PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

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

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

[Certified on 21st of September, 2021]

L.D.—O. 8/2017

AN ACT TO ESTABLISH THE SECURITIES AND EXCHANGE COMMISSION OF SRI LANKA; TO REGULATE MARKET INSTITUTIONS, CERTAIN PUBLIC OFFERS OF SECURITIES, MARKET INTERMEDIARIES; TO PROTECT INVESTORS AND TO PROVIDE FOR ENFORCEMENT MEASURES; TO DEAL WITH MARKET MISCONDUCT; AND TO OVERCOME THE CHALLENGES ENCOUNTERED BY SECURITIES MARKET REGULATORS AND TO REPEAL THE SECURITIES AND EXCHANGE COMMISSION OF SRI LANKA ACT, NO. 36 OF 1987 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

1. This Act may be cited as the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021.

PART I

CHAPTER 1

PRELIMINARY

Application of the Act

2. This Act applies to securities, securities markets and related matters except as otherwise provided in this Act.

Object and purpose of this Act

3. The object and purpose of this Act shall be –

(*a*) to establish the Securities and Exchange Commission of Sri Lanka;

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

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

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

CHAPTER 2

SECURITIES AND EXCHANGE COMMISSION OF SRI LANKA

Establishment of the Securities and Exchange Commission of Sri Lanka

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

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

Constitution of the Commission

5. (1) The Commission shall consist of –

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

(*b*) two nominated members, -

(i) a Deputy Secretary to the Treasury nominated by the Secretary to the Treasury; and

(ii) a Deputy Governor of the Central Bank of Sri Lanka nominated by the Monetary Board of Sri Lanka; and

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

(i) the Registrar-General of Companies, appointed under the Companies Act, No. 7 of 2007; and

(ii) the President of the Institute of Chartered Accountants of Sri Lanka established by the Institute of Chartered Accountants Act, No. 23 of 1959.

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

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

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

(*b*) the likelihood of any conflict between the interests of the Commission and any interest which that person has or represents.

Conflict of interest

6. Every appointed or nominated member of the Commission when being appointed shall be required to make a declaration to the Minister on any conflict of interests he may have at the time of his appointment.

Term of office of appointed or nominated members

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

Resignation of members of the Commission

8. (1) Any appointed or nominated member of the Commission may at any time resign his office by letter addressed to the Minister and such resignation shall take effect upon it being accepted by the Minister.

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

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

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

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

Disqualifications and grounds for removal

9. (1) A person shall be disqualified from being appointed or nominated or from continuing as a member of the Commission if he -

(*a*) is or becomes a member of Parliament, or a member of any Provincial Council or any local authority;

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

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

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

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

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

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

Meetings of the Commission

10. (1) The Chairman of the Commission shall, if present, preside at all meetings of the Commission. In the absence of the Chairman from any such meetings, the members present shall elect one amongst themselves to preside at such meeting.

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

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

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

Remuneration of members

11. The members of the Commission may be paid such remuneration out of the Fund of the Commission as may be determined by the Minister, in consultation with the Minister assigned the subject of finance.

Chairman of the Commission

12. (1) If the Chairman of the Commission is, by reason of illness or absence from Sri Lanka temporarily unable to perform the duties of his office the Minister shall nominate another member of the Commission to act in his place.

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

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

Members to disclose any interest

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

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

Proceedings, acts or decisions not invalidated by reason of a vacancy

14. No proceeding, act or decision 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

15. (1) The seal of the Commission shall be in the custody of the Commission.

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

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

CHAPTER 3

POWERS, DUTIES AND FUNCTIONS OF THE COMMISSION

Principal functions, powers and duties of the Commission

16. The powers, duties and functions of the Commission shall be-

(*a*) to advise the Government on the development of the securities market and to assist in the effective implementation of the policies and programmes of the Government with respect to the securities market;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Additional powers of the Commission

17. The Commission shall in addition to the powers specified in section 16 also have the power to –

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

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

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

Representation of the Commission in legal proceedings

18. The Chairman of the Commission may authorise any officer of the Commission who is an Attorney-at-Law or any officer of the Attorney-General's Department to appear on behalf of the Commission in any legal proceedings by or against the Commission or in any proceedings in which the Commission has a substantial interest.

CHAPTER 4

DIRECTOR-GENERAL AND THE STAFF OF THE COMMISSION

Director-General

19. (1) The Minister shall on the recommendation of the Commission, appoint a Director-General of the Commission, who shall be its chief executive officer. The conditions of employment including remuneration of the Director-General shall be determined by the Commission.

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

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

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

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

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

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

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

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

Staff of the Commission

20. (1) Notwithstanding anything to the contrary in any other written law, the Commission may create cadre positions and employ officers and servants as it considers necessary for the efficient discharge of its functions and may fix their salaries and wages or other remuneration, benefits and pensions of such servants and officers for the purposes of carrying out its functions and duties under the provisions of this Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

21. (1) At the request of the Commission any officer or servant of a public corporation may, with the consent of such officer or servant and the governing board of such corporation, be temporarily appointed to the staff of the Commission for such period as may be determined by the Commission or with like consent be permanently appointed to the staff of the Commission on such terms and conditions, including those relating to pension or provident fund rights, as may be agreed upon by the Commission and the governing board of such corporation.

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

Members, officers and servants of the Commission deemed to be public servants

22. All members, the Director General, officers and servants of the Commission shall be deemed to be public servants within the meaning and for the purposes of the Penal Code (Chapter 19) and of the Code of Criminal Procedure Act, No.15 of 1979.

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

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

PART II

Markets and Market Institutions

Object and purpose of this Part

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

(*a*) to promote a fair, orderly, transparent and efficient securities market in Sri Lanka through the establishment of market institutions;

(*b*) to enhance effective and efficient functioning of a securities market; and

(*c*) to mitigate systemic risk associated with securities markets.

CHAPTER 1

EXCHANGES

Prohibition against establishing an unlicensed exchange

25. (1) A person shall not establish, operate or maintain an exchange except by authority of a licence granted by the Commission.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, after summary trial before a Magistrate be liable to a fine not exceeding twenty-five million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Application to operate an exchange

26. (1) An application for a licence to operate as an exchange shall be made to the Commission in such manner and form together with such documents as may be specified by rules made by the Commission accompanied by such fees as may be prescribed.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) for the admission of trading participants;

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

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

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

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

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

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

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

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

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

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

(A) between trading participants and their clients;

(B) between trading participants;

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

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

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

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

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

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

Duties of an exchange

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*d*) any other disciplinary measure taken.

Cancellation of licence of an exchange

28. (1) The Commission may, -

(*a*) by notice in writing cancel the licence granted under section 26 with effect from the date specified in such notice; or

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

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

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

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

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

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

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

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

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

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

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

(3) For the purposes of paragraph (a) of subsection (2) where an exchange has ceased to operate its securities market for a period exceeding two weeks, it shall be deemed to have ceased to operate its securities market without obtaining the prior written approval of the Commission.

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

(*a*) for the purpose of closing down the operations of the exchange or ceasing to provide the services specified in the notice;

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

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

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

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

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

(8) An exchange which is aggrieved by the decision of the Commission made under subsection (1) may, within fourteen days of receipt of such notice, appeal to the Minister.

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

(10) The Minister may, on an appeal made under subsection (8) after hearing the Commission and the exchange within a period of three months after the receipt of such appeal -

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

(*b*) disallow the appeal.

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

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

Effect of cancellation of the licence of an exchange

29. Any cancellation of a licence or the issuance of a directive under subsection (1) of section 28 shall not operate so as to –

(*a*) avoid or affect any agreement, transaction or arrangement entered into on the securities market operated by the exchange, whether the agreement, transaction or arrangement was entered into before

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

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

Closure of the exchange in an emergency

30. (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 similar circumstance within or outside Sri Lanka.

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

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

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

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

(6) In this section –

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

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

Listing requirements of a licensed exchange

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

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

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

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

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

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

and such exchange shall comply with such requirements.

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

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

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

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

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

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

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

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

CHAPTER 2

CLEARING HOUSE

Interpretation

32. 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" mean any proceedings or other action taken by a licensed clearing house under its default rules;

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

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

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

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

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

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

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

"market contract" means -

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

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

"relevant office holder" means –

(*a*) any person acting in relation to a company as its liquidator, provisional liquidator, receiver or manager or an equivalent person; or

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

Establishment of a clearing house in an exchange

33. There may be established a licensed clearing house to clear and settle securities transactions which take place in an exchange.

Prohibition against establishing an unlicensed clearing facility

34. (1) A person shall not establish, operate or maintain a clearing facility for the purpose of clearing or settlement of securities transactions in a licensed exchange or with a market operator unless the person has been licensed by the Commission to establish or operate a clearing house under this Chapter.

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

(3) Subsection (1) shall not apply to any person providing clearing facilities for securities exempted under this Act or any clearing facility provided exclusively by the Central Bank of Sri Lanka or a clearing facility acting as an integrated central counterparty which provides for the settlement and clearing of securities as defined in this Act and securities issued by the Government of Sri Lanka or the Central Bank of Sri Lanka.

Power to grant a licence

35. (1) The Commission may grant a licence to an applicant to establish and operate as a clearing house subject to such terms and conditions as may be specified therein.

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

Application for a licence to establish or operate a clearing house

36. (1) An application for a licence to establish or operate a clearing house, acting as a central counterparty or otherwise to guarantee clearing and settlement of securities transactions in a licensed exchange or a recognized market operator, shall be made to the Commission in such manner and form as may be specified by the Commission by rules and shall be accompanied by such fee as may be prescribed.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) between clearing members;

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

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

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

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

(ii) the governing of collateral including the depositing and efficient creation and realization of guarantees or collateral provided by a defaulting clearing member in the event of default or bankruptcy of such member; and

(iii) the uninterrupted services of the clearing house under circumstances relating to sub-paragraphs (i) and (ii) above or any other circumstances that threatens the solvency of a clearing house;

(*l*) the time for entering settlement orders into the settlement system and the time when such orders become final and irrevocable;

(*m*) the time of counterparty substitution;

(*n*) the netting arrangements, the finality of settlements and any other obligations relevant to a licensed clearing house which acts as a central counterparty or otherwise.

Duties of a clearing house

37. (1) A clearing house to which a licence has been granted under section 35 shall –

(*a*) operate a safe, efficient and effective clearing facility for the purposes of clearing or settlement of securities transactions;

(*b*) manage any risks associated with its business and operations prudently;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Commission's power to regulate and supervise a licensed clearing house

38. Without prejudice to the generality of the powers conferred on the Commission under this Act, the Commission shall have the power to regulate and supervise a licensed clearing house in order to satisfy itself that the licensed clearing house carries on its functions in accordance with the provisions of this Act, rules made thereunder and the terms and conditions of the licensed clearing house.

Cancellation of licence of a clearing house

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

(*a*) cancel the licence granted under section 35 to a clearing house with effect from the date specified in the notice; or

(*b*) direct the licensed clearing house to cease to provide or operate such facilities or to cease to provide such services, with effect from the date specified in the notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Aggrieved clearing house may appeal

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

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

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

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

(*b*) disallow the appeal.

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

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

Effect of cancellation of a licence to a clearing house

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

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

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

Default rules

42. (1) A licensed clearing house shall, for the purpose of risk management, initiate default proceedings under default rules if a clearing member is unable or is likely to become unable to meet the obligations in respect of all or any unsettled market contracts to which the clearing member is a party.

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

Default proceedings etc. of a clearing house to take precedence

43. (1) Notwithstanding only of an inconsistency with the provisions of any written law relating to the assets of a person subject to insolvency, bankruptcy or winding up, or on the appointment of a receiver, a receiver and a manager, a liquidator or a person in an equivalent capacity, none of the following shall be invalid to any extent in law :–

(*a*) a market contract;

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

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

(*d*) a market charge;

(*e*) market collateral;

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

(*g*) any default proceedings.

(2) Subject to subsection (1), the powers of a relevant office holder in his capacity as such and the powers of any court under the law of insolvency or the Companies Act, No.7 of 2007 shall not be exercised in such a way as to prevent or interfere with –

(*a*) the settlement of a market contract in accordance with the rules of a clearing house; or

(*b*) any default proceedings.

Supplementary provisions relating to default proceedings

44. Nothing in the Companies Act, No. 7 of 2007 nor any other written law, shall prevent or interfere with the default proceedings instituted by a licensed clearing house in the realization and disposition of any market collateral by the licensed clearing house.

Duty to report on completion of default proceedings

45. (1) Upon completion of any default proceedings, a licensed clearing house shall provide a report in respect of each defaulter to the person or entity referred to in subsection (2) in respect of the following: -

(*a*) the net sum, if any, certified by the licensed clearing house to be payable by or to the defaulter;

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

(*c*) such other particulars in respect of such default proceedings as it thinks fit.

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

(*a*) to the Commission;

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

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

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

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

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

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

Net sum payable on completion of default proceedings

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

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

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

Right of relevant office holder to recover certain amounts arising from certain transactions

47. (1) If a clearing member ("the first clearing member") sells securities at an overvalue to, or purchases securities at an undervalue from, another clearing member ("the second clearing member") in circumstances as described in subsection (3) and thereafter a relevant office holder acts for-

(*a*) the second clearing member;

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

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

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

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

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

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

(*b*) either-

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

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

(4) In this section-

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

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

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

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

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

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

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

Clearing member to be party to certain transactions as principal

48. Notwithstanding the provisions of any other law, a clearing member who enters into any transaction including a market contract with a licensed clearing house, notwithstanding the fact that he is party to that transaction as an agent shall for all purposes including any civil action, claim or demand by or against a licensed clearing house be deemed to be a party to that transaction as a principal and not as an agent.

Market collateral delivered to a clearing house

49. Notwithstanding the provisions of any other law, where market collateral is delivered in settlement of a market contract or under a market charge to a licensed clearing house by a clearing member in accordance with the rules of the licensed clearing house, no civil action, claim or demand in respect of any right, title or interest in market collateral delivered to a licensed clearing house shall be allowed against the licensed clearing house.

Application of collateral subject to a market charge

50. The licensed 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 licensed clearing house.

Transfer of securities in settlement

51. (1) A central depository shall give effect to an instruction from a licensed clearing house to effect a transfer of securities into or out of a securities account of an account holder provided such instruction shall be for the purposes of settlement of a market contract or otherwise dealing with a market contract in accordance with the rules of the licensed clearing house.

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

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

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

Purchase and sale of securities

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

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

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

Defences in criminal or civil liability

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

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

(*a*) any member of the board of directors of the person; and

(*b*) any member of any committee established by such person.

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

CHAPTER 3

CENTRAL DEPOSITORY

Prohibition against operating an unlicensed central depository

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

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

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

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

(*a*) a central depository operated or established by the Central Bank of Sri Lanka;

(*b*) a central depository operated in respect of securities issued by the Government of Sri Lanka or the Central Bank of Sri Lanka; or

(*c*) any person providing a Central Depository for any issue of securities which have been exempted by the Commission.

Application to operate a central depository

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

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

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

(*a*) conditions under which securities may be deposited, held by, withdrawn from or transferred to and recorded in the register of securities;

(*b*) the processing of dealings in deposited securities;

(*c*) facilitating the settlement of deposited securities;

(*d*) the protection of the interests of account holders and the protection and control of information on deposited securities and dealings therein;

(*e*) transparent and non discriminatory criteria for the admission of depository participants and the categories of depository participants;

(*f*) the monitoring and supervision of depository participants and for the enforcement of the rules of the applicant company;

(*g*) the expulsion, suspension, imposition of penalties or disciplining of depository participants for failure to comply with the rules of the central depository;

(*h*) the settlement of disputes between the central depository and the depository participants and between depository participants; and

(*i*) ensuring the segregation of the securities belonging to investors from those of the depository participants.

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

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

(*a*) adequately and properly equipped premises for the conduct of its business;

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

(*c*) automated systems with adequate capacity, security arrangements and facilities to mitigate risks and to meet emergencies.

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

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

Duties of a central depository

56. (1) A central depository shall –

(*a*) operate a safe, effective and efficient system for the handling of securities;

(*b*) manage any risks associated with its business and operations prudently; and

(*c*) act in the public interest having particular regard to the need for the protection of account holders.

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

Cancellation of a licence of a central depository

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

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

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

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

(*a*) the central depository ceases to operate a system for the central handling of securities;

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

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

(*d*) the central depository has failed to comply with a condition, requirement or directive that is issued under this Act;

(*e*) any information provided for the purposes of section 55 was false or misleading in a material particular or from which there is a material omission;

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

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

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

(*i*) the central depository has on its own accord applied to the Commission to cancel the licence granted to it and the Commission, thinks it fit to do so.

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

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

(*a*) for the purpose of closing down the operations of the central depository or ceasing to provide the services specified in the notice;

(*b*) for the purpose of protecting the depositors; or

(*c*) in the public interest.

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

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

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

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

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

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

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

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

(*b*) disallow the appeal.

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

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

Effect of cancellation of licence of a central depository

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

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

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

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

Securities account

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

Book entry securities lodged with the central depository

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

Record of entry in depositor's account

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

Effect of securities held in trust by the central depository

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

(*a*) shall be deemed to be the holder of such securities; and

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

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

(3) The appointment of a receiver, a receiver or manager, liquidator or any equivalent person in respect of any insolvency or bankruptcy proceedings of a depository participant shall not affect the rights of holders of securities held in trust by the central depository of that depository participant.

Validation

63. Any registration of securities by the central depository prior to the enactment of this Act shall not be invalid only for the reason that such registration has been done other than in accordance with the provisions of this Act, regulations, rules or directives made thereunder.

CHAPTER 4

General Provisions

Rules of a market institution

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

(*a*) between the market institution and each issuer of securities;

(*b*) between the market institution and each trading participant, clearing member or depository participant as the case may be;

(*c*) between each issuer of securities and each trading participant; and

(*d*) between trading participants, clearing members or depository participants.

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

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

(4) Where a market institution proposes to amend its rules, the market institution shall forward to the Commission in writing the proposed amendment.

(5) The Commission shall, after hearing the market institution within ninety days of receipt of the proposed amendment give written notice to the market institution as to whether such amendments to the rules are-

(*a*) allowed;

(*b*) disallowed; or

(*c*) allowed with amendments, variations or modifications.

(6) Where the proposed amendment is disallowed, the Commission shall give reasons for such disapproval.

(7) Where the Commission fails to revert to the market institution within ninety days, proposed amendments to such rules under subsection (4) shall take effect immediately on the expiration of ninety days.

(8) Upon receipt of notice under subsection (5), the market institution shall give immediate effect to such rule.

(9) Notwithstanding the provisions contained in subsections (5) and (8), the Commission may amend the rules of any market institution at any time and such rules shall take effect with immediate effect or on such date as specified by the Commission.

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

65. (1) Where any person who is under a duty to comply, observe, enforce or give effect to the rules of a market institution fails to do so, the Commission shall direct such person to comply with such rules or to give reasons for such failure upon the market institution referring such matter to the Commission.

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

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

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

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

Control of substantial shareholders of a market institution

66. (1) A person other than a representative of the government, shall not enter into any agreement or arrangement to acquire any voting shares of a market institution either individually or together with any other person acting in concert with him, exceeding five *per centum* or more of the aggregate of all the voting shares in a market institution, without obtaining the prior written approval of the Commission.

(2) The Commission may impose restrictions on the maximum proportion of voting shares that may be held directly or indirectly by a group of persons representing a particular interest as may be determined by the Commission by way of an Order published in the *Gazette*.

(3) The Commission may, at any time by publishing a notification in the *Gazette,* vary the threshold referred to in subsection (1) after taking into consideration the stage of securities market development or the public interest.

(4) An application for the purpose of obtaining approval under subsection (1) shall be made by the person intending to acquire voting shares referred to therein and shall be sent to the Commission in the form and manner as may be specified by the Commission.

(5) The Commission may require the applicant –

(*a*) to give further information in connection with an application; and

(*b*) to have any information submitted in support of an application verified at the cost of the applicant, in such manner and by such persons as it may specify.

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

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

67. (1) Where the Commission is satisfied that any person has contravened the provisions of section 66, the Commission may issue a directive imposing one or more of the following prohibitions as may be applicable or appropriate in the circumstances of the contravention in respect of any shares:-

(*a*) prohibit the buying of, or the carrying out of the agreement or arrangement to buy, such voting shares, or in the case of unissued shares, the carrying out of the agreement or arrangement to buy or the buying of the right to be issued with unissued shares;

(*b*) prohibit the exercise of any voting rights in respect of such shares;

(*c*) prohibit the issue of any further shares in right of such shares or in pursuance of any offer made to the holder of such shares; or

(*d*) except in liquidation, prohibit the payment of any sums due from the market institution, on such shares, whether in respect of capital, dividends or otherwise.

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

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

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

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

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

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

(8) Any transaction, including any agreement or arrangement in relation to any shares which is in contravention of any directive issued or of any decision made under subsection (5) or of any instruction given or directive issued by the Commission under subsection (7), shall be deemed to have no effect in law.

(9) A person who contravenes any directive or decision made under subsection (5), or any instruction given or directive issued under subsection (7), commits an offence and shall, on conviction after summary trial by a Magistrate, be liable to a fine not exceeding twenty five million rupees or to imprisonment for a term not exceeding five years or to both such imprisonment and fine.

Appointment of directors to a market institution

68. (1) Notwithstanding the provisions of the Companies Act, No. 7 of 2007, a person shall not accept appointment, reappointment, election or re-election as a director, chief executive officer or chief regulatory officer of a market institution except with the prior approval of the Commission.

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

(*a*) any proposed director, chief executive officer or chief regulatory officer is an undischarged bankrupt, whether within or outside Sri Lanka;

(*b*) a judgment debt against the proposed director, chief executive officer or chief regulatory officer has not been satisfied in whole or in part;

(*c*) the proposed director, chief executive officer or chief regulatory officer–

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

(ii) has been convicted of an offence under this Act;

(iii) during a period of three years immediately preceding such appointment has been subject to any administrative sanction by the Commission under this Act;

(iv) has been convicted of an offence involving moral turpitude; or

(v) is likely to have a conflict of interest.

Alteration of material particulars of a market institution

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

Rights of an exchange or a clearing house

70. Nothing in any written law relating to contracts to the extent of its inconsistency with the provisions of this Act or any rules made thereunder shall affect -

(*a*) any rights to be conferred on an exchange or a clearing house in relation to securities under this Act, regulations, rules or directives made thereunder;

(*b*) any rights to be conferred on a party to securities transaction entered into by an exchange under this Act, regulations, rules or directives made thereunder, or the rules of an exchange or a licensed clearing house or a licensed central depositary as the case may be; or

(*c*) anything done or omitted to be done under or in relation to securities transaction entered into by an exchange or a licensed clearing house or a licensed central depositary under this Act, regulations, rules or directives made thereunder, as the case may be.

Defence in criminal or civil liability

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

(*a*) an exchange; or

(*b*) any person acting on behalf of an exchange including-

(i) any director of the exchange; or

(ii) any member of any committee established by the exchange,

to prove that the exchange or the person under paragraph (*b*) took all reasonable care and acted in good faith in the course of or in connection with the discharge of its obligations under this Act, regulations, rules or directives made thereunder or the rules of such exchange.

Provision of assistance to the Commission

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

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

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

Annual reports

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

(*a*) a report on the corporate governance policy of the market institution and any other information required by the Commission;

(*b*) audited financial statements prepared in accordance with Sri Lanka's Accounting Standards and such other requirements as may be specified in the rules; and

(*c*) consolidated financial statements, where the market institution is a holding company or a subsidiary where appropriate.

(2) The financial statements to be included in an annual report under subsection (1) shall be audited in accordance with Sri Lanka's Auditing Standards.

(3) The annual report of a clearing house and a central depository shall also include an audited report on risk management procedures and their application and any other information required by the Commission.

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

Duties of an auditor of a market institution

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

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

(*b*) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act, regulations, rules or directives made thereunder or an offence involving fraud or dishonesty affecting the financial stability of the market institution to a material extent; or

(*c*) any irregularity that has or may have a material effect on the accounts of the market institution, including any irregularity that adversely affects or may adversely affect, the funds or property of investors in securities,

the auditor shall immediately send to the board of directors a written report of the matter or the irregularity with a copy to the Commission.

(2) An auditor of a market institution shall not be liable to any suit by any person in respect of any statement made in his report under subsection (1) provided the auditor has acted in good faith.

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

(*a*) a duty to submit such additional information and reports in relation to his audit as the Commission considers necessary;

(*b*) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the market institution;

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

(*d*) a duty to submit a report on any matter arising out of his audit, examination or establishment of procedure referred to in paragraph (*b*) or (*c*), and the auditor shall carry out such duties, as an extension to his ordinary audit scope for issuing an independent opinion on the financial statements.

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

Obligation to submit periodic reports

75. A market institution, shall submit to the Commission such reports including a risk management audit in such form, manner and frequency as may be specified by the Commission. The Commission in addition shall subject the market institution to supervision and an annual audit by the Commission to ascertain compliance by the market institution with the provisions of this Act and of rules, regulations, directives that may be issued by the Commission from time to time.

Payment of annual fee

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

Prohibition against holding out

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

"derivatives market", "futures market", "licensed clearing house", "clearing facility", "central depository", "securities trading market", "derivatives trading market" or " futures trading market", or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is a stock exchange , derivatives exchange, licensed clearing house or a central depository.

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

Power of the Commission to review its own decision

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

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

PART III

Issue of Securities

Object and purpose of this Part

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

(*a*) to regulate the issue of securities by way of public offers;

(*b*) to ensure the disclosure of financial information by listed public companies;

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

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

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

CHAPTER I

PUBLIC OFFER OF SECURITIES

Public Offer of Securities

80. A listed public company or any public company which has applied to obtain a listing in an exchange shall not make a public offer of securities either directly or through a third party by way of a prospectus or a similar document or otherwise for the purposes of solicitation of funds from the public unless approved by the Commission or a person authorised by the Commission:

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

Approval of the Commission for issue of securities

81. (1) A listed public company shall obtain the approval of the Commission or any person authorised by the Commission to grant approval in respect of–

(*a*) any new issue or offer for sale of securities to the public, whether such issues or offers for sale are by way of a public offer or otherwise;

(*b*) private placement of securities;

(*c*) rights issues of securities;

(*d*) bonus issues of securities; or

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

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

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

Prospectus or similar document

82. (1) The prospectus or similar document prepared by a person making an offer to the public shall comply with the requirements specified in the Companies Act, No. 7 of 2007, and any other requirements specified by the Commission and the rules of an exchange.

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

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

Commission to issue stop orders

83. (1) Where the Commission is of the opinion that–

(*a*) a prospectus or similar document submitted to a licensed stock exchange under its listing rules or in respect of public offers falling within section 80 does not comply with or is not prepared in accordance with the provisions of this Act or the rules of the exchange as the case may be;

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

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

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

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

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

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

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

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

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

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

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

Purchase, sale or transfer of securities

84. (1) A person holding securities in a company listed on an exchange shall buy, sell, gift or otherwise deal in such securities in compliance with the trading procedure adopted by such licensed exchange:

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

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

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

Power of the Commission to require the production of documents

85. (1) Where it appears to the Commission from the disclosures made to the public that -

(*a*) there exist circumstances that the business of a listed public company has been conducted–

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

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

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

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

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

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

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

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

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

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

(*b*) where the records and documents and electronic records are not produced as required, the person required to produce such records, documents or electronic records to give reasons for such failure; or

(*c*) where the documents and electronic records are not produced, the person required to produce them shall disclose its location to the best of his knowledge and belief.

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

Power of the Commission to issue directives to listed public companies

86. Where the Commission after due inquiry or investigation determines that a listed public company has contravened or failed to comply with any provision of the Act, regulations, rules or directives made thereunder or has furnished the Commission with information that is false, inaccurate or misleading, the Commission may take any enforcement action provided under this Act as deemed appropriate.

Duty not to furnish false information to the Commission

87. (1) A person who furnishes information or cause information to be furnished to the Commission under this Act, regulations, rules or directives made thereunder shall exercise due care to ensure that the information is not false or misleading in any material particular.

(2) A person who –

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

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

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

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

Duty not to make false statements to market institutions

88. A person with intent to deceive, makes or furnishes, or knowingly and willfully authorises or permits the making or furnishing of any misleading statement or report to a market institution licensed under this Act in relation to any information that a listed public company is required to furnish under this Act, regulations, rules or directives made thereunder commits an offence under this Act.

Appointing directors or chief executive officer

89. (1) The board of directors of every listed public company shall ensure that the company and its directors comply with the rules and requirements of the exchange on which it is listed on a continuous basis as long as the company remains listed on such exchange.

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

Duties of an auditor of a listed public company

90. (1) If an auditor of a listed public company in the ordinary course of the performance of his duties, becomes aware of-

(*a*) any contravention or non compliance with any requirement or provision of this Act, any regulation, rule or directive made thereunder or a breach of any rule of an exchange or any offence involving fraud or dishonesty; or

(*b*) any matter which may in his opinion adversely affects or is likely to adversely affect the financial position of the listed public company to a material extent; or

(*c*) any irregularity that has or may have a material effect upon the accounts of a listed public company including any irregularity that affects or jeopardizes or may affect or jeopardize the funds or property of any investor in securities,

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

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

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

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

(*b*) in the case of a breach of or non compliance with any rules of an exchange, to the relevant exchange and the Commission.

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

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

(*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; or

(*d*) submit a report including an interim report on any matter referred to in paragraphs (*a*) to (*c*),

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

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

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

Prohibition against undue influence

91. (1) A person shall not influence, coerce, mislead or authorise any person engaged in –

(*a*) the preparation of the financial statements of a listed public company or any of its related companies; or

(*b*) the performance of an audit of the financial statements of a listed public company or any of its related companies,

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

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

CHAPTER 2

MARKET INTERMEDIARIES

Prohibition against holding out as a market intermediary

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

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

Requirement to be licensed with the Commission

93. (1) Any person who carries on business as a market intermediary shall hold a licence issued for that purpose by the Commission.

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

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

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

(2) The Commission may require an applicant –

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

(*b*) to have any information submitted in support of an application verified at the cost of the applicant in such manner and by such persons as it may specify.

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

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

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

Refusal to grant or renew a licence

95. (1) Where an application is made for the grant or renewal of a licence to act as a market intermediary, the Commission may refuse the application on any of the following grounds:-

(*a*) the application was not made in accordance with this Chapter;

(*b*) the applicant has failed to comply with any requirement of this Act, regulations and the rules made thereunder;

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

(*d*) the applicant is in the course of being wound up or otherwise dissolved or is an undischarged bankrupt;

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

(*f*) a liquidator or receiver or manager or an equivalent person has been appointed within or outside Sri Lanka in respect of any property of the applicant;

(*g*) the applicant has, whether within or outside Sri Lanka entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;

(*h*) the applicant or any of its directors, chief executive officer, managers or controller–

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

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

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

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

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

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

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

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

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

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

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

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

Minimum financial requirements

96. A market intermediary shall not carry on business for which it is licensed under this Chapter, without the written consent of the Commission if it does not meet the minimum financial requirements as may be specified by the Commission or as may be provided in the rules of an exchange.

Requirement to register with the Commission

97. (1) The Commission may specify by way of rules that a person who deals with clients for and on behalf of a market intermediary to register with the Commission and for that purpose such person shall be known as a "registered person".

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

Application for registration or renewal of registration

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

(2) The Commission may require an applicant–

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

(*b*) to have any information submitted in support of an application verified at the cost of the applicant in such manner and by such persons as it may specify.

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

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

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

Grounds for refusal to register or renew registration

99. (1) Where an application is made for the grant or renewal of registration as a registered person under this Part, the Commission may refuse the application on any of the following grounds: —

(*a*) the application was not made in accordance with section 98;

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

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

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

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

(*f*) the applicant has –

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

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

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

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

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

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

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

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

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

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

Power to vary conditions or restrictions

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

Duration of licence or registration

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

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

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

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

False and misleading statements to the Commission

102. (1) A person shall not, in connection with an application submitted to the Commission under this Part –

(*a*) make or procure the making of a statement to the Commission which he knows or could reasonably be expected to know is false or misleading; or

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

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

Duty to notify the Commission

103. (1) Where a market intermediary proposes to alter material particulars already furnished or undergoes or intends to alter the particulars specified in the application for a licence or the renewal of a licence, it shall be the duty of such market intermediary to inform the Commission and obtain its prior consent before such alteration or change is effected.

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

Prohibition against holding out as an agent

104. A person shall not act as an agent in carrying on the business of a licensed market intermediary or hold himself out as doing so unless he is duly authorised by the Commission or a person authorised by the Commission to carry on such activity.

Cancellation or suspension of a licence or a registration

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

(*a*) there exists any ground on which the Commission may refuse an application for a licence;

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

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

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

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

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

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

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

(*b*) if the registered person has contravened any condition or restriction in respect of its registration or any directive issued to him by the Commission under this Act; or

(*c*) if the registered person has contravened any provision of this Act or any of the rule which are binding on him as the case may be.

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

Trading in securities by market intermediaries

106. A market intermediary or registered person shall not –

(*a*) trade in or otherwise deal in securities outside the exchange of which he is a trading participant without the prior approval of the Commission;

(*b*) trade in securities in contravention of such rules of the Commission or the rules of a market institution;

(*c*) effect any transaction in a margin account in a manner contrary to the requirements set out by the market institution of which he is a trading participant; or

(*d*) effect any transaction by means of any manipulative, deceptive or other fraudulent device or contrivance in order to induce or attempt to induce the purchase or sale of any securities.

Lending and borrowing of securities without the consent of the client

107. A market intermediary shall not lend or arrange for lending of any securities carried for the account of any client without the client's written consent or borrow or arrange to borrow, using the securities carried for the account of any client as collateral without the client's written consent.

Duty of an auditor of a market intermediary

108. (1) If an auditor of a market intermediary, in the ordinary course of the performance of his duties as an auditor, is of the opinion that there has been a breach of or non compliance with any provision of this Act, regulations, rules or directives made thereunder or a breach of any rule of a market institution or any matter which may adversely affect the financial position of the market intermediary to a material extent, the auditor shall immediately submit a written report to the board of directors on the matter with a copy to–

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 3

PROTECTION OF CLIENTS' ASSETS

Interpretation

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

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

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

Protection of client's assets

110. (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 and other assets received on account of a client in trust for the benefit of such client;

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

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

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

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

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

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

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

Rules on business conduct

111. (1) The Commission may make rules regulating the business conduct of a market intermediary or a registered person as the Commission considers necessary in the interest of client protection and for the purpose of raising professional standards of a market intermediary and a registered person.

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

Duty in making recommendations

112. (1) A market intermediary or a registered person shall not make a recommendation with respect to any securities to a client where such client may reasonably be expected to rely on the recommendation, if the market intermediary or registered person does not have a reasonable basis for making the recommendation to the client.

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

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

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

Disclose certain interests in securities

113. (1) Where a market intermediary or a registered person sends a circular or other similar written communication in which he makes a recommendation, with respect to any securities, he shall include in the circular or other written communication in print not less legible than that used in the remainder of the circular or other written communication, a concise statement of the nature of any interest in the securities, or any interest in the acquisition or disposal of the securities that he or a person associated with or connected to him, has at the date on which the circular or other communication is sent.

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

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

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

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

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

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

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

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

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

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

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

Internal procedures and processes

114. A market intermediary shall establish and maintain procedures and processes for the purpose of monitoring compliance by such market intermediary and its employees, with the provisions of the Act, regulations, rules or directives made thereunder which will enable the market intermediary to monitor risk to its business.

Register of market intermediaries and registered persons

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

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

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

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

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

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

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

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

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

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

PART IV

Trade In Unlisted Securities

Object and purpose of this Part

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

(*a*) to provide a platform through a recognised market operator for sale and purchase of unlisted securities in Sri Lanka to local and overseas investors in a transparent manner; and

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

CHAPTER 1

ESTABLISHMENT OF A RECOGNISED MARKET OPERATOR

Establishment of a market operator

117. A person shall not act as a market operator under this Part unless such person is registered with the Commission or exempted from such registration by the Commission.

Requirement to register a market operator

118. (1) For the purposes of section 117, the Commission may upon application made by a person, register the person as a recognised market operator or exempt from such registration subject to any terms and conditions as the Commission considers necessary.

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

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

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

Application for registration

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

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

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

CHAPTER 2

ROLE OF A RECOGNISED MARKET OPERATOR

Functions and duties of a recognized market operator

120. The functions and duties of a recognised 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*) to comply with any directive issued by the Commission, whether of a general or specific nature; and

(*e*) to provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires.

Trading on a platform

121. 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 or the market operator

122. The Commission may make rules or require the market operator to make rules subject to the approval of the Commission -

(*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.

Cancellation of registration

123. (1) Subject to subsection (3), where the Commission is satisfied that it is appropriate to do so in the interest of the investors or for the maintenance of an orderly and fair market, the Commission may, by notice in writing, cancel the registration of a recognised market operator with effect from a date that is specified in the notice.

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

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

(*a*) closing down the operations of the recognised market operator to which the cancellation relates; or

(*b*) protecting the interest of the investors.

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

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

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

(*a*) avoid or affect any agreement, transaction or arrangement entered into by the recognised market operator whether the agreement, transaction or arrangement was entered into before or where subsection (3) applies, after the cancellation of the registration under subsection (1); or

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

Review of the performance of a recognised market operator

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

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

(*a*) the systemic risk inherent in a platform;

(*b*) the 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 subsection (1) without giving the recognised market operator an opportunity of being heard.

Application of the provisions of the Act to unlisted securities

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

PART V

Market Misconduct

Object and purpose of this Part

126. The object and purpose of this Part shall be to facilitate for the deterrence and the taking of enforcement action against –

(*a*) all types of market manipulation including false trading, market rigging and securities fraud; and

(*b*) insider trading,

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

Application of this Part

127. This Part shall apply unless specified otherwise therein-

(*a*) in respect of securities-

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

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

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

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

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

(*b*) in respect of derivatives-

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

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

CHAPTER 1

PROHIBITED CONDUCT

False trading and market rigging transactions

128. (1) A person shall not create or cause the creation of or do anything that is intended to create –

(*a*) a false or misleading appearance of active trading of securities traded on an exchange licensed by the Commission or a platform operated by a recognised market operator; or

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

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

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

(*b*) by means of any fictitious transaction or device.

(3) Without prejudice to 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; or

(*b*) makes or causes to be made an offer to buy or sell such number of securities at a specified price where he has colluded with another or caused such collusion to be made with another or knows that a person associated with him has made with him or caused to be made with him an offer to purchase the same number or substantially the same number, of the same securities at a price that is substantially the same as the first mentioned price,

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

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

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

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

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

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

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

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

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

Stock market manipulations

129. (1) A person shall not carry out or be involved in carrying out, either directly or indirectly, one or more transactions in securities of a company being transactions that have or are likely to have the effect of artificially-

(*a*) raising;

(*b*) lowering; or

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

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

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

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

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

False or misleading statements

130. A person shall not make a statement, or disseminate information that is false or misleading in a material particular and which is likely to have the effect of raising, lowering, maintaining or stabilizing the market price or volume of securities traded on an exchange licensed by the Commission or a platform operated by a recognised market operator,-

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

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

Fraudulently inducing persons to deal in securities

131. (1) A person shall not induce or attempt to induce another person to trade in securities traded on an exchange licensed by the Commission or a platform operated by a recognised market operator, -

(*a*) by making or publishing any statement or by making any forecast that he knows to be misleading, false or deceptive;

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

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

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

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

Use of manipulative and deceptive devices

132. A person shall not directly or indirectly in connection with the subscription, purchase or sale of any securities traded on an exchange licensed by the Commission or a platform operated by a recognised market operator, –

(*a*) use any device, scheme or artifice to defraud;

(*b*) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

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

CHAPTER 2

INSIDER TRADING

Information

133. In this Chapter unless otherwise provided, "information" includes –

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

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

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

(i) commercial dealings; or

(ii) dealings in securities;

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

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

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

Information becoming generally available

134. (1) In this Chapter, information generally available means information-

(*a*) that has been published or made known in a manner that would or would tend to bring it to the attention of a reasonable person who invests or trades in securities of a kind whose price or value might be affected by such information; and

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

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

Material effect on price or value of securities

135. For the purpose of this Chapter, information which has a material effect on the price or value of securities means such information which would or would tend to, on becoming generally available influence a reasonable person who invests in securities in deciding whether or not to acquire or dispose of such securities or enter into an agreement with a view to acquire or dispose of such securities.

Reference to "procure"

136. For the purposes of section 137, a person is deemed to procure an act or omission to be done or omitted to be done by another person if the first named person incites, counsels, induces, encourages or directs the said act or omission by such other person.

Prohibited conduct of persons in possession of information not generally available

137. (1) For the purpose of this Part, an 'insider' means a person, whether or not such person is connected to the respective company, if that person–

(*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 the information in subsection (1) relates -

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

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

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

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

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

Information in possession of an officer of a company

138. (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 subsections (2) and (3) of section 137; 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 "insider" means a person in possession of such information.

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

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

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

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

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

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

(*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.

Information in possession of a partner or an employee of partnership

139. (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 who knows or possess the information, it is presumed, unless the contrary is proved that every partner of the partnership knows or could reasonably be expected to know that matter or thing.

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

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

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

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

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

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

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

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

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

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

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

Exceptions in relation to underwriting and sub underwriting

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

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

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

Exceptions in relation to schemes of arrangement, reconstruction and takeover of companies

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

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

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

Exception for a company with knowledge

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

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

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

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

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

Exception in relation to an individual

143. An individual does not contravene subsection (2) of section 137 by entering into a transaction or an agreement in relation to securities merely because he is aware that he proposes to enter into or has previously entered into one or more transactions or agreements in relation to those securities.

Unsolicited transaction by market intermediaries

144. (1) A market intermediary who carries on the business of buying and selling of securities on behalf of investors or its representative shall not contravene subsection (2) of section 137 by entering into a transaction or an agreement as an agent for another person, being a transaction or an agreement entered into on the securities market of an exchange if –

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

(*b*) the market intermediary carrying on the business of buying and selling of securities or its representative has not given any advice to the other person in relation to the transaction or agreement or otherwise sought to procure the other person's instructions to enter into the transaction or agreement; and

(*c*) the other person is not associated with the market intermediary or its representatives carrying on the business of buying and selling of securities.

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

Exception in relation to collective investment schemes

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

Parity of information defence

146. (1) A person does not contravene subsection (2) of section 137 if-

(*a*) the other party to the transaction or agreement knew, or could reasonably have known, of the information before entering into the transaction or agreement; and

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

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

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

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

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

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

Offences under this Part and punishment

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

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

Jurisdiction of the Courts

148. Every offence committed under this Part shall be triable upon indictment by the High Court.

Prosecution of offences under this Part

149. Every prosecution in respect of an offence under this Part shall be instituted and conducted by the Attorney General.

Prosecution need not disprove the defences

150. In a prosecution or in an action made by the Commission under section 152 against any person for an offence under section 137, it is not necessary for the prosecution or the Commission to prove the non-existence of facts or circumstances which, if existed would by virtue of sections 138, 139, 140, 141, 142, 143, 144, 145 and 146 preclude the act from constituting a contravention of subsections (2) and (3) of section 137.

Right of the aggrieved party to claim damages

151. (1) A person who suffers loss or damage by reason of or by relying on the conduct of another person who has contravened sections 128, 129, 130, 131, 132 or subsections (2) and (3) of section 137 under this Part may recover the amount of loss or damage by instituting an action in the court against the other person whether or not the other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.

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

Right of the Commission to recover damages and seek civil penalties

152. (1) Whenever it appears to the Commission that any person has contravened sections 128, 129, 130, 131, 132 or subsections (2) and (3) of section 137 and where the Commission considers it necessary having taken into consideration the nature and manner of the contravention, the impact it has on the market and the extent of the loss caused to any investor, the Commission may institute Civil Proceedings in the court against that person.

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

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

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

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

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

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

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

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

(*c*) credited to the Compensation Fund:

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

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

Prescription

153. An action under section 152 shall not be commenced after the expiration of six years from the date of the contravention of any of the provisions in this Part.

PART VI

Finance

Object and purpose of this Part

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

(*a*) to establish various funds for the proper functioning of the Commission; and

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

CHAPTER 1

FUNDS OF THE COMMISSION

Levy of a Cess

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

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

Cess Fund

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

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

(*a*) developing the securities market;

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

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

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

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

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

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

Fund of the Commission

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

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

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

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

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

CHAPTER 2

FUND TO PROVIDE COMPENSATION TO INVESTORS

Compensation Fund

158. (1) There shall be established a fund called the "Compensation Fund," by the Commission for the purpose of granting limited compensation to any investor who suffers pecuniary loss as a result of any licensed stock broker or stock dealer being found by the Commission as being incapable of meeting its contractual obligations.

(2) The Compensation Fund shall consist of -

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

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

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

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

Appointment of a Compensation Committee

159. (1) The Commission shall appoint from amongst 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 162 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

160. (1) Any investor who has suffered pecuniary loss as a result of any licensed stock broker or stock dealer 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 the claim of the applicant for compensation. Where the applicant fails to comply with such request, the Committee may disallow the claim of the applicant.

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

Payment of compensation

161. (1) The Committee may, after examination of the documents and other evidence produced in support of the claim by an applicant or in any case where an inquiry was held on the conclusion of such inquiry allow or disallow such claim for compensation.

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

CHAPTER 3

Financial Year and Audit of Accounts

Financial Year

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

Audit of Accounts

163. (1) The Commission shall cause proper books of accounts to be kept of the income and expenditure, assets and liabilities and all other transactions of the Commission.

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

PART VII

General

Object and purpose of this Part

164. The object and purpose of this Part shall be to ensure effective implementation of provisions in this Act relating to production of documents, disclosure of information, establishment of a Complaints Resolution Committee, conducting inquiries and investigations, sharing of information and the protection of whistleblowers.

CHAPTER 1

PROVISIONS RELATING TO IMPLEMENTATION

Production of documents and disclosure of information

165. (1) The Commission or a person authorised by the Commission may by notice in writing require any person within such period as specified in the notice to furnish any information or produce any document or electronic record (other than any information or document which is prohibited from being disclosed or produced under any law relating to the imposition and recovery of any tax) as specified in such notice and as the Commission may consider necessary for the proper exercise of its powers or the discharge of its functions under this Act.

(2) It shall be the duty of any person who receives a notice under subsection (1) to comply with the requirements of such notice within the period specified therein and, where in compliance with such notice such person discloses any information or produces any document or electronic record which he is prohibited from doing under any law, such disclosure or production shall notwithstanding anything to the contrary in such law not be deemed to be a contravention of the provisions of such law.

(3) Any information furnished or the contents of a document or an electronic record produced in compliance with a notice issued under this section shall not be published or communicated by the Commission to any other person except–

(*a*) by an order of court; or

(*b*) in the course of the discharge of the functions of the Commission; or

(*c*) with the consent of the person furnishing such information, document or electronic record.

(4) The consent under paragraph (*c*) of subsection (3) is not required when the person furnishing the information, document or electronic record is being investigated by the Commission for a breach of any provision of this Act or any regulation, rule or directive made thereunder.

Inquiries and investigations

166. (1) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure Act, No. 15 of 1979, the Commission or any person duly authorised by the Commission, may hold inquiries or carry out investigations as it may consider necessary or expedient for the exercise, performance and discharge of the powers, duties and functions of the Commission under this Act.

(2) For the purposes of subsection (1), the Commission or any person authorised by the Commission may, summon and call upon any person to appear before it or him to give evidence or to produce any book or document in the possession or control of such person as are required for the purpose of such investigation or inquiry, where the Commission has reasonable grounds to believe that—

(*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 has violated any of the provisions of this Act, regulations or the rules made thereunder or the directives issued by the Commission.

(3) Any person summoned or called upon to appear before the Commission or any person duly authorised by the Commission under subsection (2) may be examined orally and any statement made by the person so examined may be in writing. Every such statement in writing shall be signed by the person so examined provided that prior to signing the same, such person shall be required to read such statement or if he does not understand the language in which it is written it shall be interpreted to him in a language he understands and he shall be at liberty to explain or add to such statement.

(4) Every person who fails to appear before the Commission or the person authorised, when required to do so under subsection (2) or who refuses to answer any question put to him by the Commission or a person duly authorised by the Commission or any person who refuses to produce or allow the Commission or any person duly authorised to take copies of any book, document or electronic record in his possession or control when required to do so or knowingly gives any false answer to any question put to him by the Commission or a person duly authorised by the Commission commits an offence.

(5) (*a*) For the purpose of carrying out an inquiry or investigation under subsection (1), the Commission may authorise in writing any officer and any expert recognised under the Computer Crimes Act, No. 24 of 2007, as may be required to enter at all reasonable hours of the day any premises of a market institution or market intermediary or listed public company to inspect and take copies of any document or electronic record or take into possession any electronic device required to be kept under this Act or under any regulation or rule or directive made thereunder or any other law in respect of such business and where the Commission has reasonable grounds to believe that such information may be required in discharging its duties under the Act, to access their computer systems to collect evidence.

(*b*) For the purpose of carrying out an inquiry or an investigation under subsection (1), it shall be lawful for the Commission or any person authorised by the Commission upon an order issued by Magistrate's court to have access to any other premises not specified in paragraph (a) and inspect any property, book, document, article, thing or electronic record or device or otherwise in any form whatsoever and seize or take possession of the copies of such book, document, article, thing or electronic record or otherwise in any form whatsoever provided it is deemed by such authorised persons to be material evidence for a successful investigation or inquiry under subsection (1).

(6) Every authorised officer under subsection (1) shall be deemed to be a peace officer within the meaning and for the purposes of the Code of Criminal Procedure Act, No. 15 of 1979.

(7) The provisions of the Computer Crimes Act, No. 24 of 2007 shall *mutatis mutandis* apply in carrying out an inquiry or investigation under subsection (5) or any other section in this Act relating to electronic records or documents.

(8) Notwithstanding anything to the contrary in any other written law where the Commission on a consideration of material collected in the course of an investigation or inquiry or both an inquiry and investigation as the case may be is satisfied that any person has committed an offence under this Act other than an offence under Part V, it may authorise the Director General to initiate criminal proceedings against such person or to take any other enforcement action as provided for under this Act.

(9) Notwithstanding anything to the contrary in any other written law the Commission may if it deems appropriate forward the material collected and received under this Part to the Attorney General or any other authority to take any appropriate action under any other written law.

Issue of freezing orders

167. (1) On reasonable suspicion of a contravention of any provision of this Act, regulations, rules or directives made thereunder, the Commission may, at any time where an inquiry is being carried out or a person is being investigated in terms of section 165, issue a directive (hereinafter referred to as a "freezing order")-

(*a*) prohibiting a person from disposing assets of such person or any part thereof which is related to the matter under inquiry or investigation; or

(*b*) prohibiting a person from entering into any transaction or a class of transactions as may be determined by the Commission.

(2) A freezing order made under subsection (1) shall not be in force for a period exceeding seven market days from the date of issue of such order.

(3) The Commission after issuing a freezing order under subsection (1), shall within the period during which the freezing order is in force, make an application to court seeking confirmation of such freezing order and also if circumstances so necessitates, request an extension thereto as required after giving the aggrieved person an opportunity of being heard.

(4) Where the court is satisfied that there are sufficient reasons for issuance of such freezing order, the court may confirm the freezing order and if it is satisfied that there are sufficient reasons for extension thereof may, grant extensions for such periods as it considers appropriate.

(5) On an application made by the Commission to court in terms of subsection (3), the court shall make an appropriate order in respect of the management of the asset under a freezing order.

Inquiry by Complaints Resolution Committee

168. (1) The Commission shall establish a Complaints Resolution Committee to hear complaints by any person relating to the professional misconduct or the breach of any provision of this Act, regulations, rules made thereunder or directives issued on a market institution, market intermediary, listed public company or a registered person or any other person who comes under the regulatory purview of the Commission.

(2) The Commission or any person duly authorised by the Commission may hold such inquiries as it or he may consider necessary or expedient for the exercise, performance and discharge of the powers, duties and functions of the Commission under this Act and for such purpose summon and call upon any person to appear before the Complaints Resolution Committee to give evidence or to produce any books or documents in the possession or control of such person as are required for the purpose of such inquiries.

(3) The Commission shall establish appropriate processes and procedures for handling such complaints, and all matters related thereto by rules.

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

(5) Where the Committee finds that a market institution, market intermediary, listed public company or registered person has contravened a provision under this Act, regulation, rule or directive issued thereunder or rules of a market institution, the Complaints Resolution Committee shall convey such finding with a recommendation to the Commission and the Commission shall have the discretion to either give effect to such recommendation or take any other action as it may deem expedient.

(6) The Commission shall not take any action under this section without affording such market institution, market intermediary, listed public company or registered person an opportunity of being heard.

Supplementary Service Providers

169. (1) The Commission shall be entitled to seek information, clarification or explanation from supplementary service providers in relation to professional services carried out in respect of a market institution, market intermediary or listed public company or an unlisted company which has made a public offer of securities in accordance with section 81.

(2) Where the Commission is of the view that the services rendered in terms of subsection (1) is likely to cause harm to the interest of investors, the Commission may issue a directive to such supplementary service provider to take corrective action as may be determined by the Commission.

(3) The Commission may make guidelines or rules to provide for the duties and obligations of supplementary service providers where the Commission considers it necessary.

Implementation of agreements or memoranda of understanding

170. The Commission may enter into agreements or memoranda of understanding with such other organisations in connection with the sharing of information on regulatory functions relating to securities and investors in securities markets.

Sharing of information and cooperation

171. (1) The Commission may on its own motion or upon an order issued by a competent court of law-

(*a*) permit a police officer or any public officer to have access to and inspect any property, book, document, article, thing or electronic record or otherwise in any form whatsoever which has been produced before, seized, detained or taken possession of by the Commission under this Act; or

(*b*) provide to a police officer or any public officer a copy of any book, document or electronic record or otherwise in any form whatsoever seized, detained or taken possession of by an investigating officer or by any officer of the Commission in the course of any inspection carried out by the Commission in the exercise of its powers or in the discharge of his duties in respect of any person.

(2) The Commission may, where it deems necessary, enter into regulatory arrangements to cooperate with any domestic or foreign supervisory authority which may include –

(*a*) obtaining any information or document or electronic record from any domestic or foreign supervisory authority; and

(*b*) share any information or document or electronic record with any domestic or foreign supervisory authority.

(3) The Commission may, upon receiving a written request from a foreign supervisory authority for assistance in respect of any regulatory matter which the foreign supervisory authority enforces or administers, provide such assistance to such foreign supervisory authority as the Commission deems fit for the purpose.

(4) In determining whether to render assistance under subsection (3), the Commission shall have regard to-

(*a*) whether the foreign supervisory authority shall pay the Commission any cost and expenses incurred for providing the foreign supervisory authority with the assistance; and

(*b*) whether the foreign supervisory authority shall be able and willing to provide reciprocal assistance in response to a comparable request for assistance from the Commission.

(5) In this section –

"domestic supervisory authority" means the Central Bank of Sri Lanka established under the Monetary Law Act, Registrar General of Companies appointed under the Companies Act, No. 7 of 2007, the Police and any other regulatory authority under any written law;

"foreign supervisory authority" means a foreign authority which exercises functions corresponding to the functions of the Commission under this Act or any person or international organisation 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; and

"Public Officer" shall have the meaning assigned to that expression by Article 170 of the Constitution.

Whistleblower protection

172. (1) An employer shall not discharge, terminate, demote or cause harassment to a person in employment on account of having provided information to the Commission concerning violations or potential violations of this Act, regulations, rules or directives made thereunder or any rule of a market institution.

(2) Any employer who retaliates against such person for providing information to the Commission in terms of subsection (1) may be subjected to such administrative penalty as may be determined by the Commission by rules, after affording such person an opportunity of being heard.

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

(4) The Commission may grant a reward in terms of rules made in that regard, to a whistleblower who is the first to provide such information which leads to the successful prosecution or any other sanction by the Commission against a person for a contravention of the provisions of this Act.

Furnishing of information to the Minister

173. The Minister may, from time to time, request the Commission in writing to furnish to him in such form as he may require returns, accounts and other information with

respect to the work of the Commission and the Commission may furnish such information other than information deemed confidential by the Commission, on the grounds that providing such information –

(*a*) would cause grave prejudice to an ongoing investigation under the Act;

(*b*) would cause grave prejudice to the prevention or detection of any offence under the Act; or

(*c*) expose the identity of a confidential source of information in relation to any inquiries or investigations that are being conducted by the Commission under the Act.

Protection for action taken under the Act

174. (1) No suit or prosecution shall be instituted against any member of the Commission or against any officer of the Commission for any acts done or purported to be done or omitted to be done in good faith under this Act or on the direction of the Commission.

(2) Any expense incurred by the Commission in any suit or prosecution brought by or against it before any court shall be paid out of the Fund of the Commission and any cost paid to or recovered by the Commission in any such suit or prosecution shall be credited to such fund of the Commission.

(3) Any expenses incurred by a person referred to in subsection (1) in any suit or prosecution brought against him before any court in respect of any act which is done or purported to be done by him under this Act or on the direction of the Commission shall, if the court holds that such act was done in good faith be paid out of the Fund of the Commission unless such expenses are recovered by him in such suit or prosecution.

CHAPTER 2

PROVISIONS RELATING TO PUNISHMENTS AND ENFORCEMENT MECHANISMS

Offences

175. (1) Other than offences under Part V, any person who–

(*a*) contravenes any provision of this Act or any requirement imposed under the provisions of this Act or any regulation or rule or directive made thereunder;

(*b*) furnishes or produces, for the purposes of this Act or any requirement imposed under the provisions of this Act or any regulation, or any rule or directive made thereunder, any information or any return, document or electronic record or statement the contents of which are, to his knowledge, untrue, incorrect or misleading;

(*c*) threatens or intimidates or willfully obstructs, makes any derogatory remarks and publishes any statement with a view to bringing disrepute or defaming any member of the Commission or the Director-General or an officer or servant of the Commission or any person with whom the Commission has entered into an agreement in the course of discharging his duties under this Act or under any regulation or rule made thereunder;

(*d*) in any manner falsify any information or electronic record or store any misleading or false information in any book or electronic record in relation to the business of a market institution, market intermediary or a listed public company or any of its related companies; or

(*e*) destroys, conceals, mutilates, alters, sends or attempts to send or conspires with any other person to remove from its premises or send out of Sri Lanka

any book, document or electronic record or accounts required to be kept or maintained under this Act, regulations, rules or directives made thereunder with intent to defraud any person, or to prevent, delay or obstruct the exercise of any power under this Act,

commits an offence.

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

(3) All offences under this Act other than offences in Part V shall be triable in the Magistrate's court and any person who is found guilty of an offence under this Act for which no penalty is expressly provided for under this Act shall be liable on conviction after summary trial to a fine not less than ten million rupees and not exceeding one hundred million rupees or to imprisonment of either description for a period not exceeding ten years or to both such fine and imprisonment.

(4) Where any offence under this Act is committed by a body corporate, any person who is at the time of the commission of the offence, a director, manager or other similar officer of the body corporate shall be deemed to be guilty of that offence unless he proves that such offence was committed without his knowledge or connivance or that he exercised all due diligence to prevent the commission of that offence as he ought to have exercised having regard to the nature of his functions and all the circumstances of the case.

Acts applicable to the criminal process

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

(2) In prosecutions and in civil actions under this Act, the provisions of the Electronic Transactions Act, No. 19 of 2006 shall apply to and in relation to the admissibility of evidence of electronic records or other documents.

Compounding of offences

177. Other than offences listed in Part V of this Act, the Commission may having regard to the circumstances in which the offence under this Act was committed, compound such offence for a sum of money not exceeding one half of the maximum fine imposable for such offence and all such sums of money received by the Commission in the compounding of an offence under this section shall be credited to the Compensation Fund of the Commission.

Power of the Commission to impose administrative sanctions

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

(*a*) contravenes any provision of this Act or commits a breach of any regulation or rule made thereunder;

(*b*) contravenes or fails to comply with any condition or restriction of a licence or registration granted under this Act;

(*c*) fails to comply with any provision of the rules of a market institution; or

(*d*) fails to comply with any written notice, guideline, directive or condition imposed by the Commission,

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

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

(ii) impose a penalty on the person who has committed the contravention, non-compliance or breach, in proportion to the severity or gravity of the contravention, non-compliance or breach and such penalty in any event shall not exceed fifty million rupees;

(iii) reprimand the person who has committed the contravention, non-compliance or breach;

(iv) require the person who has committed the contravention, non-compliance or breach to take such steps as the Commission may direct to remedy the contravention, non-compliance or breach to mitigate the effect of such contravention, non-compliance or breach, including making restitution to any other person aggrieved by the contravention, non-compliance or breach;

(v) in the case of a promoter or a director of a listed public company, in addition to the actions that may be taken under paragraphs (i) to (iv), the Commission may impose a moratorium on or prohibit any trading of or any dealing in, the listed public company's securities or in any other securities which the Commission thinks fit, by the promoter or director or any person connected with the promoter or director.

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

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

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

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

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

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

(*a*) directing a market institution to take any disciplinary action against its trading participants, clearing members or depository participants, a listed public company and a director of a listed public company for the contravention, non-compliance or breach of the rules of the market institution including the imposition of a penalty; or

(*b*) taking any other action that it is empowered to take under this Act against the person who has committed the contravention, non-compliance or breach.

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

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

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

(i) allow the appeal and mitigate the penalty;

(ii) disallow the appeal.

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

(7) Where a person has failed to pay a penalty imposed by the Commission under subsection (2), the sum of money due as such penalty may, on application being made by the Commission to the Magistrate's court, be recovered in like manner as a fine imposed by such court, notwithstanding that such sum may exceed the amount of a fine which that court may, in the exercise of its ordinary jurisdiction impose and notwithstanding the provision of any written law to the contrary the sum so recovered shall be paid to the Commission.

(8) Without prejudice to any other remedy, where an administrative sanction under paragraph (iv) of subsection (1) requires the person in contravention, non-compliance or breach to make restitution in the form of monetary payment and the person in contravention, non-compliance or breach fails to restitute, on application being made by the Commission, to the Magistrate's court, be recovered in like manner as a fine imposed by such court, notwithstanding that such sum may exceed the amount of a fine which that court may, in the exercise of its ordinary jurisdiction impose and notwithstanding the provision of any written law to the contrary the sum so recovered shall be paid to the Commission.

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

(*a*) credited to the Compensation Fund of the Commission maintained under Part VI; or

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

Power of the Commission to protect investors' assets

179. (1) The Commission may take one or more of the following actions where a market intermediary who handles or is entrusted with monies of clients or assets in the course of his business contravenes any provision of this Act,

regulation, rule or directive issued thereunder or is no longer fit and proper and the Commission is of the view that interests of investors, the clients of a market intermediary or unit holders of collective investment schemes are likely to be jeopardized, or are jeopardized—

(*a*) direct the market intermediary not to deal with monies and properties of any investor or its clients in such manner as the Commission thinks appropriate or to transfer the monies and properties of such investors or its clients or any document or electronic record in relation to such monies or properties to any other person as may be specified by the Commission;

(*b*) direct a trustee to transfer any document or electronic record in relation to monies or properties to any other person as may be specified by the Commission;

(*c*) prohibit the market intermediary from entering into transactions, soliciting business from persons or require the market intermediary or trustee to engage in business in such manner as may be specified by the Commission; or

(*d*) require a market intermediary or trustee to maintain property within Sri Lanka or at a place outside Sri Lanka as determined by the Commission.

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

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

Power of the Commission to apply to court for certain orders

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

(*a*) restraining or requiring the cessation of the contravention;

(*b*) restraining a person from dealing or trading in securities in respect of any class of securities mentioned in the order;

(*c*) declaring a securities transaction to be void;

(*d*) restraining the person from acquiring, disposing of or otherwise dealing with assets which the court is satisfied that such person is reasonably likely to acquire, dispose of or otherwise deal with;

(*e*) directing a person to dispose of any securities that are specified in the order;

(*f*) restraining the exercise of any voting or other rights attached to any securities that are specified in the order;

(*g*) restraining a person from making available, offering for subscription or purchase or issuing an invitation to subscribe for or purchase or allotting any securities that are specified in the order;

(*h*) appointing a receiver or liquidator over the property of a market intermediary or the property that is held by such person for or on behalf of another person whether on trust or otherwise;

(*i*) vesting securities or such other property that is specified in the order in a trustee appointed by court;

(*j*) requiring a person to do such act or comply with such directive where a person has refused or failed or is refusing or failing or is proposing to refuse or fail to do any act or comply with any directive that such person is required to do under this Act;

(*k*) requiring that person or any other person who appears to have been knowingly involved in the contravention to take such steps as the court may direct to remedy it or to mitigate its effect including making restitution to any other person aggrieved by such contravention;

(*l*) directing a person to do or refrain from doing a specified act for the purpose of securing compliance with any other order under this section;

(*m*) directing a person to comply with a directive that is issued by the Commission;

(*n*) on any ancillary matter deemed to be desirable in consequence of the making of an order under any of the preceding provision of this subsection.

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

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

(4) Where an application for an order under subsection (1) is made by the Commission or any person duly authorised by the Commission, the court shall not as a condition of the grant of the order require any undertaking as to damages to be given by or on behalf of the Commission.

(5) A person appointed by order of the court under subsection (1) as a receiver of the property of a market intermediary–

(*a*) may require the market intermediary to deliver to him any property of which he has been appointed receiver or to give to him all information concerning that property that may reasonably be required;

(*b*) may acquire and take possession of any property of which he has been appointed receiver;

(*c*) may deal with any property that he has acquired or of which he has taken possession in any manner in which the holder might lawfully have dealt with the property; and

(*d*) has such other powers in respect of the property as the court specifies in the order.

(6) In this section, "property", in relation to a market intermediary includes monies, securities or other property and documents of title to securities or other property entrusted to or received on behalf of any other person by the market intermediary or another person in the course of or in connection with the business of the market intermediary.

(7) The trustee appointed by an order of the court under this section—

(*a*) may require any person to deliver to the trustee any security or such other property specified in the order or to give to the trustee all information concerning the securities that may reasonably be required;

(*b*) may acquire and take possession of the securities or such other property;

(*c*) may deal with the securities or such other property in any manner as it thinks fit; and

(*d*) shall have such other powers in respect of the securities or such other property as may be specified by the court in the order.

(8) The proceeds of the dealing in or disposal of securities under subsection (1) shall be paid to court and any person claiming to be beneficially entitled to the whole or any part of such proceeds may within thirty days of such payment to court apply to the court for payment out of the proceeds due to such person.

(9) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order on the application of a party aggrieved by such order with prior notice to the Commission of such application of an aggrieved party.

Power of the Commission to publish information

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

Regulations

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

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

(*a*) the fees, terms and conditions to be satisfied for the purpose of granting a licence to a market institution;

(*b*) giving effect to any memorandum of understanding between the Commission and its foreign counter part or any other organization in respect of listing of a foreign entity in Sri Lanka or sharing of information;

(*c*) product or class of products which are not classified as securities.

(3) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(4) Every regulation made by the Minister shall, as soon as it is convenient after its publication in the *Gazette* be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder.

Rules

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

(*a*) listing and trading of securities in an exchange and the subsequent issue of any additional securities by way of rights or bonus or otherwise by listed public companies or delisting of such companies;

(*b*) regulation of listed foreign entities in respect of listing and trading in an exchange and other related matters arising therefrom;

(*c*) disclosures by market intermediaries about security transactions by persons who acquired or disposed of securities and by an exchange about security transactions;

(*d*) proper maintenance of books, records, accounts and audits by a market institution, market intermediary and regular reporting by such market institution and market intermediary to the Commission of their affairs;

(*e*) the procedure to be followed in the cancellation or suspension of a licence issued or a registration granted under this Act;

(*f*) the annual audit of the books, records, accounts and the preparation of financial statements by a market institution and market intermediary;

(*g*) regulation of takeovers or mergers where the target of such takeover or merger is a listed public company;

(*h*) a code of conduct to be observed by the trustee and an issuer of securities and a managing company of a collective investment scheme and a code on the operation and approval of a collective investment scheme;

(*i*) matters in respect of which rules are required by this Act to be made;

(*j*) the prudential requirements, fit and proper criteria, record keeping and other documentation systems to be followed by a market institution and market intermediary;

(*k*) the form and contents of prospectus proposed to be issued by a listed public company or a public company which has applied for a listing or a listed foreign entity;

(*l*) the operation of securities in a margin account by a stock broker or by a margin provider;

(*m*) the business affairs and activities of a market institution and market intermediaries, in relation to listed securities and exchange traded derivatives;

(*n*) the disclosure and reporting and the provision of information by listed public companies, listed foreign entities and other unlisted companies coming within the purview of this Act;

(*o*) the rejection of applications for listing made to an exchange and the suspension and cancellation of listing by an exchange;

(*p*) in relation to the trading of derivative contracts carried out by utilizing the facilities of a licensed derivatives exchange;

(*q*) the regulation of the activities of market makers, stock lenders and stock borrowers and on the regulation of short selling;

(*r*) the establishment and operation of a fidelity fund or compensation fund for an exchange; and

(*s*) provision for settlement of disputes between client and market intermediary and between the respective participants or members and market institutions.

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

Derivatives not gaming or wagering contracts

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

Market maker

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

Recourse against decisions of the Commission

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

Repeals, savings and transitional provisions

187. (1) The Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987 is hereby repealed (hereinafter referred to as the "repealed Act").

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

(*a*) (i) the Commission established under the repealed Act and functioning as such on the day immediately preceding the date of operation of this Act shall be deemed to be the Commission for the purposes of this Act until a new Commission is established under Part I of this Act and continue accordingly; and

(ii) the appointed members holding office immediately preceding the date of operation of this Act, shall be deemed to have been appointed as such under this Act and continue to hold office until the end of their tenure or until new members are appointed under this Act;

(*b*) every licence issued to any exchange, stock broker or stock dealer or a managing company for the purpose of operating an unit trust under the repealed Act and which is in force immediately preceeding the date of operation of this Act, shall be deemed to be a licence issued by the Commission under this Act;

(*c*) every certificate of registration issued to any clearing house or any market intermediary under the repealed Act and which is in force immediately prior to the date of operation of this Act shall be deemed to be a licence issued by the Commission under this Act;

(*d*) all regulations, rules and directives made, approvals granted and any other action taken or notices issued under the repealed Act and which are in force on the day immediately prior to the date of commencement of this Act and not inconsistent with the provisions of this Act shall be deemed to be regulations, rules and directives made, approvals granted and any other action taken or notices issued by the Commission under this Act and shall continue to be valid;

(*e*) all contracts, agreements and other instruments made under the repealed Act and subsisting on the day immediately prior to the date of commencement of this Act shall be deemed to be contracts, agreements or other instruments entered into by the Commission under this Act;

(*f*) all suits, actions, and other legal proceedings instituted by or against the Securities and Exchange Commission of Sri Lanka established under the repealed Act and pending on the day, immediately prior to the date of commencement of this Act, shall be deemed to be suits, actions and other legal proceedings instituted by or against the Commission under this Act;

(*g*) all rules of the market institutions made under the repealed Act and are in force on the day immediately prior to the date of commencement of this Act and not inconsistent with the provisions of this Act, shall be deemed to be rules made by such

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

(*h*) every application for a licence made under the provisions of the repealed Act shall with effect from the date of commencement of this Act be deemed to be an application made to the Commission established under this Act and shall be dealt with accordingly;

(*i*) all movable and immovable property vested in the Securities and Exchange Commission of Sri Lanka established under the repealed Act and existing on the day immediately preceding the date of commencement of this Act, shall, with effect from the date of commencement of this Act, be vested with the Commission;

(*j*) all sums of money lying to the credit of the funds of the Securities and Exchange Commission of Sri Lanka established under the repealed Act and existing on the day immediately preceding the date of commencement of this Act, shall stand transferred, with effect from the date of commencement of this Act, to the respective funds of the Commission established under Part VI of this Act;

(*k*) all offences or proceedings initiated under the provisions of the repealed Act, regulations, rules or directives made thereunder prior to the commencement of this Act, shall be offences committed or proceedings initiated under the repealed Act and be tried accordingly;

(*l*) all interests, rights, assets, obligations, debts and liabilities of the Securities and Exchange Commission of Sri Lanka established under the repealed Act prior to the date of commencement of this Act, shall be deemed with effect from the date

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

(*m*) the Director-General, all officers and servants of the Securities and Exchange Commission of Sri Lanka established under the repealed Act holding office prior to the date of commencement of this Act, shall be deemed with effect from the date of commencement of this Act to be Director-General, the officers and servants of the Commission, on terms not less favourable than the terms and conditions of employment to which they were entitled under the repealed Act.

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

(*a*) every reference to Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987 in any other written law shall be construed as a reference to this Act; and

(*b*) every reference to the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987 in any other written law shall be construed as referring to the corresponding provisions contained in this Act.

Interpretation

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

"accredited investor" includes-

(*a*) an individual -

(i) whose net personal assets, excluding primary residential property, exceeds two hundred million rupees in value or a higher value as may be determined by the Commission; or

(ii) whose average annual income in the preceding three years is not less than thirty million rupees or a higher value as may be determined by the Commission; and

(iii) who makes a declaration on his experience, ability and sophistication to take on the investment risk;

(*b*) a corporate entity with net assets exceeding one thousand million rupees in value as determined by-

(i) the most recent audited balance sheet of the entity; or

(ii) in the absence of the audited balance sheet, the most recent balance sheet of the corporate entity certified by the entity as giving a true and fair view of the state of affairs of the entity as of the date of the balance sheet, which date shall be within the preceding twelve months;

(*c*) the trustee of a trust as the Commission may specify when acting in that capacity; or

(*d*) any entity licensed by the Commission under this Act or such other institution or entity as the Commission may specify by rules;

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

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

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

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

(*b*) which permits or facilitates the settlement of securities transactions or dealings in securities without the physical delivery of scrips; and

(*c*) to provide other facilities and services incidental thereto,

but does not include –

(i) a central depository operated or established by the Central Bank of Sri Lanka;

(ii) a central depositary operated or established in respect of securities issued by the Government of Sri Lanka or the Central Bank of Sri Lanka; or

(iii) any person providing, or holding out as providing, a central depository for exempted securities;

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

"clearing or settlement" in relation to a clearing facility includes any arrangement, process, mechanism or service provided by a person in respect of securities transactions by which —

(*a*) information relating to the terms of those securities transactions are verified by such person with a view to confirming such transactions;

(*b*) parties to those securities transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;

(*c*) the obligations of parties under those securities, transactions are calculated, whether or not such calculations include multilateral netting arrangements; or

(*d*) parties to those securities transactions meet their obligations under such transactions, including the obligation to deliver securities or the transfer of funds or the transfer of title to securities between the parties,

but does not include -

(i) the back office operations of a party to the securities transactions referred to in the above;

(ii) the services provided by a person who has, under an arrangement with another person (hereinafter referred to as the "customer"), who is in possession or control of securities of the customer, where those services are solely incidental to the settlement of transactions relating to the securities; or

(iii) any other services as may be specified by the Commission;

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

"collective investment scheme" includes any scheme or arrangement that satisfies the conditions under which a scheme or arrangement made or offered to the public by a company for which–

(*a*) the contribution or payments made by the investors, by whatever name called, are pooled and utilized solely for the purpose of the scheme or arrangement;

(*b*) the contributions or payments are made to such scheme or arrangement by investors with a view to receive profits, income, produce or property whether movable or immovable from such scheme or arrangement;

(*c*) the investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis as may be determined by the parties;

(*d*) the property, contribution or investment forming part of the scheme or arrangement, whether identifiable or not, is managed on behalf of the investors; and

(*e*) the investors do not have day to day control over the management and operation of the scheme or arrangement,

but does not include pools of funds relating to-

(i) individual investment management arrangements;

(ii) enterprise initiative schemes;

(iii) pure deposit based schemes;

(iv) schemes not operated by way of business;

(v) debt issues, such as debentures, bonds and loan stock;

(vi) employee share schemes;

(vii) franchise arrangements;

(viii) timeshare schemes;

(ix) provision of clearing services;

(x) contracts of insurance;

(xi) individual pension accounts;

(xii) occupational and personal pension schemes;

(xiii) certain body corporates including building societies, cooperative societies, industrial and provident societies and registered friendly societies; or

(xiv) any similar arrangement to the aforementioned schemes;

"controller" means a person who –

(*a*) is entitled to exercise or control the exercise of not less than twenty *per centum* of the votes attached to the voting shares in the holder;

(*b*) has the power to appoint or cause to be appointed a majority of the directors of such holder; or

(*c*) has the power to make or cause to be made, decisions in respect of the business or administration of the market institution, collective investment scheme and market intermediary, and to give effect to such decisions or cause them to be given effect to;

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

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

"depository participant" means a person who has access to the facilities of a central depository and is admitted as a depository participant under the rules of a central depository;

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

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

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

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

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

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

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

"listed foreign entity" means an entity which is not incorporated in Sri Lanka and has been admitted to the official list of a stock exchange licensed by the Commission under this Act by way of a secondary listing;

"listed public company" means any company which has its securities listed on a stock exchange, and includes any public corporation which has its securities listed on a stock exchange licensed by the Commission under this Act;

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

"manager" in relation to a body corporate means a person who is appointed by the body corporate to manage any part of its business and includes an employee of the body corporate (other than the chief executive officer) who under the immediate authority of a director or chief executive officer of the body corporate, exercises managerial functions or is responsible for maintaining accounts or other records of the body corporate;

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

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

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

For the purposes of this definition-

(*a*) "corporate finance advisor" means any person who for a fee or commission engages in the business of providing advice, on-

(i) compliance with or in respect of fund raising requirements as provided for under this Act;

(ii) compliance with the listing requirements of an exchange licensed under this Act;

(iii) structuring of financial products; or

(iv) schemes of arrangement, schemes of restructuring or takeovers of a listed public company, but shall not include –

(A) any attorney-at-law in practice who engages in giving advice in relation to any of the above solely incidental to the practice of his profession;

(B) any accountant in practice who engages in corporate finance advice solely incidental to the practice of his profession; or

(C) any company which engages in corporate finance advice solely for its benefit or for any of its related companies;

(*b*) "credit rating agency" means a body corporate engaged in the business of assessing and evaluating the credit- worthiness of any issuer or a specific issue of securities;

(*c*) "derivatives broker" means any person engaged in the business of buying or selling of derivatives on behalf of investors in return for a commission;

(*d*) "derivative dealer" means any person engaged in the business of trading in derivative contracts on his own account;

(*e*) "investment manager" includes a person who for a fee or commission engages in the business of managing a portfolio of securities on behalf of an investor but shall not include the manager of a collective investment scheme;

(*f*) "managing company" means a company by which a unit of a unit trust scheme, a real estate investment trust, an exchange traded fund or collective investment scheme –

(i) has been or is proposed to be issued or offered for subscription; or

(ii) in respect of which an invitation to subscribe or purchase has been made, and includes any person for the time being performing the functions of a managing company.

(*g*) "margin provider" means a person who is in the business of providing credit to investors to purchase securities traded on an exchange licensed by the Commission under this Act;

(*h*) "market maker" means a person who enters bid and offer prices in the order book maintained in the automated trading system of an exchange licensed by the Commission for a specified security based on the requirements or rules stipulated by such exchange;

(*i*) "stock broker" means any person engaged in the business of buying or selling of securities other than derivatives on behalf of investors in return for a commission;

(*j*) "stock dealer" means a body corporate in the business of buying or selling of securities other than derivatives for his own account;

(*k*) "underwriter" means any body corporate which in connection with a public offer of securities, guarantees to purchase unsubscribed portion of such securities for a fee or commission or who negotiates with an issuer of securities to purchase such securities in the event of the offer being not fully subscribed;

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

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

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

"offer" or "offering" includes any attempt to sell or dispose of any securities or interest in such security for value by means of a prospectus or otherwise to the public, but does not include a bona fide invitation to any person, to enter into an underwriting agreement in respect of any such securities;

"private placement" means an issue of securities to an identified investor or category of investors other than by way of a rights issue which is offered pro-rata to the existing shareholders or a general offer to the public for subscription;

"persons acting in concert" means persons who pursuant to an agreement or understanding, whether formal or informal, co-operate, through the acquisition by any of them of any interests in shares in a company, or any other company, or to frustrate the successful outcome of an offer for a company. Without prejudice to the general application of this definition, the following persons shall be presumed to be persons acting in concert with each other unless the contrary is established to the satisfaction of the Commission: -

(*a*) a company, its parent, subsidiaries and fellow subsidiaries, and each of their associate companies, and any person who has provided financial assistance (other than a bank licensed or a finance company registered by the Central Bank of Sri Lanka in the ordinary course of business) to any of the aforesaid persons for the purchase of voting rights, all with each other;

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

(*b*) a company with any of its directors together with their close relatives, related trusts as well as companies controlled by any of the directors, their close relatives and related trusts;

(*c*) a company with any of its pension funds and employee share schemes;

(*d*) a fund manager with any investment company, unit trust or other person whose investments such fund manager manages; and

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

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

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

"public notice" means a notice of any matter that is required to be given under this Act, which shall be given by publishing a notice of that matter in at least one issue of the *Gazette* and in at least one issue of a daily newspaper in Sinhala, Tamil and English languages, circulating within Sri Lanka;

"registered person" means any person dealing with clients for and on behalf of a market intermediary and who is registered by the Commission under this Act;

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

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

"securities" include-

(*a*) debentures, stocks, shares, funds, bonds, units in a collective investment scheme or any right, options or interests therein; or

(*b*) derivatives including futures and options, whatever the nature of the underlying asset relied on; or

(*c*) notes issued or proposed to be issued by any Government or any other incorporate or unincorporate body,

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

"securities market" means a market or other place or facility where –

(*a*) offers to sell, purchase or exchange of securities are regularly made or accepted;

(*b*) Offers or invitations that are intended, or may reasonably be expected to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities, are regularly made; or

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

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

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

"stock borrower" means a person who is engaged in the business of borrowing securities;

"stock exchange" means a body corporate licensed as a stock exchange by the Commission under this Act;

"supplementary service provider" includes an actuary, auditor, custodian, trustee, valuer or such person as may be specified by the Commission who provides professional services to a market institution, market intermediary or listed public company or to a collective investment scheme;

"trading participant" means a person who has access to the facilities of an exchange and is admitted as a trading participant under the rules of an exchange licensed by the Commission under this Act;

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

Sinhala text to prevail in case of inconsistency

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

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.