

SECURITIES EXCHANGE ACT 2017

No of 2017

AN ACT to amend and consolidate the law relating to the securities market; to regulate market institutions, public offers of securities, market intermediaries and deal with market misconduct in an effective and efficient manner to meet the challenges encountered by capital markets; and for matters connected therewith or incidental thereto.

BE IT ENACTED by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows.

Short title, date of commencement and the interpretation of this Act.

1.(a) This Act may be cited as the Securities Exchange Act 2017, and shall come into operation on such date (hereinafter referred to as the "appointed date") as may be appointed by the Minister by order published in the Gazette

(b) The Minister may by Order published in the gazette defer the commencement of any Part or Chapter of this Act as he may consider expedient or necessary for the implementation of this Act.

(c) In the interpretation of this Act, the objects and purposes stated at the beginning of each part shall be taken into account in a holistic manner and shall not be confined only to that Part.

Interpretation

2. In this Act unless the context otherwise requires –

"advertisement" includes advertising done in any publication or by way of display of notices, signs or labels or by means of circulars, catalogues, price lists or other documents or by an exhibition of pictures or photographic or cinematographic films or by way of sound broadcasting or television or by the distribution of recordings through electronic media or in any other similar manner;

"bonus issue" means the issue of any security or securities to be issued in the future of a listed public company to holders of such securities and duly registered, as at the date of such issue howsoever such issue is described or referred to, without

consideration and in proportion to the securities held by them in such company on the date of such offer notwithstanding anything to the contrary in the 0, No. 7 of 2007. ;

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

- (1) to establish and operate a system for 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 person or his nominee for the depositors and dealings in respect of those securities are effected by means of entries in 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 shall not apply to –

- (a) a central depository established by the Central Bank of Sri Lanka; or
- (b) any person providing, or holding out as providing, a central depository for exempt securities.

“clearing facility” means a facility for the clearing or settlement of transactions in securities;

“clearing or settlement” in relation to a clearing facility, means any arrangement, process, mechanism or service provided by a person in respect of transactions by which —

- (a) information relating to the terms of those transactions are verified by such person with a view of confirming the transactions;
- (b) parties to those transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;
- (c) the obligations of parties under those transactions are calculated, whether or not such calculations include multilateral netting arrangements; or

- (d) parties to those transactions meet their obligations under such transactions, including the obligation to deliver, 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 transactions referred to in the above;
 - (ii) the services provided by a person who has, under an arrangement with another person (referred to in this sub-paragraph as the customer), possession or control of securities of the customer, where those services are solely incidental to the settlement of transactions relating to the securities; or
 - (iii) any other services as may be specified by the Commission.

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

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

“collective investment scheme” means any scheme or arrangement which satisfies the conditions under which a scheme or arrangement made or offered by a company for which;

- (a) the contribution, or payments made by the investors by whatever name called, are pooled, utilized solely for the purpose of the scheme or arrangement;
- (b) the contributions or payments are made to such to receive profits, income, produce or property whether movable or immovable from such scheme or arrangement;
- (c) the property, contribution or investment forming part of the scheme or arrangement, whether identifiable or not, is managed on behalf of the investors; and
- (d) the investors do not have day to day control over the management and operation of the scheme or arrangement;

the Commission shall exempt from the regulation of the Commission pools of funds relating to ;

- a. individual investment management arrangements;
- b. enterprise initiative schemes;
- c. pure deposit based schemes;
- d. schemes not operated by way of business;

- e. certain debt issues, such as debentures, bonds and loan stock;
- f. employee share schemes;
- g. franchise arrangements;
- h. timeshare schemes;
- i. provision of clearing services;
- j. contracts of insurance;
- k. individual pension accounts;
- l. occupational and personal pension schemes; or
- m. Certain bodies corporate including building societies, industrial and provident societies and registered friendly societies.

“controller” means a person who –

- (a) is entitled to exercise, or control the exercise of, not less than twenty per centum of the votes attached to the voting shares in the holder;
- (b) has the power to appoint or cause to be appointed a majority of the directors of such holder; or
- (c) has the power to make or cause to be made, decisions in respect of the business or administration of the market intermediary, and to give effect to such decisions or cause them to be given effect to.

“Court” means a High Court established under Article 154P of the Constitution for a Province, empowered with civil jurisdiction by Order published in the *Gazette* under section 2 of the High Court of the Provinces (Special Provisions) Act No.10 of 1996, within the Province for which such High Court is established, or where no such High Court vested with Civil jurisdiction is established for any province, the High Court established for the Western Province;

“delist” means to remove listed securities from the official list of an exchange;

“depository participant” means a person who has access to the facilities of a central depository and is admitted as a depository participant under the rules of a central depository.

“derivatives” include futures contracts consisting of an adjustment agreement, futures options and eligible exchange traded option or any other agreement in a class of agreements specified to be a derivative by the Commission, but shall exclude an agreement which is specified to be a derivative agreement that is not traded on a futures market of a derivatives exchange;

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

"electronic record" means a written document or other record created, stored, generated, received or communicated by electronic means.

"exchange" means a stock exchange or derivatives exchange licensed under this Act;

"listed public company" means any company which has its securities listed on a stock exchange, and includes –

(a) any public corporation which has its securities listed on a licensed stock exchange; and

(b) any company which is not registered in Sri Lanka but has been admitted to the official list of a stock exchange; and

any public company which has its securities listed on a stock exchange.

"listed securities" means any securities listed on an exchange;

"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) who under the immediate authority of a director or chief executive of the body corporate, exercises managerial functions or is responsible for maintaining accounts or other records of the body corporate.

"margin account" means an account that allows an investor to buy or sell securities generally serving as collateral to purchase listed securities;

"market institution" means an exchange, clearing house or central depository licensed under Part II of this Act;

"market intermediary" includes any person licensed under section 88 of this Act and carries on the business or providing supplementary services for the purpose of buying and selling securities on behalf of investors as a stock broker, derivatives broker, corporate finance advisor, investment analyst, investment manager, financial planner, market maker, underwriter, margin provider, credit rating agency or any other person who undertakes similar activity, and described by rules for the purpose of issuing such license by the Commission.

"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 but does not include a *bona fide* invitation to any person to enter into an underwriting agreement with respect to any such securities;

“private placement” means an issue of shares to an identified investor or category of investors other than by way of a rights issue offered pro-rata to the existing shareholders or a general offer to the public for subscription.

“persons acting in concert” means persons who pursuant to an agreement or understanding (whether formal or informal), co-operate, through the acquisition by any of them of any interests in shares in a company, or any other company, or to frustrate the successful outcome of a takeover or merger offer for a company, and without prejudice to the general application of this definition, the following individuals and companies will 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 their associated companies, and companies of which such companies are associated companies, all with each other;
- (b) a company with any of its directors (together with their close relatives, related trusts as well as companies controlled by any of the directors, their close relatives and related trusts);
- (c) a Company with any of its pension funds and employee share schemes;
- (d) any person who has provided financial assistance to any of the aforesaid persons for the purchase of any shares or interests in shares of a company, other than any registered margin provider or any other financial institution regulated by the Central Bank of Sri Lanka who provides such assistance in the ordinary course of business.

“prospectus” shall have the same meaning as in the Companies Act, No. 07 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 in the area;

“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;

“rights issue” means an issue of any shares or of shares to be issued in the future, of a listed public company to existing shareholders of such company, howsoever such issue is described or referred to, for consideration, and in proportion to the class of securities held by them in such company on the date of such offer;

“securities” means debentures, stocks, shares, funds, bonds, derivatives, units inclusive of futures and options, whatever the nature of the underlying asset relied on or

notes issued, or proposed to be issued, by any Government or any body, whether corporate or unincorporated, including any rights, options or interests (whether described as units or otherwise) therein or in respect thereof or any other instruments commonly known as securities, but does not include bills of exchange or promissory notes or certificate of deposits issued by a bank;

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

“share” shall have the same meaning as is given in the Companies Act, No.07 of 2007 or as recognized as a share under its laws in another jurisdiction.

“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 under this Act;

“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.

PART I - ESTABLISHMENT OF THE COMMISSION

Object and purpose of this Part

3. The object and purpose of this Part shall be –
- (a) to establish the Securities and Exchange Commission for the creation and maintenance of a fair, efficient and transparent securities market;
 - (b) to protect the interests of investors both local and foreign;
 - (c) to ensure the maintenance of high professional standards in the provision of services under this Act; and
 - (d) **to mitigate** systemic risks.

CHAPTER 1 – SECURITIES AND EXCHANGE COMMISSION

Establishment of the Securities and Exchange Commission

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 "the Commission") consisting of the persons who are members thereof under section 5.

(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.

Membership of the Commission

5.(1) The Commission shall consist of –

- (a) six persons drawn from the private sector possessing professional expertise and standing in respect of matters relating to the securities market, special knowledge or wide experience and proven competency in the fields of law, finance, accounting, economics, banking and business to be appointed by the Minister as members (hereinafter referred to as "appointed members").
- (b) The following ex-officio members -
 - (i) A Deputy Secretary to the Treasury nominated by the Secretary to the Treasury;
 - (ii) A Deputy Governor of the Central Bank of Sri Lanka nominated by the Monetary Board of Sri Lanka;

(iii) The person for the time being holding the office of the Registrar General of Companies.

(2) The Minister shall nominate from amongst the members of the Commission, one member to be the Chairman of the Commission.

(3) In appointing persons under subsection 5(1)(a) the Minister shall have regard to-

- (a) that person's probity and standing; and
- (b) the likelihood of any conflict between the interests of the Commission and any interest which that person has or represents;

(4) No person shall be appointed or remain as a member of the Commission if he is or becomes –

- (a) a member of Parliament, or a member of any Provincial Council or any local authority; or
- (b) a director, partner or employee of an entity licensed or registered by the Commission.

Term of office of appointed members

6. Every appointed member of the Commission shall, unless he vacates office earlier by death, by operation of law, resignation or removal, hold office for a term of three years and shall be eligible for reappointment up to a maximum period of any two terms.

Removal and resignation of appointed members

7.(1) Any appointed member of the Commission may at any time resign his office by letter addressed to the Minister.

(2) The Minister may, by order published in the Gazette, remove an appointed member from office if he –

- (a) becomes of unsound mind or incapable of carrying out his duties;
- (b) is guilty of serious misconduct in relation to his duties;
- (c) has been convicted of an offence which, involves moral turpitude;
- (d) abuses his position so as to render his continuation in office detrimental to the interest of the Commission;

- (e) in the case of the Chairman if absent for three consecutive meetings except on leave granted by the Minister;
- (f) fails to comply with his obligations under the provisions of this Act;
- (g) has been previously removed from office under this section; or
- (h) is disqualified under section 5(4).

(3) In the event of the vacation of office of any appointed member by reason of death, resignation, removal or the operation of provisions of subsection (5) hereof, the Minister may appoint another person, having regard to the provisions of subsection (3) and (4) of section 5, to hold office for the unexpired period of the term of office of the member whom he succeeds.

(4) If any appointed member of the Commission is temporarily unable to perform the duties of his office for a period in excess of 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) and (4) of section 5.

(5) An appointed 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.

Remuneration of members

8. The members of the Commission may be paid such remuneration out of the fund of the Commission as may be determined by the Minister.

Meeting of the Commission

9.(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 meetings, the members present shall elect one of the members to preside at such meeting.

(2) The quorum for any meeting of the Commission shall be five members and the Commission may subject to the requirement as to quorum, regulate the procedure in regard to the meetings of the Commission and the transaction of business at such meetings.

(3) 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.

Chairman of the Commission

10.(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

11. 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 taken. The 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.

Acts not invalidated by reason of a vacancy

12. No act or decision or proceeding 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.

Seal of the Commission

13.(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 in token of their presence.

CHAPTER 2 – POWERS, DUTIES AND FUNCTIONS OF THE COMMISSION

Powers, duties and functions of the Commission

14. For the purpose of carrying out its objectives the Commission may exercise, perform and discharge all or any of the following powers, duties and functions –

- (a) to give general or specific directives to any person or persons including investors, market institutions, market intermediaries, registered persons, clearing members, trading participants, depository participants, issuers or trustee or recognized market operators from time to time;
- (b) to give specific directives to any valuers, auditors or other supplementary service providers to market intermediaries to furnish information to the Commission;
- (c) to grant a license to a body corporate to operate as a market institution and ensure its proper conduct;
- (d) to grant a license to any person to operate as a market intermediary and ensure its proper conduct;
- (e) to register a person dealing with clients for and on behalf of a market intermediary as a registered person and to regulate their conduct in the discharge of their duties;
- (f) to register auditors who audit accounts of market institutions, market intermediaries and listed public companies and ensure its proper conduct;
- (g) to issue general or specific directives to listed public companies from time to time;
- (h) to issue general or specific directives to an acquirer, offerors or persons acting in concert with offerors or an offeree or a target company in relation to a takeover or a merger of a listed public company;
- (i) to issue specific directives to any person to prevent the imminent infringement of this Act, rules or regulations. ;
- (j) to advise the government on the development of the securities market;
- (k) to employ such officers as the Commission may consider necessary and shall fix the salaries and wages or other remuneration and benefits of such officers for the purposes of carrying out the objectives and functions of the Commission;

- (l) to regulate the listing and trading of securities in an exchange;
- (m) to regulate the issuance of securities;
- (n) to suspend the listing of any securities or to delist the listed securities or to prohibit the trading of any securities or exchange traded derivatives or to prohibit the trading of 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 inquire and conduct investigations into any activity of a market institution, market intermediary, a registered person or a listed public company;
- (p) to publish findings of wrongdoing by any market institution, market intermediary or registered person or any listed public company;
- (q) to assist in the effective implementation of the policies and programmes of the Government with respect to the securities market;
- (r) 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;
- (s) to encourage and promote the development of securities markets in Sri Lanka including research and training in connection thereto;
- (t) to regulate take-overs or mergers or any matter connected therewith or incidental thereto;
- (u) to conduct investigations into any alleged violation or contravention of the provisions of this Act or any rule, regulation or directive made there under or by any person and to enforce measures deemed necessary by the Commission;
- (v) to carry out surveillance of securities transactions; and
- (w) to do all such other acts as may be necessary, incidental and ancillary to the performance of the Commission's objectives, powers, duties and functions under this Act.

Additional powers of the Commission

15.(1) The Commission shall in addition to the powers specified in section 14 also have the powers to –

- (a) carry out inspections of the activities of market institutions or market intermediaries or registered persons or trustees in order to determine whether they are operating in conformity with the provisions of this Act 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 as the case may be;
- (b) require market institutions or market intermediaries to file with the Commission, annual balance sheet and income statements, certified by a qualified auditor in the form and manner specified by the Commission;
- (c) require the licensed managing company of a collective investment scheme to file with the Commission, in respect of every year, 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.

(2) The Commission shall have the power to appoint a Subcommittee of experts in order to perform any matter assigned to the Commission. Any decision taken by such Committee shall be binding on the parties upon the approval of Commission.

Representation of the Commission in legal proceedings

16. Any officer of the Commission who is an Attorney-at-Law or any other Attorney-at-Law as may be authorized by the Chairman may 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, notwithstanding the provisions of any written law.

CHAPTER 3 – DIRECTOR-GENERAL AND STAFF OF THE COMMISSION

Director-General

17.(1) The Commission shall 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 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 employees of the Commission.

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

(4) The Commission may remove from office the Director-General appointed under subsection (1) having regard to any one of the following reasons;

- (a) that person's probity or standing;
- (b) the likelihood of any conflict between the interests of the Commission and the Director-General.
- (c) becomes of unsound mind or incapable of carrying out his duties;
- (d) is guilty of serious misconduct in relation to his duties;
- (e) is involved in any activity which may interfere with his independence in discharging his duties; or
- (f) for any other reason that the Commission considers appropriate.

Staff of the Commission

18.(1) The Commission may appoint such other officers as it considers necessary for the efficient discharge of its functions.

(2) The officers appointed under subsection (1) shall be remunerated in such manner and at such rates notwithstanding anything to the contrary in any other written law and shall be subject to such conditions of service as may be determined by the Commission.

(3) At the request of the Commission any officer in the public service may, with the consent of the officer and the Secretary to the Ministry of the Minister in charge of the subject of Public Administration, be temporarily appointed to the Commission for such period as may be determined by the Commission with like consent, or be permanently appointed to such staff.

(4) 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.

(5) The Commission may propose secondment of its staff members to other state institutions for a period determined by the Commission on an assignment agreed upon between such institution and the Commission.

Appointment of officers of public corporations to the staff of the Commission

19.(1) At the request of the Commission any officer of a public corporation may, with the consent of such officer 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 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 member of the staff.

Members and employees of the Commission deemed to be public servants

20. All members, officers of the Commission shall be deemed to be public servants within the meaning and for the purposes of the Penal Code and of the Code of Criminal Procedure Act, No.15 of 1979.

Commission deemed to be a Scheduled institution within the meaning of the Bribery Act

21. The Commission shall be deemed to be a Scheduled institution within the meaning of the Bribery Act, and the provisions of that Act shall be construed accordingly.

Threatening, intimidating and defaming members of the Commission

22. Any person or body of persons who –

- (a) threatens or intimidates, or
- (b) makes any derogatory remarks or publishes any statement with a view to bringing disrepute or defaming the reputation of any member of the

Commission, the Director General or any other officer of the Commission in the course of discharging the duties under the Act or under any regulation or rule made under this Act,

shall be guilty of an offence and shall on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one million rupees or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.

PART II

MARKETS AND MARKET INSTITUTIONS

Object and purpose of this Part

23. The object and purpose of this Part shall be –

- (a) to promote a fair, orderly, transparent and efficient capital market in Sri Lanka through the establishment of market institutions;
- (b) to enhance effective and efficient functioning of a capital market ; and
- (c) to reduce systemic risk associated with capital markets.

Chapter 1 – Exchanges

Prohibition against establishing an unlicensed Exchange

24.(1) A person shall not establish, operate or maintain an exchange or hold himself out as establishing, operating or maintaining unless the person has been licensed to establish or operate an exchange.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million rupees or to imprisonment for a term not exceeding ten years or to both.

Application to operate an exchange

25.(1) An application to be licensed as an exchange shall be made to the Commission in such manner and form as may be specified by the Commission and shall be accompanied by a fee specified by the Commission.

(2) An application to be licensed as an exchange can only be made by a body corporate.

(3) The Commission may grant a license to the applicant to operate an exchange, subject to any terms and conditions as it thinks fit, if the Commission is satisfied that —

- (a) the applicant will ensure as far as is reasonably practicable that it will operate an orderly and fair market in relation to securities that are traded through its facilities;
- (b) the applicant will manage any risks associated with its business and operations prudently;
- (c) the applicant, in discharging its obligations under paragraph (a), will not act contrary to the public interest and in particular the interest of investors;

- (d) the applicant is able to take appropriate action against its trading participants to whom its rules apply;
- (e) the rules made by the applicant shall have satisfactory provision —
 - (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 its trading participants;
 - (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;
 - (vi) with respect to the conditions under which securities may be listed or quoted for trading in the securities market proposed to be conducted by the applicant;
 - (vii) with respect to the conditions governing trading in securities by trading participants;
 - (viii) with respect to the class or classes of securities that may be dealt in or traded on its facilities;
 - (ix) with respect to the prohibition of market misconduct;
 - (x) for the suspension of trading of any given security for the protection of investors or for the conduct of orderly and fair trading;
 - (xi) for the appointment of a disciplinary committee where majority of its members are not trading participants;
 - (xii) for the applicant to enter into contracts with trading participants and issuers and under which would agree to be bound by the rules of the applicant.
 - (xiii) generally for the carrying on of business of the exchange with due regard to the need for the protection of investors and public interest.
- (f) the applicant shall have sufficient financial, human 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 meet emergencies.
- (g) the interest of the public or the proper regulation of the market will be served by the granting of the license.

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

(5) Without limiting the generality of the terms and conditions specified in subsection (3), the Commission, may amend, revoke or impose new terms and conditions, if 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.

Duties of the Exchange

26.(1) It shall be the duty of an exchange to ensure, so far as may be reasonably practicable, 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 interests that it is required to serve under any law relating to companies conflict with the interest referred to in paragraph (a), the latter shall prevail; and
- (c) manage any risks associated with its business and operations prudently.

(3) Notwithstanding 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 this duty 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 —
- (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 its rules; or
 - (b) any irregularity, breach of any provision of this Act or its rules, 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 or directors or the key management personnel of the trading participant is in question or may reasonably be affected.

(6) Without prejudice to subsection (5), when an exchange reprimands, impose fines, suspends, expels or otherwise disciplines any of its trading participants, 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 fine, if any; and
- (d) any other disciplinary action taken.

Cancellation of license held by the exchange

27.(1) The Commission, may by notice in writing —

- (a) cancel the license granted under section 25 of this Act with effect from the date specified in the notice; or
- (b) direct the exchange 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 the license 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 exchange ceases to operate its securities market;
- (b) the exchange is being wound up or otherwise dissolved, whether within Sri Lanka or elsewhere;

- (c) the exchange has contravened any term or condition of its license or is charged with any offence under this Act;
- (d) the exchange 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 25, 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 Sri Lanka or elsewhere, in relation to or in respect of any property of the exchange;
- (h) the exchange has, whether within Sri Lanka or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (i) the exchange on its own accord applies to the Commission to cancel its license as an exchange, and the Commission thinks it fit to do so.

(3) For the purposes of paragraph (2)(a), where an exchange has ceased to operate its securities market for a period of one month, it shall be deemed to have ceased to operate its securities market unless it has obtained the prior approval of the Commission to do so.

(4) Notwithstanding the cancellation of a license 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 for the purpose of –

- (a) closing down the operations of the exchange or ceasing to provide the services specified in the notice; or
- (b) protecting the interest of investors or 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 exchange until a new board of directors is appointed.

(6) Where the Commission has granted permission to an exchange 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).

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

(8) An exchange which is aggrieved by the decision of the Commission made under subsection (1) may, within 14 days after the exchange is notified of the decision, appeal to the Minister whose decision shall be final.

(9) Notwithstanding the lodging 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 Commission shall give public notice of any cancellation of license or directive issued under this section.

Effect of cancellation of license of an exchange

28.(1) Any cancellation of license or directive issued under section 27 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 or, where subsection 27(4) applies, after the withdrawal of the approval or issuance of the directive under section 27; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

Closure of the exchange in emergency

29.(1) The Commission may after consultation with 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 circumstances 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.

(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 clearing house and direct

the clearing house 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 forthwith give written notice to the Minister setting out the reasons for the exercise of the power under this section.

(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 but is not limited to a market that reflects the forces of supply and demand.

Listing requirements of a licensed exchange

30.(1) Where an exchange complies with the listing requirements, the Commission shall grant permission for such exchange to list its securities on the relevant exchange. On such permission being granted the exchange shall enter into such arrangement as the Commission may require;

- (a) for dealing with possible conflicts of interest that may arise from the listing on the relevant exchange;
- (b) for the purpose of ensuring the integrity of trading of securities of the exchange;
- (c) for compliance with obligations as a listed company if the exchange was to become a listed company;

and the relevant exchange shall comply with such requirements.

(2) The listing requirements of the relevant exchange shall be deemed to allow the Commission, instead of the relevant exchange to make decisions and to take action, or to allow the Commission to require the relevant exchange to make decisions and to take action on behalf of the Commission relating to;

- (a) the admission to or removal of the exchange from the official list of the relevant exchange;
- (b) the stopping or suspension of the securities of the exchange from being listed and/or traded on the relevant exchange; and
- (c) such other matters as the Commission thinks fit for the purpose of subsection (1).

(3) An arrangement under subsection (1) 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 provided under or for the purpose of this section;

(4) Without prejudice to the powers of the Commission to approve or amend the rules of an exchange, clearing house and central depository, the Commission may by notice in writing;

- (a) modify the listing requirements of the relevant exchange for the purpose of applying for a listing or trading of the securities of the exchange; and
- (b) exempt the exchange from any listing requirement of the relevant exchange.

CHAPTER 2 – CLEARING HOUSE

Interpretation

31. In this Chapter, unless the context otherwise 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” means any proceedings or other action taken by a clearing house under its default rules;

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

- (a) over any property as specified in the rules of a clearing house which is held by or deposited with the clearing house; and
- (b) for the purpose of securing liabilities arising directly in connection with the clearing house ensuring the settlement of a market contract.

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

“market contract” means -

- (a) a contract which is subject to the rules of a clearing house and entered into by the 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 clearing house; or
- (b) a transaction which is or is to be cleared or settled using the clearing facility of a clearing house and in accordance with the rules of the clearing house, whether or not a novation referred to in paragraph (a) is to take place .

“transfer order” means a set of instructions issued by the respective market institution to a payment system for the money settlement and to the central depository for the transfer of title of securities through a book entry in the respective system for the settlement of a market contract.

“relevant office-holder” means –

- (a) any person acting in relation to a company as its liquidator, provisional liquidator, receiver or manager or an equivalent person;
- (b) any person appointed pursuant to an order for the administration in bankruptcy of an insolvent estate of the deceased person.

Prohibition against establishing an unlicensed clearing house

32.(1) A person shall not establish or operate a clearing facility unless the person has been licensed to establish or operate a clearing house under this section.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty five million rupees or to imprisonment for a term not exceeding five years or to both.

(2) Subsection (1) shall not apply to any person providing, or holding out as providing, clearing facilities for securities exempted under this Act.

Application for a license to establish or operate a clearing house

33.(1) An application for a license to establish or operate a clearing house acting as a central counter-party to guarantee clearance and settlement or otherwise shall be made to the Commission in such manner and form as may be specified by the Commission and shall be accompanied by a fee specified by the Commission.

(2) An application for a license to establish or operate a clearing house can 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 authorization, all the necessary arrangements to meet the requirements laid down in this Act, Rules and Regulations set forth by the Commission according to the requirements.

(5) The rules of the proposed clearing house shall subject to the satisfaction of the Commission provide for -

- (a) efficient and effective clearing house facilities in relation to securities that are cleared through its clearing facilities;
- (b) the regulation and supervision of its clearing members that use its clearing facilities;
- (c) the clearing house to enter into contracts with clearing members under which they would agree to be bound by the rules of the clearing house;
- (d) The categories of admissible clearing members including the transparent and non-discriminatory criteria for admission of such clearing members to the clearing house;
- (e) the making of rules, including rules that make provision for a quick and fair method of settling disputes -
 - (i) between the clearing house and its clearing members; and
 - (ii) between clearing members;
- (f) the expulsion, suspension, imposition of fines or disciplining of clearing members for the failure to comply with the rules of the clearing house;
- (g) provisions relating to class or the classes of securities that may be cleared on its facilities;

- (h) provisions relating to the establishment and administration of a settlement guarantee fund;
- (i) provisions relating to the initiation of default proceedings if a clearing member has failed, and risk management procedures applicable in case a clearing member appears to be unable, or likely to become unable, to meet its obligations; and
- (j) the time for entering settlement orders into the settlement system and the time when such orders become final and irrevocable.
- (k) when the clearing house performs the functions of a central counterparty, the rules shall provide for the time of counterparty substitution in the netting arrangements, finality of settlement and any other duties and functions relevant to a central counterparty;
- (l) the default rules to facilitate the uninterrupted services of the clearing house where the clearing house suffers losses caused by the default of a clearing member or any other circumstances that threatens the solvency of a clearing house; and
- (m) the governing of collateral including the depositing and efficient creation and realization of collateral in the event of default or bankruptcy of a clearing member.

(7) Where the Commission is satisfied that it is appropriate to do so in the public interest or for the proper regulation of a clearing house, it may, grant a license to the applicant to establish or operate a clearing house subject to such terms and conditions as the Commission thinks fit.

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

Duties of a Clearing House

34.(1) A clearing house shall –

- (a) as far as is reasonably practicable, operate a safe, efficient and effective clearing facility;
- (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 investors.
- (2) Notwithstanding any other law, a director of a 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 this duty and a director's duty under any other law the duty under this act shall prevail.
- (3) A clearing house shall at all times:
- (a) have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is 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, Rules and Regulations made under the Act.
 - (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 so as to ensure high standards of security and the integrity and confidentiality of the information maintained.
 - (f) make its governance arrangements, the rules governing the clearing house, and its admission criteria for clearing membership, available to the public free of charge.

Cancellation of license held by a clearing house

35.(1) The Commission may by notice in writing –

- (a) cancel the license granted under section 33 to a clearing house with effect from the date specified in the notice; or

- (b) direct the clearing house to cease to provide or operate, 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 license or issue directives 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 clearing and settlement of transactions in securities, where any of the following circumstances occur:

- (a) the clearing house ceases to provide clearing facilities;
- (b) the clearing house is being wound up or otherwise dissolved, whether within Sri Lanka or elsewhere;
- (c) the clearing house has contravened any term or condition of its license or is charged with any offence under this Act;
- (d) the clearing house 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 33 was false or misleading in a material particular or from which there is a material omission;
- (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 Sri Lanka or elsewhere, in relation to or in respect of any property of the clearing house;
- (h) the clearing house has, whether within Sri Lanka or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (i) the clearing house has on its own accord applied to the Commission to cancel the license granted to it and the Commission thinks it fit to do so.

(3) For the purposes of paragraph (2)(a), the clearing house shall be deemed to have ceased to provide clearing facilities if it has ceased to provide such facilities for a period of two weeks unless it has obtained the prior approval of the Commission to do so.

(4) Notwithstanding the cancellation of a license 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 the investors or the public interest.

(5) Where the Commission acts under subsection (1) of this section, 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 clearing house until a new board of directors is appointed.

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

(7) The Commission shall not take any action under subsection (1) without giving the clearing house an opportunity to be heard.

(8) A clearing house which is aggrieved by the decision of the Commission made under subsection (1) of this section may, within 14 days after the clearing house is notified of the decision, appeal to the Minister.

(9) Notwithstanding the lodging of an appeal under subsection (7), any action taken by the Commission under this section shall continue to have effect pending the decision of the Minister.

(10) The Commission shall give public notice of any cancellation of license or directive issued under this section.

Effect of cancellation of license to a Clearing House

36. Any cancellation of issued license or directive shall not operate so as to –

- (a) avoid or affect any agreement, transaction or arrangement entered into through the clearing house whether the agreement, transaction or arrangement was entered into before, or where section 35 applies, after the withdrawal of the license or issuance of the directive under section 35; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

Default rules

37. A clearing house shall, for the purpose of risk management, initiate default proceedings under default rules if a clearing member is unable or 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.

Default proceedings of a clearing house to take precedence

38.(1) Any default proceedings initiated by the clearing house shall take precedence over any other legal proceedings relating to the distribution of assets of a person relating to insolvency, bankruptcy or winding up subject to the terms and conditions set out in the following instruments –

- (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;
- (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 under the Companies Act, No.07 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
- (b) any default proceedings.

Duty to report on completion of default proceedings

39.(1) Upon completion of any default proceedings, a clearing house shall provide a report in respect of each defaulter to those enumerated in subsection (2) in respect of the following -

- (a) the net sum, if any, certified by the clearing house to be payable by or to the defaulter;
- (b) the fact that no sum is so payable; and
- (c) the clearing house may include in that report such other particulars in respect of such default proceedings as it thinks fit.

(2) The report prepared under sub-section (1) shall be provided forthwith -

(a) to the Commission;

(b) to the relevant office-holder acting for the defaulter to whom the report relates or that defaulter's estate; or

(c) when there is no relevant office -holder referred to in paragraph (b), to the defaulter to whom the report relates.

(3) Where the Commission receives a report pursuant to sub-section (2) in relation to sub-section (1), it may publish a notice 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 sub-section (1), he 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, supply to the creditor all or any part of that report as requested.

(5) In sub-section (2), (3) and (4), a report includes a copy of a report.

Net sum payable on completion of default proceedings

40.(1) Upon the completion of default proceedings, the net sum certified under subsection 39(1)(a) by a clearing house be payable by or to the defaulter.

(2) Notwithstanding any provision of the Companies Act, No.07 of 2007, where an order for receiving or winding up has been made or a resolution for voluntary winding up has 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. 07 of 2007.

Clearing Member to be party to certain transactions as principal

41. A clearing member who enters into any transaction (including a market contract) with a clearing house would be a party to that transaction as agent but for this section, shall for all purposes (including any civil action, claim or demand) be deemed to be a party to that transaction as principal and not as agent, notwithstanding any provision in any other law.

Securities delivered to a clearing house

42. Notwithstanding any provision in any other law, where securities are delivered in settlement of a market contract or provided as market collateral or under a market charge to a clearing house by a clearing member in accordance with the rules of the clearing house, no civil action, claim or demand, in respect of any right, title or interest in securities delivered to a clearing house shall be commenced or allowed, against the clearing house.

Application of collateral subject to a market charge

43. The Clearing house shall be entitled to execute the collateral subject to a market contract or market charge in accordance with the procedure specified in the rules of a Clearing house notwithstanding anything to the contrary in any other law.

Enforcement of judgments subject to a market charge

44.(1) Where property is subject to a market charge or has been provided as market collateral, in the realization of such property by a clearing house, no execution or other legal process for the enforcement of a judgment or order may be commenced or continued, and no distress may be levied, against the property by a person seeking to enforce any interest in or security over property, except with the consent of the clearing house notwithstanding anything contrary in any other law.

Securities transfers in settlement

45.(1) A central depository and the payment system, shall give effect to any transfer order from a respective market institution provided such instruction shall be for the purposes of settlement of a market contract notwithstanding any other provision of law.

(2) Where any transfer order of securities is given effect pursuant to subsection (1), no title in such securities shall pass except as provided under the rules of the central depository notwithstanding any other provision of law.

(3) Where any transfer order is given effect pursuant to subsection (1), by the respective system, the confirmation received by the respective market institution on the settlement by the respective system pursuant to such transfer order as specified in the rules of the respective market institution shall be final and irrevocable and shall not be subject to any action or claim by any person notwithstanding any other law.

Purchase and sale of securities

46.(1) A clearing house may instruct an exchange to effect on behalf of the 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 a default proceeding or to enable 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 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.

Immunity from criminal and civil liability

47.(1) No criminal or civil liability shall be incurred by –

- (a) a person discharging, by virtue of delegation under the default rules of a clearing house in connection with any default proceedings; or
- (b) any person acting on behalf of a person referred to in paragraph (a), including –
 - (i) any member of the board of directors of the person referred to in paragraph (a); and
 - (ii) any member of any Committee established by the person referred to paragraph (a),

for anything done within (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of that obligation.

(2) Where a relevant office-holder takes action in relation to any property of any defaulter which is liable to be dealt in accordance with the default rules of a licensed clearing house, and the relevant officer-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 in respect of any loss or damage resulting from any action of the relevant office-holder except in so far as the loss or damage was caused by the negligence of the relevant office-holder.

Savings

48. Except as expressly provided in this Act, the provisions of this Chapter shall not operate to limit, restrict or otherwise affect any right, title, interest, privilege, obligation or liability of any person; or any investigation, legal proceedings or remedy in respect of any such right, title, interest, privilege, obligation or liability.

Chapter 3 – Central Depository

Prohibition against operating an unlicensed central depository

49.(1) A person shall not establish, maintain, operate or hold himself out as providing, maintaining or operating a central depository for handling of securities, whether or not such securities are listed on any exchange without obtaining a license from the Commission.

(3) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty five million rupees or to imprisonment for a term not exceeding five years or to both.

Application to operate a central depository

50.(1) An application for a license 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 a fee specified by the Commission.

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

(3) The rules of the proposed central depository shall have satisfactory provisions with respect to:

- (a) conditions under which securities may be deposited, held by, withdrawn from or transferred to and recorded in the register of securities;
- (b) the processing of dealings in deposited securities;
- (c) facilitating the settlement of deposited securities;
- (d) the protection of the interests of account holders and the protection and control of information on deposited securities and dealings therein;
- (e) transparent and non discriminatory criteria for the admission of depository participants and the admissible categories of depository participants;
- (f) the monitoring of conditions with, and for the enforcement of the rules of the applicant company.
- (g) the expulsion, suspension, imposition of fines or disciplining of depository participants for the 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.

(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 meet emergencies.

(6) Where the Commission is satisfied that it is appropriate to do so in the public interest, or for the proper regulation of the securities market, it may, grant a license 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 specified in subsection (6), the Commission, may amend, revoke or impose new terms and conditions, if the Commission is satisfied that it is appropriate to do so in the public interest, or for the proper regulation of a central depository.

Duties of a central depository

51.(1) A central depository shall –

- (a) as far as is reasonably practicable, 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) A director of a central depository has a duty 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 this duty and a director's duty under any other law the duty under this act shall prevail notwithstanding any other provision of law.

Cancellation of license held by a central depository

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

- (a) cancel the license granted under subsection (6) of section 50 with effect from the date specified in the notice; or
- (b) direct the central depository to cease to provide or operate, 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 license 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 Sri Lanka or elsewhere;
- (c) the central depository has contravened any term or condition of its license 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 50 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 Sri Lanka or elsewhere, in relation to or in respect of any property of the central depository;
- (h) the central depository has, whether within Sri Lanka or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (i) the central depository has on its own accord applied to the Commission to cancel the license granted to it and the Commission, thinks it fit to do so.

(3) For the purposes of subsection (2)(a), 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 of two weeks unless it has obtained the prior approval of the Commission to do so.

(4) Notwithstanding the cancellation of a license 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 for the purpose of –

- (a) closing down the operations of the central depository or ceasing to provide the services specified in the notice; or
- (b) protecting the depositors or 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 clearing house until a new board of directors is appointed.

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

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

(8) A central depository which is aggrieved by the decision of the Commission made under subsection (1) may, within 14 days after the clearing house is notified of the decision, appeal to the Minister.

(9) Notwithstanding the lodging 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 Commission shall give public notice of any cancellation of the license or directives issued under this section.

Effect of cancellation of license to a central depository

53. Any cancellation of license or directive issued under section 52(1) shall not operate so as to –

- (a) avoid or affect any agreement, transaction or arrangement entered into on the computer system operated by the central depository, whether the agreement, transaction or arrangement was entered into before or, where section 52(4) applies, after the cancellation of the license or issuance of the directive under section 52(1); or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

Securities Account

54. 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 the nominee.

Book Entry securities lodged with the central depository

55. All dealing of securities held in a central depository, shall be made by means of book-entries in the accounts of the central depository without the physical delivery of scrips.

Record of entry in depositor's account

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

Effect of securities held in trust by the central depository

57.(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 shares, 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 Articles of Association and the Companies Act, No. 07 of 2007 as the case may be, as if he is the holder of those securities.

(2) the rights and duties attached to the securities maintained in the accounts of the central depository held by a nominee shall be exercised by the beneficiary identified in the respective account held in the central depository as if he is holder of those securities; and

(3) The appointment of a liquidator, receiver or manager 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.

Validation

58. Any registration of securities by the 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 and the rules made thereunder."

Chapter 5 – General Provisions

Rules of a market institution

59.(1) The rules of a market institution shall be approved by the Commission and such rules of the market institution approved by the Commission shall be deemed to be, and 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.

(2) The market institution, each issuer of securities, each trading participant, clearing member and depository participant respectively shall be deemed to have agreed to observe, and perform the obligations under the provisions of the rules that are in force for the time being, so far as those provisions are applicable to the market institution, issuer or trading participant, clearing member or depository participant as the case may be.

(3) In this section "issuer", in relation to any securities, means a person who issued or made available, or proposes to issue or make available, the securities, being securities that are cleared or settled by the clearing house.

(4) 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.

(5) Where a market institution proposes to amend its rules, shall forward to the Commission in writing the proposed amendment, whether by rescission, alteration or addition to such rules.

(6) The Commission shall, after hearing the market institution, and 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 allowed or disallowed; and if disallowed reasons for the rejection shall be conveyed in writing to any market institution by the Commission. Where the Commission fails to revert to the market institution within ninety days such rules shall take effect immediately on the expiration of ninety days.

(7) Upon receipt of notice under subsection (6), the market institution shall give immediate effect to such rule.

(8) Notwithstanding the provisions contained in subsections (6) and (7) of this section, the Commission may amend the rules of any market institution at any time by forwarding the proposed amendment received by the Commission under sub-section (5) and such rules shall take effect with immediate effect.

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

60. Where any person is under an obligation to comply with, observe, enforce or give effect to the rules of a market institution fails to do so, Court may on the application of the Commission, the market institution or a person aggrieved by the failure, and after giving the first mentioned person an opportunity to be heard, make an order directing the first mentioned person to comply with, observe, enforce or give effect to the rules of a market institution.

Control of substantial shareholders of a market institution

61.(1) No person shall enter into any agreement or arrangement to acquire any voting shares of a market institution by which, if the agreement or arrangement is carried out, he would acquire, together with any other voting shares of the market institution which were then already held by that person together with any other person acting in concert with him, voting shares of five per centum or more of the aggregate of all the voting shares in a market institution, without first obtaining the prior written approval of the Commission.

(2) The Commission may, at any time by gazette, vary the threshold referred to in subsection (1) after taking into consideration –

(a) the stage of securities market development; or

(b) public interest

(3) An application for 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.

(4) The Commission may require the applicant –

(a) to give it further information in connection with an application in such form and manner 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.

(5) The Commission may grant its approval subject to such terms and conditions as it thinks fit to impose.

Power of the Commission upon contravention of section 61

62.(1) Notwithstanding any of the provisions in any articles of association of a market institution or the Companies Act, No. 07 of 2007, or any other law, but subject to the provisions of this Act, where the Commission is satisfied that any person has contravened the provisions of section 61, it may make a preliminary order in writing, imposing one or more of the following prohibitions or restrictions as may be applicable or appropriate in the circumstances of the contravention in respect of any shares which are the subject of the contravention:

- (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 their holder; 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 preliminary order made under subsection (1) shall be served on the defaulting person as soon as is practicable, and may be publicized in such manner as the Commission thinks fit, if in the opinion of the Commission it needs to be publicized.

(3) A preliminary order shall be binding on the defaulting person, on any person for the time being holding the voting shares to which such order applies, and on any other person specified in the order or to whom the order is directed.

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

(5) The Commission may, after considering the representations made under subsection (4), either confirm, set aside or vary the preliminary order in such manner as it thinks fit.

(6) Where the Commission confirms a preliminary order, it may make an order to the holder of the shares to which the preliminary order applies to, directing such holder to dispose of the shares.

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

(8) Any transaction, including any agreement or arrangement in relation to any shares which is in contravention of any preliminary order or of any order confirmed under subsection (5) or of any instruction given or directive issued by the Commission under subsection (7), shall be void and of no force or effect in law.

(9) A person who contravenes any preliminary order, any order confirmed 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 fifty million rupees or to imprisonment for a term not exceeding ten years.

(10) The Commission may decide that a person has contravened section 61(1) notwithstanding whether or not there is a prosecution against such person for such contravention.

Appointment of directors to a market institution

63.(1) Notwithstanding any provisions in the Companies Act, No. 07 of 2007, no person shall accept appointment, reappointment, election or re-election as a director or chief executive of a market institution unless the Commission's prior approval is obtained.

(2) Where the approval or recommendation of the Commission is required under subsection (1), the Commission shall not recommend or approve, as the case may be if -

- (a) any proposed director or chief executive is an undischarged bankrupt, whether within Sri Lanka or elsewhere;
- (b) a judgment debt against the proposed director or chief executive has not been satisfied in whole or in part;
- (c) the proposed director or chief executive -

- (i) has been convicted, whether within Sri Lanka or elsewhere, 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) has been subject to any administrative action taken by the Commission under this Act;
 - (iv) has been convicted of an offence involving moral turpitude; or
 - (v) likely to have a conflict of interest
- (d) the Commission is not satisfied that the proposed director or chief executive is a person of integrity or standing and is fit and proper as defined in subsection (2) to be a director or chief executive of a market institution.

(3) The Commission shall have regard to the following criteria in considering the approval of appointment of a proposed director or chief executive of the market institution;

- (i) The person has a satisfactory past performance or expertise in the nature of the business being conducted;
- (ii) The person has an appropriate range of skills and experience to understand operate and manage the activities regulated by the SEC;
- (iii) The person has the technical knowledge and ability to perform the specified duties for which they are engaged in including recognized professional qualification and membership of relevant professional institutions.

(4) The criteria specified in the appointment of directors in subsection (2) and (3) shall *mutatis mutandis* apply to chief executive officer, manger or controller of a market intuition.

Rights of an exchange or a clearing house

64. Any contract entered into by a market institution to the extent of its inconsistency with the provisions of this Act or any rules made thereunder, or the rules of a stock exchange, derivatives exchange or clearing house, shall render unenforceable:

- (a) any rights to be conferred on an exchange or a clearing house in relation to securities as the case maybe under this Act or any rules made thereunder;

- (b) any rights to be conferred on a party to securities entered into a securities market of an exchange or such other market as licensed under this Act or any rules made thereunder, or the rules of an exchange or a licensed clearing house as the case may be;
- (c) anything done or omitted to be done under or in relation to securities entered into a securities market of an exchange or such other market as licensed under this Act or any rules made thereunder, as the case maybe.

Provision of assistance to the Commission

65.(1) A market institution shall provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires including the furnishing of such returns, and the provision of such information relating to the operations of the market institution as the Commission or such person may require for the proper administration of this Act.

(2) A person acting on behalf of, or authorized by, the Commission shall be entitled at all reasonable times to full and free access for any of the purposes of this Act to the trading facility of an exchange.

(3) A person who refuses or fails, without lawful excuse, to allow a person acting on behalf of, or authorized by, the Commission, access in accordance with subsection (2) to the trading facility of an exchange commits an offence under this Act.

Annual reports

66.(1) A market institution shall file with the Commission, within 5 months of its balance sheet date, an annual report which shall include –

- (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.

(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 annual report shall include the above specified information in addition to what is required under the Companies Act, No.07 of 2007.

Duties of an auditor

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

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the market institution, to a material extent;
- (b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act 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) Subsection (2) shall not restrict or affect any right, privilege or immunity that the auditor of a market institution, as the case may be may have, apart from this section, as a defendant in an action for defamation.

(4) 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;

- (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.

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

Obligation to submit periodic reports

68. 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.

Payment of annual fee

69. A market institution shall pay to the Commission a specified annual fee.

Prohibition against holding out

70. Unless the Commission otherwise permits, a person shall not hold out as a stock exchange, a derivatives exchange, a clearing house or a central depository and shall not take or use or by inference adopt the name, title or description of "stock exchange", "derivatives exchange", "futures exchange", "stock market", "derivatives market", "futures market", "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, clearing house or a central depository.

Power of the Commission to review its own decision

71.(1) A person who is aggrieved by the decision of the Commission may make an application to the Commission to review its decision within thirty days after the aggrieved person is notified of such decision.

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

Part III

TRADE IN SECURITIES

Object and purpose of this Part

72. The object and purpose of this Part shall be –

- (a) to regulate trade in securities;
- (b) to ensure the disclosure of financial information by public listed companies;
- (c) to require auditors to disclose financial irregularities;
- (d) to license market intermediaries and register their representatives; and
- (e) to protect clients' assets;

Chapter 1 – Trade in Securities

Offer of Securities

73. A person shall not make a public offer of securities unless such offer is made through a prospectus or a document issued in terms of the rules prescribed by the Commission for the purposes of solicitation of funds from the public.

Exempt securities

74. The Commission may exempt, by way of an Order published in the gazette, subject to specific terms and conditions as may be prescribed therein, any securities or any class of securities by reference to type, volume, value, limited character and nature from the provisions of this Act except securities of listed public companies or unlisted securities traded on a platform established by a recognized market operator as provided in Part IV of this Act.

Approval of the Commission for issue of securities

75.(1) Any person who makes a public offer of securities which is coming in for a listing on an exchange shall obtain the approval of the Commission or any person authorized on their behalf by the Commission.

(2) A listed public company shall obtain the approval of the Commission or any person authorized by the Commission may grant approval in respect of -

- (1) 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 by way of placement or otherwise;
- (2) rights issues of securities;

- (3) bonus issues of securities; and
- (4) schemes of arrangements, schemes of reconstruction, take over schemes, share option schemes and acquisition of assets by way of issues of securities.

(3) Any approval of such offer of securities shall be communicated within a period of thirty calendar days unless otherwise communicated in writing.

(4) The board of directors of every listed public company shall ensure that the company shall comply with the rules and requirements of the exchange in which it is listed on a continuing basis as long as the company remains listed on the exchange.

Prospectus

76.(1) The prospectus or such other document prepared by a person making an offer to the public prior to a listing on an exchange, shall comply with the requirements specified in the Companies Act, No. 07 of 2007, and any other requirements prescribed by the Commission and in the rules of an exchange.

(2) A person making an issue of securities to the public prior to a listing on a licensed exchange shall lodge a copy of the final prospectus with the Commission or with any person authorized by the Commission for that purpose prior to registration of the prospectus as required under the Companies Act, No. 07 of 2007.

(3) The Commission shall have the power to examine any prospectus or such other document referred to in section 73 when a person makes a public offer of securities for the purpose of solicitation of funds from the public.

Stop order

77.(1) The Commission may direct the issuer not to allot, issue, offer or make an invitation to subscribe for or purchase or sell further securities relating to public offers, where in the opinion of the commission—

- (a) a prospectus or such other document does not comply with or is not prepared as specified in section 76(1) of this Act;
- (b) a prospectus or such other document referred to in section 73 contains a statement or information that is false or misleading or constitutes a material omission; or
- (c) an issuer has contravened any provision of this Act, requirements imposed under the Act, Rules of an Exchange or the Companies Act, No.7 of 2007.

(2) The Commission may make an interim order without giving an opportunity to be heard if the commission considers that any delay in making such an order under subsection (1) would be prejudicial to public interest.

(3) Subject to subsections (2) and (4), 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.

(4) An interim order under subsection (2) 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 interim order made under subsection (2) 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 such other document referred to in section 73 have been made prior to the order made under subsection (1) –

- (a) where the securities have not 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 stop 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
- (b) where the securities have been issued to the applicants, the issue of securities shall be deemed to be void and the issuer or any other person shall–
 - (i) 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 stop 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; and
 - (ii) take necessary steps to effect the order.

(7) Notwithstanding subsection (6), the Commission shall not serve a stop order if any of the securities to which the prospectus or such other document referred to in section 73 relates have been listed on an exchange and trading in them has commenced.

Purchase, sale or transfer of securities

78.(1) A person holding securities in a public company listed on a stock exchange shall not buy, sell, gift or otherwise deal in such securities off the trading floor without the prior approval of the Commission except in compliance with the trading procedure adopted by such stock exchange;

(2) Notwithstanding anything to the contrary in subsection (1) a person may gift any such securities to a relation otherwise that in compliance with such trading procedure if he gives prior notice to the Commission and the exchange, of the particulars relating to the proposed gift.

(3) In this section "relation" means a parent, spouse, child (including step children) or sibling (including step brother or step sister) of that person or the spouse of a child of that person.

Powers of the Commission

79.(1) Where it appears to the Commission that;

- (a) there are circumstances suggesting from the disclosures made to the public that the business of a listed public company has been conducted –
 - (i) for a fraudulent or unlawful purpose;
 - (ii) in a manner that adversely affects the affairs of the company;
or
 - (iii) in a manner prejudicial to public interest.
- (b) there are circumstances suggesting that a company was listed for a fraudulent or unlawful purpose;
- (c) there are circumstances suggesting that the persons concerned with the listing of a company or the management of its affairs in relation to the listing or management of its affairs have been guilty of fraud, wrongdoing or other misconduct towards it; or
- (d) there are circumstances suggesting 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 , rules or regulations made there under or as may reasonably expected to be released to the public,

the Commission may issue directives;

- (i) to the directors of the listed public company; or
- (ii) to a listed public company;

requiring a listed public company to produce the documents, electronic records or other information specified in the directive at a specified time and place.

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

(4) The Commission or authorized person may require production of documents and electronic records from a listed public company under this section. The Commission or authorized person may also require production of those documents and electronic records from a person who appears to the Commission or authorized person to be in possession of them and;

(a) Where such documents or electronic records are produced to require the public listed company—

- (i) to take copies of them or extracts from them; and
- (ii) 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 any of them;

(b) where the records and documents and electronic records are not produced, the person required to produce them to provide an explanation of any of them.

(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.

Duty not to furnish false information to the Commission

80.(1) A person who furnishes information or cause information to be furnished to the Commission under this Act, regulations or rules 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) lodges with 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.

Duty not to make false statements to market institutions

81. A person with intent to deceive, makes or furnishes, or knowingly and willfully authorizes 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 or rules made there under shall be guilty of an offence under this Act.

Power of the Commission to issue directives to listed public companies

82. (1) Where it appears to the Commission that a listed public company has contravened or failed to comply with any provision of the Act, regulations, rules or directives in purported compliance with such provisions of the Act, regulations, rules or directives, has furnished the Commission with information that is false, inaccurate or misleading, the Commission may issue in the public interest a directive to the listed public company-

- (a) to cease and desist from the breach of this Act, regulations, rules or directives made thereunder;
- (b) to do or refrain from doing any matter as specified under this Act, regulations, rules or directives made thereunder; or
- (c) with respect to any other matter that the Commission considers necessary in the exercise of its powers under this Act, regulations, rules made thereunder;

Appointing Directors or Chief Executive Officer

83.(1) A listed public company shall maintain the status of listed public companies on the exchange as specified in the rules of an exchange.

(2) The directors or chief executive officer of the listed public company shall comply with the qualification criteria specified by the Commission or in the rules of an exchange in appointing or maintaining directors or chief executive officer to the listed public company.

Duties of auditors of listed public company

84.(1) If an auditor, in the ordinary course of the performance of his duties as an auditor of a listed public company is of the professional opinion that there has been a breach or non-compliance with any requirement or provision of this Act, regulations or rules made thereunder or a breach of any of the rules of a licensed exchange or any matter which may adversely affect to a material extent the financial position of the listed public company, the auditor shall immediately report such matter or non compliance to the audit committee in writing to rectify and if no remedial measure is taken within one week thereof , refer the matter to the board of directors in writing to rectify the breach or deter the commission of a breach where it has not yet happened.

(2) if no action is taken under the preceding section by the board of directors to rectify the breach or non-compliance within one week, the auditor shall submit a written report on the matter immediately thereupon–

- (a) in the case of a breach or non-compliance with any requirement or provision of this Act, regulations, rules or directives issued thereunder, to the Commission;
- (b) in the case of a breach or non-compliance with the rules of an exchange, to the relevant exchange and the Commission; or
- (c) in the event an auditor becomes aware of actual or intended conduct of the company which the auditor has reason to believe would constitute an imminent breach of a law or regulation or commission of a fraudulent act which may cause substantial harm to the financial position of the listed public company to a material extent to the relevant exchange and 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 intended 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 listed public company 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 listed public company in such manner or to such extent as the Commission may specify;

- (c) carry out any specific examination or establish any procedure in any particular case;
- (d) submit a report on any matter referred to in paragraphs (a) to (c); or
- (e) submit 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.

(4) The auditor shall comply with any requirement of the Commission under subsection (3) 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.

(5) 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.

Prohibition against undue influence

85.(1) A person shall not influence, coerce, mislead or authorize 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

Definition of market intermediaries

86. In this Part, “market intermediary” has the same meaning assigned to it in section 2 of this Act.

Requirement to be licensed with the Commission

87.(1) Any person who carries on or intends to carry on business as a market intermediary shall hold a license issued for that purpose by the Commission.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding ten million rupees or to imprisonment for a term not exceeding 5 years or to both.

Application for a license or renewal of a license as a market intermediary

88.(1) An application for the purpose of a license under this Section or renewal of the license under subsection (5) of this section shall be made to the Commission in such form together with such documents and such fee as may be specified by the Commission.

(2) The Commission may require an applicant –

- (a) to furnish further information in connection with an application in such form and manner 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.

(4) The Commission shall not be bound to deal further with the application until the requirements under this section are satisfied.

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

(6) Where an applicant submits an application for renewal of license after the expiry of its license, the Commission may impose a late renewal fee not exceeding 5 per centum of the licensing fee as may be specified for every day the renewal is late.

(7) The Commission may grant or renew a license for the purposes of this Part, subject to such conditions and or restrictions as it thinks fit.

Grounds for refusal to grant or renew a license

89.(1) Where an application is made for the grant or renewal of a license under this Part, the Commission may refuse the application on any of the following grounds;

- (a) the application was not made in accordance with this Act;
- (b) the applicant has failed to comply with any requirement of this Act 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 an undischarged insolvent;
- (e) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (f) a receiver, a receiver and manager or an equivalent person has been appointed within Sri Lanka or elsewhere or in respect of any property of the applicant;
- (g) the applicant has, whether within Sri Lanka or elsewhere 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, managers or controller—
 - (i) has been convicted, whether within Sri Lanka or elsewhere of an offence involving fraud or dishonesty or the conviction of which involved a finding that he acted fraudulently or dishonestly;
 - (ii) has been subjected to any administrative action taken by the Commission under this Act;
 - (iii) has been convicted or has been compounded of an offence for which he has been charged under this Act or securities laws administered outside Sri Lanka;
 - (iv) has contravened any provision made by or under any 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;
 - (v) has engaged in any business practices appearing to the Commission that may be deceitful or oppressive or otherwise improper (whether unlawful or not) or otherwise reflect discredit on its method of conducting business;
 - (vi) has engaged in or has been associated with any other business practices or otherwise conducted itself or himself in such a way as to cast doubt on its or his competence and probity; or
 - (vii) is an undischarged bankrupt whether within Sri Lanka or elsewhere;

- (i) the Commission has reason to believe that the applicant or any of its directors, chief executive 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 license; and there exists circumstances which are likely to;
 - (i) lead to the improper conduct of business by the applicant or by any of its directors, chief executive or controller; or
 - (ii) reflect discredit on the manner of conducting the business of the applicant;
- (l) the Commission has reason to believe that the applicant or any of its directors, chief executive or controller will not carry on the business efficiently, honestly or fairly; or
- (m) the Commission is of the opinion that it would be contrary to the interests of the public to grant or renew the license.

(2) The Commission shall not refuse the renewal of a license without giving the applicant an opportunity to be heard.

Minimum financial requirement

90. A market intermediary shall not carry on business for which it is licensed under this part, 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.

Requirement to be registered with the Commission

91.(1) A person who intends to deal with clients for and on behalf of a market intermediary shall register with the Commission for that purpose.

(2) For the purposes of seeking registration under subsection (1), a market intermediary shall make an application to the Commission on behalf of that person with the Commission.

Application for registration or renewal of registration

92.(1) An application of a person for the purpose of registration or renewal of the registration shall be made to the Commission in such form together with such documents and such fee as may be specified by the Commission.

(2) The Commission may require an applicant –

- (a) to furnish further information in connection with an application in such form and manner 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) The Commission shall not be bound to deal further with the application until the requirements under this section are satisfied.

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

(5) Where an applicant submits an application for renewal of registration after the expiry of its registration, the Commission may impose a late renewal fee not exceeding 5 per centum of the registration fee as may be specified for every day the renewal is late.

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

Grounds for refusal to register or renew registration

93.(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:

- (a) the application was not made in accordance with section 91;
- (b) the applicant has failed to comply with any requirements of this Act;
- (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 an undischarged insolvent or an undischarged bankrupt whether within Sri Lanka or elsewhere;
- (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 Sri Lanka or elsewhere of an offence involving fraud or other dishonesty or the conviction of which involved a finding that he acted fraudulently or dishonestly;
 - (ii) been subjected to any administrative action taken by the Commission under this Act;
 - (iii) been convicted or compounded of an offence under this Act or securities laws administered outside Sri Lanka;
 - (iv) contravened any provision made by or under any written law whether within Sri Lanka or elsewhere 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;
 - (v) engaged in any business practices appearing to the Commission to be deceitful or otherwise improper (whether unlawful or not) or otherwise reflect discredit on the method of conducting business; or
 - (vi) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on the competence and soundness of judgment;
- (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;
- (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 the public to grant or renew the registration.

(2) The Commission shall not refuse the renewal of registration without giving the applicant an opportunity to be heard.

Power to vary conditions or restrictions

94. The Commission may, at any time by notice in writing to a market intermediary or registered person, vary any condition or restriction or impose such further condition or restriction as it considers necessary for the protection of investors.

Duration of license or registration

95.(1) A license that has been granted under this Part shall be valid for a period of twelve months from the date of issue of the license.

(2) A license 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.

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

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

False and misleading statements to the Commission

96.(1) No person shall, 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) shall commit an offence and shall on conviction be liable to a fine not exceeding 10 million rupees or to imprisonment for a term not exceeding 5 years or both.

Duty to notify the Commission

97.(1) Where a market intermediary proposes to alter material particulars already furnished or undergoes or intends to undergo a change from the particulars specified in the application for a license or the renewal of a license, 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; and

(2) Where a registered person proposes to alter any particulars already furnished or undergoes or intends to undergo a change from the state 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.

Prohibition against holding out as an agent

98.(1) 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 authorized by the Commission to act as an agent of a market intermediary to carry on such activity.

Cancellation or suspension of license or registration

99.(1) The Commission shall, cancel or suspend a license granted to a market intermediary under this Part, where the Commission is satisfied that –

- (a) there exists a ground on which the Commission may refuse an application for a license;
- (b) the market intermediary has contravened any condition or restriction in respect of its license or any directive issued to him by the Commission under this Act; or
- (c) the market intermediary has contravened any rules binding upon him as the case may be.

(2) Before the cancellation or suspension of a license granted to a market intermediary in terms of the preceding subsection the market intermediary shall be given an opportunity to be heard.

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

(4) The cancellation of a license 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.

(6) The provisions of subsections (1) 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 under this Part.

Trading in securities by market intermediaries

100. 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 ;
 - (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.

Lending and borrowing of securities without the consent of the client

101. A stock broker shall not lend or arrange for the 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.

Duties of auditors of a market intermediary

102.(1) If an auditor, in the ordinary course of the performance of his duties as an auditor of a market intermediary, is of the professional opinion that there has been a breach or non-compliance of any requirement or provision of this Act, regulations or rules made thereunder or a breach of any of the rules of a market institution or any matter which may adversely affect to a material extent the financial position of the market intermediary, 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 breach or non-compliance of any requirement or provision of this Act, regulations, rules or directives issued there under, 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 the Commission; or
- (c) in any other case which adversely affects to a material extent the financial position of the market intermediary, to the relevant market institution and 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 intended 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 specify;
- (c) carry out any specific examination or establish any procedure in any particular case;
- (d) submit a report on any matter referred to in paragraphs (a) to (c); or
- (e) submit 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.

(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 – Protection of clients' assets

Interpretation

103. 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 from 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.

Protection of client’s assets

104(1) A market intermediary shall, to the extent that it receives money or other assets from or on account of a client –

- (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 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 without his written consent;
- (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 (4) in relation to that client’s money or other assets.

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

(4) Except as otherwise provided in this section or the rules made under this section, all money or other assets received from or on account of clients or deposited in the manner prescribed under subsection 2 -

- (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.

(5) Any market intermediary who, without reasonable excuse, contravenes subsection (2), subsection (4) or any rules made under subsection (3), shall be guilty of an offence.

Rules on business conduct

105.(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

Recommendations

106.(1) A market intermediary or a registered person shall not make a recommendation with respect to any securities to a person who 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 person and also caution that the value of securities may fluctuate.

(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 person 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 person is accurate and complete;
 - (b) he has given such consideration to, and conducted such investigation of, the subject-matter of the recommendation as is reasonable in all the circumstances; and
 - (c) the recommendation is based on the consideration and investigation referred to in paragraph (b).
- (3) Where –
- (a) a market intermediary or registered person in making a recommendation to a person contravenes subsection (1);
 - (b) the person in reliance on the recommendation does a particular act or refrains from doing a particular act; and
 - (c) the person suffers loss or damage as a result of doing that act or refraining from doing that act, as the case may be without prejudice to any other remedy available to that person,

the market intermediary is liable to compensate any direct loss or damage .

(4) In this section, a reference to the making of a recommendation is a reference to the making of a recommendation expressly or by implication.

(5) This section shall not apply to any market intermediary or class of market intermediary in such circumstances or under such conditions as may be specified by the Commission.

Disclose certain interests in securities

107.(1) Where a market intermediary or registered person sends a circular or other similar written communication in which he makes a recommendation, whether expressly or by implication, with respect to any securities, he shall include in the circular or other communication, in type not less legible than that used in the remainder of the circular or other communication, a concise statement of the nature of any interest in, 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 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 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 deemed to have an interest in the acquisition or disposal of the securities; and
 - (c) notwithstanding section (1) or (2)(b) 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 communication to which subsection (1) applies, the market intermediary shall preserve a copy of the circular or other communication for 6 years.

(5) For the purposes of this section, a circular or other 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 against the Act.

(7) For the purpose of this section market intermediary means a stockbroker, derivatives broker, corporate finance advisor, investment analyst, investment manager, financial planner, managing company or underwriter and any other category of market intermediary as may be determined by the Commission.

Internal procedures and processes

108.(1) A market intermediary shall establish and maintain reasonable procedures and processes in writing that will enable the market intermediary to monitor compliance with the Act.

(2) A market intermediary shall establish, and maintain reasonable procedures and processes in writing that will enable the market intermediary to monitor risk to its business.

Register of market intermediaries and registered persons

109.(1) The Commission shall keep in such form and manner as it may determine, a register of market intermediaries which shall be made available for public inspection in such manner as it may determine.

(2) The register for Market Intermediary shall contain –

- (a) the name of the market intermediary;
- (b) the business address of the market intermediary;
- (c) the type of license held by the market intermediary;
- (d) the date the license was granted to the market intermediary;
- (e) the names of registered persons acting for or employed by the market intermediary; and
- (f) any other matter that the Commission considers appropriate.

(3) The Commission may make appropriate annotations in the register with respect to a market intermediary where the license held by the market intermediary is cancelled or suspended under this Act.

PART IV

TRADE IN UNLISTED SECURITIES

Object and purpose of this part

110. The object and purpose of this part shall be –

- (a) to provide a platform through a recognized market operator for sale and purchase of unlisted securities in Sri Lanka to local and overseas investors in a transparent manner; and
- (b) to provide information relating to unlisted securities to local and overseas investors through a recognized market operator in a transparent manner.

Chapter 1 – Establishment of a recognized market operator

Establishment of a recognized market operator

111. (1) A person shall not operate as a recognized market operator under this Part unless such person is registered with the Commission and is able to create an interest for trades that takes place outside an exchange in the unlisted market for securities in a transparent manner.

(2) The terms and conditions of trading and the type of investors permitted to trade on such platform and the level of disclosures required to be made by parties to a transaction in unlisted securities shall be specified by the Commission in the rules made by the Commission from time to time.

Recognized market operator

112.(1) For the purposes of the preceding section, the Commission may upon application made by a person, register the person as a recognized market operator subject to any terms and conditions as the Commission considers necessary.

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

Application for registration

113.(1) An application to be registered as a recognized market operator shall be accompanied by such documents and information and in such manner as the Commission may specify.

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

(3) An application by any person for registration under this chapter shall provide documents evidencing the arrangement made by such platform for the clearance and settlement of the trades executed on the platform to the satisfaction of the Commission.

(4) An application for registration as a recognized market operator must be a body corporate.

Chapter 2 – Role of a recognized market operator

Functions and duties of recognized market operator

114. The functions and duties of a recognized market operator shall be -

- (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) comply with any direction issued by the Commission, whether of a general or specific nature; and
- (e) 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.

Trading on a platform

115. Any person buying and selling securities on a platform shall execute their

orders through trading members admitted by the platform.

Rules to be made by the Commission

116. The Commission shall make rules -

- (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.

Withdrawal of registration

117.(1) Subject to subsection (4), where the Commission is satisfied that it is appropriate to do so in the interest of the investors, in the public interest or for the maintenance of an orderly and fair market, the Commission may, by notice in writing, withdraw the registration with effect from a date that is specified in the notice.

(2) Such notice referred to in subsection (1) shall state the grounds in support of the withdrawal.

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

- (a) closing down the operations of the recognized market operator to which the withdrawal relates; or
- (b) protecting the interest of the investors or the public interest.

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

(5) The Commission shall not exercise its power under subsection (1) in relation to a recognized market operator unless it has given the recognized market

operator an opportunity to be heard.

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

- (a) avoid or affect any agreement, transaction or arrangement entered into by the recognized market operator whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the registration under subsection (1); or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

Review of the performance of a recognized market operator

118.(1) The Commission may from time to time review the performance of a recognized market operator under this Part.

(2) The Commission may have regard to the following conditions in reviewing the status of the recognized market operator;

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

(3) The Commission shall not exercise its powers under the preceding section without giving the recognized market operator an opportunity to be heard.

Application of the provisions of the Act to unlisted securities

119.(1) The provisions of this Act shall *mutatis mutandis* apply to a sale, purchase and transfer of unlisted securities established on a platform by a recognized market operator except Part II and Part VI of this Act dealing with Market Institutions and Finance.

(2) The rules relating to unlisted securities made by the Commission under this Part shall prevail over any other rules made by the Commission.

PART V
MARKET MISCONDUCT

Object and purpose of this Part

120. The object and purpose of this Part shall be –

- (a) to prevent false trading, market rigging and market manipulation with a view to establishing a fair, orderly and transparent capital market; and
- (b) to prevent insider trading with a view to establishing a fair, orderly and transparent capital market.

Application of this Part

121. This Part shall apply to–

- (a) in respect of securities –
 - (i) acts or omissions occurring within Sri Lanka in relation to securities of any corporate entity which is formed or is carrying on business or is listed within or outside Sri Lanka; and
 - (ii) acts or omissions occurring outside Sri Lanka in relation to securities of any corporate entity which is formed or is carrying on business within Sri Lanka; and
- (b) in respect of derivatives -
 - (iii) acts occurring within Sri Lanka in relation to derivatives, whether traded within or outside Sri Lanka; and
 - (iv) acts occurring outside Sri Lanka in relation to derivatives traded within Sri Lanka.

Chapter 1 – Prohibited conduct

False trading and market rigging transactions

122.(1) Subject to section 127, a person shall not create, or cause to create, or do anything that is intended to create a false or misleading appearance of active trading in securities on an exchange within Sri Lanka or a false or misleading appearance with respect to the market for or the price of any such securities.

(2) A person shall not by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress, or cause fluctuations in the market price of any securities.

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

- (a) 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 commits an offence; or
- (b) makes or causes to be made an offer to buy or sell any securities at a specified price where he has made or caused to be made or knows that a person associated with him has made or caused to be made an offer to purchase the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price commits an offence.

(4) In dealing with a contravention of subsection (3), it is a defence for a person to establish that–

- (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 in an exchange; and
- (b) he did not act recklessly, whether or not he created a false or misleading appearance of active trading in an exchange.

(5) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.

(6) In dealing with a contravention of subsection (2) it is a defence if the person establishes that the change in the beneficial ownership in relation to purchase or sale of securities did not intend to create a false or misleading appearance with respect to the market for, or the price of securities.

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

- (a) a reference to the making of an offer to sell or purchase securities; and
- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase securities.

Stock market manipulations

123.(1) Subject to section 127, a person shall not carry out or be involved in carrying out, either directly or indirectly, any number of 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 stabilising

the price or volume of securities of the company in Sri Lanka, for the purpose *inter alia*, of inducing other persons whether or not such person is 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 includes—

- (a) a reference to the making of an offer to sell or purchase such securities of the company; and
- (b) a reference to the making of an invitation, however expressed that expressly or impliedly invites a person to offer to sell or purchase such securities of the company.

False or misleading statements

124. A person shall not make a statement, or disseminate information that is false or misleading in a material particular and is likely to have the effect of raising, lowering, maintaining or stabilising the market price or volume of securities, if –

- (a) he does not take reasonable care whether the statement or information is true or false; or
- (b) he knows or could reasonably be expected to have known that the statement or information is false or misleading in a material particular.

Fraudulently inducing persons to deal in securities

125.(1) A person shall not induce or attempt to induce another person to trade 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 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) In a contravention of paragraph (1)(d) in relation to the recording or storing of information, it shall be a defence if the defendant establishes that when the information was recorded or stored, he had no reasonable grounds for expecting that the information would be available to any person.

Use of manipulative and deceptive devices

126. It shall be unlawful for any person, directly or indirectly in connection with the subscription, purchase or sale of any securities –

- (a) to use any device, scheme or artifice to defraud;
- (b) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or
- (c) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements.

Exempt certain class of transactions

127. The Commission may make rules to exempt any particular class, category or description of persons or any particular class, category or description of transactions relating to securities to which section 122 or 123 does not apply.

Penalty for offences

128. A person who contravenes section 122, 123, 124, 125 or 126 commits an offence and shall be punishable on conviction after summary trial to imprisonment for a term not exceeding ten years or to a fine of not less than ten million rupees and not exceeding hundred million rupees or both.

Chapter 2 – Insider Trading

Information

129. In this Chapter, "information" includes –

- (a) matters of supposition and other matters relating to listed public companies that are insufficiently definite to the public;
- (b) matters relating to the intentions, or likely intentions of a person;
- (c) matters relating to negotiations or proposals with respect to –
 - (i) commercial dealings; or
 - (ii) dealing in securities;
- (d) information relating to the financial performance of a company;
- (e) information that a person proposes to enter into or has previously 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 relating to the future.

Information generally available

130. (1) In this Chapter, information is generally available if the information has been made known in a manner that would or would tend to bring it to the attention of reasonable persons who invest in securities of a kind whose price or value might be affected by the information and since it was so made known, a reasonable period for it to be disseminated among and assimilated by such persons has elapsed.

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

Material effect on price or value of securities

131. In this Chapter, information on becoming generally available would or would tend to have a material effect on the price or value of securities refers to such information which would or would tend to, on becoming generally available influence reasonable persons who invest 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.

Trading in securities

132. In this Chapter, where trading of a security on a securities market of an exchange is suspended, which is ordinarily permitted on that exchange, shall not affect such securities trading on that securities market other than on that exchange.

Reference to "procure"

133. In this Chapter, the term "procure" means, if a person incites, induces, encourages or directs an act or omission by another person, the first-mentioned person is deemed to procure the act or omission by the other person.

Prohibited conduct of person in possession of inside information

134.(1) A person is an "insider", whether such person is connected to respective company or not, if that person –

- (a) possesses information that is not generally 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
- (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 information in subsection (1) relates –

- (a) acquire or dispose of or enter into an agreement for or with a view to the acquisition or disposal of such securities; or
- (b) procure, directly or indirectly, an acquisition or disposal of or the

entering into an agreement for or 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, 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 in subsection (1) relates; or
- (b) procure 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 in subsection (1) relates.

(4) A person who contravenes subsection (2) or (3) commits an offence and shall be punished on conviction to imprisonment for a term not exceeding ten years and to a fine of not less than ten million rupees.

(5) The Commission may make rules in respect of any particular class, category or description of persons or any particular class, category or description of transactions, relating to securities, to whom or which this section does not apply.

Information in possession of an officer of a company

135.(1) In this Chapter a company is deemed to possess any information-

(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 subsection 134(3); or
 - (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 where a person in possession of the information is an insider.
- (3) A company does not contravene subsection 134(2) by entering into the transaction or agreement at any time merely because of information in the possession of the company if-
- (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 or involved in the transaction or agreement; and
 - (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 or was not involved in the transaction or agreement.

(4) In this section "related company" means any subsidiary, associate or holding company or a subsidiary of the holding company of any body corporate.

Information in possession of a partner or an employee of partnership

136.(1) In this Chapter, a partner of a partnership is deemed to possess any information –

- (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, 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) 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.

(3) A partner of a partnership does not contravene Section 134(2) by entering into a transaction or agreement referred to in that subsection at any time merely because one or more (but not all) of the partners, or an employee or employees of the partnership were in actual possession of information at the time if-

- (a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:
 - (i) a partner who is taken to possess the information merely because another partner or an employee of the partnership was in possession of the information; or
 - (ii) an employee of the partnership who was not in possession of the information.
- (b) the partnership had in operation at that time agreements that could reasonably be expected to ensure that-

- i. the information was not communicated to a partner or an employee or one of the partners or employees who was or were involved in or made the decision with respect to entering into the transaction or agreement in question;
- ii. no advice with respect to the decision to enter into the transaction or agreement was given to that partner or employee by a partner or an employee in possession of the information; and
- 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

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.

- (4) A partner of a partnership does not contravene subsection 134(2) 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.

Exceptions in relation to underwriting and sub-underwriting

137.(1) Subsection 134(2) shall not apply in respect of –

- (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 134(3) 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).

Exceptions in relation to schemes of arrangement

138.(1) Section 134 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, reconstructions and take-over of companies.

(2) Subsection 134(2) 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 clearing house.

(3) Subsection 134(2) shall not apply to an exchange in relation to a sale or purchase of securities where the exchange acts on an instruction from a clearing house.

Exception for a company with knowledge of its intention

139.(1) A company does not contravene subsection 134(2) by entering into a transaction or an agreement in relation to securities other than those of the 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 134(2) by entering into a transaction or an agreement in relation to securities other than those of the 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 became 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 134(2) by entering into a transaction or an agreement on behalf of a company in relation to securities other than those of the 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 became aware of the matters referred to 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.

Exception in relation to an individual

140. An individual does not contravene subsection 134(2) 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.

Unsolicited transaction by market intermediaries

141. A market intermediary who carries on the business of buying and selling of securities on behalf of investors or its representative does not contravene subsection 134(2) 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 –

- (a) the transaction or agreement is entered into under a specific instruction by the other person and was not solicited by a market intermediary carrying on the business of buying and selling securities or its representative;
- (b) the market intermediary carrying on the business of buying and selling 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 carrying on the business of buying and selling securities or its representative.

(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.

Exception in relation to collective investment schemes

142. Subsection 134(2) 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 buy-back 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 or interest.

Parity of information defence

143.(1) A person does not contravene subsection 134(2) if –

- (a) the other party to the transaction or agreement knew, or ought to 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 unrealised gain or possible 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) A contravention of subsection 134(3) where the person communicated information or caused information to be communicated to another person, it shall be a defence-

- (a) if 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 130; or
- (b) if the other party knew or could reasonably have known the information before the information was communicated.

Prosecution need not disprove the defences

144. In a prosecution or civil enforcement action by the Commission against any person for an offence under Section 134, 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 section 135,136, 137, 138, 139, 140, 141, 42 and 143 or any rules made under subsection 134(5) preclude the act from constituting a contravention of subsection 134(2) and (3).

Civil liability for contravention of certain sections

145.(1) A person who suffers loss or damage by reason of or by relying on the

conduct of another person who has contravened section 122, 123, 124, 125, 126 or 134 may recover the amount of loss or damage by instituting civil proceedings 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.

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

Civil action by the Commission

146.(1) Where it appears to the Commission that any person has contravened section 122, 123, 124, 125, 126 the Commission may institute civil proceedings in the court against that person whether or not that person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution institute civil proceedings in the court against that person.

(2) For a proceeding instituted by the Commission under subsection (1) against any person who has contravened section 122, 123, 124, 125 or 126 the Commission may if it considers that it is in the public interest take civil action against such person –

(a) to recover an amount which shall not exceed three times the gross amount of pecuniary gain made or loss avoided by such person; or

(b) to claim civil penalty in such amount as the court considers appropriate having regard to the severity or gravity of the contravention being an amount not exceeding hundred million rupees.

(3) An amount recovered by the Commission in an action under subsection (2) shall be applied -

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

(b) secondly, to compensate persons who have suffered loss or damage as a result of the contravention.

(4) If the Commission considers that it is not practicable to compensate the persons referred to in paragraph (3)(b) in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons 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 (3)(b).

(5) The Commission may in the public interest take any or both of the following actions against an insider, if such insider has acquired or agreed to acquire securities or procured another person to acquire or agree to acquire securities, in contravention of subsection 134(2); or such insider communicated information referred to in subsection 134(1) to another person, in contravention of subsection 134(3), and such securities were permitted to be traded on an exchange, whether or not the insider had been charged with an offence in respect of the contravention or whether or not the contravention had been proved in a prosecution –

- (a) to recover an amount equal to three times the amount being the difference between the price at which the securities were acquired or agreed to be acquired, by the insider or the other person, and the price at which they would likely to have been acquired at the time of the acquisition or agreement, as the case may be, if the information had been generally available;
- (b) to claim civil penalty in such amount as the court considers appropriate having regard to the seriousness of the contravention being an amount not more than hundred million rupees.

(6) The Commission may in the public interest take any action under paragraph (a) or (b) or both against the insider, if such insider has disposed of or agreed to dispose of securities or procured another person to dispose of or agree to dispose of securities in contravention of subsection 134(2) or an insider communicated information referred to in subsection 134(1) to another person in contravention of subsection 134(3), and such securities were permitted to be traded on an exchange whether or not the insider had been charged with an offence in respect of the contravention or whether or not the contravention had been proved in a prosecution:

- (a) recover an amount equal to three times the amount being the difference between the price at which the securities were disposed of, or agreed to be disposed of, by the insider or the other person, and the price at which they would likely to have been disposed of at the time of the disposal or agreement, as the case may be, if the information had been generally available;
 - (b) claim civil penalty in such amount as the court considers appropriate having regard to the seriousness of the contravention, being an amount not more than hundred million rupees.
- (7) (a) Nothing in this section shall be construed to prevent the Commission from entering into an agreement with any person on the basis of an admission of liability to pay the gross amount of pecuniary gain made or loss avoided

subject to the limits provided in subsection(2) for a contravention of any provision of this Part.

(b)If the parties fail to enter into an agreement or fail to perform the obligations under the agreement, any admission of liability referred to in paragraph (a) above shall not be admissible in a subsequent action instituted in a court of law by the Commission.

(8) Any right of action that is conferred under this section shall not affect the right of action that is conferred on a person who has suffered loss or damage referred to in any other section of this Act or under any other law.

PART VI

FINANCE

Object and purpose of this Part

147. The object and purpose of this Part shall be –

- (a) to establish various funds for the proper functioning of the Commission.
- (b) to establish a fund to provide limited compensation to investors who have no other remedy.

CHAPTER 1

FUNDS OF THE COMMISSION

Levy of a Cess

148.(1) There shall be charged, levied and paid a cess at such rates as may be specified by the Minister by Order 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 specified 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

149.(1) There shall be established a fund called the Cess Fund to which shall be credited the proceeds of the Cess imposed under the preceding section.

(2) There shall be paid out of the Cess Fund such sums as may be authorised by the Commission for the purpose of –

- (a) developing the securities market;
- (b) enhancing monies lying to the credit of the Compensation Fund established under this Part; and
- (c) exercising, performing and discharging the powers, duties and functions of the Commission for the purpose of achieving its objectives.

(3) The 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 conserving the Cess Fund.

Fund of the Commission

150.(1) The Commission shall have its own Fund.

(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.
- (c) all such sums of money as may be received by the Commission by way of donations, gifts or grants from any source whatsoever, whether in or outside Sri Lanka; and
- (d) such sums of money as maybe 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) Moneys belonging to the Fund of the Commission may be invested by the Commission in such manner as may be determined by the Commission.

Financial Year

151. The financial year of the Commission shall be the period of twelve months commencing on the first day of January each year.

Audit of Accounts

152.(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 provision 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.

CHAPTER 2 FUND TO PROVIDE COMPENSATION TO INVESTORS

Compensation Fund

153.(1) There shall be established a fund called the Compensation Fund, for the purpose of granting limited compensation to any investor who suffers pecuniary loss as a result of any fraudulent or negligent act of a market intermediary if the investor has no other remedy.

(2) The Compensation Fund may be used by the Commission for the purpose of investor education and to reward whistleblowers entitled to receive such reward under the provisions of this Act as considered necessary by the Commission.

(3) The Compensation Fund shall consist of -

- (a) such sums of money as may be voted upon by Parliament for the purpose of the Fund;
- (b) such sums of money as may be credited to the Fund under the provisions of this Act;
- (c) such sums of money as may be collected as penalties or damages accrued to the Commission under the provisions of this Act;
- (d) such sums of money as may be credited from the Cess Fund as approved by the Commission.

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

Appointment of Compensation Committee

154.(1) The Minister shall appoint from among the members of the Commission, three members who shall comprise the Compensation Committee (hereinafter referred 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

155 and the decision of such Committee on any such assessment or award shall be final and conclusive for the purpose of this Act.

Application for Compensation

155.(1) Any investor who has suffered pecuniary loss as a result of any market intermediary being 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 his claim for compensation. Where the applicant fails to comply with such request, the Committee may disallow his claim.

(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 his claim.

Payment of compensation

156.(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.

(3) The Commission shall make rules relating to the assessment of compensation payable and the assessment of compensation by the Committee under subsection (2) shall be in accordance with such rules.

PART VII

GENERAL

Object and purpose of this Part

157. The object and purpose of this Part shall be -

- (a) to ensure effective implementation of provisions in this Act relating to production of documents, disclosure of information, establishment of a Complaints Management Committee, conducting inquiries and investigations, sharing of information, protection of whistleblowers and the recovery of damages by the Commission on behalf of the investors;
- (b) to ensure efficient implementation and enforcement of provision in this Act relating to offences, compounding of offences, imposition of administrative penalties, through court orders and rules, regulations, repeals, savings and transitional provisions.

CHAPTER 1

PROVISIONS RELATING TO EFFECTIVE IMPLEMENTATION

Production of documents and disclosure of information

158.(1) The Commission or a person authorized by the Commission may by notice in writing require any person within such period as specified in the notice to furnish any information or produce any document or electronic record (other than any information or document which is prohibited from being disclosed or produced under any law which provides for 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 such 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 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) in accordance with the provision of this Act;

- (b) in a court proceeding where the Commission is a party;
- (c) in the course of the discharge of the functions of the Commission; or
- (d) with the consent of the person furnishing such information, document or electronic record.

(4) The consent under paragraph (3)(d) is not required when the person furnishing the information, document or electronic record is being investigated by the Commission for a breach of any of the provision of this Act or any rules or regulations.

Inquiries and investigations

159.(1) The Commission or any person duly authorized by the Commission, may carry out investigations or hold inquiries 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 and for such purpose, summon and call upon any person to appear before it or him 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 investigation or inquiry, where the Commission has reasonable grounds to believe that -

- (a) the transactions in securities are being dealt with in a manner detrimental to investors or the securities market by any person; or
- (b) any market institution, market intermediary, investor or any other person associated with the securities market has violated any of the provisions of this Act or the regulations or the rules made or directives issued by the commission thereunder;

(2) Any person summoned or called upon to appear before the Commission or any person duly authorized by the Commission under subsection (1) may be examined orally and any statement made by the person so examined may be reduced to writing. Every such statement reduced to writing shall be signed by the person so examined provided that prior to signing the same, such statement shall be read to such person 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.

(3) Every person who fails to appear before the Commission or the person authorized, when required to do so under subsection (1) or who refuses to answer any question put to him by the Commission or a person duly authorized by the Commission or who refuses to produce 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 authorized by the Commission shall be

guilty of an offence under this Act and shall on conviction after summary trial before a Magistrate be liable to a term of imprisonment of either description not exceeding ten years or to a fine not exceeding fifty million rupees or to both such imprisonment and fine.

(4) For the purpose of carrying out an investigation or inquiry under subsection (1), the Commission may authorize in writing any officer to enter at all reasonable hours of the day any premises of a market institution or market intermediary and inspect and take copies of any documents or electronic records required to be kept under this Act or under any regulation or rule or directives made under this Act or any other law in respect of such business.

Inquiry by Complaints Management Committee

160.(1) The Commission may establish a Complaints Management Committee to hear and determine complaints by any person relating to the professional conduct or activities or any breach of any provisions of this Act or rules or directives issued by the Commission to a market institution, market intermediary, listed public company registered person or any supplementary service provider.

(2) The Commission or any person duly authorized 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 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 inquiry.

(3) The Commission shall establish appropriate process and procedures for handling complaints, determination of complaints and all matters related thereto.

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

(5) The Complaints Management Committee shall not make any determination without affording such market institution, market intermediary, listed public company, registered person or any supplementary service provider an opportunity of being heard.

(6) Where the Complaints Management Committee determines that a market institution, market intermediary, listed public company, registered person or any supplementary service provider has contravened a provision under this Act, regulation, rule or directive issued under the Act or rules of a market institution, the Commission shall have the discretion to either take appropriate action to give effect to such

recommendations or to refer the matter for further investigation to the appropriate authority.

(7) A party aggrieved by the decision of the Complaints Management Committee may appeal to the Commission for review of the decision.

Registration of auditors

161. All auditors carrying out external audits of accounts of market institutions, market intermediaries and listed public companies should be registered with the Commission on the terms and conditions issued by the Commission. All auditors making an application for registration with the Commission should be registered with the Institute of Chartered Accountants of Sri Lanka prior to making such an application.

Implementation of treaties, MOUs and Resolutions of international organizations

162. The Minister may by way of Regulations give legal effect to any bilateral or multilateral treaty, Memorandum of Understanding (MOU) or Resolution of an international organization to which Sri Lanka has become a State party with any other State or international organization by way of signature, ratification or accession in regard to sharing of information on regulatory functions relating to securities and investors in capital markets.

Sharing of information and cooperation

163.(1) The Commission may at its own initiative or at the request of a public officer or by a police officer by way of a warrant issued by a competent court of law -

- (a) allow a police officer or any public officer to have access to and inspect any property, book, document, article, things or electronic record or otherwise in any form whatsoever which have been produced before, seized, detained or taken possession of by an investigating officer 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 and such police officer or public officer may make use of such copy of such book or document or electronic record in the exercise of his 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 co-operate with any domestic or foreign supervisory authority which may include –

- (a) obtaining any information or document or electronic record from any domestic or foreign supervisory authority; and
- (b) share any information or document or electronic record with any domestic or foreign supervisory authority.

(3) The Commission may, upon receiving a written request from a foreign supervisory authority for assistance to investigate into an alleged breach of a legal or regulatory requirement which the foreign supervisory authority enforces or administers, provide assistance to the foreign supervisory authority by carrying out investigation of the alleged breach or provide such assistance to the foreign supervisory authority as the Commission thinks fit.

(4) In determining whether it is in the public interest to render assistance under subsection (3), the Commission shall have regard to -

- (a) whether the foreign supervisory authority will pay the Commission any cost and expenses incurred for providing the foreign supervisory authority with the assistance; and
- (b) whether the foreign supervisory authority will 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, Registrar of Companies, the Police and any other person exercising regulatory functions.

“foreign supervisory authority” means a foreign authority which exercises functions corresponding to the functions of the Commission under this Act or any person or international organization outside Sri Lanka exercising regulatory functions and in respect of which the Commission considers desirable and necessary in the interest of the public to enter into such arrangement or to render such assistance.

Whistleblower protection

164.(1) An employer shall not discharge, terminate, demote or cause harassment to a person in employment who provides information concerning violations or potential violations of this Act or any regulations, rule or directives made thereunder or any rules of an exchange.

(2) Any employer who retaliates against such person that provides or has provided information to the Commission or to any officer authorized by the Commission under subsection (1) may be subjected to administrative penalty.

(3) For the purposes of this section, a "person in employment" includes a director, partner, chief executive, chief financial officer, company secretary, internal auditor or any other employee.

(4) The Commission may grant a reward to a whistleblower that provides information which leads to a successful enforcement action on the basis of guidelines issued relating to the grant of such reward.

Furnishing of information to the Minister

165. The Minister may, from time to time, request in writing from the Commission to furnish to him in such form as he may require returns, accounts and other information with respect to the work of the Commission other than information deemed confidential by the Commission and the Commission shall furnish such information.

Protection for action taken under the Act

166.(1) No suit or prosecution shall be instituted against any member of the Commission or against any of the officers 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 expenses 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 costs 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 any such person as is referred to in subsection (1) in any suit or prosecution brought against him before any court in respect of any act which is done or purported to be done by him under this Act or on the direction of the Commission shall, if the court holds that such act was done in good faith be paid out of the Fund of the Commission unless such expenses are recovered by him in such suit or prosecution.

CHAPTER 2
PROVISIONS RELATING TO THE EFFICIENT IMPLEMENTATION OF THE ACT

Offences

167.(1) Any person who –

- (a) contravenes any provision of this Act or any requirement imposed under the provisions of this Act or any regulation or rules or directives 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) willfully obstructs any member of the Commission or an officer of the Commission or any person with whom the Commission has entered into an agreement in the performance of his duties under the provisions of this Act;
- (d) in any manner falsify any information or electronic record or store any misleading or false information in any books or electronic records 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 any books, documents or electronic records or accounts required to be kept or maintained under this Act, regulations or rules with intent to defraud any person, or to prevent, delay or obstruct the carrying out or the exercise of any power under this Act;

shall be guilty of an offence as provided in the subsequent subsections of this section.

(2) 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 by a Magistrate to imprisonment of either description for a period not exceeding ten years or to a fine not less than ten million rupees and not exceeding hundred million rupees or to both such imprisonment and fine.

(3) 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.

(4) Where a person who is an employee or acting on behalf of a body corporate contravenes any provision of this Act or any regulations, rules or directives made thereunder, the body corporate or on whose behalf the employee is acting shall be deemed to have contravened such provision unless the body corporate proves that such offence was committed without its knowledge or connivance or that it exercised all due diligence to prevent the commission of that offence as it ought to have exercised having regard to the circumstances of the case.

Compounding of offences

168. 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.

Power of the Commission impose administrative sanctions

169.(1) Except in relation to offences listed in Part V if any person contravenes a provision of this Act or regulations made thereunder or contravenes or fails to comply with any condition or restriction of a licence or registration granted under this Act or fails to comply with any provision of the rules of a market institution, any written notice, guidelines, directive issued or condition imposed by the Commission or any rule issued by the Commission, the Commission may impose administrative penalties or may take the following administrative action –

- (a) direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notice, condition, directive or guideline;
- (b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach but in any event not exceeding fifty million rupees;
- (c) reprimand the person in breach;

- (d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach;
 - (e) 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 (a) to (d) above, the following actions may be taken by the Commission:
 - (i) 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 persons connected with the promoter or director; or
 - (ii) issue a public statement to the effect that, in the Commission's opinion, the retention of office by the director is prejudicial to the public interest.
- (2) The Commission in the interest of investor protection may issue a directive freezing the assets of any person in contravention of any provision of this Act, rules, regulations or directives for seven calendar days and make an application to Court for an extension of the freezing order to prevent a dissipation of investor assets;
- (3) The Commission shall not take any action under subsection (1) without giving the person in breach an opportunity to be heard.
- (4) For the purposes of paragraph (1)(d) in determining whether or not restitution is to be made by a person in breach, the Commission shall have regard to—
- (a) the profits that have accrued to such person in breach; or
 - (b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.
- (5) 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.
- (6) Nothing in this section shall preclude the Commission from -
- (a) directing a market-institution to take any disciplinary action against its participants, a listed public company and a director of a listed public

company for breach of the rules of the market institution including the imposition of a fine; or

- (b) taking any action that it is empowered to take under this Act against the person in breach.

(7) Where a person has failed to pay a penalty imposed by the Commission under subsection (1), the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Commission.

(8) Without prejudice to any other remedy, where a directive under subsection (1) had required the person in breach to make restitution in the form of monetary payment and the person in breach fails to retribute, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.

(9) To the extent that any of the amounts obtained under subsection (1) or subsection (8) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be;

- (a) paid to the Compensation Fund maintained under Part VI; or

- (b) retained by the Commission to defray the costs of regulating the capital market as the Commission may determine.

Power of the Commission to enter into enforceable settlement agreements

170(1). The Commission may enter into an enforceable settlement agreement with any person with respect to any undertaking between the parties with a view to ensuring compliance with the provision of this Act, regulations, rules or directives issued thereunder except for offences listed in Part V of this Act, in pursuance of its objectives.

(2). The responsible person may withdraw or vary the terms of the settlement agreement anytime with the consent of the Commission.

(3). If the Commission considers that the responsible person has breached any terms of the settlement agreement, the Commission may apply to Court for an order under subsection (4).

(4). If the Court is satisfied that the responsible person has breached a term of the settlement agreement the Court may issue;

- (i) an order directing the responsible person to comply with that term of the settlement agreement;

- (ii) an order directing the person to pay to any person or to the Commission an amount up to any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (iii) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach; or
- (iv) any other order that the Court considers appropriate.

Power of the Commission to protect investors' assets

171.(1) The Commission may take one or more of the following actions outlined hereinbelow where a market intermediary who handles or is entrusted with clients' monies or assets in the course of his business contravenes any provision of this Act, regulation or rules or directives issued thereunder 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 jeopardised, or are jeopardized -

- (i) direct the market intermediary not to deal with monies and properties of any investors 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 documents or electronic records in relation to such monies or properties to any other person as may be specified by the Commission;
- (ii) direct a trustee to transfer any documents or electronic records in relation to monies or properties to any other person as may be specified by the Commission;
- (iii) prohibit the market intermediary from entering into transactions, soliciting business from persons or require the market intermediary or trustee to carry on business in a manner as may be specified by the Commission; or
- (iv) 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 an opportunity to be heard.

(3) Subsection (2) shall not apply if the Commission considers that any delay in taking an action under this section would be prejudicial to investors, the interest of clients of the market intermediary or the public interest.

Power of the Commission to apply to Court for certain orders

172.(1) On an application made by the Commission, if it appears to Court that there is a reasonable likelihood that any person will, or has contravened a provision of this Act regulations or any rule made thereunder or that a person has failed or is failing to comply with any directive issued by the Commission, the Court may make -

- (i) an order restraining or requiring the cessation of the contravention;
- (ii) an order restraining a person from dealing or trading in securities or derivatives contract in respect of any class of securities or derivatives contract mentioned in the order;
- (iii) an order declaring a securities transaction or derivatives contract to be void or voidable;
- (iv) an order restraining the person from acquiring, disposing of or otherwise dealing with assets which the Court is satisfied that such person is reasonably likely to dispose of or otherwise deal with;
- (v) an order directing a person to dispose of any securities that are specified in the order;
- (vi) an order restraining the exercise of any voting or other rights attached to any securities that are specified in the order;
- (vii) an order 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;
- (viii) an order 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;
- (ix) an order vesting securities or such other property that is specified in the order in a trustee appointed by Court;
- (x) an order requiring a person to do such act or comply with such directive where such 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 he is required to do under this Act, regulation or rules made under this Act,;

- (xi) an order 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;
- (xii) an order 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;
- (xiii) an order directing a person to comply with a directive that is issued by the Commission;
- (xiv) an order imposing a travel ban on any person in contravention of any provision of the Act; and
- (xv) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.

(2) If an application is made to a Court for an order under subsection (1), the Court may, if in its opinion it is desirable to do so, before considering the application, make an interim order *ex parte* pending the determination of the application.

(3) The Court may before making an order under subsection (1) direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit or both.

(4) Where an application for an order under subsection (1) is made by the Commission or any person duly authorized 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 the receiver any property of which he has been appointed receiver or to give to the receiver 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 securities or such other property specified in the order or to give to the trustee all information concerning the securities or derivatives contracts that may reasonably be required;
- (b) may acquire and take possession of the securities or such other property;
- (c) may deal with the securities or such other property in any manner as it thinks fit; and
- (d) shall have such other powers in respect of the securities or such other property as may be specified by the Court in the order.

(8) The proceeds of the dealing in or disposal of securities or derivatives contracts 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 him.

(9) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

Power of the Commission to recover damages on behalf of investors

173.(1) The Commission may, if it considers that it is in the public interest to do so, recover on behalf of a person who suffers loss or damage by reason of, or by relying on

the conduct of another person who has contravened any provision relating to issue of securities, the amount of the loss or damage by instituting civil proceedings against the other person whether or not that 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.

(2) Notwithstanding the provisions of any law relating to limitation of time, an action under subsection (1) may be instituted within six years from the date on which the Commission became aware of the contravention.

(3) Any loss or damage recovered by the Commission shall be paid into the Compensation Fund and be applied –

- (a) firstly, to reimburse the Commission for all costs of the investigation and proceedings in respect of the contravention; and
- (b) secondly, to compensate persons who suffer loss or damage by reason of, or by relying on, the conduct of another person who has contravened sections relating to the issuance of securities under this Act.

(4) If the Commission considers that it is not practicable to compensate the persons referred to in paragraph (3)(b) in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons 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(3)(b).

(5) To the extent that any amount recovered or obtained in a civil action under subsection (1) has not been distributed pursuant to subsection (3), it shall be retained by the Commission to defray the costs of regulating the market, as the Commission may determine.

(6) Subject to subsection (1), any person who suffer loss or damage by reason of, or by relying on, the conduct of another person who has contravened sections relating to the issuance of securities may recover the amount of the loss or damage by instituting civil proceedings against the other person whether or not that 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.

(7) Any right of action that is conferred under this section is in addition to any right that such person has under any other law.

Power of the Commission to publish information

174. The Commission may, where it thinks necessary or expedient in the interest of the public or for the protection of investors and in such form or manner as it thinks fit, publish any information in relation to any decision made or any action taken by the Commission under this Act , regulations or rules.

Regulations made by the Minister

175.(1) The Minister may make regulations to give effect to the principles and provisions of this Act.

(2) In particular, the Minister may make Regulations in regard to –

- (a) the terms and conditions to be satisfied for the purpose of granting of license to a market institution;
- (b) the terms and conditions to be complied for the purpose of granting a license to a market intermediary;
- (c) the terms and conditions to be complied for the purpose of granting approval for the operation of a collective investment scheme;
- (d) the purpose for which the Cess Fund could be used for developing the capital market in Sri Lanka; and
- (e) in respect of all matters prescribed by this Act.

(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.

(5) Notification of the date on which any regulation is deemed to be rescinded shall be published in the Gazette.

Rules made by the Commission

176.(1) The Commission may make rules as may be required from time to time for the purpose of giving full effect to the provisions of this Act or in carrying out the

powers, objectives and functions 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;
- (b) disclosures by market intermediaries about security transactions by persons who acquired or disposed of securities and by an exchange about security transactions;
- (c) 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;
- (d) the annual audit of the books, records, accounts and the preparation of financial statements by a market institution and market intermediary;
- (e) regulation of take-over or mergers where the target of such take-over or merger is a listed public company;
- (f) a code of conduct to be observed by the trustee and an issuer of securities and a managing company of a collective investment scheme;
- (g) matters in respect of which rules are required by this Act to be made;
- (h) the prudential requirements, staff qualifications, record keeping and other documentation systems to be followed by a market institution and market intermediary;
- (i) the form and contents of prospectus proposed to be issued by a market intermediary, a listed public company or a public company which has applied for a listing;
- (j) the operation of securities in a margin account by a stock broker or by a margin provider;
- (k) the business affairs and activities of a market institution and market intermediaries, in relation to listed securities and exchange traded derivatives;
- (l) disclosure and reporting and the provision of information by listed public companies and other unlisted companies coming within the purview of this Act;

- (m) rejection of applications for listing made to an exchange and the suspension and cancellation of listing by an exchange;
- (n) in relation to the trading of derivative contracts carried out utilizing the facilities of a licensed derivatives exchange;
- (o) the regulation of the activities of stock lenders and stock borrowers;
- (p) the establishment and operation of a fidelity fund or compensation fund for a derivatives exchange; and
- (q) provision for settlement of disputes between client and market intermediary and between the respective participants or members and market institutions.

(2) Every rule made under subsection (1) shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified therein.

Derivatives not gaming or wagering contracts

177. Notwithstanding any other law, a derivative contract traded through an exchange shall not be taken to be a gaming or wagering contract.

Repeals, savings and transitional provisions

178.(1) The Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987 is hereby repealed and replaced by this Act.

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

- (a) Members of the Securities and Exchange Commission of Sri Lanka holding office immediately prior to the date of commencement of this Act shall be deemed to be members of the Securities and Exchange Commission of Sri Lanka and of the appointed members of such Securities and Exchange Commission of Sri Lanka holding office on that day.
- (b) Every license issued to any exchange, clearing house, stock broker or stock dealer by the Securities and Exchange Commission of Sri Lanka and which is in force immediately prior to the date of commencement of

this Act, shall be deemed to be a license issued by the Securities and Exchange Commission of Sri Lanka.

- (c) Every certificate of registration to any market intermediary by the Securities and Exchange Commission of Sri Lanka and which is in force immediately prior to the date of commencement of this Act shall be deemed to be a license issued by the Securities and Exchange Commission of Sri Lanka.
- (d) All rules and regulations made by the Securities and Exchange Commission of Sri Lanka and are in force on the day immediately prior to the date of commencement of this Act shall be deemed to be rules and regulations made by the Securities and Exchange Commission of Sri Lanka.
- (e) All contracts, agreements and other instruments of the Securities and Exchange Commission of Sri Lanka 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 Securities and Exchange Commission of Sri Lanka.
- (f) All suits, actions, and other legal proceedings instituted by or against the Securities and Exchange Commission of Sri Lanka 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 Securities and Exchange Commission of Sri Lanka.

Sinhala text to prevail in case of inconsistency

179. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.