Sri Lanka Legislative Drafting Workshops

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PROPOSED DRAFT BILL - SECURITIES MARKET GROUP

An Act to provide for the establishment of the Securities and Exchange Commission for the purpose of regulating the Securities Market in Sri Lanka; to grant licenses to stock exchanges, managing companies of unit trust, stock brokers and stock dealers; to register market intermediaries; to set up a compensation fund; to appoint an advisory committee on securities; and for matters connected therewith or incidental thereto.

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

PART I - GENERAL

1. This Act may be cited as the Securities and Exchange Commission Act, No. 1 of 1998, and shall come into operation on a date as may be appointed by the Minister (hereinafter referred to as “the appointed date”) by order published in the Gazette.

2. (1) Minister shall establish a Commission called Securities and Exchange Commission of Sri Lanka, (hereinafter referred to as “the Commission”) within one month of the date of coming into operation 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 may sue and be sued in such name.

3. (1) The Commission shall consist of -

(a) Deputy Security to the Treasury; and
(b) Six professional persons appointed by the Minister who appear to the Minister to have wide experience in legal, financial, business or administrative matters.

(2) The Minister shall nominate from among the members of the Commission, a Chairman of the Commission (hereinafter referred to as "the Chairman").

(3) Every member appointed under paragraph (b) of subsection (1) shall, unless he vacates earlier by death, resignation or removal, hold office for a term of three years.

The objects of the Commission shall be-

4. (a) the creation and maintenance of a market in which securities can be issued and traded in an orderly and fair manner;

(b) the protection of the interests of investors;

(c) the regulation of the securities market and to ensure that professional standards are maintained therein.

**PART II - LAW**

5. (1) No person shall carry on the business of a stock exchange, stock broker, stock dealer or a managing company of a unit trust, unless he has applied in prescribed form together with the prescribed fee to the Commission and obtained a licence from the Commission to carry on such business.

(2) An applicant for any licence under subsection (1) shall comply with the terms and conditions set out in the Schedule hereto in respect of such licence.
No person shall carry on the business of a market intermediary in securities, unless he has applied for registration to the Commission in prescribed form together with the prescribed fee complying with the terms and conditions set out in the Schedule hereto in respect of a market intermediary and obtained a certificate from the Commission.

7. (1) Any person aggrieved by a decision of the Commission -
   (a) refusing to grant a license under section 5 or refusing to register under section 6; or
   (b) canceling or suspending a license or registration under section 22,
       may appeal to the court of appeal within three months from the date on which the decision was communicated to such person.

   (2) The court of appeal may, on an appeal made to it under subsection (1), confirm, modify or set aside the decision of the Commission and make any order as the interest of justice may require.

8. Any licensed stock broker, or stock dealer shall not sell, lend or arrange for lending of, any securities carried for the account of any customer without the written consent of the customer.

9. No licensed stock broker or stock dealer shall deal in listed securities outside any licensed stock exchange of which he is a member, or in contravention of such rules as the Commission may make relating to the trading of securities.

10. (1) Any person who is an insider in relation to a listed public company shall not trade in securities of that company if he possesses or he has or is
reasonably believed to have access to any unpublished price sensitive information of such securities.

(2) For the purposes of this section “insider” in relation to a listed company shall mean an insider within the meaning of section 220 of the companies Act No. 17 of 1982.

Where a licensed stock exchange, stock broker, stock dealer, managing company of a unit trust or a registered market intermediary, as the case may be, proposes to alter any particulars already furnished or undergoes or intends to undergo a change from the state specified in the application under section 5 or section 6, as the case may be, it shall be the duty of such licensed stock exchange, stock broker, stock dealer, managing company, as the case may be, to inform the Commission and obtain its prior approval before such alteration or change is effected.

Where shares in any public company has been allotted to any person prior to the listing of its shares in a licensed stock exchange, no shares or any security convertible to shares in such company shall be listed on a licensed stock exchange within a period of one year from the date of last such allotment.

No managing company shall issue units in a unit trust unless:

(a) such unit trust has been approved by the Commission, and

(b) a trustee approved by the Commission has been appointed in respect of such unit trust.

No person shall issue or publish or cause to be issued or published any prospectus, explanatory memorandum or advertisement inviting the public to invest in units of a unit trust or shares of a listed public company unless he
has obtained prior approval of the Commission for the content of such prospectus, explanatory memorandum or advertisement and for its issue and publication.

15. It shall be the duty of any person who is required to furnish any return or information by the Commission, to comply with such requirement except where such person is precluded from making such return or divulging such information under the provisions of any law.

16. Any investor who suffered pecuniary loss due to the failure of a licensed stock broker, stock dealer, managing company of a unit trust or as a result of those broker, dealer or managing company becoming incapable of meeting his contractual obligations towards such investor may make his claim to the Committee appointed under section 25 within three months of the date on which such loss was made.

17. (1) Complaints by any share holder of any listed company or unit holder of any unit trust relating to the professional conduct or activities of any licensed stock exchange, stock broker, stock dealer, managing company of any unit trust or any registered market intermediary or of such listed company, may be made to the Committee appointed under section 26 by orally or in writing.

(2) Complaints by any licensed stock broker or stock dealer, relating to the professional conduct or activities of the licensed stock exchange of which such broker or dealer is a member, may be made in writing to the Committee appointed under section 26.
(3) The objects of the Commission shall be:

(a) the creation and maintenance of a market in which securities can be issued and traded in an orderly and fair manner;

(b) the protection of the interests of investors;

(c) the regulation of the securities market and to ensure that professional standards are maintained therein.

PART III - IMPLEMENTATION

18. It shall be lawful for the Commission, for the purpose of carrying out its objects, to exercise, perform and discharge all or any of the following powers, duties and functions:

(a) to grant a license to any body corporate to operate as a stock exchange, stock broker, stock dealer or managing company of a unit trust and ensure proper conduct of their business;

(b) to register every body corporate which is operating or intend or operate as a market intermediary and ensure the proper conduct of such business;

(c) to give general or specific directions to any licensed stock exchange, stock broker, stock dealer, managing company of a unit trust or a registered market intermediary or a trustee of a unit trust, from time to time;

(d) to grant compensation to any investor who suffers pecuniary loss resulting from the violation of securities rules or regulation by a licensed stock broker, stock dealer, or managing company of a unit trust and where such broker, dealer or managing company as the case
may be, has failed to meet or has become incapable of meeting his contractual obligations to the investor concerned.

(e) to regulate the listing and issue of securities;
(f) to maintain a register of all listed securities in this country;
(g) to cancel or suspend the listing of any securities or suspend the trading of any listed securities or all listed securities for not more than 3 days at a time, where such cancellation or suspension is, in the opinion of the Commission, necessary to protect the investors;
(h) to investigate and inquire into any activity of a licensed stock exchange, stock broker, stock dealer, managing company of a unit trust, trustee of a unit trust, registered market intermediary or any listed company;
(i) to publish findings of malfeasance by any licensed stock exchange, stock broker, stock dealer, managing company of a unit trust or trustee of a unit trust or a registered market intermediary or any listed company;
(j) to implement the policies and programmes of the Government with respect to the securities market;
(k) to undertake a continuous public dissemination programme of market information through mass media;
(l) to regulate the take-over or merger between companies where they are listed companies or at least one involved is a listed company;
(m) to conduct investigation into and take appropriate action against, any violation or contravention of the provision of this Act. or any rule or regulation made thereunder by any person;
(n) to grant rewards, from the fund of the Commission, to employees of the Commission who have shown efficiency in the implementation of the provisions of the Act, and to those who have contributed to the development of the securities market; and
(o) to impose and levy a cess for the purpose of generating income to the
compensation fund, on the daily trading of listed securities in any licensed stock exchange.

19. The Commission shall --
   (a) conduct regular inspections of the activities of licensed stock exchanges, stock brokers, stock dealers, managing companies of unit trust, trustees of unit trusts or registered market intermediaries or listed companies in order to determine whether they are operating in conformity with the provisions of the Act or any rules or regulations made thereunder.
   (b) require licensed stock exchanges, stock brokers, stock dealers, managing companies of unit trusts and registered market intermediaries to file with the Commission, annual balance sheet and income statements certified by a qualified auditor.

20. (1) The Commission shall not issue a license to any person to operate as a stock exchange, stock broker, stock dealer or managing company of a unit trust, where the applicant for that license does not comply with the terms and conditions set out in the Schedule hereto in respect of that license.

21. (1) The Commission shall charge and levy a cess at such rate as may be prescribed, on every purchase or sale of securities executed in the trading floor of any licensed stock exchange.
(1) The Minister shall appoint from among the members of the Commission three members to comprise the Compensation and Rewards Committee (hereinafter referred to as "the Committee").

(2) The Committee shall be responsible for assessing and awarding compensation in respect of any application received under section 16 and deciding on rewards that is to be granted to the staff of the Commission for the efficient performance of their duties.

(3) Where the Committee awards any claim of compensation or decides to grant any rewards to any staff of the Commission, it shall notify such awards or rewards to the claimant or staff, as the case may be.

(4) The Commission shall make rules relating to the assessment of compensation payable and rewards allowable to its staff.
Rules made 30. The Commission shall make the following rules as may be required from time to time, for the purpose of ensuring orderly and fair trading in securities and protection of investors' interests:

(a) listing of securities in any licensed stock exchange;
(b) disclosures by dealers about share transactions and by licensed stock exchanges about securities transactions;
(c) proper maintenance of books, records, accounts and audits by licensed stock exchanges, stock brokers, stock dealers, managing companies of unit trusts and registered market intermediaries and regular reporting by such bodies to the Commission of their affairs.

Appointment 31. (1) Minister shall appoint an Advisory Committee consisting of:

(a) the Deputy Governor of the Central Bank;
(b) the Registrar of Companies;
(c) the President of the Institute of Chartered Accountants of Sri Lanka; and
(d) three other professional persons appear to the Minister to have wide experience in legal, financial or business matters.

(2) It shall be the duty of the Advisory Committee appointed under subsection (1), to advise to the Government on the development of the securities market and on any other matter referred to it by the Government for its consideration.

PART IV - SANCTIONS

Penalty for 32. (1) Any person who in connection with an application or appeal or claim made under this Act, willfully makes a false or misleading statement or willfully omits or fails to report any subsequent
misleading statements.

changes which render the application already made misleading shall be guilty of an offense and on conviction after summary trial before a Commercial Court holder in Colombo shall be liable to a fine not exceeding the amount as referred to in subsection (2).

(2) Fine for the year 1998, shall be one million rupees and for any subsequent year be one million rupees adjusted by the inflationary factor for 1998 or by the cumulative inflationary factors since 1998, published by the Central Bank, as the case may be.

Penalty for 33. (1) Any person who is found to be guilty of an offense of insider dealings in trading in securities shall, on conviction after summary trial before a Commercial Court holder in Colombo, be liable to a fine as referred to in subsection (2) to imprisonment for a term not exceeding five years or both such fine and imprisonment.

(2) For the purpose of subsection (1), the amount for the year 1998 shall be twenty million rupees and for any subsequent year shall be such amount derived by adjusting that amount by the inflationary factor for 1998 or by the cumulative inflationary factor since 1998, as the case may be, published by the Central Bank. In addition to this amount the Court convicting for insider dealing shall make an order to the person convicted to pay three times of the gain that person may have made or loss that person could have avoided by the said insider dealing in securities. For this purpose a certificate issued by the Director - General of Securities and Exchange Commission shall be admissible in evidence.

Offenses. Any person who contravenes any provision of this Act or any requirement imposed under the provisions of this Act or of any
regulation made thereunder shall be guilty of an offense and on
conviction by a Commercial Court holden in Colombo be liable
to a fine not exceeding 10 million or a sentence of
imprisonment for a period not exceeding 5 years or to both
such fine and imprisonment.

PART V - APPROPRIATION

35. (1) The Minister shall on recommendation of the Commission,
appoint a Director-General of the Commission who shall be
the chief executive officer of the Commission.

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

36. The Commission may, in consultation with the Director-General,
appoint such other officers and employees as it considers necessary for
the efficient discharge of its functions under this Act.

37. (1) The Commission shall have its own Fund. There shall be paid
into the Fund:

(a) all such sums of money as may be voted by Parliament
from time to time;

(b) all such sums of money as may be received by the
Commission in the exercise of its powers and functions
under this Act;

(c) all such sums of money as may be appropriated under
Section 21;
(d) all such sums of money as may be appropriated under section 38.

(2) There shall be paid out of the Fund:

(a) 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.

(b) all such sums as may be authorized by the Commission for the purpose of:

(i) developing the securities market;

(ii) rewarding the staff of the Commission;

(iii) carrying out continuous public dissemination of market information through mass media.

(3) Moneys lying to the credit of the Fund may be invested by the Commission in any investments other than securities.

Appropriation 38. Any sums of money recovered by a Commercial Court, under this Part of the Act, by way of fines shall be appropriated by the court as follows:

(a) one half shall be credited to the Consolidated Fund;

(b) one fourth shall be credited to the Compensation Fund; and

(c) balance one quarter shall be credited to the Fund of the Commission.

Compensation Fund 39. (1) The Commission shall establish a Fund called the Compensation Fund for the purpose of granting compensation to any investor under this Act.

(2) There shall be paid into the Compensation Fund:

(a) all such sums of money as may be voted by Parliament;
(b) all such sums as may be recovered by the Commission by the compounding of any offenses under this Act;

(c) all such sums as may be appropriated under section 38.

(3) The shall be paid out of the Fund any sum as awarded as compensation to investors under section 25.

(4) Money lying to the credit of the Compensation Fund may be invested by the SEC in any manner other than in securities.

PART VI - MISCELLANEOUS

Superseding 40. (1) Not withstanding anything to the contrary in any other written law, the provisions of this Act shall prevail over and above the provisions of such law.

(2) The provisions of the Companies Act, Mortgage Act, and Auditing and Accounting Standards Act shall stand amended, in so far as such provisions are not inconsistent or in derogation to the powers of the Securities and Exchange Commission under this Act.

Repeals and 41. (1) The Securities and Exchanges Commission Act, No. 36 of 1987 is hereby repealed.

(2) Notwithstanding the repeal of the Securities and Exchanges Commission Act, Rules and Regulations made under that Act shall be deemed, so far as they are not inconsistent with the Act, rules and regulations made thereunder, to be the Act.
“Advertisement” includes advertising in any publication or by way of display of notices, signs, labels or business cards including electronic media;

“Commercial Court” means a district court appointed under the Indicative Act to hear all matters related to securities market;

“Credit rating agency” means a person engaged in the business of assessing and evaluating the creditworthiness of any issue of listed securities;

“margin provider” means a person who is in the business of providing credit to investors to purchase securities of a listed public company;

“market intermediary” means an underwriter, a margin provider, credit agency or an investment manager and includes a central depository performing as clearing house in securities;

“managing company of a unit trust” means a company incorporate under the law, managing property held by the trustee of a unit trust for the benefit of unit holders of such unit trust;

“Minister” means the Minister of the subject of Finance;
"Securities" means stocks, shares, debentures, funds, bonds, notes issued, issued by any Government or of any body whether corporate or unincorporate, but shall not include bills of exchange or promissory notes or certificate of deposits issued by a bank;

"Underwriter" means any person who, in connection with a public issue of securities of a listed public company, guarantees to purchase unsubscribed securities of such company for a fee or commission in the event of the offer being not fully subscribed - Schedule - Part I - Part IV

Schedule (sections 58.6)

Part I: - Terms and conditions to be complied for the issue of a licence as a stock exchange.

Part II: - Terms and conditions to be complied for the issue of a licence as a stock broker or a stock dealer.

Part III:

Part IV: