirements of such exchange   
 for the purpose of applying for a listing or trading   
 of the securities of such exchange; or

(*b*) exempt such exchange from any listing requirement.

CHAPTER 2

CLEARING HOUSE

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| **32.** | In this Chapter, unless the context otherwise | Interpretation |

requires –

“central counterparty” means a legal person who engages in clearing and settlement of trades on a securities market by becoming the buyer to every seller and the seller to every buyer by guaranteeing each trade;

“default proceedings” mean any proceedings or other action taken by a licensed clearing house under its default rules;

“default rules”, in relation to a licensed clearing house, mean such rules of the licensed clearing house which provide for the initiation of default proceedings if a clearing member has failed to meet

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its obligations in respect of all or any unsettled   
market contracts to which the clearing member is a   
party;

“defaulter” means a clearing member who is the subject of any default proceedings;

“market charge” means a charge, whether fixed or floating, granted in favour of a licensed clearing house -

(*a*) over any property as specified in the rules of   
 a clearing house which is held by or deposited   
 with the licensed clearing house; and

(*b*) for the purpose of securing liabilities arising   
 directly in connection with the licensed   
 clearing house ensuring the settlement of a   
 market contract;

“market collateral” means any property or guarantees given in any other form of collateral as specified in the rules of a licensed clearing house held by or deposited with a licensed clearing house for the purpose of securing liabilities arising directly in connection with the clearing house ensuring the performance of market contracts by the licensed clearing house;

“market contract” means -

(*a*) a contract which is subject to the rules of a   
 licensed clearing house and entered into by   
 the licensed clearing house with a clearing   
 member pursuant to a novation for the   
 purpose of clearing and settlement of   
 transactions using the clearing facility of a   
 licensed clearing house; or

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(*b*) a transaction which is or is to be cleared or   
 settled using the clearing facility of a licensed   
 clearing house and in accordance with the   
 rules of the licensed clearing house, whether   
 or not a novation referred to in paragraph (*a*)   
 is to take place;

“relevant office holder” means –

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| (*a*) | any person acting in relation to a company as its liquidator, provisional liquidator, receiver |

or manager or an equivalent person; or

(*b*) any person appointed pursuant to a   
 bankruptcy proceedings.

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| **33.** | There may be established a licensed clearing house | Establishment of a clearing house in an exchange  Prohibition  against  establishing an unlicensed  clearing facility |
| to clear and settle securities transactions which take place in an exchange. | |
| **34.** | (1) A person shall not establish, operate or maintain |
| a clearing facility for the purpose of clearing or settlement of securities transactions in a licensed exchange or with a market operator unless the person has been licensed by the Commission to establish or operate a clearing house under | |

this Chapter.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction after a 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 any person providing clearing facilities for securities exempted under this Act or any clearing facility provided exclusively by the Central Bank of Sri Lanka or a clearing facility acting as an integrated central counterparty which provides for the settlement and clearing of securities as defined in this Act and securities issued by the Government of Sri Lanka or the Central Bank of Sri Lanka.

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| Power to grant a licence | **35.** | (1) The Commission may grant a licence to an |
| applicant to establish and operate as a clearing house subject | |

to such terms and conditions as may be specified therein.

(2) The Commission may amend, revoke or impose new terms and conditions to the licence, if the Commission is satisfied that it is appropriate to do so for the protection of investors, or for the proper regulation of a licensed clearing house.

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| Application for a licence to  establish or  operate a  clearing house | **36.** | (1) An application for a licence to establish or |
| operate a clearing house, acting as a central counterparty or otherwise to guarantee clearing and settlement of securities transactions in a licensed exchange or a recognized market | |

operator, shall be made to the Commission in such manner and form as may be specified by the Commission by rules and shall be accompanied by such fee as may be prescribed.

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

(3) An applicant shall provide all information necessary to satisfy the Commission that the applicant has established, at the time of submitting the application, the necessary arrangements to comply with the requirements of this Act, or regulation or rules made thereunder.

(4) The rules of such clearing house (hereinafter referred to as the “clearing rules”) may provide for -

(*a*) the efficient provision of clearing facilities in   
 relation to securities that are cleared through its   
 clearing facilities;

(*b*) the requirement for entering into contracts with   
 clearing members under which they would agree to   
 be bound by the rules of the licensed clearing house;

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(*c*) the admission of clearing members to the clearing   
 house including transparent and non discriminatory   
 criteria for such admission;

(*d*) the effective regulation and supervision of its   
 clearing members that use its clearing facilities;

(*e*) conditions relating to the acceptance of guarantees   
 or collateral, from clearing members and for the   
 efficient management of such guarantees or   
 collateral;

(*f*) the establishment of a Settlement Guarantee Fund   
 and the implementation of a prudent risk   
 management system;

(*g*) the obligations of clearing members and minimum   
 requirements with regard to capital, internal audit   
 and risk management;

(*h*) the fair and efficient settlement of disputes -

(i) between the clearing house and its clearing   
 members; and

(ii) between clearing members;

(*i*) the expulsion, suspension, and disciplining of   
 clearing members including the power or authority   
 of the licensed clearing house to impose penalties   
 for the failure of clearing members to comply with   
 the rules of the licensed clearing house;

(*j*) the specification of the class or the classes of   
 securities that may be cleared and settled using its   
 facilities;

(*k*) the inclusion of default rules to facilitate–

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(i) the initiation of default proceedings if a   
 clearing member has failed to meet its   
 obligations under the clearing rules and the   
 risk management procedures to deal with a   
 clearing member who appears to be unable,   
 or is likely to become unable to meet its   
 obligations;

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| Duties of a  clearing house | (ii) | | the governing of collateral including the |
| depositing and efficient creation and realization of guarantees or collateral provided by a defaulting clearing member in the event of default or bankruptcy of such member; and | | |
| (iii) | | the uninterrupted services of the clearing |
| house under circumstances relating to sub-paragraphs (i) and (ii) above or any other circumstances that threatens the solvency of a clearing house; | | |
| (*l*) | the time for entering settlement orders into the | |
| settlement system and the time when such orders become final and irrevocable; | | |
| (*m*) | the time of counterparty substitution; | |
| (*n*) | the netting arrangements, the finality of settlements | |
| and any other obligations relevant to a licensed clearing house which acts as a central counterparty or otherwise. | | |
| **37.** | (1) A clearing house to which a licence has been | |
| granted under section 35 shall – | | |
| (*a*) | operate a safe, efficient and effective clearing | |
| facility for the purposes of clearing or settlement of securities transactions; | | |
| (*b*) | manage any risks associated with its business and | |

operations prudently;

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(*c*) maintain an adequate level of capital in accordance   
 with the financial risks undertaken with regard to   
 the securities transactions that are to be cleared and   
 settled using its services;

(*d*) undertake financial liability within the limits   
 established in its rules and within the framework of   
 the guarantees to be taken from its clearing members   
 in the form of margins, charges and collateral;

(*e*) establish and maintain a data processing   
 infrastructure and other internal controls including   
 internal audit systems for risk management;

(*f*) segregate the guarantees and the assets of account   
 holders from the assets of the licensed clearing   
 house;

(*g*) not use the guarantees or assets taken from its   
 clearing members for purposes other than those for   
 which they were deposited; and

(*h*) act in the public interest having particular regard   
 to the need to protect investors.

(2) Notwithstanding the provisions of any other law, a director of a licensed clearing house has a duty to act at all times in the public interest having particular regard to mitigation of systemic risk and where there is a conflict between the duty under this Act and a director’s duty under any other law, the duty under this Act shall prevail.

(3) A licensed clearing house shall at all times -

(*a*) have robust governance arrangements, which   
 include a clear organizational structure with well-  
 defined, transparent and consistent lines of   
 responsibility, effective processes to identify,   
 manage, monitor and report the risks to which it is

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or might be exposed, and adequate internal control   
mechanisms, including sound administrative and   
accounting procedures;

(*b*) adopt policies and procedures which are sufficiently   
 effective so as to ensure compliance with this Act,   
 regulations, rules or directives made thereunder;

(*c*) maintain and operate an organizational structure   
 that ensures continuity and orderly functioning in   
 the performance of its services and activities, and   
 shall employ appropriate and proportionate systems,   
 resources and procedures;

(*d*) maintain a clear separation between the reporting   
 lines for risk management and those for the other   
 operations of the clearing house;

(*e*) maintain information technology systems adequate   
 to deal with the complexity, variety and type of   
 services and activities performed in order to ensure   
 high standards of security to ensure the integrity   
 and confidentiality of the information maintained;   
 and

(*f*) make its governance arrangements, the rules   
 governing the licensed clearing house, and its   
 admission criteria for licensed clearing house   
 membership, available to the public free of charge.

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| Commission’s power to  regulate and  supervise a  licensed  clearing house | **38.** | Without prejudice to the generality of the powers |
| conferred on the Commission under this Act, the Commission shall have the power to regulate and supervise a licensed clearing house in order to satisfy itself that the licensed clearing house carries on its functions in accordance | |

with the provisions of this Act, rules made thereunder and the terms and conditions of the licensed clearing house.

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| **39.** | (1) The Commission may by notice in writing - | Cancellation of |
| licence of a |
| (*a*) | cancel the licence granted under section 35 to a | clearing house |

clearing house with effect from the date specified   
in the notice; or

(*b*) direct the licensed clearing house to cease to provide   
 or operate such facilities or to cease to provide such   
 services, 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, in the public interest or for the proper regulation of the clearing and settlement of transactions in securities, if any of the following circumstances occur:-

(*a*) the licensed clearing house ceases to provide   
 clearing facilities;

(*b*) the licensed clearing house is being wound up or   
 otherwise dissolved, whether within or outside Sri   
 Lanka;

(*c*) the licensed clearing house has contravened any   
 term or condition of its licence or is charged with   
 any offence under this Act;

(*d*) the licensed clearing house has failed to comply   
 with a term or condition of its license requirement   
 or directive issued under this Act or otherwise fails   
 to comply with any provision or requirement under   
 this Act;

(*e*) any information provided for the purposes of section   
 36 was false or misleading in a material particular   
 or from which there is a material omission;

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(*f*) a judgment debt against the clearing house 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 licensed clearing   
 house;

(*h*) the licensed clearing house has, whether within or   
 outside Sri Lanka, entered into a compromise or   
 scheme of arrangement with its creditors; or

(*i*) the licensed clearing house has on its own accord   
 applied to the Commission to cancel the licence   
 granted to it.

(3) For the purposes of paragraph (a) of subsection (2), the clearing house shall be deemed to have ceased to provide clearing facilities if it has ceased to provide such facilities for a period exceeding two weeks without obtaining the prior written approval of the Commission to do so.

(4) Notwithstanding the cancellation of a licence or the issuance of a directive under subsection (1), the Commission may permit the clearing house 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 for the purpose of –

(*a*) closing down the operations of the clearing house   
 or ceasing to provide the services specified in the   
 notice; or

(*b*) protecting investors or the public interest.

(5) Where the Commission acts under subsection (1), the Commission may, where it considers necessary, appoint an

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interim board of directors for a period of six months which may be extended up to a period of one year to manage the affairs of the licensed clearing house until a new board of directors is appointed.

(6) The Commission shall not take any action under subsection (1) without giving the clearing house an opportunity of being heard.

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| **40.** | (1) A licensed clearing house which is aggrieved by | Aggrieved  clearing house may appeal |
| the decision of the Commission made under subsection (1) of section 39, may, within fourteen days after the clearing | |

house is notified of the decision, appeal to the Minister.

(2) Notwithstanding the lodging of an appeal under subsection (1), any action taken by the Commission under this section shall continue to have effect pending the decision of the Minister.

(3) The Minister may, on an appeal made under subsection (1)-

(*a*) allow the appeal and direct the Commission to   
 revoke the cancellation of the licence or the   
 directive; or

(*b*) disallow the appeal.

(4) The Commission shall give effect to the decision of the Minister under subsection (3).

(5) Subject to subsection (4), the Commission shall give public notice of any cancellation of a licence or any directive issued under this section.

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| **41.** | Any cancellation of a licence or the issuance of a | Effect of  cancellation of a licence to a  clearing house |
| directive under subsection (1) of section 39 shall not operate so as to – | |

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(*a*) avoid or affect any agreement, transaction or   
 arrangement entered into through the licensed   
 clearing house whether the agreement, transaction   
 or arrangement was entered into before, or where   
 subsection (4) of section 39 applies, after the   
 cancellation of the licence or issuance of the   
 directive under section 39; or

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

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| Default rules | **42.** | (1) A licensed clearing house shall, for the purpose |

of risk management, initiate default proceedings under default rules if a clearing member is unable or is likely to become unable to meet the obligations in respect of all or any unsettled market contracts to which the clearing member is a party.

(2) Where a licensed clearing house initiates any default proceedings, all subsequent proceedings or other action taken under its clearing rules for the purposes of the settlement of market contracts of which the defaulter is a party shall be deemed to have been carried out under the default rules of the licensed clearing house.

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| Default  proceedings etc.  of a clearing  house to take  precedence | **43.** | (1) Notwithstanding only of an inconsistency with |
| the provisions of any written law relating to the assets of a person subject to insolvency, bankruptcy or winding up, or on the appointment of a receiver, a receiver and a manager, a liquidator or a person in an equivalent capacity, none of | |

the following shall be invalid to any extent in law :–

(*a*) a market contract;

(*b*) the rules of a clearing house relating to the   
 settlement of a market contract;

(*c*) any proceedings or other action taken under the   
 rules of a clearing house relating to the settlement   
 of a market contract;

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(*d*) a market charge;

(*e*) market collateral;

(*f*) the default rules of a clearing house; or

(*g*) any default proceedings.

(2) Subject to subsection (1), the powers of a relevant office

holder in his capacity as such and the powers of any court

under the law of insolvency or the Companies Act, No.7 of

2007 shall not be exercised in such a way as to prevent or

interfere with –

(*a*) the settlement of a market contract in accordance

with the rules of a clearing house; or

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| (*b*) | any default proceedings. | Supplementary provisions  relating to  default  proceedings |
| **44.** | Nothing in the Companies Act, No. 7 of 2007 nor |
| any other written law, shall prevent or interfere with the default proceedings instituted by a licensed clearing house in the realization and disposition of any market collateral | |

by the licensed clearing house.

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| **45.** | (1) Upon completion of any default proceedings, a | Duty to report on completion of default  proceedings |
| licensed clearing house shall provide a report in respect of each defaulter to the person or entity referred to in subsection (2) in respect of the following: - | |
| (*a*) | the net sum, if any, certified by the licensed clearing |

house to be payable by or to the defaulter;

(*b*) the fact that no sum is so payable to the defaulter;

and

(*c*) such other particulars in respect of such default

proceedings as it thinks fit.

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(2) A certified copy of the report prepared under subsection (1) shall be provided forthwith-

(*a*) to the Commission;

(*b*) to the defaulter to whom the report relates or to the   
 relevant office holder acting for the defaulter to   
 whom the report relates or to the defaulter’s estate;   
 and

(*c*) to such other person as the Commission deems fit.

(3) Where the licensed clearing house has made a report pursuant to subsection (1), relevant office holder of the defaulter shall publish a notice of that fact to bring it to the attention of creditors of the defaulter to whom the report relates.

(4) Where a relevant office holder or defaulter receives a report pursuant to subsection (1), it shall, at the request of any of his creditors-

(*a*) make the report available for inspection by the   
 creditor within two days from the receipt of such   
 request; or

(*b*) on payment of a relevant fee as determined by the   
 relevant office holder or the defaulter, provide to   
 the creditor a certified copy of such report or any   
 part of that report as requested.

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| Net sum payable on completion  of default  proceedings | **46.** | (1) Upon the completion of default proceedings, |
| the net sum certified under paragraph (*a*) of subsection (1) of section 45 by a licensed clearing house shall be payable by or to the defaulter. | |

(2) Notwithstanding any provision of the Companies Act, No. 7 of 2007, where an order for a receiver or winding up has been made or a resolution for voluntary winding up has

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been passed, the net sum referred to in subsection (1) shall be taken into account in relation to winding up proceedings under the Companies Act, No. 7 of 2007.

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| **47.** | (1) If a clearing member (“the first clearing member”) | Right of relevant office holder to recover certain  amounts arising from certain  transactions |
| sells securities at an overvalue to, or purchases securities at an undervalue from, another clearing member (“the second clearing member”) in circumstances as described in subsection (3) and thereafter a relevant office holder acts | |

for-

(*a*) the second clearing member;

(*b*) the principal of the second clearing member in the   
 sale or purchase; or

(*c*) the estate of the second clearing member or the   
 person referred to in paragraph (*b*),

the relevant office holder may recover, from the first clearing member, or the principal of the first clearing member, an amount equal to the identified gain obtained by the sale or purchase by the first clearing member, or the principal of the first clearing member unless a court orders otherwise.

(2) The amount equal to the identified gain is recoverable even if the sale or purchase may have been discharged according to the rules of the clearing house and replaced by a market contract.

(3) The circumstances referred to in subsection (1) for a sale or purchase shall be where-

(*a*) an identified event has occurred in relation to the   
 second clearing member or the principal of the   
 second clearing member; and

(*b*) either-

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(i) the first clearing member knew, or could   
 reasonably have known that an identified   
 event was likely to occur in relation to the   
 second clearing member or the principal of   
 the second clearing member; or

(ii) the principal of the first clearing member   
 knew or could reasonably have known that   
 an identified event was likely to occur to the   
 second clearing member or the principal of   
 the second clearing member, and the   
 identified event occurs within the period of   
 six months immediately following the date   
 on which the sale or purchase was entered   
 into.

(4) In this section-

(*a*) “identified event”, in relation to a second clearing   
 member or a person who is or was in respect of a   
 sale or purchase referred to in subsection (1) means-

(i) an act of bankruptcy committed by the second   
 clearing member or the principal of the second   
 clearing member, as the case may be;

(ii) a meeting of creditors summoned in relation   
 to the second clearing member or the   
 principal of the second clearing member, as   
 the case may be, pursuant to the Companies   
 Act, No.7 of 2007; or

(iii) the presentation of a petition for the winding   
 up of the second clearing member or the   
 principal of the second clearing member, as   
 the case may be, to a court;

(*b*) “identified gain” in relation to a sale or purchase   
 referred to in subsection (1), means the difference   
 between –

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(i) the market value of the securities which is   
 the subject of the sale or purchase; and

(ii) the value of the consideration for the sale or   
 purchase, as at the time the sale or purchase   
 was entered into.

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| **48.** | Notwithstanding the provisions of any other law, a | Clearing  member to be party to certain transactions as principal |
| clearing member who enters into any transaction including a market contract with a licensed clearing house, notwithstanding the fact that he is party to that transaction | |

as an agent shall for all purposes including any civil action, claim or demand by or against a licensed clearing house be deemed to be a party to that transaction as a principal and not as an agent.

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| **49.** | Notwithstanding the provisions of any other law, | Market collateral delivered to a  clearing house |
| where market collateral is delivered in settlement of a market contract or under a market charge to a licensed clearing | |

house by a clearing member in accordance with the rules of the licensed clearing house, no civil action, claim or demand in respect of any right, title or interest in market collateral delivered to a licensed clearing house shall be allowed against the licensed clearing house.

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| **50.** | The licensed clearing house shall be entitled to | | Application of  collateral subject to a market  charge  Transfer of  securities in  settlement |
| execute the collateral subject to a market contract or market charge in accordance with the procedure specified in the rules of a licensed clearing house. | | |
| **51.** | | (1) A central depository shall give effect to an |
| instruction from a licensed clearing house to effect a transfer of securities into or out of a securities account of an account | | |

holder provided such instruction shall be for the purposes of settlement of a market contract or otherwise dealing with a market contract in accordance with the rules of the licensed clearing house.

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(2) An instruction under subsection (1) shall be given by a licensed clearing house only in relation to a securities account which relates to an account holder who is a party to a market contract or an account holder who had instructed a clearing member to effect a trade which results in a market contract to which a clearing member has become a party.

(3) Where any transfer of securities pursuant to a market contract is effected by the central depository to or from a securities account of an account holder pursuant to subsection (1), no title in such securities shall pass to an account holder except as provided under the rules of a licensed clearing house.

(4) Where a transfer of securities has been effected into or out of a securities account of an account holder pursuant to subsection (1), a central depository shall not be subject to any action or claim by or be liable to any damages to that account holder.

Purchase and **52.**  (1) A licensed clearing house may require an sale of securities exchange to effect on behalf of the licensed clearing house a sale or purchase of securities if such sale or purchase, as the case may be, is effected for the purposes of settlement of any market contract or to facilitate default proceedings or to enable the clearing house to realize any asset comprised in any market charge or provided as market collateral, and the exchange shall give effect to any such instruction.

(2) Where a sale or purchase of securities has been effected on behalf of the licensed clearing house pursuant to subsection (1) by an exchange, the exchange shall not be subject to any action or claim by or be liable to any damages to any person.

(3) A clearing or settlement transaction of securities carried out by a clearing house or a payment by or to a licensed clearing house shall not be reversed, undone or cancelled other than in accordance with the clearing and settlement rules of the licensed clearing house.

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| **53.** | (1) It shall be a defence to a person in any civil or | Defences in  criminal or civil liability |
| 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.

(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

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| **54.** | (1) A person shall not establish, operate or maintain | Prohibition  against  operating an  unlicensed  central  depository |
| 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.  (2) Any person who contravenes the provisions of | |

subsection (1), commits an offence and shall on conviction

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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.

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| 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;

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(*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.

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(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.

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| Duties of a | **56.** | (1) A central depository shall – |

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| depository | (*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.

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| Cancellation of a | **57.** | (1) The Commission may by notice in writing - |
| licence of a | (*a*) | cancel the licence granted under section 55 with |
| central |
| depository |
| effect from the date specified in the notice; or |

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(*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;

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(*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

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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.

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| **58.** | Any cancellation of a licence or the issuance of a | Effect of  cancellation of licence of a  central  depository |
| 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,

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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.

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| 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.

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| Book entry  securities lodged with the central depository  Record of entry in depositor’s  account  Effect of  securities held in trust by 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. | |
| **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. | |
| **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.

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(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.

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

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.

CHAPTER 4

GENERAL PROVISIONS

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| **64.** | (1) The rules of a market institution shall be approved | Rules of a  market  institution |
| by the Commission and such approved rules shall operate as a binding contract- | |
| (*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.

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(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.

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(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.

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| **65.** | (1) Where any person who is under a duty to comply, | Power of Court to order  observance or enforcement of rules of market institutions |
| 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. | |

(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.

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| **66.** | (1) A person other than a representative of the | Control of  substantial  shareholders of a market  institution |
| 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.

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(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.

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| 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:-

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(*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.

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(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.

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| 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.

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(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.

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| 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.

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| 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 depositary 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 depositary under this Act, regulations, rules   
 or directives made thereunder, as the case may be.

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| 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-

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(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.

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| **72.** | (1) A market institution shall provide such assistance | Provision of  assistance to the Commission |
| 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.

(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.

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| **73.** | (1) A market institution shall file with the | Annual reports |

Commission an annual report, within five months of the date of its balance sheet, which shall include-

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(*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.

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

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

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(*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

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(*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.

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| 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.

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| Payment of  annual fee  Prohibition  against holding out | **76.** | A market institution shall pay to the Commission |
| an annual fee as may be prescribed. | |
| **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”,

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“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.

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| **78.** | (1) A person who is aggrieved by a decision of the | Power of the  Commission to review its own decision |
| Commission may make an application to the Commission to review its decision within thirty days after the aggrieved | |

person is notified of such 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**

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| **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;

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(*c*) to require auditors to disclose financial irregularities   
 of listed public companies;

(*d*) to licence market intermediaries and register their   
 representatives; and

(*e*) to protect assets of the clients.

CHAPTER I

PUBLIC OFFEROF SECURITIES

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| Public Offer of Securities | **80.** | A listed public company or any public company |
| which has applied to obtain a listing in an exchange shall | |

not make a public offer of securities either directly or through a third party by way of a prospectus or a similar document or otherwise for the purposes of solicitation of funds from the public unless approved by the Commission or a person authorised by the Commission:

Provided however, the Commission having taken into consideration the volume of securities, class of securities, the number and type of investors, the nature of the issuer or the nature of the securities market may by rules made under this Act require that the approval of the Commission be obtained prior to certain types of public offers of unlisted companies.

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| Approval of the Commission for issue of  securities | **81.** | (1) A listed public company shall obtain the | |
| approval of the Commission or any person authorised by the Commission to grant approval in respect of– | | |
| (*a*) | | any new issue or offer for sale of securities to the |

public, whether such issues or offers for sale are by   
way of a public offer or otherwise;

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(*b*) private placement of securities;

(*c*) rights issues of securities;

(*d*) bonus issues of securities; or

(*e*) schemes of arrangements, schemes of reconstruction,   
 take over schemes, share option schemes and   
 acquisition of assets by way of issues of securities.

(2) A listed foreign entity seeking a listing on an exchange licensed by the Commission shall apply to the Commission or any person authorised by the Commission for approval to make a public offer of securities.

(3) The board of directors of every listed public company and listed foreign entity shall ensure that the company or the entity shall comply with the rules and requirements of the exchange in which it is listed at all times so long as the company or the entity remains listed on the exchange.

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| **82.** | (1) The prospectus or similar document prepared by | Prospectus or similar  document |
| a person making an offer to the public shall comply with the requirements specified in the Companies Act, No. 7 of 2007, | |

and any other requirements specified by the Commission and the rules of an exchange.

(2) A person making an issue of securities to the public shall lodge a copy of the prospectus or a similar document with the Commission or with any person authorised by the Commission for that purpose prior to registration of the prospectus as required under the Companies Act, No. 7 of 2007.

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(3) The Commission may examine any prospectus or similar document when a person makes a public offer of securities for the purpose of solicitation of funds from the public.

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| Commission to | **83.** | (1) Where the Commission is of the opinion that– |
| issue stop orders |
| (*a*) | a prospectus or similar document submitted to a |

licensed stock exchange under its listing rules or in   
respect of public offers falling within section 80   
does not comply with or is not prepared in   
accordance with the provisions of this Act or the   
rules of the exchange as the case may be;

(*b*) a prospectus or similar document contains a   
 statement or information that is false or misleading   
 or from which there is a material omission; or

(*c*) an issuer has contravened any provision of this Act,   
 regulations, rules or directives made thereunder or   
 has not complied with the requirements imposed   
 under this Act,

the Commission may issue an order to the issuer not to allot, issue, offer or make an invitation to subscribe for or purchase or sell further securities relating to public offers.

(2) The Commission shall not make an order under subsection (1) unless the Commission has given a reasonable opportunity to be heard to any affected person as to whether such an order should be made.

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(3) If the Commission considers that any delay in making an order under subsection (1) by giving an opportunity to be heard would be prejudicial to the interest of investors, the Commission may make an interim order without giving an opportunity to be heard.

(4) An interim order under subsection (3) shall, unless previously revoked have effect until the end of twenty one days after the day on which it is made or the conclusion of the hearing in subsection (2), whichever date is later.

(5) An order made under subsection (1) or an interim order made under subsection (3) may be revoked by the Commission by way of a directive if the Commission becomes satisfied that the circumstances that resulted in the making of the order no longer exist.

(6) Where applications to subscribe for or purchase securities to which the prospectus or similar document relates has been made prior to an order under subsection (1) being made–

(*a*) but before the securities have been issued to the   
 applicants, the applications shall be deemed to have   
 been withdrawn and cancelled and the issuer or   
 such other person who receives the monies, shall,   
 forthwith repay without interest all monies received   
 from the applicants and if the money is not repaid   
 within fourteen days of the order, the issuer shall be   
 liable to repay the monies with interest as may be   
 specified by the Commission from the expiration   
 of that period; or

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(*b*) where the securities have been allotted to the   
 applicants, the allotment of securities shall be   
 deemed to be void and the issuer or any other person   
 shall forthwith repay without interest all monies   
 received from the applicants and if such money is   
 not repaid within fourteen days of the date of service   
 of the order the issuer shall be liable to repay such   
 monies with interest at the rate as may be specified   
 by the Commission from the expiration of that   
 period.

(7) Provisions of this section shall not apply in respect of any issuer if any of the securities to which the prospectus or similar document relates have been issued or listed on an exchange and trading in them has commenced.

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| Purchase, sale or transfer of  securities | **84.** | (1) A person holding securities in a company listed |
| on an exchange shall buy, sell, gift or otherwise deal in such securities in compliance with the trading procedure adopted | |

by such licensed exchange:

Provided however, where no express trading procedure has been adopted by such exchange, the approval of the Commission shall be obtained.

(2) A person as referred to in subsection (1) may gift any such securities to a relation otherwise than in compliance with such trading procedure, if he gives prior notice to the Commission and the licensed exchange, of the particulars relating to the proposed gift.

(3) In this section “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.

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| **85.** | (1) Where it appears to the Commission from the | Power of the  Commission to require the |
| disclosures made to the public that - | |

production of

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| (*a*) | there exist circumstances that the business of a listed | documents |

public company has been conducted–

(i) in a manner that contravenes the provisions   
 of this Act, regulations, rules or directives   
 made thereunder or rules of a market   
 institution; or

(ii) in a manner, prejudicial to interest of   
 investors;

(*b*) there exist circumstances that the company was   
 listed for a fraudulent or unlawful purpose;

(*c*) there exist circumstances that the persons concerned   
 with the listing of a company or the management of   
 its affairs in relation to the listing have been guilty   
 of fraud, wrongdoing or other misconduct; or

(*d*) there exist circumstances that the director or   
 management of a listed public company have   
 intentionally suppressed information with respect   
 to the affairs of the company that is required to be   
 provided under this Act, regulations, rules or   
 directives made thereunder or as may reasonably   
 be expected to be released to the public,

the Commission may issue directives to the listed public company requiring such company to produce the documents, electronic records or other information specified in the directive at a specified time and place in order to conduct an inquiry or investigation into the matters specified in the preceding provisions.

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(2) The Commission may delegate its authority under subsection (1) to any person to require the submission of documents, electronic records or any other information for the purposes of subsection (1).

(3) The Commission or an authorised person may also require the production of such documents and electronic records in relation to the listed public company which is the subject of an inquiry or investigation, from any person who is in possession of them.

(4) Where such documents or electronic records referred to in subsections (1), (2) and (3) are produced, the Commission or the authorised officer shall require the listed public company–

(*a*) to require that person or any other person who is a   
 present or past officer of the listed public company   
 or was at any time employed by the listed public   
 company to provide an explanation of such   
 documents and electronic records; and

(*b*) where the records and documents and electronic   
 records are not produced as required, the person   
 required to produce such records, documents or   
 electronic records to give reasons for such failure;   
 or   
(*c*) where the documents and electronic records are not   
 produced, the person required to produce them shall   
 disclose its location to the best of his knowledge   
 and belief.

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(5) Where any listed public company fails to comply with this section, the Commission shall issue a directive to the listed public company under section 86 of this Act.

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| **86.** | Where the Commission after due inquiry or | Power of the  Commission to issue directives to listed public companies |
| investigation determines that a listed public company has contravened or failed to comply with any provision of the Act, regulations, rules or directives made thereunder or has | |

furnished the Commission with information that is false, inaccurate or misleading, the Commission may take any enforcement action provided under this Act as deemed appropriate.

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| **87.** | (1) A person who furnishes information or cause | Duty not to  furnish false  information to the Commission |
| information to be furnished to the Commission under this Act, regulations, rules or directives made thereunder shall | |

exercise due care to ensure that the information is not false or misleading in any material particular.

(2) A person who –

(*a*) signs a document lodged with the Commission; or

(*b*) submits to the Commission a document by   
 electronic means using any identification or other   
 authentication method or procedure assigned to him   
 by the Commission,

shall exercise due care to ensure that the document is not false or misleading in a material particular.

(3) A person who contravenes subsection (1) or (2) commits an offence under this Act.

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| Duty not to  make false  statements to  market  institutions  Appointing  directors or  chief executive officer | **88.** | A person with intent to deceive, makes or furnishes, |
| or knowingly and willfully authorises or permits the making or furnishing of any misleading statement or report to a market institution licensed under this Act in relation to any information that a listed public company is required to furnish under this Act, regulations, rules or directives made thereunder commits an offence under this Act. | |
| **89.** | (1) The board of directors of every listed public |
| company shall ensure that the company and its directors comply with the rules and requirements of the exchange on which it is listed on a continuous basis as long as the company remains listed on such exchange. | |

(2) The directors or chief executive officer of a listed public company shall comply with the fit and proper criteria specified by the Commission by rules or in the rules of an exchange approved by the Commission.

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| Duties of an  auditor of a  listed public  company | **90.** | (1) If an auditor of a listed public company in the |
| ordinary course of the performance of his duties, becomes aware of- | |
| (*a*) | any contravention or non compliance with any |
| requirement or provision of this Act, any regulation, rule or directive made thereunder or a breach of any rule of an exchange or any offence involving fraud or dishonesty; or | |
| (*b*) | any matter which may in his opinion adversely |
| affects or is likely to adversely affect the financial position of the listed public company to a material extent; or | |
| (*c*) | any irregularity that has or may have a material |
| effect upon the accounts of a listed public company including any irregularity that affects or jeopardizes or may affect or jeopardize the funds or property of any investor in securities, | |

the auditor shall immediately report such matters referred to in paragraphs (*a*), (*b*) or (*c*) to the audit committee in writing for rectification and if no remedial measure is taken within

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two weeks thereof, refer such matters to the board of directors in writing to rectify such matters or deter the commission of a breach where it has not yet occurred.

(2) If no action is taken under subsection (1) by the board of directors to rectify such matters referred to in paragraphs (*a*), (*b*) or (*c*) within two weeks, the auditor shall submit a written report on the matters immediately thereupon–

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| (*a*)  (*b*) | in the case of a contravention or non compliance with any requirement or provision of this Act, any regulation, rule or directive issued thereunder or an offence involving fraud or dishonesty, to the Commission; or  in the case of a breach of or non compliance with any rules of an exchange, to the relevant exchange and the Commission. |

(3) No auditor shall be liable to be sued in any court for any report submitted by the auditor in good faith and in the performance of any duty imposed on the auditor under this section.

(4) The Commission may at any time during or after an audit, require an auditor of a listed public company to–

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| (*a*)  (*b*)  (*c*)  (*d*) | submit such additional information in relation to his audit as the Commission may specify;  enlarge or extend the scope of his audit of the business and affairs of the listed public company in such manner or to such extent as the Commission may specify;  carry out any specific examination or establish any procedure in any particular case; or  submit a report including an interim report on any matter referred to in paragraphs (*a*) to (*c*), |

and the Commission may specify the time within which such requirements shall be complied with by the auditor.

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(5) The auditor shall comply with any requirement of the Commission under subsection (4) and the listed public company shall remunerate the auditor at the rates specified by the Commission in respect of the discharge by him of all additional duties under this section.

(6) The listed public company shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all of the additional duties under this section.

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| Prohibition  against undue influence | **91.** | (1) A person shall not influence, coerce, mislead or |
| authorise any person engaged in – | |
| (*a*) | the preparation of the financial statements of a |
| listed public company or any of its related companies; or | |
| (*b*) | the performance of an audit of the financial |
| statements of a listed public company or any of its related companies, | |

to do anything which he knows or could reasonably have known may cause the financial statements or audited financial statements to be false or misleading in a material particular.

(2) Any person who contravenes subsection (1) commits an offence.

CHAPTER 2

MARKET INTERMEDIARIES

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| Prohibition  against holding out as a market intermediary | **92.** | (1) A person shall not hold out as a market |
| intermediary without obtaining a licence from the Commission. | |

(2) Any person who contravenes subsection (1) 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 fine and imprisonment.

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| **93.** (1) Any person who carries on business as a market intermediary shall hold a licence issued for that purpose by the Commission. | Requirement to  be licensed with the Commission |

(2) Any person who contravenes subsection (1) 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 fine and imprisonment.

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| **94.** (1) An application for the purpose of a licence under this section or renewal of the licence under subsection (4) of this section shall be made to the Commission in such form together with such documents as may be specified by the Commission by way of rules accompanied by such fee as | Application for a licence or  renewal of a  licence as a  market  intermediary |

may prescribed.

(2) The Commission may require an applicant –

(*a*) to furnish further information in connection with   
 an application as it may specify; 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.

(3) An application for renewal of a licence under this section shall be made three months prior to the expiry of the licence, accompanied by the renewal fee as may be prescribed.

(4) Where an application for renewal of a licence is made after the expiry of the licence, the Commission may in addition to the renewal fee, impose a late fee not exceeding five *per centum* of the licensing fee as may be prescribed for each day of delay until the renewal is made.

(5) The Commission may grant or renew a licence for the purposes of this Chapter, subject to such conditions or restrictions as it deems fit.

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| Refusal to grant or renew a  licence | **95.** (1) Where an application is made for the grant or renewal of a licence to act as a market intermediary, the Commission may refuse the application on any of the following grounds:- | | |
| (*a*) | the application was not made in accordance with | |
| this Chapter; | | |
| (*b*) | the applicant has failed to comply with any | |
| requirement of this Act, regulations and the rules made thereunder; | | |
| (*c*) | any information or document that is furnished by | |
| the applicant to the Commission is false or misleading or from which there is a material omission; | | |
| (*d*) | the applicant is in the course of being wound up or | |
| otherwise dissolved or is an undischarged bankrupt; | | |
| (*e*) | execution against the applicant in respect of a | |
| judgment debt has been returned unsatisfied in whole or in part; | | |
| (*f*) | a liquidator or receiver or manager or an equivalent | |
| person has been appointed within or outside Sri Lanka in respect of any property of the applicant; | | |
| (*g*) | the applicant has, whether within or outside Sri | |
| Lanka entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; | | |
| (*h*) | the applicant or any of its directors, chief executive | |
| officer, managers or controller– | | |
| (i) | | has been convicted, whether within or outside |
| Sri Lanka of an offence involving fraud or dishonesty or the conviction of which involved a finding that he acted fraudulently or | | |

dishonestly;

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(ii) has been subjected to any administrative   
 sanction under this Act;

(iii) has been convicted or has been compounded   
 of an offence for which he has been charged   
 under this Act or under the laws governing   
 securities outside Sri Lanka;

(iv) has contravened any provision made under any   
 law whether within or outside Sri Lanka   
 enacted for protecting members of the public   
 against financial loss, due to dishonesty,   
 incompetence or malpractice by persons,   
 concerned in the provision of financial   
 services or the management of companies or   
 against financial loss due to the conduct of   
 discharged or undischarged bankrupts; or

(v) is an undischarged bankrupt whether within or   
 outside Sri Lanka;

(*i*) the Commission has reason to believe that the   
 applicant or any of its directors, chief executive   
 officer or controller may not be able to act in the   
 best interest of its clients having regard to their   
 reputation, character, financial integrity and   
 reliability;

(*j*) the Commission is not satisfied as to the financial   
 standing of the applicant or the manner in which   
 the applicant’s business is to be conducted;

(*k*) the Commission is not satisfied as to the record of   
 past performance or expertise of the applicant,   
 having regard to the nature of the business which   
 the applicant may carry on in connection with the   
 holding of the licence and there exists circumstances   
 which are likely to -

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(i) lead to the improper conduct of business by   
 the applicant or by any of its directors, chief   
 executive officer or controller; or

(ii) reflect discredit on the manner of conducting   
 the business of the applicant; or

(*l*) the Commission is of the opinion that it would be   
 contrary to the interests of the investors to grant or   
 renew the licence.

(2) The Commission shall not refuse to grant or renew a licence without giving the applicant an opportunity to be heard.

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| Minimum  financial  requirements | **96.** A market intermediary shall not carry on business for which it is licensed under this Chapter, without the written consent of the Commission if it does not meet the minimum |

financial requirements as may be specified by the Commission or as may be provided in the rules of an exchange.

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| Requirement to register with the Commission | **97.** (1) The Commission may specify by way of rules that a person who deals with clients for and on behalf of a market intermediary to register with the Commission and |

for that purpose such person shall be known as a “registered person”.

(2) For the purposes of seeking registration under subsection (1), a market intermediary shall submit an application to the Commission on behalf of that person referred to in subsection (1) (hereinafter referred to as the“applicant”).

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| Application for registration or renewal of  registration | **98.** (1) An application for the purpose of registration or renewal of the registration as a registered person under section 97 shall be made to the Commission in such form accompanied by such documents as may be specified by the |

Commission by rules together with such fee as may be prescribed.

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(2) The Commission may require an applicant–

(*a*) to furnish further information in connection with   
 an application as it may specify; 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.

(3) An application for renewal of registration under this section shall be made three months prior to the expiry of the registration.

(4) Where an application for renewal of registration is made after the expiry of its registration, the Commission may in addition to the renewal fee impose a late fee not exceeding five *per centum* of the registration fee as may be prescribed for each day of delay until the renewal is made.

(5) The Commission may grant or renew a registration for the purposes of this Chapter, subject to such conditions or restrictions as it thinks fit.

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| **99.** (1) Where an application is made for the grant or renewal of registration as a registered person under this Part, the Commission may refuse the application on any of the following grounds: — | | Grounds for  refusal to  register or renew registration |
| (*a*) | the application was not made in accordance with |

section 98;

(*b*) the applicant has failed to comply with any   
 requirement of section 98;

(*c*) any information or document that is furnished by   
 the applicant to the Commission is false or   
 misleading or from which there is a material   
 omission;

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(*d*) the applicant is an undischarged insolvent or an   
 undischarged bankrupt whether within or outside   
 Sri Lanka;

(*e*) execution against the applicant in respect of a   
 judgment debt has been returned unsatisfied in   
 whole or in part;

(*f*) the applicant has –

(i) been convicted, whether within or outside Sri   
 Lanka of an offence involving fraud or   
 dishonesty or of an offence the conviction for   
 which involves a finding that he had acted   
 fraudulently or dishonestly;

(ii) been subjected to any administrative sanction   
 under this Act;

(iii) been convicted or compounded in respect of   
 an offence under this Act or under any laws   
 governing securities outside Sri Lanka; or

(iv) contravened any provision made under any   
 written law whether within or outside Sri Lanka   
 appearing to the Commission to be enacted for   
 protecting members of the public against   
 financial loss due to dishonesty, incompetence   
 or malpractice by persons, concerned in the   
 provision of financial services or the   
 management of companies or against financial   
 loss due to the conduct of discharged or   
 undischarged bankrupts;

(*g*) the Commission is not satisfied as to the educational   
 or other qualification or experience of the applicant   
 having regard to the nature of the duties to be   
 performed for and on behalf of the market   
 intermediary;

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(*h*) the Commission has reason to believe that the   
 applicant may not be able to act in the best interests   
 of the clients of the market intermediary having   
 regard to his reputation, character, financial   
 integrity and reliability;

(*i*) the Commission is not satisfied as to the record of   
 past performance or expertise of the applicant   
 having regard to the nature of the duties to be   
 performed for and on behalf of the market   
 intermediary;

(*j*) the Commission has reason to believe that the   
 applicant has not acted honestly or fairly; or

(*k*) the Commission is of the opinion that it would be   
 contrary to the interests of investors to grant or   
 renew the registration.

(2) The Commission shall not refuse to grant or renew the registration without giving the applicant an opportunity of being heard.

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| **100.** The Commission may, at any time by notice in writing to a market intermediary and the registered person, vary any condition or restriction or impose such further | Power to vary conditions or restrictions |

condition or restriction as it considers necessary for the protection of investors.

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| **101.** (1) A licence that has been granted under this Part shall be valid for a period of twelve months from the date of issue of the licence. | Duration of  licence or  registration |

(2) A licence that has been renewed under this Part shall continue to be in force for a further period of twelve months or such later date as may be specified by the Commission commencing on the date upon which it would have expired but for its renewal.

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(3) Where a licence is renewed for a period of more than twelve months, in terms of subsection (2), the market intermediary shall pay to the Commission the prescribed licence fee.

(4) The provisions of subsections (1) to (3) of this section shall, *mutatis mutandis*, apply to, and in relation to the duration of the registration granted to a registered person under this Part.

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| False and  misleading  statements to the Commission | **102.** (1) A person shall not, in connection with an application submitted to the Commission under this Part – | |
| (*a*) | make or procure the making of a statement to the |

Commission which he knows or could reasonably   
be expected to know is false or misleading; or

(*b*) omit to state any matter to the Commission where   
 he knows or could reasonably be expected to know   
 that because of the omission, the statement is   
 misleading in a material respect.

(2) Any person who contravenes subsection (1) commits an offence.

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| Duty to notify  the Commission | **103.** (1) Where a market intermediary proposes to alter material particulars already furnished or undergoes or intends |

to alter the particulars specified in the application for a licence or the renewal of a licence, it shall be the duty of such market intermediary to inform the Commission and obtain its prior consent before such alteration or change is effected.

(2) Where a registered person proposes to alter any particulars already furnished or intends to change or alter the status specified in the application for registration or renewal of a registration as a registered person, it shall be the duty of such registered person and the market intermediary for whom the registered person is acting for or employed, to forthwith inform the Commission of such alteration or change.

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| **104.** A person shall not act as an agent in carrying on the business of a licensed market intermediary or hold himself out as doing so unless he is duly authorised by the | Prohibition  against holding out as an agent |

Commission or a person authorised by the Commission to carry on such activity.

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| **105.** (1) The Commission shall, cancel or suspend a licence granted to a market intermediary under this Part, where the Commission is satisfied that- | | Cancellation or suspension of a licence or a  registration |
| (*a*) | there exists any ground on which the Commission |

may refuse an application for a licence;

(*b*) the market intermediary has contravened any   
 condition or restriction in respect of its licence or   
 any directive issued to him by the Commission   
 under this Act; or

(*c*) the market intermediary has contravened any   
 provision of this Act or any rule binding upon him   
 as the case may be.

(2) Before the cancellation or suspension of a licence granted to a market intermediary in terms of subsection (1) of this section, the market intermediary shall be given an opportunity of being heard.

(3) Where the licence granted to a market intermediary is cancelled, it shall be the duty of the market intermediary to forthwith surrender its licence to the Commission.

(4) The cancellation of a licence by the Commission under subsection (1) shall not affect or prejudice the institution or maintenance of any action against such market intermediary under this Act.

(5) The Commission shall have the power to suspend or cancel the registration granted to a registered person under this Part –

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(*a*) if it transpires that there exists any ground that   
 would disentitle him to registration;

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| (*b*)  (*c*) | if the registered person has contravened any condition or restriction in respect of its registration or any directive issued to him by the Commission under this Act; or  if the registered person has contravened any provision of this Act or any of the rule which are binding on him as the case may be. |

(6) The provisions of subsections (2) to (4) of this section shall, *mutatis mutandis*, apply to, and in relation to, any suspension or cancellation as the case may be, of a registration granted to a registered person under this Part.

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| Trading in  securities by  market  intermediaries  Lending and  borrowing of  securities without the consent of the client | **106.** A market intermediary or registered person shall not – | |
| (*a*) | trade in or otherwise deal in securities outside the |
| exchange of which he is a trading participant without the prior approval of the Commission; | |
| (*b*) | trade in securities in contravention of such rules of |
| the Commission or the rules of a market institution; | |
| (*c*) | effect any transaction in a margin account in a |
| manner contrary to the requirements set out by the market institution of which he is a trading participant; or | |
| (*d*) | effect any transaction by means of any manipulative, |
| deceptive or other fraudulent device or contrivance in order to induce or attempt to induce the purchase or sale of any securities.  **107.** A market intermediary shall not lend or arrange for lending of any securities carried for the account of any client without the client’s written consent or borrow or arrange to borrow, using the securities carried for the account of any client as collateral without the client’s written consent. | |

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| **108.** (1) If an auditor of a market intermediary, in the ordinary course of the performance of his duties as an auditor, is of the opinion that there has been a breach of or non compliance with any provision of this Act, regulations, rules | Duty of an  auditor of a  market  intermediary |

or directives made thereunder or a breach of any rule of a market institution or any matter which may adversely affect the financial position of the market intermediary to a material extent, the auditor shall immediately submit a written report to the board of directors on the matter with a copy to–

(*a*) in the case of a contravention or non compliance   
 with any provision of this Act, regulation, rule or   
 directive made thereunder or any offence involving   
 fraud or dishonesty, to the Commission;

(*b*) in the case of a breach or non compliance of any of   
 the rules of a market institution, to the relevant   
 market institution and to the Commission; or

(*c*) in any other case, which adversely affects the   
 financial position of the market intermediary to a   
 material extent, to the relevant market institution   
 and to the Commission.

(2) No auditor shall be liable to be sued in any court for any report submitted by the auditor in good faith and in the performance of any duty imposed on the auditor under this section.

(3) The Commission may at any time during or after an audit, require an auditor of a market intermediary to–

(*a*) submit such additional information in relation to   
 his audit as the Commission may specify;

(*b*) enlarge or extend the scope of his audit of the   
 business and affairs of the market intermediary in   
 such manner or to such extent as the Commission   
 may require;

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(*c*) carry out any specific examination or establish any   
 procedure in any particular case; or

(*d*) submit a report or an interim report as the case may   
 be on any matter referred to in paragraphs (*a*) to (*c*),

and the Commission may specify the time within which such requirements shall be complied with by the auditor.

(4) The auditor shall comply with any requirement of the Commission under subsection (3) and the market intermediary shall remunerate the auditor at the rates specified by the Commission in respect of the discharge by him of all additional duties under this section.

(5) The market intermediary shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all of the additional duties under this section.

CHAPTER 3

PROTECTIONOF CLIENTS’ ASSETS

Interpretation **109.** For the purposes of this Chapter, unless the context otherwise requires—

“client” in relation to a market intermediary means   
a person on behalf of whom the market   
intermediary trades or from whom the   
market intermediary accepts instructions   
to deal in securities;

“money or other assets” means money received or   
retained by, or any other asset deposited   
with a market intermediary in the course   
of its business for which it is liable to   
account to its client, and any money or   
other assets accruing therefrom.

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| **110.** (1) A market intermediary shall, to the extent that it receives money or other assets from or on account of a client– | | Protection of client’s assets |
| (*a*) | do so on the basis that the money or other assets |

shall be applied solely for such purpose as may be   
agreed to by the client when or before it receives   
the money or other assets;

(*b*) shall hold money and other assets received on   
 account of a client in trust for the benefit of such   
 client;

(*c*) shall not commingle money received on account   
 of a client with its own funds or use such money as   
 margin or guarantee for, or to secure any transaction   
 of or to extend credit of any person other than the   
 client; and

(*d*) record and maintain a separate book entry for each   
 client in accordance with the provisions of this Part   
 or any rules that may be specified under subsection   
 (2) in relation to that client’s money or other assets.

(2) The Commission may, make rules in respect of all or any of the matters in subsection (1), including the handling of money or other assets by a market intermediary.

(3) Except as otherwise provided in this section or the rules made under subsection (2), all money or other assets received from or on account of clients or deposited with a market intermediary-

(*a*) shall not be available for payment of debts of the   
 market intermediary; and

(*b*) shall not be liable to be paid or taken in execution   
 under an order or a process of any court in respect   
 of any liability of that market intermediary.

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(4) Any market intermediary who, contravenes subsection (1), subsection (3) or any rule made under subsection (2), shall commit an offence.

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| Rules on  business conduct | **111.** (1) The Commission may make rules regulating the business conduct of a market intermediary or a registered |

person as the Commission considers necessary in the interest of client protection and for the purpose of raising professional standards of a market intermediary and a registered person.

(2) Any person who contravenes the rules made under subsection (1) commits an offence.

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| Duty in making recommendations | **112.** (1) A market intermediary or a registered person shall not make a recommendation with respect to any |

securities to a client where such client may reasonably be expected to rely on the recommendation, if the market intermediary or registered person does not have a reasonable basis for making the recommendation to the client.

(2) For the purposes of subsection (1), a market intermediary or registered person does not have a reasonable basis for making a recommendation to a client unless–

(*a*) he has, for the purposes of ascertaining that the   
 recommendation is appropriate, having regard to   
 the information possessed by him concerning the   
 investment objectives, financial situation and   
 particular needs of the client, given such   
 consideration to, and conducted such analysis or   
 investigation of the subject matter of the   
 recommendation as is reasonable in all the   
 circumstances; and

(*b*) he has based the recommendation on the   
 consideration, analysis or investigation referred to   
 in paragraph (*a*).

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|  |  |
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| **113.** (1) Where a market intermediary or a registered person sends a circular or other similar written communication in which he makes a recommendation, with | Disclose certain interests in  securities |

respect to any securities, he shall include in the circular or other written communication in print not less legible than that used in the remainder of the circular or other written communication, a concise statement of the nature of any interest in the securities, or any interest in the acquisition or disposal of the securities that he or a person associated with or connected to him, has at the date on which the circular or other communication is sent.

(2) Where a market intermediary or registered person is charged with an offence in respect of a contravention of subsection (1), it shall be a defence for the market intermediary or registered person to prove that at the time the circular or other communication was sent, he was not aware and could not reasonably be expected to have been aware —

(*a*) that he had an interest in the securities, or an interest   
 in the acquisition or disposal of the securities; or

(*b*) that the person associated with or connected to him   
 had an interest in the securities, or an interest in the   
 acquisition or disposal of the securities as the case   
 may be.

(3) For the purposes of subsections (1) and (2) -

(*a*) an interest of a person in the acquisition or disposal   
 of any securities includes any financial benefit or   
 advantage that will or is likely to accrue directly or   
 indirectly to the person upon or arising out of the   
 acquisition or disposal of the securities;

(*b*) without limiting the generality of paragraph (a), a   
 person who has entered into an underwriting   
 agreement in respect of any securities shall be

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deemed to have an interest in the acquisition or   
disposal of the securities; and

(*c*) notwithstanding subsection (1) or paragraph (*b*) of   
 subsection (2), a person is not connected to or   
 associated with another person unless the person   
 and the other person are acting jointly or otherwise   
 acting under or in accordance with an arrangement   
 made between them, in relation to the sending of   
 the circular or other communication.

(4) When a market intermediary sends to a person a circular or other written communication to which subsection (1) applies, the market intermediary shall preserve a copy of the circular or other written communication for six years from the date on which the circular or other written communication is sent.

(5) For the purposes of this section, a circular or other written communication sent to a person shall, if it is signed by an officer of a market intermediary, be deemed to have been sent by the market intermediary.

(6) Any person who contravenes this section commits an offence under this Act.

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| Internal  procedures and processes | **114.** A market intermediary shall establish and maintain procedures and processes for the purpose of monitoring compliance by such market intermediary and its employees, |

with the provisions of the Act, regulations, rules or directives made thereunder which will enable the market intermediary to monitor risk to its business.

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| Register of  market  intermediaries and registered persons | **115.** (1) The Commission shall keep in such form and manner as it may determine, a register of market intermediaries and registered persons which shall be made available for public inspection in such manner as the Commission may determine. |

(2) The register shall be in electronic form and the Commission shall update the register at all times.

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(3) The register for the market intermediary and the registered person shall contain –

(*a*) the name of the market intermediary or the   
 registered person;

(*b*) the business address of the market intermediary or   
 the registered person;

(*c*) the type of licence held by the market intermediary   
 or the type of registration held by the registered   
 person;

(*d*) the date the licence was granted to the market   
 intermediary or the date the registration was granted   
 to the registered person;

(*e*) the names of registered persons acting for or   
 employed by the market intermediary; and

(*f*) any other matter that the Commission considers   
 appropriate.

(4) The Commission may make necessary amendments in the register with respect to a market intermediary or a registered person where the licence held by the market intermediary is cancelled or suspended or where the registration held by the registered person is cancelled or suspended under this Act.

**PART IV**

**Trade In Unlisted Securities**

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| **116.** The object and purpose of this Part shall be – | | Object and  purpose of this Part |
| (*a*) | to provide a platform through a recognised market |

operator for sale and purchase of unlisted securities   
in Sri Lanka to local and overseas investors in a   
transparent manner; and

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|  |  |
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| (*b*) | to facilitate the disclosure of information relating to unlisted securities to local and overseas investors through a recognised market operator in a transparent manner. |

CHAPTER 1

ESTABLISHMENTOFA RECOGNISED MARKET OPERATOR

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| Establishment of a market  operator  Requirement to register a market operator | **117.** A person shall not act as a market operator under this Part unless such person is registered with the Commission or exempted from such registration by the Commission.  **118.** (1) For the purposes of section 117, the Commission may upon application made by a person, register the person as a recognised market operator or exempt from such registration subject to any terms and conditions as the Commission considers necessary. |

(2) The Commission may exempt a market operator from registration under section 117 having regard to the criteria specified under section 119 subject to such terms and conditions as may be specified by the Commission.

(3) The Commission may, from time to time, vary, amend or revoke any terms and conditions imposed under subsection (1).

(4) The Commission may notwithstanding the exemption granted under subsection (2), withdraw such exemption and may require such person to be registered if the Commission deems it necessary in the interests of investors.

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| Application for registration | **119.** (1) An application to be registered as a recognised market operator shall be accompanied by such documents and information and in such form as the Commission may specify by rules. |

(2) An application by such person for registration under this section shall provide documents to prove that such person has experience in trades executed on a platform to the satisfaction of the Commission.

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(3) An application by such person for registration under this Chapter shall provide documents to prove that the arrangements are made by such platform for the clearance and settlement of the trades executed on the platform to the satisfaction of the Commission.

CHAPTER 2

ROLEOFA RECOGNISED MARKET OPERATOR

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| **120.** The functions and duties of a recognised market operator shall be- | | Functions and  duties of a  recognized  market operator |
| (*a*) | to provide a platform for the sale and purchase of |

unlisted securities in Sri Lanka;

(*b*) to provide information relating to unlisted securities   
 in Sri Lanka to the local and international financial   
 community;

(*c*) to provide criteria for admission and regulatory   
 standards of its trading members;

(*d*) to comply with any directive issued by the   
 Commission, whether of a general or specific nature;   
 and

(*e*) to 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.

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| **121.** Any person buying and selling securities on a platform shall execute their orders through trading members | Trading on a  platform |

admitted by the platform.

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| **122.** The Commission may make rules or require the market operator to make rules subject to the approval of the Commission - | Rules to be  made by the  Commission or the market |

operator

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|  |  |  |
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| Cancellation of registration | (*a*) | to determine the type of unlisted securities that can |
| be traded on a platform; | |
| (*b*) | to determine the type of issuers who can report |
| trades to a platform; | |
| (*c*) | to determine the type of investors that may trade on |
| the platform; | |
| (*d*) | to determine the type of trading members that may |
| trade on the platform; | |
| (*e*) | for the admission of trading members on the |
| platform; | |
| (*f*) | to determine the level of disclosures required to be |
| made by the platform; and | |
| (*g*) | to determine the standard of business conduct in |
| the sale or purchase of unlisted securities.  **123.** (1) Subject to subsection (3), where the Commission is satisfied that it is appropriate to do so in the interest of the investors or for the maintenance of an orderly and fair market, the Commission may, by notice in writing, cancel the registration of a recognised market operator with effect from a date that is specified in the notice. | |

(2) The grounds for the cancellation of the registration shall be stated in the notice referred to in subsection (1).

(3) Notwithstanding the cancellation under subsection (1), the Commission may permit the person to continue on or after the date on which the cancellation is to take effect, to carry on such activities affected by the cancellation as the Commission may specify in the notice for the purpose of –

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| (*a*)  (*b*) | closing down the operations of the recognised market operator to which the cancellation relates; or  protecting the interest of the investors. |

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(4) Where the Commission has granted permission to a person under subsection (3), such person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened any provision of this Act.

(5) The Commission shall not exercise its power under subsection (1) in relation to a recognised market operator unless it has given the recognised market operator an opportunity of being heard.

(6) Any cancellation of registration made under this section shall not operate so as to –

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| (*a*) | avoid or affect any agreement, transaction or | Review of the  performance of a recognised  market operator |
| arrangement entered into by the recognised market operator whether the agreement, transaction or arrangement was entered into before or where subsection (3) applies, after the cancellation of the registration under subsection (1); or | |
| (*b*) | affect any right, obligation or liability arising under |
| such agreement, transaction or arrangement.  **124.** (1) The Commission may from time to time review the performance of a recognised market operator under this Part. | |

(2) The Commission may have regard to the following when reviewing the status of the recognised market operator:-

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| (*a*)  (*b*)  (*c*)  (*d*)  (*e*) | the systemic risk inherent in a platform;  the public interest;  the size and structure of the platform;  the class of unlisted securities traded on the platform; and  the nature of the investors and the participants using |

the platform.

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

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

**PART V**

**Market Misconduct**

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| Object and  purpose of this Part | **126.** The object and purpose of this Part shall be to facilitate for the deterrence and the taking of enforcement action against – | |
| (*a*) | all types of market manipulation including false |

trading, market rigging and securities fraud; and

(*b*) insider trading,

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

Application of **127.** This Part shall apply unless specified otherwise this Part therein-

(*a*) in respect of securities-

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

(ii) to acts or omissions occurring outside Sri Lanka   
 in relation to securities of any listed public

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

(iii) to acts or omissions occurring in relation to   
 any securities issued by any Government   
 outside Sri Lanka which are traded using the   
 facilities of an exchange licensed by the   
 Commission; or

(iv) to acts or omissions occurring in relation to   
 securities traded on a platform operated by a   
 recognised market operator; and

(*b*) in respect of derivatives-

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

(ii) to acts occurring outside Sri Lanka in relation   
 to derivatives traded on an exchange licensed   
 by the Commission.

CHAPTER 1

PROHIBITED CONDUCT

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| **128.** (1) A person shall not create or cause the creation of or do anything that is intended to create – | | False trading  and market  rigging  transactions |
| (*a*) | a false or misleading appearance of active trading |

of securities traded on an exchange licensed by the   
Commission or a platform operated by a recognised   
market operator; or

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

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

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

(3) Without prejudice to the generality of subsection (1), a person who –

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| (*a*)  (*b*) | effects, takes part in, is concerned in or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities; or  makes or causes to be made an offer to buy or sell such number of securities at a specified price where he has colluded with another or caused such collusion to be made with another or knows that a person associated with him has made with him or caused to be made with him an offer to purchase the same number or substantially the same number, of the same securities at a price that is substantially the same as the first mentioned price, |

shall be deemed to have created a false or misleading appearance of active trading in such securities.

(4) In dealing with a contravention of subsection (1) it shall be a defence if the person establishes that the purpose or purposes for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for or the price of such securities.

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

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(*a*) the purpose for which he did the act was not or did   
 not include, the purpose of creating a false or   
 misleading appearance of active trading on an   
 exchange or a platform operated by a recognised   
 market operator; and

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

(6) For the purposes of this section, a purchase or sale of securities does not involve a change in the beneficial ownership, if a person or a person associated with such person had an interest in such securities before the purchase or sale and continues to have an interest in such securities after the purchase or sale.

(7) The reference in paragraph (a) of subsection (3) to a transaction of sale or purchase of securities includes -

(*a*) the making of an offer to sell or purchase securities;   
 and

(*b*) the making of an invitation, that expressly or   
 impliedly invites a person to offer to sell or   
 purchase securities.

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

transactions in securities of a company being transactions that have or are likely to have the effect of artificially-

(*a*) raising;

(*b*) lowering; or

(*c*) pegging, fixing, maintaining or stabilizing,

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

(2) A reference in this section to a transaction in relation to securities of a company traded on an exchange licensed by the Commission or a platform operated by a recognised market operator includes–

(*a*) the making of an offer to sell or purchase such   
 securities of the company; and

(*b*) the making of an invitation, that expressly or   
 impliedly invites a person to offer to sell or   
 purchase such securities of the company.

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| False or  misleading  statements | **130.** | A person shall not make a statement, or disseminate |
| information that is false or misleading in a material particular and which is likely to have the effect of raising, | |

lowering, maintaining or stabilizing the market price or volume of securities traded on an exchange licensed by the Commission or a platform operated by a recognised market operator,-

(*a*) without taking reasonable care to check the   
 accuracy of the statement or information; or

(*b*) if he knows or could reasonably be expected to   
 have known that the statement or information is   
 false or misleading in a material particular.

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| **131.** (1) A person shall not induce or attempt to induce another person to trade in securities traded on an exchange licensed by the Commission or a platform operated by a recognised market operator, - | | Fraudulently  inducing persons to deal in  securities |
| (*a*) | by making or publishing any statement or by |

making any forecast that he knows to be misleading,   
false or deceptive;

(*b*) by any dishonest concealment of material facts;

(*c*) by the reckless making or publishing, dishonestly   
 or otherwise of any statement or forecast that is   
 misleading, false or deceptive; or

(*d*) by recording or storing in, or by means of, any   
 mechanical, electronic or other device, information   
 that he knows to be false or misleading in a material   
 particular.

(2) For the purposes of paragraph (*d*) of subsection (1), it shall be a defence if the person referred to therein establishes that when the information was recorded or stored, that such person had no reasonable grounds for believing that the information would be available to any other person.

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| **132.** A person shall not directly or indirectly in connection with the subscription, purchase or sale of any securities traded on an exchange licensed by the Commission or a platform operated by a recognised market operator, – | | Use of  manipulative and deceptive devices |
| (*a*) | use any device, scheme or artifice to defraud; |
| (*b*) | engage in any act, practice or course of business |

which operates or would operate as a fraud or deceit   
upon any person; or

(*c*) make any false statement of a material fact or omit   
 to disclose in a statement a material fact which   
 results in making such statement false or misleading.

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CHAPTER 2

INSIDER TRADING

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

(*a*) information relating to listed public companies that   
 are not sufficiently definite to warrant being made   
 known to the public;

(*b*) matters relating to the intended decisions, of a   
 person;

(*c*) matters relating to negotiations or proposals with   
 respect to –

(i) commercial dealings; or

(ii) dealings in securities;

(*d*) information relating to the financial performance   
 of a company;

(*e*) information that a person proposes to enter into or   
 has entered into one or more transactions or   
 agreements in relation to securities or has prepared   
 or proposes to issue a statement relating to such   
 securities; and

(*f*) matters related to the listed public company that   
 have been decided to be executed in the future.

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| Information  becoming  generally  available | **134.** (1) In this Chapter, information generally available means information- | |
| (*a*) | that has been published or made known in a manner |

that would or would tend to bring it to the attention   
of a reasonable person who invests or trades in   
securities of a kind whose price or value might be   
affected by such information; and

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

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

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| **135.** For the purpose of this Chapter, information which has a material effect on the price or value of securities means | Material effect  on price or value of securities |

such information which would or would tend to, on becoming generally available influence a reasonable person who invests in securities in deciding whether or not to acquire or dispose of such securities or enter into an agreement with a view to acquire or dispose of such securities.

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| **136.** For the purposes of section 137, a person is deemed to procure an act or omission to be done or omitted to be | Reference to “procure” |

done by another person if the first named person incites, counsels, induces, encourages or directs the said act or omission by such other person.

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| **137.** (1) For the purpose of this Part, an ‘insider’ means a person, whether or not such person is connected to the respective company, if that person– | Prohibited  conduct of  persons in  possession of  information not |

generally

|  |  |  |
| --- | --- | --- |
| (*a*) | possesses information that is not generally | available |

available which on becoming generally available   
a reasonable person would expect it to have a   
material effect on the price or the value of securities;   
and

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(*b*) knows or could reasonably be expected to know   
 that the information is not generally available.

(2) An insider shall not whether as principal or agent in respect of any securities to which the information in subsection (1) relates -

(*a*) sell or buy or enter into an agreement or transaction   
 for the sale or purchase of such securities; or

(*b*) procure directly or indirectly, an acquisition or   
 disposal of or enter into an agreement or transaction   
 with a view to the acquisition or disposal of such   
 securities.

(3) Where trading in the securities to which the information in subsection (1) relates is permitted on a securities market of an exchange or a platform operated by a recognised market operator, the insider shall not directly or indirectly, communicate the information referred to in subsection (1) or cause such information to be communicated to another person, if the insider knows or could reasonably be expected to know that the other person would or would tend to -

(*a*) acquire, dispose of or enter into an agreement with   
 a view to the acquisition or disposal of any securities   
 to which the information referred to in subsection   
 (1) relates; or

(*b*) procure or direct a third person to acquire, dispose   
 of or enter into an agreement with a view to the   
 acquisition or disposal of any securities to which   
 the information referred to in subsection (1) relates.

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| **138.** (1) In this Chapter, a company is deemed to possess any information- | Information in  possession of an officer of a |

company

(*a*) which an officer of the company-

(i) possesses and which came into his possession   
 in the course of his duties as an officer of the   
 company; or

(ii) knows or could reasonably be expected to   
 know because he is an officer of the company;

(*b*) which an officer of the company possesses and   
 which came into his possession in the course of his   
 duties as an officer of a related company of the first   
 mentioned company where-

(i) the officer is an insider by reason of being in   
 possession of the information;

(ii) the officer is involved in the decision,   
 transaction or agreement of the first mentioned   
 company in acquiring or disposing of   
 securities in relation to which the officer is   
 an insider or entering into an agreement to   
 acquire or dispose of such securities,   
 procuring another person to acquire or dispose   
 of such securities or enter into an agreement   
 to do so or communicating the information   
 in circumstances referred to in subsections   
 (2) and (3) of section 137; or

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(iii) it is reasonable to expect that the officer   
 would communicate the information to   
 another officer of the first mentioned   
 company acting in his capacity as such unless   
 it is proved that the information was not in   
 fact so communicated.

(2) In this section “information” refers to information which a company is deemed to possess and “insider” means a person in possession of such information.

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

(*a*) the decision to enter into the transaction or   
 agreement was taken on behalf of the company by   
 a person or persons other than an officer of the   
 company in possession of the information;

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

(i) the information was not communicated to a   
 person or one of the persons who was   
 involved in or made the decision to enter into   
 or be involved in the transaction or   
 agreement;

(ii) no advice with respect to the decision to enter   
 into or be involved in the transaction or   
 agreement was given to that person by the   
 person in possession of the information; or

(iii) the person in possession of the information   
 would not be involved in the decision to enter   
 into or be involved in the transaction or   
 agreement; and

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(*c*) the information was not communicated, no such   
 advice was given and the person in possession of   
 the information was not involved in the decision to   
 enter into or be involved in the transaction or   
 agreement.

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| **139.** (1) In this Chapter, a partner of a partnership is deemed to possess any information – | | Information in possession of a partner or an  employee of  partnership |
| (*a*) | if a partner possesses information and it came into |

another partner’s possession in his capacity as a   
partner of the partnership;

(*b*) if an employee of the partnership possesses such   
 information and it came into the employee’s   
 possession in the course of his duties; or

(*c*) if a partner or an employee of a partnership knows   
 or could reasonably be expected to know any matter   
 or thing because of another partner or employee   
 who knows or possess the information, it is   
 presumed, unless the contrary is proved that every   
 partner of the partnership knows or could reasonably   
 be expected to know that matter or thing.

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

(*a*) the decision to enter into the transaction or   
 agreement was taken on behalf of the partnership   
 by -

(i) a partner who was not in possession of the   
 information; or

(ii) an employee of the partnership who was not   
 in possession of the information;

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(*b*) the partnership had in existence at that time   
 agreements that could reasonably be expected to   
 ensure that-

(i) the information was not communicated to the   
 partner or employee who was or were involved   
 in or made to enter into the transaction or   
 agreement in question;

(ii) no advice with respect to the decision to enter   
 into the transaction or agreement was tendered   
 to that partner or employee by a partner or an   
 employee who was in possession of the   
 information; or

(iii) the partner or employee in possession of the   
 information would not be involved in the   
 decision to enter into or be involved in the   
 transaction or agreement; and

(*c*) the information was not communicated, no advice   
 was given and the partner or employee in possession   
 of the information was not involved in the decision   
 to enter into or be involved in the transaction or   
 agreement.

(3) A partner of a partnership does not contravene subsection (2) of section 137 by entering into the transaction or agreement referred to in that subsection otherwise than on behalf of the partnership merely because the partner is deemed to possess information that is in possession of another partner or employee of the partnership.

(4) In this section “information” refers to information which a partnership is deemed to possess and where a partner or an employee of the partnership in possession of that information is an insider.

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| **140.** (1) Subsection (2) of section 137 shall not apply in respect of – | | Exceptions in relation to  underwriting and sub  underwriting |
| (*a*) | the entering into of an underwriting agreement or a |
| sub underwriting agreement; or | |
| (*b*) | the acquisition of securities under an obligation to |

do so in an agreement referred to in paragraph (*a*).

(2) Subsection (3) of section 137 shall not apply in respect of the communication of information in relation to securities to a person solely for the purpose of procuring the person–

(*a*) to enter into an underwriting agreement or a sub   
 underwriting agreement in relation to such   
 securities; or

(*b*) to acquire such securities under an obligation to do   
 so in an agreement referred to in paragraph (*a*).

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| **141.** (1) Section 137 shall not apply to an acquisition or disposal of securities or the communication of information that is carried out under any other written law relating to schemes of arrangement, reconstruction and takeover of companies. | Exceptions in  relation to  schemes of  arrangement,  reconstruction  and takeover of companies |

(2) Subsection (2) of section 137 shall not apply to a clearing house which acquires or disposes of securities for the purpose of settlement of a market contract or in relation to any proceedings or other action relating to the settlement of a market contract where the acquisition or disposal of securities is made in accordance with the rules of a licensed clearing house.

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

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

company merely because the company is aware that it proposes to enter into or has previously entered into one or more transactions or agreements in relation to those securities.

(2) Subject to subsection (3), a company does not contravene subsection (2) of section 137 by entering into a transaction or an agreement in relation to securities other than the securities of such company because an officer of the company is aware that it proposes to enter into or has previously entered into one or more transactions or agreements in relation to those securities.

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

(4) Subject to subsection (5) a person does not contravene subsection (2) of section 137 by entering into a transaction or an agreement on behalf of a company in relation to securities other than the securities of such company merely because the person is aware that the company proposes to enter into or has previously entered into one or more transactions or agreements in relation to those securities.

(5) Subsection (4) shall not apply unless the person becomes aware of the matters referred to that subsection in the course of his duties as an officer of the first mentioned company or in the course of acting as an agent of the first mentioned company.

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| Exception in  relation to an  individual | **143.** An individual does not contravene subsection (2) of section 137 by entering into a transaction or an agreement in relation to securities merely because he is aware that he |

proposes to enter into or has previously entered into one or more transactions or agreements in relation to those securities.

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| **144.** (1) A market intermediary who carries on the business of buying and selling of securities on behalf of investors or its representative shall not contravene subsection (2) of section 137 by entering into a transaction or an agreement as an agent for another person, being a transaction or an agreement entered into on the securities market of an exchange if – | | Unsolicited  transaction by market  intermediaries |
| (*a*) | the transaction or agreement is entered into under a |
| specific instruction by the other person and was not solicited by a market intermediary or its representative carrying on the business of buying and selling of securities; | |
| (*b*) | the market intermediary carrying on the business of |
| buying and selling of securities or its representative has not given any advice to the other person in relation to the transaction or agreement or otherwise sought to procure the other person’s instructions to enter into the transaction or agreement; and | |
| (*c*) | the other person is not associated with the market |
| intermediary or its representatives carrying on the business of buying and selling of securities. | |

(2) Nothing in this section shall affect the responsibility of the market intermediary in relation to subsection (1) of this section with respect to the business of buying and selling of securities in his capacity as the principal.

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| **145.** Subsection (2) of section 137 shall not apply in respect of the redemption by a trustee under a trust deed relating to a collective investment scheme in accordance with a buyback covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets less any liabilities of the collective investment scheme to which the units of the collective investment scheme relates and less any reasonable charge for purchasing the units of the collective investment scheme. | Exception in  relation to  collective  investment  schemes |

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| Parity of  information  defence | **146.** (1) A person does not contravene subsection (2) of section 137 if- | |
| (*a*) | the other party to the transaction or agreement knew, |

or could reasonably have known, of the information   
before entering into the transaction or agreement;   
and

(*b*) that person acquires or disposes of such securities   
 on such terms and in such circumstances, that –

(i) he does not obtain any gain or avoid any   
 loss, including an unrealized gain or   
 unrealized avoidance of loss in price or value   
 of the securities, as the case may be, for himself   
 or any other person by reason of the effect   
 that the information is likely to have when it   
 becomes generally available; and

(ii) the purpose of the acquisition or disposal of   
 the securities does not include any purpose   
 of securing a gain or avoiding a loss, as the   
 case may be, for himself or any other person   
 by reason of the effect that the information is   
 likely to have when it becomes generally   
 available.

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

(*a*) that the information came into the possession of   
 the person so communicating the information solely   
 as a result of it being made known in a manner   
 likely to make it generally available pursuant to   
 section 134; or

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

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| **147.** (1) A person who contravenes sections 128, 129, 130, 131, 132 or subsections (2) and (3) of section 137 commits an offence and shall be liable on conviction to a fine of not less than ten million rupees or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment. | Offences under this Part and  punishment |

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

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| **148.** Every offence committed under this Part shall be triable upon indictment by the High Court.  **149.** Every prosecution in respect of an offence under this Part shall be instituted and conducted by the Attorney General.  **150.** In a prosecution or in an action made by the Commission under section 152 against any person for an offence under section 137, it is not necessary for the prosecution or the Commission to prove the non-existence of facts or circumstances which, if existed would by virtue of sections 138, 139, 140, 141, 142, 143, 144, 145 and 146 preclude the act from constituting a contravention of subsections (2) and (3) of section 137.  **151.** (1) A person who suffers loss or damage by reason of or by relying on the conduct of another person who has contravened sections 128, 129, 130, 131, 132 or subsections (2) and (3) of section 137 under this Part may recover the amount of loss or damage by instituting an action in the court against the other person whether or not the other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution. | Jurisdiction of the Courts  Prosecution of offences under this Part  Prosecution  need not  disprove the  defences  Right of the  aggrieved party to claim  damages |

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

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| Right of the  Commission to  recover damages and seek civil  penalties | **152.** (1) Whenever it appears to the Commission that any person has contravened sections 128, 129, 130, 131, 132 or subsections (2) and (3) of section 137 and where the Commission considers it necessary having taken into consideration the nature and manner of the contravention, |

the impact it has on the market and the extent of the loss caused to any investor, the Commission may institute Civil Proceedings in the court against that person.

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

(*a*) to pay to the Commission an amount equal to three   
 times the gross amount of the pecuniary gain made   
 or loss avoided by such person; and

(*b*) for the payment of a civil penalty as the court   
 considers appropriate having regard to the severity   
 or gravity of the contravention, being an amount   
 not less than ten million rupees and not exceeding   
 one hundred million rupees.

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

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

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

(*a*) applied to reimburse the Commission for all costs   
 of the investigation and proceedings in respect of   
 the contravention;

(*b*) applied to compensate persons who have suffered   
 loss or damage as a result of the contravention; and

(*c*) credited to the Compensation Fund:

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

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

**153.** An action under section 152 shall not be commenced Prescription

after the expiration of six years from the date of the contravention of any of the provisions in this Part.

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**PART VI**

**Finance**

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| Object and  purpose of this Part | **154.** The object and purpose of this Part shall be- | |
| (*a*) | to establish various funds for the proper functioning |

of the Commission; and

(*b*) to establish a fund to provide limited compensation   
 to investors who have no other remedy.

CHAPTER 1

FUNDSOFTHE COMMISSION

Levy of a Cess **155.** (1) There shall be charged, levied and paid a cess at such rates as may be prescribed by the Minister by regulations published in the *Gazette* on every purchase and sale of securities recorded in an exchange or notified to it under its rules by both the purchaser and the seller. Different rates may be prescribed in respect of different classes of securities.

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

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

(2) The monies lying to the credit of the Cess Fund shall only be utilized for the purpose of –

(*a*) developing the securities market;

(*b*) enhancing monies lying to the credit of the   
 Compensation Fund or the Fund of the Commission   
 established under this Part;

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(*c*) meeting all expenditure incurred by the   
 Commission in the management, administration,   
 and operation of the Commission in the exercise,   
 performance and discharge of its duties and   
 functions;

(*d*) granting loans for housing, educational, health and   
 transport purposes to the staff of the Commission   
 as the Commission deems appropriate;

(*e*) to make contributions to pension and provident   
 funds and other schemes established for the benefit   
 of the Director General and its officers and servants   
 and their dependents and nominees; and

(*f*) to defray the costs of study, in Sri Lanka or abroad   
 of the officers and servants of the Commission who   
 are of proven merit as determined by the   
 Commission.

(3) Any excess money lying to the credit of the Cess Fund may be invested by the Commission in such manner as may be determined by the Commission for the purpose of developing the Cess Fund.

**157.** (1) The Commission shall have its own Fund. Fund of the Commission

(2) There shall be paid into the Fund –

(*a*) all such sums of money as may be voted upon from   
 time to time by Parliament for the use of the   
 Commission;

(*b*) all sums of money as may be charged as costs   
 incurred in carrying out all inspections under the   
 provisions of this Act or paid as fees under the   
 provisions of this Act;

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(*c*) such sums of money that are recovered, as   
 reimbursements for costs incurred in carrying out   
 investigations and institution of legal proceedings   
 in respect of contraventions under the provisions   
 of this Act;

(*d*) all such sums of money as may be received by the   
 Commission by way of donations, gifts or grants   
 from the Consolidated Fund, the Government or a   
 foreign Government, State Agencies and from   
 multilateral and bilateral agencies whether within   
 or outside Sri Lanka; and

(*e*) such sums of money as may be credited from the   
 Cess Fund.

(3) There shall be paid out of the Fund all such sums of money required to defray the expenditure incurred by the Commission in the exercise, discharge and performance of its powers, functions and duties.

(4) Monies belonging to the Fund of the Commission may be invested by the Commission in such manner as may be determined by the Commission.

CHAPTER 2

FUNDTOPROVIDE COMPENSATIONTO INVESTORS

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| Compensation Fund | **158.** (1) There shall be established a fund called the“Compensation Fund,” by the Commission for the purpose |

of granting limited compensation to any investor who suffers pecuniary loss as a result of any licensed stock broker or stock dealer being found by the Commission as being incapable of meeting its contractual obligations.

(2) The Compensation Fund shall consist of -

(*a*) such sums of money as may be voted upon by   
 Parliament;

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(*b*) such sums of money as may be credited to the fund   
 under the provisions of this Act; and

(*c*) such sums of money as may be credited from the   
 Cess Fund as approved by the Commission.

(3) Monies belonging to the Compensation Fund may be invested by the Commission in such manner as may be determined by the Commission.

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| **159.** (1) The Commission shall appoint from amongst the members of the Commission, three members who shall comprise the Compensation Committee (hereinafter referred | Appointment of a Compensation Committee |

to as the “Committee”) of the Commission.

(2) The Committee appointed under subsection (1) shall be responsible for assessing and awarding compensation in respect of any application made under section 162 and the decision of such Committee on any such assessment or award shall be final and conclusive for the purpose of this Act.

**160.** (1) Any investor who has suffered pecuniary loss as Application for a result of any licensed stock broker or stock dealer being compensation

found incapable of meeting his contractual obligation towards such investor may make an application to the Committee in the specified form claiming compensation from the Compensation Fund.

(2) The Committee may from time to time, require an applicant to produce any document or other evidence in support of the claim of the applicant for compensation. Where the applicant fails to comply with such request, the Committee may disallow the claim of the applicant.

(3) If at any time the Committee considers it necessary so to do, it may hold an inquiry into the claim of the applicant and shall by notice in writing, inform the applicant to be present on such date, and at such time and place as may be specified in the notice. Where the applicant fails to appear for such inquiry on the date set out in the notice, the Committee may disallow the claim of the applicant.

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| Payment of  compensation | **161.** (1) The Committee may, after examination of the documents and other evidence produced in support of the |

claim by an applicant or in any case where an inquiry was held on the conclusion of such inquiry allow or disallow such claim for compensation.

(2) Where the Committee allows any claim it shall make an assessment of the limited compensation payable and shall make an award in relation thereto. Notice of such award shall be given in writing to the applicant.

CHAPTER 3

FINANCIAL YEARANDAUDITOFACCOUNTS

Financial Year **162.** The financial year of the Commission shall be the period of twelve months commencing on the first day of January each year.

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| Audit of  Accounts | **163.** (1) The Commission shall cause proper books of accounts to be kept of the income and expenditure, assets |

and liabilities and all other transactions of the Commission.

(2) The provisions of Article 154 of the Constitution relating to the audit of accounts of public corporations shall apply to the audit of the accounts of the Commission.

**PART VII**

**General**

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| Object and  purpose of this Part | **164.** The object and purpose of this Part shall be to ensure effective implementation of provisions in this Act relating to production of documents, disclosure of information, |

establishment of a Complaints Resolution Committee, conducting inquiries and investigations, sharing of information and the protection of whistleblowers.

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CHAPTER 1

PROVISIONS RELATINGTO IMPLEMENTATION

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| **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 | Production of documents and disclosure of  information |

**(**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.

(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.

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(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.

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| 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—

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| (*a*)  (*b*) | the transactions in securities are being dealt with in a manner detrimental to investors or the securities market by any person; or  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.

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(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).

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(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.

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| 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.

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(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.

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| **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 | Inquiry by  Complaints  Resolution  Committee |

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.

(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.

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(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.

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| 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.

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(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.

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| **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 | Implementation of agreements or memoranda of  understanding |

markets.

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| **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.

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(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

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| to | the | functions | of | the |

Commission under this Act or any

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| person | or | international |

organisation outside Sri Lanka

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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, Whistleblower demote or cause harassment to a person in employment on protection

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.

(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.

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| **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 |

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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.

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| 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.

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CHAPTER 2

PROVISIONS RELATINGTO PUNISHMENTSAND 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.

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| 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.

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(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.

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| **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.  **178.** (1) Except in relation to offences under Part V, if any person – | | Compounding of offences  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: -

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| (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; |

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| (ii)  (iii)  (iv)  (v) | 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;  reprimand the person who has committed the contravention, non-compliance or breach;  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;  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–

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

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(*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 reciept of such appeal,-

(i) allow the appeal and mitigate the penalty;

(ii) disallow the appeal.

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(*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 restitute, 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–

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| Power of the  Commission to protect  investors’assets | (*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.  **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, | |

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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.

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| 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;

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(*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.

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(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;

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(*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.

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| **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 | Power of the  Commission to publish  information |

action taken by the Commission under this Act, regulations, rules or directives.

**182.** (1) The Minister on the recommendation of the Regulations 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.

(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 counter   
 part 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;

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(*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;

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(*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.

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| 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. |

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**185.** Notwithstanding anything to the contrary in this Market maker 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.

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| **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.  **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”). | Recourse against decisions of the Commission  Repeals, savings and transitional provisions |

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

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| (*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 preceeding   
 the date of operation of this Act, shall be deemed to   
 be a licence issued by the Commission under this   
 Act;

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(*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

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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.

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| 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

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(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

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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 depositary 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 —

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(*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;

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“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;

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 (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;

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(*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;

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“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;

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“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;

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| (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;

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(*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;

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(*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

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| 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;

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“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 companyregistered 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;

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(*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;

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“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,

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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.

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| **189.** | In the event of any inconsistency between the | Sinhala text to  prevail in case  of inconsistency |
| Sinhala and Tamil texts of this Act, the Sinhala text shall prevail. | |

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