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PART I

Acts, Ordinances, President's Orders and Regulations

NATIONAL ASSEMBLY SECRETARIAT

Islamabad, the 6th May, 2015

No. F. 22(22)/2015-Legis.—The following Act of *Majlis-e-Shoora* (Parliament) received the assent of the President on 13th May, 2015 and is hereby published for general information:—

ACT No. III OF 2015

An Act to amend and consolidate law for the regulation of the securities industry and the protection of investors

WHEREAS it is expedient to amend and consolidate law for the regulation of the securities industry, the protection of investors and for the matters connected therewith or ancillary thereto;

It is hereby enacted as follow:—

(169)

Price : Rs. 83.50

[779 (2015)/Ex. Gaz.]

PART 1

PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called the Securities Act, 2015.

(2) It extends to the whole of Pakistan.

(3) Except for PART V, this Act shall come into force at once, and PART V of this Act shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint.

2. **Definitions.**—In this Act, unless there is anything repugnant in the subject or context,—

(i) “accredited” means accredited in accordance with section 67;

(ii) “associate”, in relation to—

(a) an individual, means—

(I) that individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, stepfather, mother, stepmother, brother, stepbrother, sister or stepsister;

(II) any company of which that individual is a director;

(III) any company in which that individual or any of the persons mentioned in sub-clause (i), has control of twenty per cent or more of the voting power in the company, whether such control is exercised individually or jointly; or

(IV) any employee of that individual; or

(b) a company, means another company in which the first-mentioned company has control of not less than twenty per cent of the voting power in that company,

and a reference in this Act to an associated person or associated company shall be construed accordingly;

(iii) “auditor” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Ordinance, 1961 (X of 1961), to be appointed from the panel of auditors approved by the Commission to perform the functions assigned to auditors under this Act;

- (iv) "balloter" means a person who provides services to an issuer for selecting the required number of applicants of public issue through a ballot;
- (v) "bank" means a bank licenced under section 27 of the Banking Companies Ordinance, 1962 (LVII of 1962);
- (vi) "central depository" means any company licensed by the Commission for the handling of securities, as envisaged in the Central Depository Act 1997 (XIX of 1997) and licensed under section 49 of this Act;
- (vii) "clearing facility" means a facility for the clearing and settlement of securities traded on a securities exchange;
- (viii) "clearing house" means a company that is licenced by the Commission as a clearing house under section 24;
- (ix) "clearing member" means a person who, is admitted as a clearing member for clearing and settlement on his own behalf as well as on behalf of others under the regulations of a clearing house;
- (x) "Commission" means the Securities and Exchange Commission of Pakistan established under section 3 of the Securities and Exchange Commission of Pakistan Act, 1997(XLII of 1997);
- (xi) "commissioner" means a commissioner as defined in section 2 (h) of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (xii) "company" means a company as defined in clause (7) of sub-section (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984);

*Explanation:—*The expression "company" used in this Act, shall, wherever the context requires, also include a body corporate or corporation established by any special enactment for the time being in force;
- (xiii) "control" includes the right to appoint majority of directors or to control management or policy decisions, exercisable by a person individually, or through any person acting in concert, directly or indirectly, whether by virtue of his shareholding, management right, shareholders agreement, voting agreement or otherwise;
- (xiv) "Court" means the Company Bench of a High Court as provided in sections 7 and 8 of the Companies Ordinance, 1984 (XLVII of 1984);

- (xv) "customer" means a person on whose behalf a regulated person carries on any regulated securities activity and includes any person commonly known as an investor;
- (xvi) "customer assets" means money received, receivable or retained by or any other property deposited with, a regulated person in the course of his business for which he is liable to account to his customer, and any money or other property accruing there from;
- (xvii) "customer money" means money of any currency that, in the course of carrying on his regulated securities activity, a regulated person holds or receives on behalf of a customer or which he owes to a customer;
- (xviii) "default proceedings" means proceedings or other action taken by a clearing house, stock exchanges and central depository under its default regulations;
- (xix) "default regulations", means those provisions of the regulations which provide for the initiation of proceedings or other action if a clearing member has failed or appears to be unable or likely to become unable, to meet his obligations for all unsettled or open market contracts to which he is a party;
- (xx) "depository receipt" means a certificate or other record, whether or not in the form of a document, which—
- (a) is issued by or on behalf of a person who holds any shares, debt securities and warrants of a particular issuer; and
 - (b) acknowledges that another person is entitled to rights in relation to the share, debt securities and warrants, debt securities and warrants of the same kind;
- (xxi) "director", in relation to a company, includes any person occupying in relation to the position of a director, by whatever name called;
- (xxii) "expert" includes banker, securities advisor, engineer, valuer, accountant, lawyer and any other person whose profession gives authority to a statement made by him;
- (xxiii) "family" means a spouse and lineal ascendants and descendants;

- (xxiv) "futures broker" means a person who, by way of business, whether as principal or agent,—
- (a) makes or offers to make with any person or induces or attempts to induce any person to enter into or to offer to enter into any agreement for or with a view to the purchase or sale of a futures contract; or
 - (b) solicits or accepts any order for, or otherwise dealing in, a futures contract;
- (xxv) "futures exchange" means a public company that is licensed by the Commission as a futures exchange;
- (xxvi) "holding company" means a holding company as defined in section 3 of the Companies Ordinance, 1984 (XLVII of 1984);
- (xxvii) "issuer", in relation to securities, means any person who has issued or proposes to issue a security;
- (xxviii) "licenced person" means any person or entity licenced under this Act and includes a regulated person;
- (xxix) "listed company" means a public company, body corporate or other entity any of whose securities are listed on securities exchange;
- (xxx) "listed securities" means securities listed on the securities exchange;
- (xxxi) "majority shareholder" means shareholder who holds, owns or control, directly or indirectly, more than fifty percent of the shares having voting rights in a company or who, for other reasons, has domination or control of the company and includes a group of shareholders who collectively own more than fifty percent of shares or otherwise have that domination or control;
- (xxxii) "margin" means the amount of cash, approved securities or any other form of margin as prescribed;
- (xxxiii) "market contract" means—
- (a) a contract subject to the regulations of a clearing house entered into by the clearing house with a clearing member under a novation and for the purpose of clearing and settlement of

- transactions using the clearing facility before or after default proceedings have commenced; or
- (b) a transaction which is being cleared or settled using the clearing facility and subject to the regulations of a clearing house, whether or not a novation referred to in sub-clause (a) is to take place;
- (xxxiv) "money" includes any form of money, whether represented by a cheque or other payable order or otherwise;
- (xxxv) "non-banking finance company" shall have the same meaning as assigned to it in clause (a) of section 282A of the Companies Ordinance, 1984 (XLVII of 1984);
- (xxxvi) "offeror" means any person or entity holding, directly or indirectly, such number of securities as may be prescribed and offers such securities for sale to the public or invites any other person to make subscription for such an offer and includes an issuer;
- (xxxvii) "prescribed" means prescribed by regulations made by the Commission;
- (xxxviii) "principal", in relation to a representative, means the regulated person which the representative represents;
- (xxxix) "private company" means a private company as defined in clause (28) of sub-section (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984);
- (xl) "private offering (non-public offering) or private placement" means an offer to sell or issue securities to a group of investors (whether individual or institutional) not more than the number prescribed and not using the print or electronic media for inviting offers;
- (xli) "prospectus" means any document described or issued as a prospectus and includes any document, notice, circular, material, advertisement, offer for sale document, publication or other invitation offering to the public (or any section of the public) or inviting offers from the public for the subscription or purchase of any securities of a company, body corporate or entity, other than deposits invited by a bank and certificate of investments and certificate of deposits issued by non-banking finance companies;

- (xlii) "public company" means a public company as defined in clause (30) of sub-section (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984);
- (xliii) "qualified institutional buyer" means —
- (a) a bank;
 - (b) a financial institution as defined under clause (15A) of sub-section (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984); or
 - (c) any other entity, which is notified by the Commission as a 'qualified institutional buyer' based on the criteria prescribed under regulations;
- (xliv) "quotation and trade reporting system" means the operation of facilities that permit the dissemination of price quotations for the purchase and sale of securities and reports of completed transactions in securities;
- (xlv) "record" means all documentary, electronic and digital materials created, generated, sent, communicated, received or stored, regardless of physical form or characteristics;
- (xlvi) "regulated market" means any securities exchange, over-the-counter market or platform that is licensed by the Commission;
- (xlvii) "regulated person" means a person or entity licenced by the Commission under Part V of this Act to carry on any regulated securities activity;
- (xlviii) "regulated securities activity" means a regulated securities activity as specified in section 63;
- (xlix) "regulations" means regulations made by the Commission under this Act;
- (l) "representative" means an individual, by whatever name called, in the employment of or acting for or by arrangement with, a regulated person, who carries out for that regulated person any such activity (other than work ordinarily performed by accountants, clerks or cashiers), whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise; and includes any officer of a company who performs for the company any such activity whether

or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise and includes an agent of a regulated person;

- (li) "rules" means rules made under this Act;
- (lii) "securities" in the case of listed instruments includes—
 - (a) shares and stock of a company (shares);
 - (b) any instrument creating or acknowledging indebtedness which is issued or proposed to be issued by a company including, in particular, debentures, debenture stock, loan stock, bonds, notes, commercial paper, sukuk or any other debt securities of a company, whether constituting a charge on the assets of the company or not (debt securities);
 - (c) loan stock, bonds, sukuk and other instruments creating or acknowledging indebtedness by or on behalf of a government, central bank or public authority (Government and public debt securities);
 - (d) modoraba certificates, participation term certificates and term finance certificates;
 - (e) any right (whether conferred by warrant or otherwise) to subscribe for shares or debt securities (warrants);
 - (f) any option to acquire or dispose of any other security (options);
 - (g) units in a collective investment scheme, including units in or securities of a trust fund (whether open-ended or closed end);
 - (h) the rights under any depository receipt in respect of shares, debt securities and warrants (custodian receipts); and
 - (i) any other instrument notified by the Commission to be securities for the purposes of this Act,

but does not include —

- (a) futures contracts;
- (b) bills of exchange;
- (c) promissory notes; and
- (d) certificates of deposit;

(lii) "securities adviser" means a person, who —

- (a) gives investment advice on whether, which, the time at which or the terms or conditions on which, securities may be bought, sold, exchanged or subscribed for;
- (b) issues analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on whether or the time at which or the terms or conditions on which, specific securities may be bought, sold, exchanged or subscribed for; or
- (c) advises on the management of a portfolio of securities for another person —
 - (i) without holding property of the other person; and
 - (ii) on terms that preclude him from doing so,

but does not include —

- (I) a bank;
 - (II) a person who gives such advice or issues such analyses or reports —
 - (A) in a newspaper, magazine, book or other publication which is made generally available to the public, and which does not have as its principal or only object the provision of advice or the issue of analyses or reports, concerning securities; or
 - (B) in television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise; and
 - (III) any other person excluded to the such extent as may be notified by the Commission;
- (liv) "securities broker" means a trading right entitlement certificate holder or "TRE" certificate holder who, by way of business, —
- (a) makes or offers to make with any person or induces or attempts to induce any person to enter into or to offer to enter into, any agreement for or with a view to buying, selling, exchanging or subscribing for, securities; or

- (b) solicits or accepts any order for or otherwise trading in, or effects transactions in, securities for clients or on its own account;
- (iv) "securities exchange" means a public company that is licensed by the Commission as a securities exchange under section 5;
- (vi) "securities manager" means a person who manages or offers or agrees to manage, with or without remuneration, a portfolio of securities belonging to another person, whether on a discretionary authority granted by that other person or otherwise;
- (vii) "securities market" means any market or place at which or any service or facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange securities are regularly made on a centralized basis, being offers or invitations that are intended or may reasonably be expected, to result, directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange securities;
- (viii) "senior management officer" includes, chief executive officer/managing director, deputy managing director/chief operating officer and chief regulatory officer or holder of such positions by whatever name called;
- (lix) "settlement", in relation to a market contract, includes partial settlement;
- (lx) "shelf registration" means an arrangement that allows a single offering document allowing companies to make multiple offerings as disclosed in the offering document within a prescribed time and subject to prescribed conditions;
- (lxi) "subsidiary" means a subsidiary as defined in section 3 of the Companies Ordinance, 1984 (XLVII of 1984);
- (lxii) "substantial shareholder", in relation to a company, means a person who has an interest in shares of a company –
 - (a) the nominal value of which is equal to or more than ten per cent of the issued share capital of the company; or
 - (b) which enables the person to exercise or control the exercise of ten per cent or more of the voting power at a general meeting of the company;

- (lxiii) "trading in securities" means (whether as principal or agent) —
- (a) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into, any agreement for or with a view to the purchase or sale of a security; or
 - (b) soliciting or accepting any order for or otherwise trading in a security;
- (lxiv) "trading right entitlement certificate" or "TRE certificate" means a trading right entitlement certificate as defined in the Stock Exchanges (Corporatization, Demutualization and Integration) Act, 2012 (XV of 2012);
- (lxv) "trading right entitlement certificate holder" or "TRE certificate holder" means a trading right entitlement certificate holder as defined in the Stock Exchanges (Corporatization, Demutualization and Integration) Act, 2012 (XV of 2012); and
- (lxvi) "underwriter" means a person who —
- (a) on a firm commitment basis purchases newly issued securities or securities offered for sale for the purpose of public resale on behalf of the issuer or offeror or who guarantees to an issuer or offeror that the unsold residue of the issuer's public issue or sale will be taken up; or
 - (b) on a best efforts basis acts as an underwriter for the issuer.

PART II

SECURITIES EXCHANGES

3. Licensing requirement.—(1) No person shall establish or operate or assist in establishing or operating or hold himself out as operating a securities market except under and in accordance with a securities exchange licence granted by the Commission under section 5.

(2) The Commission shall determine the number and places for the establishment of securities exchanges.

4. **Eligibility for licensing.**—(1) Subject to sub-section (2), a public company having an object to operate as a stock exchange shall be eligible for licensing as a securities exchange only if—

- (a) it has, and maintains at all times, a minimum paid-up capital (net of losses) of rupees five hundred million or such higher amount as may be notified by the Commission;
- (b) not more than such percentage of share of the company as may be notified by the Commission is held directly or indirectly by a —
 - (i) securities broker or any connected person or the majority shareholder of such securities broker, or an associate of the majority shareholder of such securities broker;
 - (ii) securities exchange or any connected person or the majority shareholder of such securities exchange, or an associate of the majority shareholder of such securities exchange;
 - (iii) futures broker or any connected or the majority shareholder of such futures broker, or an associate of the majority shareholder of such futures broker; or
 - (iv) futures exchange or any connected person or the majority shareholder of such futures exchange, or an associate of the majority shareholder of such futures exchange;

Provided that the Commission may in the official Gazette notify any class or classes of persons to hold such number of shares of the securities exchange as the Commission deems appropriate;

- (c) its promoters, directors, majority shareholders, senior management officers fulfill the fit and proper criteria as may be prescribed; and
- (d) it satisfies such other conditions as may be prescribed.

(2) For the purposes of clause (b) of sub-section (1), two or more companies are connected companies if one of them is —

- (a) the holding company of the other;
- (b) a subsidiary of the other; or
- (c) a subsidiary of the holding company of the other.

5. **Grant of licence.**—(1) A public company eligible for a licence may apply to the Commission to be licenced as a securities exchange in such form and manner as may be prescribed.

(2) The application under sub-section (1), shall be accompanied by the prescribed fee.

(3) The Commission may require an applicant to provide the Commission with such further information as it considers necessary in relation to the application, in such form or verified in such manner as the Commission may direct.

(4) The Commission may, in writing, subject to such conditions or restrictions as it may think fit to impose, grant licence to a public company as a securities exchange if the Commission is satisfied that the company shall operate a fair, transparent and efficient securities market; manage any risks associated with its business and operations prudently and enforce compliance by TRE certificate holder and listed companies with its regulations.

(5) In the exercise of its powers to grant licence under sub-section (4), the Commission shall have regard to whether,-

(a) the company's regulations make satisfactory provision for—

- (i) a fair, transparent and efficient market in securities that are traded through its facilities;
- (ii) the proper regulation and supervision of TRE certificate holder and listed companies;
- (iii) appropriate measures for the protection of customers;
- (iv) an equitable distribution of the dues, fees and other charges levied by the company;
- (v) the trading in securities by its officers and employees; and
- (vi) any other matters as may be prescribed;

(b) the company has sufficient financial, human and system resources to—

- (i) establish and operate a fair, transparent and efficient securities market;

- (ii) meet contingencies or disasters, including events such as technical complications occurring with automated systems; and
 - (iii) provide adequate security arrangements;
- (c) the company has made arrangement with respect to the appointment, removal from office and functions of the persons responsible for making or enforcing the exchange regulations, in such manner to secure a proper balance –
- (i) between the interests of the TRE certificate holder of the company; and
 - (ii) between the interests of the company or its TRE certificate holder and the public interest:

Provided that the arrangements shall not be regarded as satisfying these requirements unless the persons responsible for such matters include a number of persons independent of the company, its TRE certificate holder and other regulated persons sufficient to ensure the balance referred to in sub-clause (ii); and

- (d) it would not be contrary to the public interest to licence the company.
- (6) Subject to the provisions of this Act, a securities exchange licence shall be granted subject to such annual renewal fee as may be prescribed.

6. Duties of securities exchange.—(1) It shall be the duty of a securities exchange to ensure —

- (a) a fair, transparent and efficient market in securities that are traded on its securities market; and
- (b) that risks associated with its business and operations are managed prudently.

(2) In discharging its duty under sub-section (1), a securities exchange shall —

- (a) act in the public interest; and
- (b) ensure that the interest of investor, customer and public at large prevails where it conflicts with the interest of the securities exchange, TRE certificate holder, shareholders, board of directors and management.

(3) A securities exchange shall operate its facilities in accordance with the regulations made under section 7 and approved under section 8.

(4) A securities exchange shall regulate the operations, standards of practice and business conduct of TRE certificate holder and their representatives and other employees in accordance with the regulations, policies, procedures and practices of the securities exchange.

(5) A securities exchange shall ensure that the listed companies and its designated officers shall comply with the regulations, policies, procedures and practices of the securities exchange.

(6) A securities exchange shall preserve confidentiality with regard to all information in its possession concerning TRE certificate holder and their customers, except that such information may be disclosed by the securities exchange as and when required in writing to do so by the Commission or by a clearing house under its regulations or required under any law for the time being in force, or it is ordered to do so by the Court.

(7) A securities exchange shall have efficient procedures and arrangements for addressing customer's complaints.

(8) The securities exchange shall put in place such structural provisions, operating procedures, and surveillance techniques to detect and prevent insider trading and market abuse.

(9) A securities exchange shall immediately notify the Commission if it becomes aware —

- (a) of a financial irregularity or other matter which in the opinion of the securities exchange may indicate that its financial integrity is in question or that it is unable to meet its legal obligations;
- (b) that any TRE certificate holder is unable to comply with any regulation of the securities exchange or any financial resources regulation;
- (c) of a financial irregularity or other matter which in the opinion of the securities exchange may indicate that the financial standing or integrity of a TRE certificate holder is in question or that a TRE certificate holder may not be able to meet his legal obligations; or
- (d) of non-compliance or violation by a company listed on such securities exchange of any provisions of this Act or any regulations made by there under.

(10) A securities exchange shall immediately notify the Commission of any action taken against a TRE certificate holder or listed company.

(11) A securities exchange shall at all times provide and maintain, for the conduct of its business,—

- (a) adequate and properly equipped premises;
- (b) automated systems with adequate capacity, facilities to meet contingencies or emergencies, physical, virtual and logical security arrangements and technical support; and
- (c) comprehensive business continuity plan.

(12) A securities exchange shall ensure that appointment or removal of chief executive officer and chief regulatory officers by whatever names called is made with the prior approval of the Commission.

7. Regulations of securities exchange.—(1) Without limiting the generality of sub-section (4) of section 5, the regulations of a securities exchange, may make provision —

- (a) with respect to the constitution, powers and functions of the governing body of the securities exchange and matters relating to disciplining of the directors, officers and functionaries of the securities exchange;
- (b) with respect to the development of risk management system, including control measures and safeguards with respect to large exposures, and matters connected therewith;
- (c) with respect to the risk management procedures, misalignment of incentives and conflict of interest between securities broker, its employees and its clients;
- (d) with respect to disclosure of conflict of interest by directors and employees of the securities exchanges;
- (e) with respect to the eligibility, admittance and conduct of TRE certificate holder;
- (f) with respect to listing and delisting of securities;
- (g) with respect to the appointment and functioning of internal auditors;
- (h) expulsion, suspension or disciplining of TRE certificate holder for conduct inconsistent with just and equitable principles in connection

- with trading in securities or for a contravention of the regulations of the securities exchange;
- (i) with respect to liquidation of the assets of securities brokers deposited or in control of the securities exchange to fulfill customer claims arising there from;
 - (j) with respect to the terms and conditions under which securities may be traded;
 - (k) with respect to operational, information system and regulatory audit of securities broker and securities exchange including the regular assessment of trading systems as well as the assessment of reliability and effectiveness of all risk management and control measures implemented by securities exchange;
 - (l) with respect to the mechanism for inspection and provisions relating to audit and compliance of securities brokers including cooperation with other licensed entities for violation of any requirement of this Act or any rules or regulations made there under;
 - (m) with respect to proprietary trading by TRE certificate holder;
 - (n) effective surveillance and monitoring to detect and prevent insider trading and market abuse practices;
 - (o) with respect to fair and properly supervised trading practices;
 - (p) with respect to the prohibition of trading in securities by securities brokers or their representatives, either directly or indirectly, for their own accounts or accounts of associated persons, except in accordance with the regulations of the securities exchange;
 - (q) with respect to measures to prevent manipulation, market rigging and artificial markets in its securities market;
 - (r) for preventing the excessive use of credit by way of initial or maintenance margin in respect of the purchase or carrying of any securities;
 - (s) for effective know your customer and customer due diligence policies and procedures and other matters ancillary to anti-money laundering;
 - (t) the recording and publishing of details of trading;

- (u) the financial integrity of securities broker such as to provide reasonable assurance that all obligations out of the trading in securities on the securities market of that securities exchange will be met;
 - (v) with respect to the fee and charges payable for facilities and services provided by the securities exchange;
 - (w) with respect to brokerage and other charges by securities brokers;
 - (x) with respect to the equitable allocation of the dues, fees and other charges levied by the securities exchange;
 - (y) with respect to settlement of claims and dispute resolution between any of its securities brokers, or between securities brokers and their customers, or between securities brokers and their accredited representatives or between accredited representative(s) of securities brokers and their customers, in relation to any market contract of the securities exchange;
 - (z) where a securities broker appears to be unable or likely to become unable, to meet his obligations in respect of one or more market contracts, to enable action to be taken to close out his position in relation to all unsettled market contracts to which he is a party, including facilitation in default proceedings; and
 - (aa) generally for the carrying on the business of the securities exchange with due regard to the interests and protection of the investing public.
- (2) The regulations of a securities exchange shall apply to—
- (a) the securities exchange, its employees and its directors and the securities exchange shall be responsible to ensure their compliance with such regulations;
 - (b) securities brokers, their representatives and other employees and the securities broker shall be responsible to ensure their compliance with such regulations; and
 - (c) listed company.
- (3) The power to make regulations conferred by this section on the securities exchange shall be subject to the condition of previous placement of the said regulations on the website of the securities exchange along with the rationale

for eliciting public opinion thereon for a period of not less than seven days starting from the date of its placement on the website:

Provided that, on an application by the securities exchange, the Commission may waive the condition of eliciting public opinion in cases requiring the immediate implementation of a proposed regulation(s).

(4) The Commission may, by notice in writing served on a securities exchange, require it —

- (a) to make regulations specified in the notice within the period specified; or
- (b) to amend regulations referred to in the notice in the manner and within the period specified in the notice.

(5) Where the Commission is satisfied that a securities exchange has not complied with a requirement referred to in sub-section (4) within the period specified in the notice, the Commission may make or amend the regulations specified in the notice instead of the securities exchange and the regulations so made or amended shall be deemed to have been made or amended by the securities exchange and shall have effect accordingly.

8. Approval of regulations or amendments to regulations of securities exchange.—(1) No regulation of a securities exchange or any amendment whether by way of rescission, substitution, alteration or addition to a regulation shall have effect unless it has the approval in writing of the Commission.

(2) A securities exchange shall submit or cause to be submitted to the Commission for its approval the regulations and every amendment thereto that require approval under sub-section (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them.

(3) The Commission shall, by notice in writing served on the securities exchange, give its approval or refuse to give its approval to the regulations or amendment of the regulations, as the case may be, or any part thereof.

(4) The Commission may give its approval under sub-section (3) subject to requirements that shall be satisfied before the regulations or amendment of the regulations or any part thereof take effect.

(5) Subject to the approval of the Commission under sub-section (3) all regulations or amendments to the regulations made by the securities exchange shall be notified in the official Gazette and shall take effect from such date as may be specified in the notification.

9. Statutory obligation of securities broker to comply with regulations of securities exchange.—Securities broker of a securities exchange shall comply with the regulations of that exchange.

10. Securities exchange to assist the Commission.—A securities exchange shall provide such assistance to the Commission as the Commission may require for the performance of the functions and duties of the Commission, including the furnishing of such returns and the provision of such books and other information relating to the business of the securities exchange or in respect of trading in securities or any other information as the Commission may require from time to time for the proper administration of this Act.

11. Review of disciplinary action taken by securities exchange.—(1) Where a securities exchange reprimands, impose penalty, suspends, expels or otherwise takes disciplinary action against securities broker in accordance with its regulations, the securities exchange shall immediately inform the Commission in writing of the name of the securities broker, the reason for and nature of the action taken, the amount of any sum imposed by way of penalty and the period of any suspension.

(2) The securities exchange shall grant an opportunity of being heard to the securities broker before it impose a penalty, reprimands, suspends, expels or otherwise takes disciplinary action against the securities broker:

Provided that where the securities exchange is satisfied that delay in the suspension of securities broker shall be detrimental to the interest of investors or the public in general, the securities exchange may, after recording reasons in writing, immediately suspend the securities broker till the time an opportunity of hearing is provided to the securities broker and a final decision is taken within a period of not more than thirty days.

(3) The Commission may, on its own motion or on application by an aggrieved person, review any disciplinary action taken by a securities exchange under sub-section (1) and may affirm, modify or set aside the decision of the securities exchange after giving the securities broker and the securities exchange an opportunity of being heard.

(4) Nothing in this section shall preclude the Commission, in any case where a securities exchange fails to act against a securities broker, from suspending,

expelling or otherwise disciplining a securities broker, but before doing so the Commission shall give the securities broker and the securities exchange an opportunity to be heard:

Provided that where the Commission is satisfied that delay in the suspension of any securities broker shall be detrimental to the interest of investors or the public in general, the Commission may, after recording reasons in writing, immediately suspend any securities broker till the time an opportunity of hearing is provided to the securities broker and a final decision is taken within a period of not more than thirty days.

(5) Any action taken by a securities exchange under sub-section (1) shall be without prejudice to the power of the Commission to take such further action as it deems fit with regard to the securities broker or his licence.

12. Power of the Commission to issue directions to securities exchange.—(1) The Commission may, if it considers it necessary or expedient —

- (a) for ensuring fair, transparent and efficient securities markets or for ensuring fair, transparent and efficient clearing and settlement of securities transactions;
- (b) for ensuring the integrity of, and proper management of systemic risks in, securities markets;
- (c) for ensuring a fair and proper governance structure of the securities exchange; or
- (d) in the interest of the public or for the protection of customers, issue directions to a securities exchange by notice in writing either of a general or specific nature.

(2) Without prejudice to the generality of sub-section (1), any direction issued under that sub-section may relate to —

- (a) the trading or the termination of trading on or through the facilities of that securities exchange;
- (b) any securities listed or quoted on that securities exchange;
- (c) the manner in which securities exchange carries on its business;
- (d) removing or suspending the directors or officers of the securities exchange from office or suspending securities brokers of the securities exchange; and

- (e) any other matter that the Commission considers necessary for the effective administration of this Act or the rules or regulations made under the Act,

and the securities exchange shall comply with any such direction.

13. Emergency powers of the Commission.—(1) Where the Commission has reason to believe or decides on the recommendation of the securities exchange, that an emergency exists or where the Commission considers it necessary or expedient in the interest of the public or section of the public or for the protection of customers, the Commission may direct by notice in writing a securities exchange to take such action as it considers necessary to maintain or restore fair, transparent and efficient trading in securities or any class of securities, including but not limited to,—

- (a) liquidate any position in respect of any securities or any class of securities;
- (b) terminate trading on a securities market;
- (c) suspend trading on a securities market;
- (d) confine trading to liquidation of securities positions;
- (e) order the liquidation of all positions or part thereof or the reduction in such positions;
- (f) limit trading to a specific price range;
- (g) modify trading days or hours;
- (h) require any person to act in a specified manner in relation to trading in securities or any class of securities; and
- (i) modify or suspend any of the regulations of a securities exchange,

and the securities exchange shall comply with that direction.

(2) Where the Commission suspends trading on a securities market under clause (c) of sub-section (1) the suspension shall be for a period not exceeding three months, provided that the Commission may, if it considers it necessary, extend the suspension for one further period not exceeding three months at the expiry of which the Commission shall either notify the securities exchange in writing that the suspension has expired or proceed to cancel the securities exchange licence or pass such orders as it deems appropriate.

(3) Where a securities exchange fails to comply with a direction of the Commission under sub-section (1), within such time as is specified by the Commission, the Commission may take all necessary actions as it deem appropriate.

- (4) In this section, "emergency" means —
- (a) an act of government affecting securities;
 - (b) any major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such securities; or
 - (c) any other situation or practice which in the opinion of the Commission constitutes an emergency.

14. Suspension or cancellation of securities exchange licence.— (1) The Commission may, by notice in writing served on the securities exchange,—

- (i) suspend the license granted under this Act with effect from the date specified in the notice for such period as may be specified in the notice; or
- (ii) cancel a securities exchange licence granted under this Act with effect from the date specified in the notice; or
- (iii) supersede the governing body or other authority of the securities exchange; or
- (iv) suspend or remove the director, officer, or a TRE certificate holder from his office or securities exchanges,

if the securities exchange —

- (a) ceases to comply with the eligibility conditions specified in section 4;
- (b) ceases to operate a securities market that it has been licensed to under section 5;
- (c) is being wound up or enters into an arrangement with its creditors or members without the prior written approval of the Commission;
- (d) fails to comply with any requirement of this Act or any other applicable law;
- (e) fails to comply with a direction of the Commission;

- (f) fails to provide the Commission with information required by the Commission or provides false or misleading information;
 - (g) is operating in a manner detrimental to the public interest; or
 - (h) requests the Commission to do so.
- (2) For the purposes of clause (b) of sub-section (1) a securities exchange shall be deemed to have ceased to operate its securities market if —
- (a) it has ceased to operate its securities market for more than thirty days unless it has obtained the prior written approval of the Commission to do so; or
 - (b) it has ceased to operate such securities market under a direction issued by the Commission under section 12 or 13.
- (3) The Commission may by the notice served under sub-section (1) permit the securities exchange to continue, on or after the date on which the suspension or cancellation is to take effect, to carry on such activities affected by the suspension or cancellation as the Commission may specify in the notice for the purpose of —
- (a) closing down the operations of the securities exchange; and
 - (b) protecting the public interest.
- (4) Except where responding to a request under clause (h) of sub-section (1), the Commission shall not take action under sub-section (1) without first giving the securities exchange an opportunity of being heard.
- (5) Where the Commission suspends or cancels the licence of a securities exchange under this section, it shall cause notice of that fact to be published in at least two daily newspapers having wide circulation.
- (6) Any notice of suspension under sub-section (1) may direct that the functions of the governing body of the securities exchange shall be performed during the period of suspension by such person as may be specified in the notice.

15. Effect of cancellation of licence.—A cancellation of licence referred to in section 14 shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into on the securities market operated by the securities exchange where the agreement, transaction or arrangement was entered into before the cancellation of the licence; and

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

16. Accounts and audit.—(1) A securities exchange shall keep proper books of accounts and records of its profit and loss, assets and liabilities and all other transactions of the securities exchange as may be prescribed.

(2) The securities exchange shall send audited financial statements along with auditor's report of the securities exchange for the financial year, including such other items as may be prescribed, within three month after the end of each financial year or such later time as allowed by the Commission.

(3) The Commission may, where it deems appropriate, also require operational and regulatory audit to be conducted by an independent auditor in a prescribed manner.

(4) The auditors report shall be in such a manner as may be prescribed.

(5) The auditors shall have a right of access at all reasonable times to the books, accounts, vouchers and other records of the securities exchange and are entitled to require from officers of the securities exchange such information and explanations as they consider necessary for the performance of their duties as auditor.

(6) The accounting and other records required to be reported under this section shall be preserved by the securities exchange for a period of ten years or such longer period as may be prescribed.

17. Power of the Commission to appoint auditor.—(1) Where the Commission is satisfied that it is in the public interest to do so, it may appoint in writing an auditor for special audit, at the expense of the securities exchange, to examine, audit and report, either generally or in relation to any matter, on the books, accounts and records of a securities exchange.

(2) The Commission may appoint special auditors to furnish the Commission with a regulation compliance audit report in the form and manner prescribed.

18. Annual report.—(1) A securities exchange shall, within four months after the end of its financial year or such later time as allowed by the Commission, give to the Commission an annual report that includes —

- (a) a description of the activities undertaken by the securities exchange in the financial year;

- (b) the resources (including financial, technological and human resources) that the securities exchange had available, and used, in order to ensure compliance with its obligations and, in particular, its obligation to ensure that the securities market of the securities exchange operates in a fair, transparent and efficient manner;
 - (c) an analysis of the extent to which the securities exchange considers that the activities undertaken, and resources used, have resulted in full compliance with all of its obligations under this Act, rules and regulations made under the Act; and
 - (d) an independent regulation compliance report from the auditor certifying regulatory compliance of the securities exchange during the financial year.
- (2) The securities exchange shall ensure that the annual report is accompanied by such other information and statements as may be prescribed.
 - (3) The annual report shall be accompanied by an audit report.

19. Listing of securities.—(1) A company that wishes to have its securities listed on a securities exchange shall submit an application in the form and manner specified by the securities exchange, and send a copy of the application to the Commission.

(2) Upon receipt of an application under sub-section (1), the securities exchange may, if it is satisfied after making such inquiry as it may consider necessary that the applicant fulfils the conditions prescribed in this behalf, list the securities for trading on the securities exchange.

(3) Where a securities exchange refuses to list a company's securities, the Commission may, either on petition by the applicant made within the prescribed time or on its own motion, direct the securities exchange to list the securities.

(4) Where, after the listing of securities, the Commission or securities exchange finds that the application is deficient in any material respect or that the company has failed to comply with any prescribed condition or requirement and that the continued listing of the securities would not be in the public interest, the Commission or the securities exchange may, by order, either require the company to correct the deficiency or comply with the prescribed condition or requirement within the time specified in the order or revoke the listing.

(5) A company's listed securities may be delisted on application by the company to the securities exchange which may deny the application or grant it on such conditions as appear necessary or appropriate for the protection of customers.

(6) Where a securities exchange refuses to delist a company's securities, the Commission may, on petition by the company made within the specified time, direct the securities exchange to delist the security.

(7) The Commission or a securities exchange may, if it considers it to be in the interests of an orderly market or in the public interest so to do, by order recording the reasons, suspend for a period not exceeding sixty days the trading of any listed securities and may, from time to time, for stated reasons and in the said manner extend the suspension for such further periods as it deems appropriate.

(8) No application for the listing of securities shall be refused and no listing shall be revoked, without first giving the relevant company an opportunity to be heard.

20. Compulsory listing.—Where the Commission, having regard to the nature of and the dealings in a company's securities, is of the opinion that it is necessary or expedient in the public interest so to do, it may, after consulting the securities exchange and giving the company an opportunity of being heard, direct the securities exchange to list the company's securities.

PART III

CLEARING-HOUSES

21. Interpretation.—(1) In this Part —

- (a) "defaulter" means a clearing member who is the subject of any default proceedings; and
- (b) "market charge" means a charge, whether fixed or floating, created in favour of a clearing house —
 - (i) over any property which is held by or deposited with the clearing house; and
 - (ii) for the purpose of securing liabilities arising directly in connection with the clearing house ensuring the settlement of a market contract; and
- (c) "market collateral" includes cash or any other prescribed form of collateral which is held by or deposited with a clearing house for the purpose of securing liabilities arising directly in connection with the clearing house ensuring the settlement of a market contract.

(2) Where a charge is created partly for the purpose specified in the definition of "market charge" in sub-section (1) and partly for other purposes, the charge is in this Part a market charge in so far as it has effect for that specified purpose.

(3) Where any collateral is granted partly for the purpose specified in the definition of "market collateral" in sub-section (1) and partly for other purposes, the collateral is in this Part market collateral in so far as it has been provided for that specified purpose.

(4) References in this Part to the law on insolvency include references to the relevant provision made by or under —

- (a) the Companies Ordinance, 1984 (XLVII of 1984); and
- (b) any other enactment which is concerned with or in any way related to the insolvency of a person.

(5) References in this Part to settlement in relation to a market contract are to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.

22. Licensing requirement.—(1) No person shall establish or operate or assist in establishing or operating or hold himself out as operating a clearing facility except under and in accordance with a clearing house licence granted by the Commission under section 24.

(2) The Commission shall determine the number and places for the establishment of clearing houses.

23. Eligibility for licensing.—(1) Subject to sub-section (2), a public company shall be eligible for licensing as a clearing house, if —

- (a) it has, and maintains at all times, a minimum paid-up capital (net of losses) of rupees five hundred million or such higher amount as may be notified by the Commission;
- (b) its shareholding is held, directly or indirectly, in such percentage as may be notified by the Commission by following —
 - (i) a securities exchange or any connected company or the majority shareholder of such securities exchange, or an associate of the majority shareholder of such securities exchange; or

- (ii) a futures exchange or any connected company or the majority shareholder of such futures exchange, or an associate of the majority shareholder of such futures exchange:

Provided that the Commission may in the official Gazette notify any class or classes of person to hold such number of shares of the clearing house as the Commission deems appropriate:

Provided further that any sale or purchase of shares of the clearing house shall be subject to the prior approval of the Commission;

- (c) its promoters, directors, senior management officers fulfill the fit and proper criteria as may be prescribed; and
- (d) it satisfies such other conditions as may be prescribed.

(2) For the purposes of clause (b) of sub-section (1), two or more companies are connected companies if one of them is —

- (a) the holding company of the other;
- (b) a subsidiary of the other; or
- (c) a subsidiary of the holding company of the other.

24. Grant of licence.—(1) A public company eligible for a licence may apply to the Commission to be licensed as a clearing house in such form and manner as may be prescribed.

(2) The application under sub-section(1) shall be accompanied by the prescribed fee.

(3) The Commission may require an applicant to provide the Commission with such further information as it considers necessary in relation to the application, in such form or verified in such manner as the Commission may direct.

(4) The Commission may, in writing, subject to such conditions or restrictions as it may think fit to impose, grant a licence to a public company as a clearing house if the Commission is satisfied that the company will ensure that, as far as is reasonably practical, there are fair, transparent and efficient clearing arrangements for transactions in securities; the company will manage any risks associated with its business and operations prudently and the company will enforce compliance by its clearing members with its regulations.

(5) In the exercise of its powers to grant licence under sub-section (4), the Commission shall have regard to whether,-

- (a) the company's regulations make satisfactory provision for —
 - (i) the proper regulation and efficient operation of the clearing facility which it operates;
 - (ii) the proper regulation and supervision of its clearing members; and
 - (iii) equitable allocation of reasonable dues, fees, and other charges among its clearing members and other persons using its facilities; and
 - (iv) any other matters as may be specified by the Commission from time to time;
- (b) the company has sufficient financial, human and system resources to —
 - (i) establish and operate a fair, transparent and efficient clearing facility;
 - (ii) meet contingencies or disasters (including events such as technical complications occurring with automated systems);
 - (iii) provide adequate security arrangements; and
 - (iv) any other matters as may be specified by the Commission; and
- (c) it would not be contrary to the public interest to licence the company.

(6) Subject to the provisions of this Act, a clearing house licence shall be granted subject to such annual renewal fee as may be prescribed.

25. Duties of clearing house.—(1) It shall be the duty of a clearing house to ensure —

- (a) fair, transparent and efficient clearing and settlement arrangements for any transactions in securities cleared or settled through its facilities; and
- (b) that risks associated with its business and operations are managed prudently.

(2) In discharging its duty under sub-section (1), a clearing house shall act in the interest of the public, having particular regard to the interest of customers.

(3) A clearing house shall operate its facilities in accordance with the regulations made under section 26 and approved under section 27.

(4) A clearing house shall formulate and implement appropriate procedures for ensuring that its clearing members comply with its regulations.

(5) A clearing house shall preserve confidentiality with regard to all information in its possession concerning its clearing members and their customers, except that such information may be disclosed by the clearing house as and when required in writing to do so by the Commission or by the securities exchange under its regulations or required under other law for the time being in force or if it is ordered to do so by the Court.

(6) A clearing house shall have efficient procedures and arrangements for addressing customer's complaints.

(7) A clearing house shall immediately notify the Commission if it becomes aware—

(a) of a financial irregularity or other matter which in the opinion of the clearing house may indicate that its financial integrity is in question or that it is unable to meet its legal obligations;

(b) that any of its clearing members is unable to comply with any regulation of the clearing house;

(c) of a financial irregularity or other matter which in the opinion of the clearing house may indicate that the financial standing or integrity of a clearing member is in question or that a clearing member may not be able to meet its legal obligations.

(8) A clearing house shall immediately notify the Commission of any action taken by it against a clearing member.

(9) A clearing house shall at all times provide and maintain for the conduct of its business, —

(a) adequate and properly equipped premises;

(b) automated systems with adequate capacity, facilities to meet contingencies or emergencies, physical, virtual and logical security arrangements and technical support; and

(c) comprehensive business continuity plan.

(10) A clearing house shall ensure that appointment or removal of its chief executive officer and chief regulatory officer, by whatever name called, is made with the prior approval of the Commission.

26. Regulations of clearing house.—(1) Without limiting the generality of sub-section (4) of section 24, the regulations of a clearing house, may make provision—

- (a) for the registration of or transfer of securities;
- (b) for the settlement of transactions involving securities;
- (c) for guaranteeing to its clearing members the performance of market contracts;
- (d) for setting up a settlement guarantee fund;
- (e) with respect to the constitution, powers and functions of the governing body of the clearing house;
- (f) with respect to the eligibility, admittance and conduct of clearing members;
- (g) with respect to operational, information system and regulatory audit of the clearing house and its clearing members;
- (h) with respect to the manner of establishment, maintaining and operating clearing accounts with the clearing house;
- (i) with respect to the establishment and operations of clearing and settlement system;
- (j) with respect to the development of risk management system including control measures and safeguards with respect to large exposures and matters connected therewith;
- (k) with respect to the establishment, maintenance and contributions to the clearing and settlement fund and investments thereon;
- (l) with respect to the mechanism and procedure for satisfaction of loss or liability in the clearing settlement system;
- (m) with respect to the mechanism for inspection and provisions relating to audit and compliance of clearing members including cooperation with other licensed entities for violation of any requirement of this Act or any rules or regulations made there under;

- (n) with respect to the statements to be sent by the clearing house to its clearing members;
- (o) with respect to regulating access to the computer settlement system of the clearing house and the limits of such access;
- (p) with respect to the fee and charges payable for facilities and services provided by a clearing house;
- (q) with respect to the dispute resolution between clearing members, complaint handling, disciplinary action, hearing and appeal procedure;
- (r) with respect to the delivery of securities for settlement through the central depository;
- (s) for the expulsion, suspension or disciplining of clearing members for any contravention of the regulations of the clearing house;
- (t) with respect to acting as central counter party; and
- (u) generally for the carrying on the business of the clearing house.

(2) In addition to the requirements of sub-section (1), the regulations of a clearing house shall also include default provisions, to the satisfaction of the Commission, for carrying out of proceedings or other action if a clearing member has failed or appears to be unable or likely to become unable to meet its obligations for all unsettled or open market contracts to which he is a party.

(3) Where a clearing house undertakes default proceedings, all subsequent action for settlement of market contracts to which the defaulter is a party shall be presumed to be taken under the default regulations.

(4) The regulations of a clearing house shall apply to the employees and representative of its clearing members, and the clearing member shall be responsible to ensure their compliance with such regulations.

(5) The power to make regulations conferred by this section on the clearing house shall be subject to the condition of previous publication of the said regulations on the website of clearing house along with a rational for eliciting public opinion thereon within a period of not less than seven days from the date of its publication placement on website:

Provided that, on an application by the clearing house, the Commission may waive the condition of placement of proposed regulations on the website of the clearing house in cases requiring the immediate implementation of a proposed regulation(s).

(6) The Commission may, by notice in writing served on a clearing house, require it —

- (a) to make regulations specified in the notice within the period specified; or
- (b) to amend regulations referred to in the notice in the manner and within the period specified in the notice.

(7) Where the Commission is satisfied that a clearing house has not complied with a requirement referred to in sub-section (6) within the specified period the Commission may make or amend the regulations specified in the notice instead of the clearing house and the regulations so made or amended shall be deemed to have been made or amended by the clearing house and shall have effect accordingly.

27. Approval of regulations or amendments to regulations of clearing house.— (1) No regulation of a clearing house or any amendment whether by way of rescission, substitution, alteration or addition, thereto shall have effect unless it has the approval in writing of the Commission.

(2) A clearing house shall submit or cause to be submitted to the Commission for its approval the regulations and every amendment thereto that require approval under sub-section (1), together with explanations of their purpose and likely effect, including their effect on customers, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them.

(3) The Commission shall, by notice in writing served on the clearing house, give its approval or refuse to give its approval to the regulations or amendment of the regulations, as the case may be, or any part thereof.

(4) The Commission may give its approval under sub-section (3) subject to requirements that shall be satisfied before the regulations or amendment of the regulations or any part thereof take effect.

(5) Subject to the approval of the Commission under sub-section (3), all regulations or amendments to the regulations made by the clearing house shall be notified in the official Gazette and shall take effect on such date as may be specified in the notification.

28. Statutory obligation of clearing members to comply with regulations of clearing house.— Members of a clearing house shall comply with the regulations of that clearing house.

29. Clearing house to assist the Commission.—A clearing house shall provide such assistance to the Commission as the Commission may require for the performance of the functions and duties of the Commission, including the furnishing of such returns and the provision of such books and other information relating to the business of the clearing house or in respect of any trading in securities, any clearing arrangements for securities or any other information as the Commission may require from time to time for the proper administration of this Act.

30. Review of disciplinary action taken by clearing house.—(1) Where a clearing house reprimands, penalizes, suspends, expels or otherwise takes disciplinary action against a clearing member in accordance with its regulations, the clearing house shall immediately inform the Commission in writing of the name of the clearing member, the reason for and nature of the action taken, the amount of any sum imposed by way of penalty and the period of any suspension.

(2) The clearing house shall grant an opportunity of being heard to its clearing member before it impose penalty, reprimands, suspends, expels or otherwise takes disciplinary action against the member:

Provided that where the clearing house is satisfied that delay in the suspension of its member shall be detrimental to the interest of investors or the public in general, the clearing house may, after recording reasons in writing, immediately suspend its member till the time an opportunity of hearing is provided to the member and a final decision is taken within a period of not more than thirty days.

(3) The Commission may, on its own motion or on application by an aggrieved person, review any disciplinary action taken by a clearing house under sub-section (1) and may affirm, modify or set aside the decision of the clearing house after giving the clearing member and the clearing house an opportunity of being heard.

(4) Nothing in this section shall preclude the Commission, in any case where a clearing house fails to act against a clearing member, from suspending, expelling or otherwise disciplining a clearing member, but before doing so the Commission shall give the clearing member and the clearing house an opportunity to be heard.

(5) Any action taken by a clearing house under sub-section (1) shall be without prejudice to the power of the Commission to take such further action as it deems fit with regard to the clearing member or its licence.

31. Power of the Commission to issue directions to clearing house.—(1) The Commission may, if it considers it necessary or expedient —

- (a) for ensuring fair, transparent and efficient clearing and settlement of transactions in securities;
- (b) for ensuring the integrity of and proper management of systemic risks in securities markets, or
- (c) in the interests of the public or a section of the public or for the protection of customers,

issue directions by notice in writing either of a general or specific nature to a clearing house.

(2) Without prejudice to the generality of sub-section (1), any direction issued under that sub-section may relate to —

- (a) the clearing and settlement of market contracts and the making of adjustments of contractual obligations arising out of those securities contracts;
- (b) the manner in which a clearing house carries on its business;
- (c) removing or suspending the directors or officers of the clearing house from office or suspending clearing members of the clearing house; and
- (d) any other matter that the Commission considers necessary for the proper administration of this Act or the rules and regulations made hereunder,

and the clearing house shall comply with any such direction.

32. Emergency powers of the Commission.—(1) Where the Commission has reason to believe or decides on the recommendation of clearing house, that an emergency exists or where the Commission considers it necessary or expedient in the interest of the public or section of the public or for the protection of customers or where the Commission takes action under section 13, the Commission may direct by notice in writing a clearing house to take such action as it considers necessary including but not limited to —

- (a) altering conditions of delivery;
- (b) fixing the settlement price at which securities are to be liquidated;

- (c) requiring additional deposits;
 - (d) requiring margins or additional margins for any securities; and
 - (e) modifying or suspending any of the regulations of the clearing house,
- and the clearing house shall comply with that direction.

(2) Where a clearing house fails to comply with a direction of the Commission under sub-section (1), within such time as is specified by the Commission, the Commission may take all necessary actions as it deems appropriate.

- (3) In this section, the expression "emergency" means —
- (a) any act of government affecting securities;
 - (b) any major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for securities; or
 - (c) any other situation or practice which in the opinion of the Commission constitutes an emergency.

33. Suspension or cancellation of clearing house licence.—(1) The Commission may by notice in writing served on the clearing house suspend for such period as may be specified in the notice or cancel a clearing house licence granted under this Act with effect from the date specified in the notice if the clearing house—

- (a) ceases to comply with the eligibility conditions specified in section 23;
- (b) ceases to operate the clearing facility that it has been licensed to operate under section 24;
- (c) is being wound up;
- (d) fails to comply with any requirement of this Act;
- (e) fails to comply with a direction of the Commission;
- (f) fails to provide the Commission with information required by the Commission or provides false or misleading information;
- (g) is operating in a manner detrimental to the public interest; or
- (h) requests the Commission to do so.

(2) For the purposes of clause (b) of sub-section (1) a clearing house shall be deemed to have ceased to operate as a clearing house, if —

(a) it has ceased to operate its clearing house facility for more than thirty days unless it has obtained the prior approval of the Commission to do so; or

(b) it has ceased to operate such clearing facility under a direction issued by the Commission under section 31 or section 32.

(3) The Commission may by the notice served under sub-section (1) permit the clearing house 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 clearing house; and

(b) protecting the public interest.

(4) Except where responding to a request under clause (h) of sub-section (1), the Commission shall not cancel a clearing house licence without first giving the clearing house an opportunity of being heard.

(5) Where the Commission suspends or cancels the licence of a clearing house under this section, it shall cause notice of that fact to be published in at least two daily newspapers having wide circulation.

(6) Any notice of suspension under sub-section (1) may direct that the functions of the governing body of the clearing house shall be performed during the period of suspension by such person as may be specified in the notice.

34. Effect of cancellation of licence.—A cancellation of licence under section 33 shall not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement entered into on the securities market of a securities exchange where the agreement, transaction or arrangement was entered into before the cancellation of the licence; and

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

35. Accounts and audit.—(1) A clearing house shall keep proper books of accounts and records of its profit and loss, assets and liabilities and all other transactions of the clearing house as may be prescribed.

(2) The clearing house shall send audited financial statements to the Commission along with auditors report of clearing house for the financial year, including a profit and loss account, balance sheet, cash flow statement and such other items as may be prescribed within three months after the end of each financial year or such later time as allowed by the Commission.

(3) The Commission may, where it deems appropriate, also require operational and regulatory audit to be conducted by an independent auditor in a prescribed manner.

(4) The auditors report shall be in such a manner as may be prescribed.

(5) The auditors shall have a right of access at all reasonable times to the books, accounts, vouchers and other records of the clearing house and shall be entitled to require from officers of the clearing house such information and explanations as they consider necessary for the performance of their duties as auditor.

(6) The accounting and other records required to be reported under this section shall be preserved by the clearing house for a period of ten years or such longer period as may be prescribed.

36. Power of the Commission to appoint auditor.—(1) Where the Commission is satisfied that it is in the public interest to do so, it may appoint in writing an auditor for special audit, at the expense of the clearing house, to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of a clearing house.

(2) The Commission may appoint special auditors to furnish the Commission with a regulation compliance audit report in the form and manner prescribed.

37. Annual report.—(1) A clearing house shall, within four months after the end of its financial year or such later time as allowed by the Commission, give to the Commission an annual report that includes –

- (a) a description of the activities undertaken by the clearing house in the financial year;
- (b) the resources, including financial, technological and human resources, that the clearing house had available, and used, in order to ensure compliance with its obligations;
- (c) an analysis of the extent to which the clearing house considers that the activities undertaken, and resources used, have resulted in full

compliance with all of its obligations under this Act, rules and regulations made under the Act; and

- (d) an independent regulations compliance report from the auditor certifying regulatory compliance of the clearing house during the financial year.

(2) The clearing house shall ensure that the annual report is accompanied by such other information and statements as may be prescribed.

(3) The annual report shall be accompanied by an audit report where required by the Commission under sub-section (4).

(4) The Commission may, by giving written notice to the clearing house, require the clearing house to obtain an audit report by a person to be approved by the Commission on the annual report and on any information or statements accompanying it.

38. Proceedings of clearing house take precedence over laws of insolvency.—(1) The following shall not be to any extent invalid at law on the ground of inconsistency with the law relating to the distribution of the assets of a person on insolvency, bankruptcy or winding up or on the appointment of a receiver over any of the assets of a person —

- (a) a market contract;
- (b) the regulations of a clearing house relating to the settlement of a market contract;
- (c) any proceedings or other action taken under the regulations of a clearing house relating to the settlement of a market contract;
- (d) a market charge;
- (e) the default regulations of a clearing house; or
- (f) any default proceedings.

(2) No person, nor a court acting under the laws of insolvency, may exercise any power to prevent or interfere with —

- (a) the settlement of a market contract in accordance with the regulations of a clearing house; or
- (b) any default proceedings.

39. Duty to report on completion of default proceedings.—(1) A clearing house shall, upon completion by it of any default proceedings, prepare a report on such proceedings stating in respect of each defaulter —

- (a) the action taken against the defaulter;
- (b) the net sum, if any, certified by the clearing house to be payable by or to the defaulter; or
- (c) the fact that no sum is payable.

(2) A clearing house which has prepared a report pursuant to sub-section (1) shall supply the report to —

- (a) the Commission;
- (b) the relevant securities exchange;
- (c) the central depository; and
- (d) the defaulter to whom the report relates.

(3) Where the Commission receives pursuant to sub-section (2) a report made pursuant to sub-section (1), it may publish notice of that fact in such manner as it considers appropriate to bring it to the attention of creditors of the defaulter to whom the report relates.

(4) Where a defaulter receives pursuant to sub-section (2) a report made pursuant to sub-section (1), he shall, at the request of any of his creditors, —

- (a) make the report available for inspection by the creditor within two days from the receipt of such request; or
- (b) on payment of the prescribed fee, supply to the creditor all or any part of that report as requested.

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

40. Net sum payable on completion of default proceedings.—(1) This section shall apply to any net sum certified under clause (b) of sub-section (1) of section 39 by a clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

(2) Where an order for receivership or winding up has been made or a resolution for voluntary winding up has been passed, any net sum shall be —

- (a) provable in the bankruptcy or winding up; and
- (b) taken into account for the purpose of any law relating to set-off.

(3) For the purposes of sub-section (2), the certificate of the clearing house as to the amount of the net sum payable shall be receivable in evidence as sufficient proof of the net sum payable.

41. Disclaimer of property, rescission of contracts, etc.—(1) Section 407 of the Companies Ordinance, 1984 (XLVII of 1984) shall not apply in relation to —

- (a) a market contract;
- (b) a contract effected by a clearing house for the purpose of realizing property provided as market collateral;
- (c) a market charge; or
- (d) any default proceedings.

(2) Section 406 of the Companies Ordinance, 1984 (XLVII of 1984) shall not apply to any act, matter or thing which has been done pursuant to —

- (a) a market contract;
- (b) a disposition of property pursuant to a market contract;
- (c) the provision of market collateral;
- (d) a contract effected by a clearing house for the purpose of realizing property provided as market collateral or any disposal of property pursuant to such a contract;
- (e) a disposal of property in accordance with the regulations of a clearing house as to the application of property provided as market collateral;
- (f) a disposal of property as a result of which the property becomes subject to a market charge or any transaction pursuant to which that disposal is made;
- (g) a disposal of property made in enforcing a market charge;
- (h) a market charge; or
- (i) any default proceedings.

42. Enforcement of judgments over property subject to market charge, etc.—(1) Notwithstanding anything contained in any other law for the time being in force, where property is subject to a market charge or has been provided as market collateral, no execution or other legal process for the enforcement of a judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in or security over the property, except with the consent of the clearing house concerned.

(2) Where by virtue of this section a person would not be entitled to enforce a judgment or order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.

43. Clearing member to be party to transactions as principal.—Where for the purposes of fulfilling clearing and settlement obligation or margin call or mark-to-market loss or any other obligation, whatsoever, a clearing member enters into any transaction or contract with a clearing house, irrespective of its nature, including but not limited to a market contract, in the capacity as a principal or agent, notwithstanding anything contained in any other law, rule or regulation, in such transaction or contract the clearing member shall act and considered as Principal and liable to make payment or delivery, to the clearing house, as the case may be.

44. Property deposited with clearing house.—(1) Subject to sub-section (2), where any property is deposited as market collateral by a clearing member with a clearing house in accordance with the regulations of the clearing house, then, notwithstanding any other law or rules or regulations, no action, claim or demand, either civil or criminal, in respect of any right, title or interest in such property held or enjoyed by any person shall lie or shall be commenced or allowed, against the clearing house or its nominees.

(2) The operation of sub-section (1) in respect of any property deposited as market collateral with a clearing house is subject to any modifications and exclusions provided in the regulations of the clearing house.

45. Preservation of rights, etc.—Except to the extent that they expressly provide, the provisions of this Part shall not operate to limit, restrict or otherwise affect —

- (a) any right, title, interest, privilege, obligation or liability of a person;
- (b) any investigation, legal proceeding or remedy in respect of any such right, title, interest, privilege, obligation or liability.

PART IV

CENTRAL DEPOSITORY COMPANIES

46. Interpretation.—In this Part—

- (a) “account holder” shall have the same meaning as is assigned to it in sub-section (3) of section 2 of the Central Depositories Act, 1997 (XIX of 1997);
- (b) “CDS element” means central depository system element and includes an account holder, a participant, an issuer of eligible securities, an eligible pledgee or any other market intermediary as may be prescribed under the Central Depositories Act, 1997 (XIX of 1997);
- (c) “investor account” means the account opened by an investor with a central depository in accordance with the terms and conditions specified by such central depository;
- (d) “investor account holder” means any individual who, or other entity which, is allowed by central depository at its discretion to open and maintain an investor account with central depository with or without having direct access to CDS;
- (e) “participant” shall have the same meaning as is assigned to it in clause (17) of section 2 of the Central Depositories Act, 1997 (XIX of 1997); and
- (f) “sub-account holder” has the same meaning as given in clause (28) of section 2 of the Central Depositories Act, 1997 (XIX of 1997).

47. Licensing requirement.—No person shall establish or operate or assist in establishing or operating or hold himself out as operating a depository facility except under and in accordance with a central depository licence granted by the Commission under section 49:

Provided that a licensing requirement provided in this section shall not be applicable on depository facility provided by State Bank of Pakistan through State Bank of Pakistan- Banking Services Corporation for government securities.

48. Eligibility for licensing.—A company shall be eligible for licensing as a central depository only if —

- (a) the company is incorporated as a public company under the Companies Ordinance, 1984 (XLVII of 1984);

- (b) the company complies with all the requirements in Central Depositories Act 1997 (XIX of 1997);
- (c) it has, and maintains at all times, a minimum paid-up capital (net of losses) of rupees five hundred million or such higher amount as may be notified by the Commission;
- (d) the collective shareholding of the securities exchanges does not exceed such percentage as the Commission may notify, of the total shareholding of the company:

Provided that the Commission may in the official Gazette notify any class or classes of persons to hold such number of shares of the central depository as the Commission deems appropriate.

Provided further that any sale or purchase of shares of the central depository shall be subject to the prior approval of the Commission;

- (e) no promoter, director, majority shareholders, senior management officer or employee of such a company —
 - (i) has been convicted of fraud, breach of trust or an offence involving moral turpitude or removed from service for misconduct or has been adjudicated as insolvent;
 - (ii) has been associated with any illegal banking business, deposit taking or financial dealings;
 - (iii) has been a sponsor, director, chief executive or a senior management officer of any defaulting entity;
 - (iv) has ever been a defaulter of any commercial bank or financial institution, including non-banking financial institution, securities exchange and clearing house or has suspended payment or has compounded with his creditors;
 - (v) has ever been a defaulter or non-payer of verified unsettled claims of its customer as a TRE certificate holder of securities exchange; and
 - (vi) fulfill the fit and proper criteria as may be prescribed;

(f) the promoters of such company are persons of experience and integrity and have special knowledge of matters which the company may have to deal with as a central depository company; and

(g) it satisfies such other conditions as may be prescribed.

49. Grant of licence.—(1) A public company eligible for a licence may apply to the Commission to be licensed as a central depository in such form and manner as may be prescribed.

(2) The application under sub-section (1) shall be accompanied by a prescribed fee.

(3) The Commission may require an applicant to provide the Commission with such further information as it considers necessary in relation to the application, in such form or verified in such manner as the Commission may direct.

(4) The Commission may, in writing, subject to such conditions or restrictions as it may think fit to impose, license a public company as a central depository if the Commission is satisfied that the company will ensure that, as far as is reasonably practicable, there are fair, transparent and efficient depository facilities, the company will manage any risk associated with its business and operations prudently, in the manner prescribed and the company will enforce compliance by CDS element with its regulations.

(5) In the exercise of its powers to grant licence under sub-section (4), the Commission shall have regard to, whether—

(a) the company's regulations make satisfactory provision for—

(i) the proper regulation and efficient operation of the depository facility which it operates;

(ii) the proper regulation and supervision of CDS element;

(iii) maintaining the accounts of its account holders, participants, sub-account holders and investor account holders in the manner as may be prescribed;

(iv) equitable allocation of dues, fees and other charges among the CDS element and other persons using its facilities; and

(v) any other matters as may be prescribed;

(b) the company has sufficient financial, human and system resources to—

(i) establish and operate a fair, transparent and efficient depository facility;

(ii) meet contingencies or disasters (including events such as technical complications occurring with automated systems); and

(iii) provide adequate security arrangements; and

(c) it would not be contrary to the public interest to license the company.

(6) Subject to the provisions of this Act, a licence granted under this section shall be subject to such annual renewal fee as may be prescribed.

50. Duties of central depository.—(1) It shall be the duty of a central depository to ensure —

(a) fair, transparent and efficient depository facility;

(b) that risks associated with its business and operations are managed prudently;

(c) compliance with all the provisions of the Central Depositories Act, 1997 (XIX of 1997); and

(d) that requirements referred to in clause (b) of sub-section (4) of section 49 shall be evaluated, examined and certified by such independent and reputable expert and in such time intervals as may be prescribed.

(2) In discharging its duty under sub-section (1), a central depository shall act in the interest of the CDS elements and in particular shall give paramount importance to the interest of the public.

(3) A central depository shall operate its facilities in accordance with the Central Depositories Act, 1997 (XIX of 1997) and the regulations made there under.

(4) A central depository shall formulate and implement appropriate procedures under its regulations, compliance of which shall be mandatory on all CDS elements :

(5) A central depository shall have efficient procedures and arrangements for addressing complaints and taking enforcement actions thereof.

(6) A central depository shall immediately notify the Commission if it becomes aware —

- (a) of a financial irregularity or other matter which in the opinion of the central depository may indicate that its financial integrity is in question or that it is unable to meet its legal obligations;
- (b) that any of its CDS element is unable to comply with any regulation of the central depository; and
- (c) of a financial irregularity or other matter which in the opinion of the central depository may indicate that the financial standing or integrity of a CDS element is in question or that a CDS elements may not be able to comply with legal and regulatory requirements.

(7) A central depository shall ensure that appointment or removal of its chief executive officer by whatever name called is made with the prior approval of the Commission.

(8) A central depository shall at all times provide and maintain —

- (a) adequate and properly equipped premises;
- (b) automated systems with adequate capacity, facilities to meet contingencies or emergencies, security arrangements and technical support; and
- (c) comprehensive business continuity plan for the conduct of its business.

51. Regulations of central depository.— (1) Without limiting the generality of sub-section (4) of section 49, the regulations of a central depository, may make provision —

- (a) with respect to the constitution, powers and functions of the governing body of the central depository;
- (b) with respect to the appointment and functioning of internal auditors;
- (c) with respect to operational, information system, risk evaluation and regulatory audit of the central depository;
- (d) with respect to the mechanism for inspection, enforcement and other punitive actions relating to audit and compliance of CDS Elements

including cooperation with other licensed entities for violation of any requirement of this Act or any rules or regulations made there under;

- (e) with respect to the equitable allocation of the dues, fees and other charges levied by the central depository;
- (f) with respect to dissemination of information to CDS element, securities exchange, clearing house, other entities or institutions and general public;
- (g) with respect to integrity and professional conduct of its employees; and
- (h) generally for carrying on the business of the central depository.

(2) The power to make regulations conferred by this section on the central depository shall, for eliciting public opinion thereon, be subject to condition of previous publication of the said regulations alongwith their rationale on the website of central depository for a period of seven days starting from the date of its placement on website:

Provided that, on an application by the central depository, the Commission may waive the condition of placement of proposed regulations on the website of the central depository in cases requiring the immediate implementation of a proposed regulation.

(3) The Commission may, by notice in writing served on a central depository, require it—

- (a) to make regulations specified in the notice within the period specified; or
- (b) to amend regulations referred to in the notice in the manner and within the period specified in the notice.

(4) Where the Commission is satisfied that a central depository has not complied with a requirement referred to in sub-section (3) within the specified period the Commission may make or amend the regulations specified in the notice instead of the central depository and the regulations so made or amended shall be deemed to have been made or amended by the central depository and shall have effect accordingly.

52. Approval of regulations of central depository.—(1) No regulation of a central depository or any amendment, whether by way of rescission, substitution,

alteration or addition, to a regulation shall have effect unless it has the approval in writing of the Commission.

(2) A central depository shall submit or cause to be submitted to the Commission for its approval the regulations and every amendment thereto that require approval under sub-section (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them.

(3) The Commission shall, by notice in writing served on the central depository, give its approval or refuse to give its approval to the regulations or amendment of the regulations, as the case may be or any part thereof.

(4) The Commission may give its approval under sub-section (3) subject to requirements that shall be satisfied before the regulations or amendment of the regulations or any part thereof take effect.

(5) Subject to the approval of the Commission under sub-section (3), all regulations or amendments thereto made by the central depository shall be notified in the official Gazette and shall take effect upon such publication or such date as may be specifically specified in the notification.

53. Obligation of CDS element to comply with regulations and procedures of central depository.— CDS element shall at all times comply with the regulations and procedures of the central depository.

54. Central depository to assist the Commission.—A central depository shall provide such assistance to the Commission as the Commission may require for the performance of the functions and duties of the Commission, including the furnishing of such returns and the provision of such books and other information relating to the business of the central depository or in respect of any activity and arrangements in securities or any other information as the Commission may require from time to time for the proper administration of this Act and the Central Depositories Act, 1997 (XIX of 1997).

55. Power of the Commission to issue directions to central depository.—(1) The Commission may, if it considers it necessary or expedient

- (a) for ensuring fair, transparent and efficient working of the central depository;
- (b) for ensuring the integrity and proper management of systemic risks in the securities markets,

- (c) in the interests of the public or a section of the public or for the protection of customers, the CDS elements and their clients;

issue directions by notice in writing either of a general or specific nature to a central depository.

(2) Without prejudice to the generality of sub-section (1), any direction issued under that sub-section may relate to —

- (a) the book-entry system of the central depository;
- (b) the manner in which a central depository carries on its business;
- (c) removing or suspending the directors or officers of the central depository from office or suspending CDS elements of the central depository;
- (d) the settlement of investor or customers claims and enforcement and other punitive actions against CDS element; and
- (e) any other matter that the Commission considers necessary for the proper administration of this Act and the Central Depositories Act, 1997 (XIX of 1997) or the rules and regulations made hereunder,

and the central depository shall comply with any such direction.

56. Emergency powers of the Commission.—(1) Where the Commission has reason to believe or decides on the recommendation of the central depository, that an emergency exists or where the Commission considers it necessary or expedient in the interest of the public or section of the public or for the protection of customers or where the Commission takes action under section 13 or section 32, the Commission may direct by notice in writing a central depository to take such action as it considers necessary and the central depository shall comply with that direction.

(2) Where a central depository fails to comply with a direction of the Commission under sub-section (1), within such time as is specified by the Commission, the Commission may take such other action, including but not limited to those specified in sub-section (1), as the Commission considers fit to maintain or restore fair, transparent and efficient depository facility.

(3) In this section, "emergency" means —

- (a) any act of government affecting securities;
 - (b) any major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for securities;
- or

- (c) any other situation or practice which in the opinion of the Commission constitutes an emergency.

57. Suspension or cancellation of licence.— (1) The Commission may, by notice in writing served on the central depository,—

- (i) suspend the license granted under this Act with effect from the date specified in the notice for such period as may be specified in the notice; or
- (ii) supersede the board of directors or other authority of the central depository; or
- (iii) suspend or remove the director, officer or member from his office; or
- (iv) cancel the licence granted under this Act with effect from the date specified in the notice,

if the central depository—

- (a) ceases to comply with the eligibility conditions specified in section 48;
- (b) ceases to operate the central depository facility that it has been licensed to operate under section 49;
- (c) is being wound up;
- (d) fails to comply with any requirement of this Act or the Central Depositories Act, 1997 (XIX of 1997);
- (e) fails to comply with a direction of the Commission;
- (f) fails to provide the Commission with information required by the Commission or provides false or misleading information;
- (g) is operating in a manner detrimental to the public interest; or
- (h) requests the Commission to do so.

(2) For the purposes of clause (b) of sub-section (1) a central depository shall be deemed to have ceased to operate as a central depository if—

- (a) it has ceased to operate its depository facility for more than thirty days unless it has obtained the prior approval of the Commission to do so; or

(b) it has ceased to operate such depository facility under a direction issued by the Commission.

(3) The Commission may by the notice served under sub-section (1) permit the central depository to continue, on or after the date on which the suspension or cancellation is to take effect, to carry on such activities affected by the suspension or cancellation as the Commission may specify in the notice for the purpose of—

(a) closing down the operations of the central depository; and

(b) protecting the public interest.

(4) Except where responding to a request under clause (h) of sub-section (1), the Commission shall not take any action under sub-section (1) against the central depository without first giving the central depository an opportunity of being heard.

(5) Where the Commission suspends or cancels the licence of a central depository under this section, it shall cause notice of that fact to be published in at least two daily newspapers having wide circulation.

58. Effect of cancellation of licence.—A cancellation of licence under section 57 shall not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement entered into on the securities market of a securities exchange where the agreement, transaction or arrangement was entered into before the cancellation of the licence; or

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

59. Accounts and audit.—(1) A central depository shall keep proper books of accounts and records of its profit and loss, assets and liabilities and all other transactions of the central depository as may be prescribed.

(2) The central depository shall, within three months after the end of each financial year, prepare financial statement of the central depository for the financial year, including a profit and loss account, balance sheet, cash flow and such other items as may be prescribed.

(3) The auditors shall prepare a report on the financial statement received and send such statement to the central depository within three months from the

close of financial year or such later time as allowed by the Commission and the central depository shall forthwith after its receipt send a copy of the report and a copy of the statement of accounts to the Commission.

(4) The Commission may, where it deems appropriate, require all system to be audited by an independent auditor in alternate year in a prescribed manner.

(5) The auditors report shall be prepared in such a manner as may be prescribed.

(6) The auditors shall have a right of access at all reasonable times to the books, accounts, vouchers and other records of the central depository and are entitled to require from officers of the central depository such information and explanations as they consider necessary for the performance of their duties as auditors.

(7) The accounting and other records required to be reported under this section shall be preserved by the central depository for a period of ten years or such longer period as may be prescribed.

60. Power of the Commission to appoint auditor.— (1) Where the Commission is satisfied that it is in the public interest to do so, it may appoint in writing an auditor for special audit at the expense of the central depository, to examine, audit and report, either generally or in relation to any matter, on the books, accounts and records of a central depository.

(2) The Commission may appoint special auditors to furnish the Commission with a regulation compliance audit report in the form and manner prescribed.

61. Annual report.— (1) A central depository shall, within four months after the end of its financial year or such later time as allowed by the Commission, give to the Commission an annual report that includes—

(a) a description of the activities undertaken by the central depository in the financial year;

(b) the resources including financial, technological and human resources, that the central depository had available and used in order to ensure compliance with its obligations; and

(c) an analysis of the extent to which the central depository considers that the activities undertaken and resources used, have resulted in full compliance with all of its obligations under this Act and the Central Depositories Act, 1997 (XIX of 1997) and its regulations.

(2) The central depository shall ensure that the annual report is accompanied with information prescribed for this purposes which may include, without limitation, —

- (a) names of the participants who are members of the company;
- (b) number of account holders as well as sub-account holders;
- (c) list of shareholders of the company indicating change in the shareholdings, if any; and
- (d) names of senior management staff of the company with qualifications and experience.

(3) The annual report shall be accompanied by an audit report where required by the Commission.

(4) The Commission may, by giving written notice to the central depository, require the central depository to obtain an audit report, by a person to be approved by the Commission, on the annual report and on any information or statements accompanying it.

62. Preservation of rights, etc.—Except to the extent that they expressly provide, the provisions of this Part shall not operate to limit, restrict or otherwise affect —

- (a) any right, title, interest, privilege, obligation or liability of a person; and
- (b) any investigation, legal proceeding or remedy in respect of any such right, title, interest, privilege, obligation or liability.

PART V

REGULATED SECURITIES ACTIVITIES

63. Scope of regulated securities activities.—For the purposes of this Act, a person shall be deemed to be carrying on a regulated securities activity if such person carries out on business or purports to do so, as a —

- (a) securities broker;
- (b) securities adviser;
- (c) securities manager;
- (d) share registrar;

- (e) credit rating company;
- (f) balloter;
- (g) underwriter;
- (h) debt securities trustee; or
- (i) any other activity as may be notified by the Federal Government.

64. Licensing requirement.—(1) No person shall carry on a regulated securities activity or purport to do so, unless such person is licensed by the Commission under this Act and operates in accordance with such licence.

(2) A licence granted under this Act shall specify the regulated securities activity or activities that the regulated person is permitted to undertake and such person shall be restricted to such regulated securities activity or activities so specified.

(3) The Commission may, by notification in the official Gazette, exempt any financial institution or class of financial institutions from the operation of subsection (1) subject to such terms and conditions as may be prescribed.

Explanation.—For the purposes of this sub-section the expression “financial institution” shall have the same meaning as defined under clause (15A) of subsection (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984).

65. Eligibility for licensing.—(1) A licence in respect of a regulated securities activity shall only be granted to a public or private company except that—

- (a) in the case of a securities adviser, a licence may be granted to an individual; and
- (b) in the case of a representative, a licence may only be granted to an individual.

(2) A regulated person that is licensed to indulge in a regulated securities activity shall be restricted to undertake only that activity exclusively.

(3) In the case of a bank a licence under this Part except a licence for underwriting or any other regulated activity as may be prescribed shall be granted only to a subsidiary company of the bank for such purpose and such subsidiary shall be exclusively engaged in regulated securities activities.

66. Representatives.—No person shall act as a representative in carrying on business in any regulated securities activity or hold himself out as doing so, unless he is the holder of a representative’s licence for that regulated securities activity and is duly accredited to a principal.

67. Accreditation of representatives.—(1) A representative is accredited to a principal for the purposes of this Act only if—

- (a) the licence of the representative states that he is accredited to the principal; and
- (b) the representative is recorded as being accredited in the register of regulated persons maintained by the Commission under section 72.

(2) The Commission shall not issue a representative's licence unless both the representative and the principal have informed the Commission in writing that he is or is to be accredited.

(3) Where the accreditation of a representative has been terminated whether by the principal or the representative—

- (a) the principal shall immediately notify the Commission, and any securities exchange of which he is a TRE certificate holder, in writing of such termination;
- (b) the principal shall publish in two daily newspapers having wide circulation a notice advising of such termination and shall make arrangements for the placement of the notice on the securities exchange website;
- (c) the representative shall forthwith return his licence to the Commission; and
- (d) the Commission shall forthwith amend the register of regulated persons accordingly.

68. Application for licence.—(1) An application for a licence under this Part shall be made to the Commission in the prescribed form and shall be accompanied by the prescribed fee and shall—

- (a) give the Commission information it requires—
 - (i) about the services which the applicant will hold himself out as being able to provide if the application is allowed;
 - (ii) about the business which the applicant proposes to carry on and to which the application relates and about any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business; and
 - (iii) to enable the Commission to consider the matters referred to in section 151; and

(b) specify the location of all premises at which the records or other documents of the regulated securities activity in respect of which the application is made are to be kept.

(2) The Commission may require an applicant to provide it with such further information as the Commission considers necessary.

(3) An application for the grant of a representative's licence shall be supported in the prescribed manner by a principal who is the holder of or who has applied for a licence to conduct a regulated securities activity.

69. Grant of licence.—(1) Subject to the provisions of this Act, the Commission may, on an application duly made in accordance with section 68, grant the licence or refuse the application.

(2) The Commission shall grant a licence if satisfied that the applicant—

(a) is a fit and proper person to be licenced, having regard to the provisions of section 151;

(b) will be able, if licensed, to comply with any financial resources regulations that may apply to the applicant;

(c) has specified premises under clause (b) of sub-section (1) of section 68 that are suitable for keeping records or other documents;

(d) in the case of an application for a representative's licence, has passed such examination and undertaken such training as may be prescribed;

(e) complies with the conditions prescribed in relation to anti-money laundering and counter financing of terrorism under the applicable laws; and

(f) satisfies such other conditions as may be prescribed.

(3) Subject to the provisions of this Act, a licence granted under this section shall be granted for a period of one year and may be renewed for further periods of one year provided that,—

(a) the regulated person applies for renewal of licence one month prior to the expiry of his license;

(b) pays the prescribed annual licence fee; and

(c) meets the requirements of sub-section (2).

70. Power of the Commission to impose conditions.—(1) The Commission may grant a licence subject to such conditions or restrictions as it considers necessary.

(2) The Commission may, by written notice served on the holder of the licence, amend or cancel any of the conditions or attach new conditions.

71. Power of the Commission to issue directions to regulated persons.—(1) The Commission may by notice in writing give a regulated person a direction under this section where it appears to the Commission that —

- (a) it is desirable for the protection of public interest or customers; or
- (b) the regulated person is contravening, has contravened or is about to contravene or has failed to comply with any provision of or requirement under this Act, any rule or any regulation made under this Act or in purported compliance with any such provision or requirement has furnished the Commission with information that is false, inaccurate or misleading.

(2) A direction under this section may contain all or any of the following prohibitions or requirements, namely: —

- (a) require a regulated person to cease and desist from the contravention;
- (b) prohibit a regulated person from entering into transactions of a class or description specified in the notice or entering into them otherwise than in circumstances so specified or to an extent so specified;
- (c) prohibit a regulated person from soliciting business from a person of a class or description so specified or from persons other than persons of such a class or description;
- (d) prohibit a regulated person from carrying on business in a specified manner or otherwise than in a specified manner;
- (e) as regards any assets whether in Pakistan or elsewhere and whether they are the assets of the regulated person or not —
 - (i) prohibit the regulated person from transferring, alienating or otherwise disposing of such assets or from dealing with them in a manner specified in the notice; or
 - (ii) require the regulated person to deal with such assets in, and only in, a manner specified in the notice;

- (f) require a regulated person to maintain in Pakistan assets of such value as appears to the Commission to be desirable with a view to ensuring that the regulated person will be able to meet his liabilities in respect of his business; or
- (g) require a regulated person to transfer control of assets of a specified class or description to a trustee approved by the Commission,

and the regulated person shall comply with such direction.

(3) A direction under this section shall be for such specified period as the Commission considers necessary which period may be extended by the Commission as considered necessary by it.

(4) The Commission may, by written notice either of its own motion or on the application of the regulated person on whom a prohibition or requirement has been imposed under this section, rescind or vary the prohibition or requirement if it appears to the Commission that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

72. Register of regulated persons.—(1) The Commission shall maintain a register of regulated persons in the form it considers most appropriate.

(2) For each regulated person, other than a representative, the register shall record—

- (a) the name and address of the regulated person;
- (b) the date on which the licence was granted;
- (c) the type of regulated securities activity permitted by the licence;
- (d) any conditions attached to the licence;
- (e) the name and address of every accredited representative, manager and officer;
- (f) the location of the premises at which the records or other documents of the regulated person are kept;
- (g) where the regulated person is a company, the name of each director and of the secretary of the company and the names of majority shareholder;
- (h) any order of cancellation of licence; and

- (i) such other particulars as the Commission considers necessary in the interest of the investing or general public.
- (3) For each representative, the register shall record —
 - (a) his name and address;
 - (b) the date on which his licence was granted;
 - (c) the name and address of the principal to whom he is accredited; and
 - (d) such other particulars as the Commission considers desirable in the interest of the investing or general public.

(4) The register referred to in sub-section (1) shall be made available on the website of the Commission and securities exchange.

(5) Any person may apply for a certified copy of the information contained in the register upon payment of the prescribed fee in the prescribed manner.

73. Notification of change in register particulars.—Where —

- (a) a regulated person ceases to carry on the business to which his licence relates; or
- (b) a change occurs in any matter particulars of which are required by section 72 to be entered in the register,

the regulated person shall as soon as is practicable and in any event within seven days give to the Commission notice in writing of the event concerned.

PART VI

CONDUCT OF REGULATED SECURITIES ACTIVITIES

74. Standards of conduct.— In the conduct of regulated securities activities, a regulated person shall at all times act according to the principles of best practice and, in particular, shall —

- (a) observe a high standard of integrity and fair dealing;
- (b) act with due care, skill and diligence;
- (c) observe high standards of market conduct;

- (d) seek from customers information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling the regulated person to fulfill his responsibilities to the customer;
- (e) take steps to give public information to every customer which will enable the customer to make a balanced and informed investment decision;
- (f) avoid any conflict of interest with customers and, where such a conflict unavoidably arises, to ensure fair treatment to the customer by complete disclosure and the interests of the regulated person should never be unfairly placed above those of the customer;
- (g) protect properly, by way of segregation and identification, those customer assets for which the regulated person is properly responsible;
- (h) maintain adequate financial resources to meet the regulated securities activities commitments of the regulated person and withstand the risks to which the business is subject;
- (i) organize and control internal affairs in a responsible manner;
- (j) keep proper records and maintain such records for a period of ten years or such longer period as notified by the Commission;
- (k) have efficient procedures and arrangements for addressing customer's complaints and settlement of customer's claims;
- (l) have adequate arrangements to ensure that all staff employed are suitable, adequately trained and properly supervised, together with well-defined compliance procedures;
- (m) have adequate system of internal controls and internal audit, ensuring compliance with the relevant laws for the time being in force;
- (n) make efforts to resolve any dispute through mediation; and
- (o) deal with the Commission in an open and co-operative manner and keep the Commission informed of anything concerning the regulated person that might be expected to be disclosed to it.

75. Business conduct regulations.—(1) Without prejudice to section 169 the Commission may make regulations requiring regulated persons to comply with such practices and standards relating to their conduct in carrying on the regulated securities activities for which they are licensed as are specified in the regulations.

(2) Without limiting the generality of sub-section (1), the Commission may make regulations for or with respect to —

- (a) the use of misleading or deceptive advertisements by or on behalf of a regulated person;
- (b) the disclosure to a customer of the financial risks in respect of securities trading recommended by the regulated person to the customer;
- (c) the avoidance of any conflict of interest between the regulated person and a customer;
- (d) recommendations made by a regulated person;
- (e) the priority to be given to customer's orders;
- (f) fit and proper criteria for the promoters, directors, senior management officers and officers of regulated person;
- (g) implementation of in-house compliance and internal audit function to ensure compliance to the applicable regulatory framework;
- (h) observance of fair trade and market practices and prohibition of market abuses, fraudulent practices and deception of general public;
- (i) trading against a customer; and
- (j) any other matter relating to the practices and standards of conduct required of a regulated person in conducting the regulated securities activity for which the regulated person is licensed.

76. Issue of contract notes.—A regulated person shall, in respect of every contract for the purchase, sale or exchange of securities entered into by him, whether as principal or agent, make out a contract note in such a manner as may be prescribed.

77. Short selling.—(1) Except in accordance with regulations, a person shall not sell any listed securities that he or his principal does not own either for his own account or for the account of another person.

(2) For the purposes of sub-section (1), a person who sells securities includes a person who —

- (a) sells the securities;
- (b) purports to sell the securities;
- (c) offers to sell the securities;

(d) holds himself out as entitled to sell the securities; or

(e) instructs a securities broker to sell the securities.

(3) For the purposes of sub-section (1), a person is treated as owning securities only if—

(a) he or his agent is legally entitled to the securities;

(b) he has purchased the securities or has entered into an unconditional contract to purchase the securities, even if he does not yet have title to them;

(c) he owns other securities convertible into or exchangeable for the securities and has tendered the other securities for conversion or exchange;

(d) he has an option to acquire the securities and has exercised the option; or

(e) he has rights or warrants to subscribe to the securities and has exercised the rights or warrants.

78. Customer assets.—(1) A regulated person shall—

(a) treat and deal with all customer assets received by him from a customer in respect of any regulated securities activity as belonging to that customer;

(b) account for in a separate trust account, designated or evidenced as such, for all the customer assets received from the customer or accruing to the customer pursuant to clause (a); and

(c) not commingle those customer assets with the assets of the regulated person.

(2) Without prejudice to section 169 the Commission may make regulations with respect to the segregation, safekeeping and utilization of customer assets that a regulated person holds on behalf of a customer.

(3) Without limiting the generality of sub-section (2), regulations may—

(a) require customer money to be paid into segregated bank accounts established for customer money and designated as trust accounts or customer accounts;

- (b) make provision with respect to the opening, control and keeping of bank accounts and specify when and how customer money is to be paid into such accounts and require it to be dealt with, and accounted for, in the prescribed manner;
- (c) require the maintenance of records in relation to such accounts;
- (d) require the submission to the Commission, upon request or at prescribed intervals, of prescribed information, records and documents for the purpose of enabling the Commission to ascertain readily whether the regulations are being complied with; and
- (e) provide for any other matter relating to customer assets.

PART VII

ACCOUNTS, CAPITAL REQUIREMENTS AND AUDIT

79. Accounts and records to be kept.—(1) Every regulated person shall keep such accounting and other records as prescribed which shall sufficiently explain the transactions and financial position of all business relating to his licence and enable a true and fair financial statements to be prepared from time to time and shall keep those records in such manner and form as to enable them to be conveniently and properly audited.

(2) Without limiting the generality of sub-section (1), such accounts and other records shall be maintained as may be prescribed.

(3) The accounting and other records required to be maintained under this section shall be preserved by the regulated person for a period of not less than ten years from the date on which they are made and shall at all reasonable times be open to inspection by the Commission or by any person appointed by the Commission.

(4) All records shall be maintained in sufficient detail to establish readily whether or not any financial resources regulations are being complied with.

80. Financial resources regulations.— (1) Without prejudice to section 169, the Commission may make regulations requiring regulated persons to have and maintain, in respect of the securities regulated activity for which they are licensed, the financial resources set by the regulations.

(2) Financial resources regulations may—

- (a) require regulated persons to maintain financial resources in accordance with —

- (i) specified requirements as to the amount in which they are to be maintained; and
 - (ii) any other prescribed requirements;
- (b) prescribe the assets, liabilities and other matters to be taken into account under the regulations to determine the financial resources of a regulated person and the extent to which, and the manner in which, they are to be taken into account for that purpose;
 - (c) require regulated persons to submit to the Commission, at intervals set out in the regulations, returns of their financial resources and trading activities in a form set by the Commission;
 - (d) require regulated persons to submit returns to the Commission in response to a request by the Commission for information relating to their financial resources and any trading activities; and
 - (e) provide for any other matter relating to the financial resources of regulated persons.

81. Failure to comply with financial resources regulations.—(1) If a regulated person becomes unable to comply with financial resources regulations the regulated person shall —

- (a) notify the Commission, of that fact;
- (b) in the case of a securities broker, also notify the securities exchange of which the regulated person is a TRE certificate holder, clearing house and central depository, of that fact; and
- (c) cease conducting the regulated securities activity for which the regulated person is licensed, otherwise than for the purpose of giving effect to an agreement or arrangement permitted under his licence and entered into before the time when it became so aware.

(2) The duties of a regulated person under sub-section (1) shall arise as soon as the regulated person becomes aware or should, with the exercise of diligence, have become aware, of his inability to comply with the financial resources regulations.

(3) A regulated person that is a company is deemed to be aware of an inability to comply with the financial resources regulations if a director or employee of it is so aware or should, with the exercise of diligence, have been aware of the inability.

(4) Where the Commission becomes aware of an inability by a regulated person to comply with financial resources regulations the Commission may, whether or not notice has been given under sub-section (1), —

- (a) suspend the licence; or
- (b) permit the regulated person to carry on business on the conditions, if any, the Commission imposes.

(5) Where the Commission suspends a licence for a specified period under sub-section (4), the suspension shall be for a period not exceeding three months, provided that the Commission may, if it considers it necessary, extend the suspension for such further periods not exceeding three months at any time, at the expiry of which the Commission shall either notify in writing the regulated person that the suspension has expired or proceed to cancel the licence, as it deems appropriate.

82. Monitoring compliance with financial resources regulations.—

(1) The Commission may at any time, by notice in writing served on a regulated person, require the regulated person to satisfy the Commission that the regulated person complies with all of the requirements of the financial resources regulations that apply to the regulated person in such manner as may be prescribed.

(2) Without limiting the generality of sub-section (1), the Commission may exercise any of the powers of an auditor appointed by the Commission under section 86 for the purpose of ascertaining whether a regulated person complies with all of the requirements of the financial resources regulations that apply to the regulated person.

83. Auditor to be appointed.—(1) Within one month after becoming licenced under this Act a regulated person, other than a representative, shall appoint an auditor, approved by the Commission, to perform the functions required of an auditor of a regulated person under or pursuant to the provisions of this Act and the regulations made hereunder.

(2) An auditor shall not be eligible for appointment under sub-section (1) if he is —

- (a) a director, officer, employee, shareholder, partner or family member of the regulated person; or
- (b) a partner or employee of such person; or
- (c) not in compliance with the section 254 of the Companies Ordinance, 1984 (XLVII of 1984).

(3) A regulated person shall, within seven days of the appointment of an auditor, notify the Commission in writing of the name and address of the auditor.

(4) A regulated person shall, within seven days, notify the Commission in writing of the removal or resignation of an auditor.

84. Audited accounts to be lodged with the Commission.— A regulated person other than a representative, shall —

- (a) for the financial year from the day on which he commences to carry on a regulated securities activity; and
- (b) for each subsequent financial year,

prepare financial statements, a balance sheet and a cash flow statement made up to the last day of the financial year which shall show a true and fair view, contain the information prescribed, and shall lodge those documents with the Commission not later than four months after the end of the financial year, together with an auditor's report which shall express opinions on such matters as may also be prescribed.

85. Auditor to report to the Commission in certain cases.— If, during the performance of his duties as auditor for a regulated person, an auditor—

- (a) becomes aware of any matter which in his opinion adversely affects the financial or regulatory position of the regulated person to a material extent; or
- (b) discovers evidence of a contravention of any financial resources regulations or of section 78 (customer assets) or with section 79 (accounts and records to be kept),

he shall promptly report it in writing to the Commission and to the regulated person.

86. Power of the Commission to appoint auditor for special audit.— Where the Commission is satisfied that it is in the interest of a regulated person, his customers or the investors or general public to do so, it may appoint in writing an auditor to conduct special audit, at the expense of the regulated person, to examine, audit and report, either generally or in relation to any matter, on the books, accounts and record of the regulated person and on money, securities or other property held on account of any other person by the regulated person or by a nominee appointed by the regulated person, if —

- (a) the regulated person has failed to lodge audited accounts with the Commission under section 84; or

- (b) the Commission has received a report of audit under section 85; or
- (c) the Commission has reason to believe that the regulated person has failed to comply with any financial resources regulations, with section 78 (customer assets) or with section 79 (accounts and records to be kept).

PART VIII

PUBLIC OFFERS OF SECURITIES

87. Offer of securities.—(1) This Part applies to offer of securities other than Government debt securities.

(2) Subject to the provisions of this Part, no person shall make a public offer of securities unless the issuer or offeror of the securities has submitted for approval to the Commission, and the Commission has approved prospectus.

(3) No person shall make a public offer of securities if such person or its directors, sponsors or substantial shareholders have been holding the office of the directors, or have been sponsors or substantial shareholders in any company, which—

- (a) had been declared defaulter by the securities exchange; or
- (b) whose TRE certificate has been cancelled or forfeited by the securities exchange; or
- (c) which has been de-listed by a securities exchange due to non-compliance of its regulations:

Provided that the Commission may grant relaxation upon reasons to be recorded, and rectification of cause leading to such de-listing.

- (4) Sub-section (2) shall not apply—
- (a) to securities offered by the State Bank of Pakistan;
 - (b) where the securities are offered in connection with a private offering or private placement; and
 - (c) issue of shares of a subsidiary to the members of a listed holding company by way of specie dividend or any other distribution in the prescribed manner.

- (d) where the securities are offered by the issuer to—
- (i) members or employees of the issuer; or
 - (ii) members of the families of any such members or employees; and
- (e) where the securities are shares and are offered as bonus shares to any or all of the members of the issuer;

(5) A prospectus approved by the Commission shall be valid for a period of sixty days from the date of such approval or for a longer period approved by the Commission in case of shelf registration, provided that the supplement to the prospectus for each offering shall contain updated disclosures:

Provided that the time period of sixty days provided for approval of prospectus may be extended by the Commission by reasons to be recorded in writing.

(6) The Commission shall not be liable to any action in damages suffered as a result of any prospectus approved by the Commission.

(7) A person who, in connection with a public offer of securities, makes a false or fictitious application, commits an offence.

(8) The Commission may, where it considers it appropriate, forfeit any or all of the money paid or payable in respect of an offering application under subsection (7) after providing the applicant a reasonable opportunity of being heard.

88. Approval, issue, circulation and publication of prospectus.—

(1) No person shall issue, circulate and publish prospectus including a shelf-prospectus or supplement to the prospectus until it has been approved by the Commission which approval may be subject to such conditions or restrictions as the Commission considers necessary.

(2) The issuer or the offeror, as the case may be, shall, not less than twenty one days before the proposed date of publication of the prospectus, submit a copy to the Commission for approval.

(3) Where a public offer of securities is to be made in Pakistan the issuer or offeror, as the case may be, shall publish the prospectus in full text or in such abridged form as may be prescribe, at least in one Urdu and one English daily newspaper.

(4) The prospectus shall not be published in the newspapers less than seven days or more than thirty days before the commencement of the public subscription.

(5) The issuer or the offerer, as the case may be, shall make available sufficient number of copies of the prospectus approved by the Commission under subsection (1), free of charge, from the date of its publication in the newspapers till the closing of the subscription at the registered office of the issuer, with all the securities exchanges of the country, with all the bankers to the issue, the concerned state registrar, the concerned ballotter and the concerned credit rating agency, if any.

(6) The prospectus in full text and the shares subscription form shall be uploaded on the website of the issuer and shall remain there from the date of its publication in the newspapers till the closing of the subscription.

(7) No person shall issue, circulate, publish, telecast or broadcast without the prior written approval of the Commission, an advertisement, other than a prospectus, announcing a public offer of securities for which a prospectus is required under this Part unless a prospectus has been published and the advertisement gives an address in Pakistan from which it can be obtained.

(8) The issuer or offeror, as the case may be, shall not, at any time, vary the terms of the clauses stipulated in its prospectus except subject to the approval of the Commission.

(9) Where an issuer or the offerer, as the case may be, can issue, circulate and publish supplement to the prospectus inviting the general public for subscription of the security(ies) earlier offered to the public through shelf-prospectus, provided that—

- (a) it has obtained prior written approval of the Commission for its issue, circulation and publication;
- (b) the last supplement should be published within such time period to be prescribed by the Commission; and
- (c) the aggregate amount of the offer or issue floated in tranches should not exceed the total issue size as mentioned in the shelf-prospectus.

(10) A copy of each supplement to the prospectus shall be filed with the registrar on or before the date of its issue, circulation or publication.

(11) A supplement to the prospectus shall contain such information as may be prescribed by the Commission and it shall be published in atleast all those newspapers in which the shelf-prospectus has been published.

(12). In case of any misstatement or omission of material information from the supplement to the prospectus, sections 92 and 93 shall apply *mutatis mutandis*.

89. Contents of prospectus.—The Commission may approve a prospectus if it contains such information and reports as may be prescribed.

90. Expert to be independent.—A prospectus shall not contain a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or in the management of the company.

91. Expert's consent to issue of prospectus containing statement made by him.—A prospectus that contains a statement purporting to be made by an expert or to be based on a statement made by an expert shall not be issued, circulated or published unless—

- (a) the expert has given his written consent to the issue of the prospectus with the statement in the form and context in which it is included; and
- (b) there appears in the prospectus a statement that the expert has given and has not withdrawn his consent.

92. Criminal liability for defective prospectus.—A person commits an offence, who—

- (a) makes a misleading, incorrect, untrue or deceptive statement in a prospectus; or
- (b) omits information or a statement from a prospectus that this Act or any rule or regulation made under this Act, requires to be included in the prospectus.

93. Compensation for false or misleading prospectus.—Every offeror, issuer, director of an offeror or issuer or any person who has signed the prospectus shall be liable to pay compensation to any person who acquires any of the securities, in reliance upon the prospectus, to which the prospectus relates and suffers loss in respect of them as a result of any incorrect, untrue or misleading statement in the prospectus or the omission from it of any matter required to be included by or under section 89.

94. Abridged prospectus.—Notwithstanding the provisions of this Part, a public offer of securities may be made by publication of an abridged version of a prospectus (an abridged prospectus), instead of a prospectus, if—

- (a) a prospectus is prepared in accordance with section 89 and the abridged prospectus is prepared in accordance with such requirements as may be prescribed;

- (b) a copy each of the prospectus and the abridged prospectus is submitted to the Commission at the same time for approval and both the prospectus and the abridged prospectus are approved by the Commission;
- (c) sufficient copies of the prospectus are made available for collection at the times and places specified in section 88 and the abridged prospectus; and
- (d) the public offer complies with such other requirements as may be prescribed.

95. Issue of securities outside Pakistan.— No company shall, except with the prior approval of the Commission, issue or list any securities outside Pakistan.

96. Disclosure of price sensitive information.— (1) Except as provided in sub-section (4), a listed company shall disclose to the public forthwith any price sensitive information relating to the company or its subsidiaries which has come to the company's knowledge and which would be material to an investor's investment decision, including information that—

- (a) is necessary to enable the public to appraise the position of the company and its subsidiaries;
- (b) is necessary to avoid the creation or continuation of a false market in the securities of the company (false market being defined as an uninformed market or one which is based on incomplete information); or
- (c) might reasonably be expected to materially affect the market activity and the price of its securities.

(2) A listed company shall ensure that, when disclosing information pursuant to clauses (a) to (c) of sub-section (1), the means it uses for disseminating information are such that it equally, timely and effectively provides access to such information by the holders of the securities of the company and investors.

(3) A listed company meets the requirements of sub-section (1) when information that affects the market or a sector of the market generally is made public in a manner that would be likely to bring it to the attention of persons who commonly invest in securities of a kind whose price or value might be affected by the information.

(4) A listed company may, under its own responsibility, delay the public disclosure of price sensitive information such as not to prejudice its legitimate interests, provided that—

- (a) such delay would not be likely to mislead public investors;
- (b) any person receiving the information owes the listed company a duty of confidentiality, regardless of whether such duty is based on law, regulations, articles of association or contract; and
- (c) the listed company is able to ensure the confidentiality of that information.

(5) In the event that a listed company is also traded or listed on a foreign market or exchange, the listed company shall ensure that where information is released to those markets the same information is released in Pakistan simultaneously.

(6) Without limiting the generality of this section the listed company shall also comply with such further obligations and requirements as may be prescribed.

97. Notification of required disclosure by the Commission or a securities exchange.—(1) A listed company shall respond promptly upon being informed by the Commission or a securities exchange that there are unusual movements in the price or volume of its traded securities by promptly disclosing to the public—

- (a) details of any matter or development of which it is aware that is or may be relevant to the unusual movements, or
- (b) a statement of the fact if it is not aware of any such matter or development.

(2) It shall be the responsibility of the listed company to respond promptly, in the same manner, to any news in the print and electronic media regarding that company which may *prima facie* affect the opinion of investor or public at large.

(3) Without limiting the general effect or provisions of this Part, listed companies shall also comply with such further reporting obligations and requirements as may be prescribed.

98. Power of the Commission to require production of records and documents concerning listed companies.—(1) Where—

- (a) it appears to the Commission that there are circumstances suggesting that the business of a listed company has been or is being conducted—

- (i) with intent to defraud its creditors or the creditors of another person;
 - (ii) for a fraudulent or unlawful purpose; or
 - (iii) in a manner that adversely effects any of its members;
- (b) it appears to the Commission that there are circumstances suggesting that a company was listed for a fraudulent or unlawful purpose;
- (c) it appears to the Commission that there are circumstances suggesting that the persons concerned with the listing of a company or the management of its affairs have in relation to the listing or management been guilty of fraud, misfeasance or other misconduct towards it or its members; or
- (d) it appears to the Commission that there are circumstances suggesting that the members of a listed company have not been given all the information with respect to its affairs that they might reasonably expect.

the Commission may give directions —

- (i) to the directors or management of the listed company;
- (ii) to a subsidiary or an associated company of the listed company; or
- (iii) to a listed company or listed companies that own or control either individually or collectively a majority shareholding of the listed company or have the power to place a majority of directors on the board of the listed company or
- (iv) where it appears to the Commission that it is in the interest of the investor or public interest.

requiring it, at the time and place specified in the directions, to produce the records and documents specified in the directions.

(2) The Commission may, when acting under sub-section (1), authorize a person, on producing, if required to do so, evidence of his authority to require a listed company referred to in sub-section (1) to produce to him records and documents specified by him.

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

(4) The power under this section to require a listed company or other person to produce records and documents includes the power—

(a) if the records and documents are produced—

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

(ii) to require that person or any other person who is a present or past officer of the listed company or is or was at any time employed by the listed company, to provide an explanation of any of them; or

(b) if the records and documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

99. Remedy in cases of unfair prejudice by listed companies.—(1)

If it appears to the Commission from any information, record or other document obtained under this Act or the rules or regulations made under the Act or any other legislative power, that the affairs of a listed company is being or has been conducted in a manner unfairly prejudicial to the interests of some or all of its shareholders, the Commission may make an application to the Court for an order under this section.

(2) If on an application under this section the Court is of the opinion that the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of its members generally or of some part of the members, whether or not the conduct consists of an isolated act or a series of acts, the Court may, with a view to bringing to an end the matters complained of—

(a) make an order restraining the carrying out of the act or conduct;

(b) order that the company shall bring in its name the proceedings the Court considers fit against the persons, on the terms, the Court orders;

(c) appoint a receiver of the whole or a part of the company's property or business and may specify the powers and duties of the receiver or manager and fix his remuneration; and

- (d) make any other order it considers fit, whether for regulating the conduct of the company's affairs in future or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital or otherwise.

(3) Where an order under this section makes an alteration in or an addition to the constitution of a company, the company shall not have power without the leave of the Court to make any further alteration in or addition to the constitution inconsistent with the order.

100. Power of the Commission to issue directives to listed companies.—Where it appears to the Commission that —

- (a) it is desirable for the protection of members or other holders of securities or in the public interest;
- (b) the listed company is in breach of listing regulations; or
- (c) the listed company is contravening, has contravened or is about to contravene or has failed to comply with any provision of, or requirement under, this Act, any rules or any regulations made, under this Act and in purported compliance with any such provision or requirement, has furnished the Commission with information that is false, inaccurate or misleading,

the Commission may issue directive to the listed company —

- (i) to cease and desist from the breach of this Act or rules or regulations made there under;
- (ii) to do or not to do any matter as specified under this Act or rules or regulations made there under; or
- (iii) with regard to or for any other matter that the Commission considers necessary in exercise of its powers under this Act or rules or regulations made there under,

and the listed company shall comply with the directive.

101. Duty of directors and others to disclose shareholding in listed company.—(1) Every person who becomes a director, executive officer, or substantial shareholder of a listed company shall give notice in writing to the company—

- (a) of his beneficial ownership in the listed equity securities of the company or any other nature of securities as may be prescribed by the Commission; and

(b) of the amount and description of the securities of the company and date of acquisition of beneficial ownership.

(2) A director, executive officer or substantial shareholder of a listed company shall give notice in writing to the company of any of the following events, namely:—

(a) any change in beneficial ownership mentioned in sub-section (1) and the notification shall state the number, amount and description of securities involved.

(b) any gain referred to in section 104.

(3) The reporting requirement imposed by sub-sections (1) and (2) shall be fulfilled before the expiration of a period of seven days beginning with the day on which the requirement first arises.

(4) For the purposes of sections 101 to 107, the term "executive officer" - includes but not limited to the chief executive, chairman, chief financial officer, secretary, auditor or any other officer of the company as may be prescribed by the Commission.

(5) For the purposes of sections 101 to 107, beneficial ownership of securities of any director, executive officer or substantial shareholder, in case of natural person, shall be deemed to include the securities beneficially owned, held or controlled by—

(a) him or her;

(b) the wife or husband of a director of a company, not being herself or himself a director of the company;

(c) the minor son or daughter of a director where "son" includes step-son and "daughter" includes step-daughter; and "minor" means a person under the age of eighteen years;

(d) a private company, where such director, executive officer or substantial shareholder is a shareholder, but to the extent of his proportionate shareholding in the private company;

Provided that "control" in relation to securities means the power to exercise a controlling influence over the voting power attached thereto.

Provided further that in case the substantial shareholder is a non-natural person, only those securities will be treated beneficially owned by it, which are held in its name.

102. Register of directors' interests notified under section 101.—

(1) Every listed company shall keep a register for the purposes of section 101 in the form approved by the Commission.

(2) Whenever a company receives notification from a director, executive officer or substantial shareholder pursuant to section 101, the company shall enter in the register, against name of the respective director, executive officer or substantial shareholder, the information received and the date of the entry.

(3) Whenever a listed company is notified of any matter in consequence of requirement imposed by sub-section (1) of section 101, the company shall notify it to the Commission, within seven days of the receipt of the information, showing therein name of director, executive officer or shareholder, date of appointment or acquisition of beneficial ownership and number of shares held by him.

103. Notification to the Commission of directors and others' interest.—(1) Every director, executive officer or substantial shareholder of a listed company shall submit to the Commission in the prescribed form—

- (a) a statement of beneficial ownership in the listed equity securities of the company or any other nature of securities as may be prescribed by the Commission;
- (b) the particulars of any change in the interest aforesaid; and
- (c) any change in his position.

(2) The reporting requirement imposed by sub-sections (1) shall be fulfilled before the expiration of a period of seven days beginning with the day on which the requirement first arises.

(3) For the purposes of sections 101 to 107, "equity security" means any stock or transferable share (preferred or common) or similar security representing ownership, any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security, any such warrant or right itself, and such other security as may be prescribed by the Commission.

104. Trading by directors and others.—Where any director, executive officer or substantial shareholder of a listed company irrespective of any intention makes any gain computed in the prescribed manner, by the purchase and sale, or

the sale and purchase, of any beneficially owned listed equity securities of same class, or any other nature of securities as may be prescribed by the Commission, within period of less than six months, such director, executive officer or substantial shareholder shall make a report to the Commission in the prescribed form before the expiration of a period of seven days beginning with the day on which the gain accrues:

Provided that nothing in this section shall apply to any nature of acquisition as may be prescribed by the Commission.

105. Tender of gain to be credited to Federal Consolidated Fund.—Where director, executive officer or substantial shareholder makes any gain mentioned in section 104, such director, executive officer or substantial shareholder shall tender the amount of such gain to the Commission within the period of six months of the accrual of gain and the Commission shall credit the amount of such gain to the Federal Consolidated Fund.

106. Directive by the Commission.—(1) Where within the period provided in section 105, a director, executive officer or substantial shareholder fails or neglects to tender the gain, the Commission may by order in writing direct such director, executive officer or substantial shareholder, to tender the gain to the Commission for onward credit to the Federal Consolidated Fund.

(2) where any person who contravenes or fails to comply with any provision of sections 101, 102, 103, 104, 105 and 107, the Commission may by order in writing direct,—

- (a) in the case of an individual, to pay by way of penalty to the Commission such sum which may extend to five hundred thousand rupees and to a further sum which may extend to one thousand rupees per day for every day during which the default continues; and
- (b) in the case of a company, the company and its every director or officer who is knowingly and willfully in default, to pay by way of penalty to the Commission such amount which may extend to five hundred thousand rupees and to a further amount which may extend to one thousand rupees per day for every day during which the default continues.

(3) Any person, who obstructs or contravenes or does not comply with any order or direction given under this section commits an offence and shall be liable to pay by way of penalty such amount which may extend to five million rupees or three times the tenderable gain made, whichever is higher.

107. Notification to the Commission of prescribed information.—

(1) Every listed company, once in each year, prepare in the prescribed manner and file with the Commission a return containing the prescribed information.

(2) The return referred to in sub-section (1) shall be filed with the Commission within forty-five days from the date of the annual general meeting held in the year or, where no such meeting is held or if held is not concluded, from the last day of the calendar year to which it relates.

PART IX

TAKEOVERS

108. Interpretation.— In this Part, —

- (a) “acquirer” means any person who, directly or indirectly, acquires or intends to acquire voting shares or voting rights in, or control of the target company, either by himself or through any person acting in concert;
- (b) “manager to the offer” means a bank, securities broker or an investment bank licensed by the Commission, appointed as per requirements of this Part;
- (c) “offer period” means the period from the date of public announcement of public offer to the date of closure of public offer or earlier withdrawal thereof;
- (d) “persons acting in concert” means—
 - (i) persons who, with a common objective or purpose of acquisition of voting shares or voting rights in, or control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of such shares or voting rights in, or control over the target company.
 - (ii) without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—
 - (A) a company, its holding company, subsidiary company and any company under the same management or control;

- (B) a company, its promoters or sponsors or its directors, and any person entrusted with the management of the company;
- (C) directors of companies referred to in item (A) of this sub-clause and associates of such directors;
- (D) relatives of the acquirer or persons acting in concert with the acquirer;
- (E) a securities manager and its client, who is an acquirer, and
- (F) banks, financial advisors and securities brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the relative of such individual:

Provided that this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to a public offer under this Act;

Explanation.—For the purposes of this clause “associate” of a person means,—

- (i) any relative of such person; and
 - (ii) trusts of which such person or his relative is a trustee;
 - (iii) partnership firm in which such person or his relative is a partner; or
 - (iv) private company in which the person or his relative is director or a member;
- (e) “public announcement” means the announcement of intention to acquire or offer to acquire voting shares of the target company made to the public by the acquirer pursuant to this Part in the prescribed manner and includes the announcement made in relation to a competitive bid;
 - (f) “public offer” means the public offer for acquisition of voting shares of a target company and includes any competitive bid or bids made for this purpose;

- (g) "relative" means spouse, real and half siblings and their children, and lineal ascendants and descendants of a person;
- (h) "voting shares" means shares in the equity share capital of a target company carrying voting rights and includes any security which entitles the holder thereof to obtain or exercise voting rights;

Explanation.— For the purpose of this clause shares also include all depository receipts carrying an entitlement to exercise voting rights in the target company; and

- (i) "target company" means a listed company or holding company of a listed company whose voting shares or control are directly or indirectly acquired or intended to be acquired.

109. This Part not to apply to certain transactions.—(1) Except as provided otherwise in sub-section (2), nothing contained in this Part shall apply to—

- (a) allotment of voting shares pursuant to a right issue to existing members of a company in proportion to their shareholding, except voting shares allotted and issued under sub-section (7) of section 86 of the Companies Ordinance, 1984 (XLVII of 1984);
- (b) allotment of voting shares to the licenced underwriters pursuant to any underwriting agreement;
- (c) acquisition of voting shares in the ordinary course of business by banks and financial institutions as enforcement of security;
- (d) acquisition of voting shares by succession or inheritance;
- (e) a scheme of arrangement or reconstruction including amalgamation or merger or de-merger under any law for the time being in force;
- (f) exercise of option by a bank or a financial institution in pursuance of a conversion option under a loan agreement;
- (g) sale of shares in consequence of privatization of a unit or its management rights within the meaning of Privatization Commission Ordinance, 2000 (LII of 2000);
- (h) acquisition pursuant to *inter se* transfer of shares amongst qualifying persons, being,—
 - (i) relatives;

- (ii) persons named as promoters or sponsors, in the memorandum of Association of target company holding not less than twenty five percent of the equity securities of the target company;
- (iii) a company, its subsidiaries, its holding company, other subsidiaries of such holding company;
- (iv) major shareholders of a target company collectively exercising management control for a continuous period of three years prior to the proposed acquisition;

Explanation.—For the purposes of this clause the expression “major shareholder” means person directly holding more than twenty per cent of voting shares of the target company;

- (i) a scheme of rehabilitation of a company, approved under any law for the time being in force.

(2) After the acquirer acquires voting shares pursuant to sub-section (1), the acquirer shall make a disclosure of the acquisition in the prescribed manner.

110. Acquisition of more than ten per cent voting shares of a company.— (1) Any acquirer who acquires voting shares, which, taken together with voting shares, if any, held by the acquirer, would entitle the acquirer to more than ten per cent voting shares in a listed company, shall disclose the aggregate of his shareholding in that company to the said company, the securities exchange on which the voting shares of the said company are listed and the Commission as provided in sub-section (2).

(2) The disclosure mentioned in sub-section (1) shall be made within two working days of—

- (a) the receipt of intimation of allotment of voting shares; or
- (b) the acquisition of voting shares, as the case may be.

Explanation.—For the purposes of this section the expression “acquisition” shall include purchases confirmed by the TRE certificate holder of a stock exchange in accordance with applicable rules or regulations.

(3) An acquirer may acquire additional voting shares within a period of twelve months after acquisition of voting shares pursuant to sub-section (1) without making disclosure as required by sub-section (1) in case the total acquisition does not exceed an aggregate of thirty per cent.

111. Acquisition of voting shares beyond prescribed limits or control of a company.—No person shall, directly or indirectly,—

- (a) acquire voting shares, which (taken together with voting shares, if any, held by such person) would entitle such person to more than thirty per cent voting shares in a listed company; or
- (b) acquire additional voting shares in case the acquirer already holds more than thirty per cent but less than fifty-one per cent of the voting shares of a listed company:

Provided that such acquirer shall not be required to make a fresh public offer within a period of twelve months from the date of the previous public offer; or

- (c) acquire control of a listed company,

unless such person makes a public offer to acquire voting shares of the listed company in accordance with this Part.

112. Number of voting shares and offer price.—(1) The public offer by the acquirer shall be made for such minimum number of voting shares and for such minimum offer price as may be prescribed.

(2) Where the number of voting shares offered for sale by the shareholders are more than the voting shares offered to be acquired by the acquirer, the acquirer shall, in consultation with the manager to the offer, accept the public offer or offers received from the shareholders on a proportional basis:

Provided that acquisition of voting shares from a shareholder shall not be less than the minimum marketable lot or the entire holding if it is less than the marketable lot.

113. Appointment of manager to the offer.—Before making any public offer the acquirer shall appoint a manager to the offer who shall not be an associate, or a group company, of the acquirer or the target company.

114. Timing of the public announcement of intention.—Any person intending to acquire control or voting shares of the target company which may attract the provisions of section 111, shall make a public announcement of its intention to acquire in such manner as may be prescribed.

115. Public announcement of intention and public offer not to contain misleading material.—The public announcement of intention, the public offer, any other advertisement, circular, brochure or any publicity material issued in respect of, or in relation to, the acquisition of voting shares shall not contain any misleading or incorrect information.

116. Conditional offer.—(1) A public offer by the acquirer may be made conditional upon minimum level of acceptances:

Provided that such level shall not be less than the limit prescribed by the Commission.

(2) Where a public offer is made conditional upon minimum level of acceptance, the acquirer may reject all such acceptances if the same do not reach the minimum level specified in the public offer:

Provided that the acquirer shall be free to accept the acceptances even if such acceptances, put together, do not reach the specified minimum level.

117. Persons to whom public offer shall be made.—The acquirer shall ensure that the offer letter is sent to all the shareholders of the target company whose names appear on the register of members of the company as on the date specified in the public announcement:

Provided that where the public announcement is made pursuant to an agreement to acquire voting shares or control of the target company, the offer letter shall be sent to the shareholders other than the parties to the agreement.

118. Prohibition for acquirer.—Where the acquirer has, neither in the public announcement nor in the offer letter, stated his intention to dispose of the undertaking or a sizeable part thereof, of the target company except in the ordinary course of business of the target company, the acquirer, where he has proceeded to acquire control of the target company, shall not dispose of the undertaking or a sizeable part thereof, of the target company for a period of two years from the date of acquisition of the control.

119. Prohibitions on board of directors of the target company.—(1) The board of directors of the target company, during the offer period, shall not—

- (a) sell, transfer, or otherwise dispose of or enter into an agreement for sale, transfer, or for disposal of the undertaking or a sizeable part thereof, not being sale or disposal of assets in the ordinary course of business of the company or its subsidiaries;
- (b) encumber any asset of the company or its subsidiary;
- (c) issue any further shares during the offer period; or
- (d) enter into any material contract.

(2) Once the public announcement of intention has been made, the board of directors of the target company shall not appoint any person who represents or has an interest in the acquirer as an additional director or against a casual vacancy on the board of directors, till acquisition is completed.

(3) The target Company shall not transfer the securities acquired by the acquirer unless all obligations have been fulfilled by the acquirer under this chapter as certified by the manager to the offer.

(4) Notwithstanding anything contained in the Companies Ordinance, 1984 (XLVII of 1984), once the acquisition of shares has been completed in accordance with this Part, the target company shall allow such changes in the board of directors as would give the acquirer proportionate representation on the board or control of the company.

(5) In case the acquirer does not get a proportionate representation on the board of directors of the target company or the number of casual vacancies so created to complete the board on the basis of proportional representation are not sufficient, the acquirer may serve a notice on the target company for holding of fresh elections and shall submit a copy of such notice to the Commission forthwith.

(6) The board of directors of the target company shall cause the election of directors to be held within thirty days from the receipt of the notice under sub-section (5), and the elections shall be held in accordance with the provisions of sub-sections (2) to (5) of section 178 of the Companies Ordinance, 1984 (XLVII of 1984).

(7) The board of directors so elected shall hold office during the remainder of the term of the outgoing directors of the target company.

120. Competitive bid.—(1) Any person, other than the acquirer who has made the first public announcement, who is desirous of making a competitive bid, shall, within twenty-one days of the public announcement of the first offer, make a public announcement of his offer for acquisition of at least same number of voting shares of the target company.

Explanation.—For the purpose of this section a bid shall be deemed as competitive only if it offers a higher purchase price.

(2) A competitive bid shall not be for less than the number of voting shares for which the earlier public offer has been made.

(3) The provisions of this Part shall, *mutatis-mutandis*, apply to the competitive bid made under sub-section (1).

121. Upward revision of offer.— Irrespective of whether or not there is a competitive bid, the acquirer, who has made the public announcement, may make upward revision in his offer in respect to the price or the number of voting shares to be acquired, at any time up to seven working days prior to the date of the closure of public offer.

122. Withdrawal of public offer.— (1) Except as provided in sub-section (2), a public offer, once made, shall not be withdrawn.

(2) A public offer may be withdrawn,—

(a) if a competitive bid has been made;

(b) if the sole acquirer, being a natural person, has died or has been declared to be of unsound mind before the completion of the acquisition process; or

(c) in such circumstances as may be prescribed.

(3) If the acquirer who made the first public offer does not withdraw his offer within seven working days of the public announcement of the competitive bid or does not make an upward revision of his offer within the time specified in section 121, the earlier offer on the original terms shall continue to be valid and binding on the acquirer, except that the closing date of such public offer shall stand extended to the date of closure of public offer under the last subsisting competitive bid.

123. Security to be furnished by the acquirer.— (1) The acquirer shall furnish a security for performance of his obligations on such terms and conditions as may be prescribed.

(2) The total consideration payable under the public offer shall be calculated assuming full acceptances irrespective of whether the consideration for the public offer is payable in cash or otherwise.

(3) In case there is any upward revision of offer, consequent upon a competitive bid or otherwise, the value of the security shall be increased as may be prescribed under sub-section (1).

(4) The security furnished shall be released in such manner as may be prescribed.

124. Conduct of takeovers.— (1) The Commission shall make regulations with respect to the making and conduct of takeover offers and matters incidental and connected therewith.

(2) Without prejudice to the generality of sub-section (1), the Commission may make regulations for or with respect to—

- (a) the form, manner, timing and submission of offers;
- (b) public announcements of intention and public offer;
- (c) independent advice to shareholders;
- (d) the obligations of directors;
- (e) the standard of care and responsibility;
- (f) the timing and content of documents;
- (g) the offer timetable;
- (h) asset valuations and offer pricing;
- (i) restrictions on trading before and during the offer;
- (j) security to ensure completion of a takeover offer;
- (k) mandatory offers, offer size and acquisition;
- (l) squeeze outs;
- (m) competitive bids;
- (n) conditional offers; and
- (o) any other matter that the Commission considers necessary to ensure the proper conduct of takeovers.

125. Powers of Commission to issue directions under this Part.— The Commission may, in the interest of the securities market, give such directions as it deems fit including—

- (a) directing the person concerned not to further deal in securities;
- (b) prohibiting the person concerned from disposing of any of the securities acquired in violation of provisions of this Part;
- (c) directing the person concerned to sell the voting shares acquired in violation of the provisions of this Part; and/or
- (d) taking such action against the person concerned as may be necessary.

126. Penalties for non-compliance.— (1) In the event of withdrawal of public offer, except as provided in section 122, or contravention of any provision of this Part, the Commission may, after providing reasonable opportunity of hearing, by an order in writing, debar the acquirer and any person acting in concert from acquiring voting shares of a listed company for a period of three years.

(2) In case any member of the board of directors or management of the target company contravenes any provision of this Part, such person shall, on a finding by the Commission, after providing reasonable opportunity of hearing, stand disqualified to hold the office of director, chief executive officer, by whatever name called, chief financial officer or company secretary in a listed company for a period of two years.

- (3) If any person—
- (a) refuses or fails to furnish any document, paper or information which he is required to furnish by, or under, this Part;
 - (b) refuses or fails to comply with any order or direction of the Commission made or issued under this Part; or
 - (c) contravenes or otherwise fails to comply with the provisions of this Part,

the Commission may, if satisfied, after giving the person an opportunity of being heard, that the refusal, failure or contravention was willful, impose penalty which may extend to one hundred million rupees as may be specified in the order.

PART X

INSIDER TRADING

127. Application of this Part.—The provisions of this Part shall apply to listed securities traded by listed companies and insiders described in section 130.

128. Prohibition of insider trading.—(1) No person shall indulge in insider trading and any contravention of this section shall be an offence.

- (2) Insider trading shall include,—
- (a) an insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains or using others to transact such deals;
 - (b) any other person to whom inside information has been passed or disclosed by an insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains or using others to transact such deals;
 - (c) transaction by any person as specified in clauses (a) and (b) or any other person who knows or ought to have known under normal and

reasonable circumstances, that the information possessed and used for transacting any deal is inside information; or

- (d) an insider person passing on inside information to any other person, or suggesting or recommending to another person to engage in or dealing in such listed securities with or without the inside information being disclosed to the person who has dealt in such securities.

(3) The following shall not be deemed as insider trading:

- (a) any transaction performed under an agreement that was concluded before the time of gaining access to inside information; or
- (b) the disclosure of inside information by an insider person as required under law.

(4) No contract shall be void or unenforceable by reason only of an offence under this section.

129. Inside information.—For the purposes of this Part the expression “inside information” means—

- (a) information which has not been made public, relating, directly or indirectly, to one or more issuers of listed securities or to one or more listed securities and which, if it were made public, would be likely to have an effect on the prices of those listed securities or on the price of related listed securities;
- (b) in relation to derivatives on commodities, information which has not been made public, relating, directly or indirectly, to one or more such derivatives and which are traded in accordance with accepted market practices on those markets;
- (c) in relation to persons responsible for the execution of orders concerning listed securities, information which is conveyed by a client to such person and related to the client's pending orders; or
- (d) information regarding decision or intentions of a person to transact any trade in listed securities.

130. Insiders.—Insiders shall include—

- (a) any sponsor, executive officer or director of an issuer of listed securities;
- (b) any sponsor, executive officer, director or partners of a legal person or unincorporated business association, in which the issuer holds a share or voting rights, directly or indirectly, of twenty-five per cent or more;

- (c) any sponsor, executive officer director or partner of a legal person or unincorporated business association who holds, directly or indirectly, a share or voting rights of twenty per cent or more in an issuer of listed securities;
- (d) any sponsor, executive officer or director of an organization that has been engaged in the placement of securities or the public offer of securities, as well as any employee of the issuer or an organization participating in the issuing and marketing of such securities who has had access to insider information during his employment, for a period of one year after leaving employment;
- (e) any person holding a share, directly or indirectly, which enables him to appoint director on the board, or ten per cent or more shares of an issuer of listed securities;
- (f) any sponsor, executive officer or director of a credit institution in which the issuer of listed securities has an account;
- (g) any person obtaining inside information as part of his employment or when discharging his usual duties in an official capacity or in any other way relating to work performed under contract of employment or otherwise;
- (h) any person obtaining inside information through unlawful means;
- (i) spouse, lineal ascendant or descendant including step children partner or nominee of a person referred to in clauses (a) to (h); and
- (j) any person obtaining information or advice to trade in a security from any person referred to in clauses (a) to (i).

131. Listed companies' responsibilities to disclose inside information.—(1) Whenever a listed company or a person acting on their behalf, discloses any inside information to any third party in the normal exercise of employment, profession or duties, complete and effective public disclosure of that information must be made simultaneously:

Provided that the provisions shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, regulations, articles of association or contract.

(2) Listed companies or persons acting on their behalf, shall maintain a list of persons employed, under contract or otherwise in the prescribed manner, who have access to inside information and such companies and persons acting on

their behalf shall regularly update this list and send it to the Commission whenever required by the Commission.

(3) Listed company shall in the list of persons that have access to insider information state that the persons listed have acknowledged the requirements of this Part related to the prohibition to conclude transactions with the use of inside information and to advise the persons to whom they provide inside information.

(4) Any person who contravenes the provisions of this section and regulations made hereunder shall commit an offence.

PART XI

OTHER MARKET ABUSES

132. False trading and market rigging transactions.—(1) No person shall create or cause to be created or do anything that is calculated to create a false or misleading appearance of active trading in securities on a securities market or a false or misleading appearance with respect to the price of securities on the securities market and any contravention of this section shall be an offence.

(2) Without limiting the general nature of what constitutes a false or misleading appearance of active trading under sub-section (1), a false or misleading appearance of active trading in securities is created for the purpose of this section if a person—

- (a) enters into or carries out, directly or indirectly, any transaction for the sale or purchase of securities that does not involve a change in the beneficial ownership of them or offers to do so;
- (b) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make or knows that an associate of his has made or proposes to make, an offer to buy the same or substantially the same, number of them; or
- (c) offers to buy the securities at a price that is substantially the same as the price at which he has made or proposes to make or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same, number of them.

133. Market manipulation.—(1) A person shall commit an offence, if—

- (a) he places an order, enters into or carries out, directly or indirectly any transactions, in the listed securities of a company that by themselves or in conjunction with any other transaction —

- (i) increase or are likely to increase, their price with the intention of inducing another person to purchase or subscribe for or to refrain from selling securities issued by the same company or a related company;
 - (ii) reduce or are likely to reduce, their price with the intention of inducing another person to sell or to refrain from purchasing securities issued by the same company or a related company;
 - (iii) stabilise or are likely to stabilise, their price with the intention of inducing another person to sell, purchase or subscribe for or to refrain from selling, purchasing or subscribing for, securities issued by the same company or by a related company; or
 - (iv) has the effect of misleading investors who trade in securities on the basis of closing prices.
- (b) he, for the purposes of inducing, dissuading, effecting, preventing or in any manner influencing or turning to his advantage the sale or purchase of any security, directly or indirectly, does any act or practice or engage in a course of business, or omit to do any act which operates or would operate as a fraud, deceit or manipulation upon any person, in particular-
- (i) makes any fictitious quotation;
 - (ii) creates a false and misleading appearance of active trading in any security;
 - (iii) effects any transaction in such security which involves no change in its beneficial ownership;
 - (iv) enters into an order or orders for the purchase and sale of security which will ultimately cancel out each other and will not result in any change in the beneficial ownership of such security;
 - (v) directly or indirectly, effects a series of transactions in any security creating the appearance of active trading therein or of raising of price for the purpose of inducing its purchase by others or depressing its price for the purpose of inducing its sale by others;
 - (vi) being a director or an officer of the issuer of a listed equity security or a beneficial owner of not less than ten per cent of such security who is in possession of material facts, omits to disclose to the public through securities exchange any such facts while buying or selling such security.

134. Fraudulently inducing trading in securities.—A person shall commit an offence, if he induces or attempts to induce another person to subscribe for, sell or purchase securities –

- (a) by making or publishing any statement, promise or forecast or giving any investment advice that is false, misleading or deceptive;
- (b) by any concealment of material facts; or
- (c) by recording or storing in or by means of, any mechanical, electrical or other device, information that is false or misleading in a material particular.

135. Employment of fraudulent or deceptive devices.—A person shall commit an offence if he, directly or indirectly, in connection with any transaction with any other person involving the subscription for the purchase or sale of securities,—

- (a) employs any device, scheme or artifice to defraud that other person;
- (b) engages in any act, practice or course of business which operates as a fraud or deception or is likely to operate as a fraud or deception, on that other person; or
- (c) makes any untrue statement of a matter of fact or omits to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading.

136. False or misleading statement inducing securities transactions.—(1) A person shall commit an offence, if he, directly or indirectly, for the purpose of inducing the subscription for, sale or purchase of securities by others, of any listed company or to maintain, increase, reduce or stabilise the price of its securities, makes with respect to those securities or with respect to the operations or the past or future performance of the company—

- (a) any statement or disseminates information through the media which is, at the time and in light of the circumstances in which it is made, false or misleading with respect to any material fact and which he knows or has reasonable grounds to believe to be false or misleading; or
- (b) any statement or disseminates information through the media which is, by reason of the omission of a material fact, rendered false or

misleading and which he knows or has reasonable grounds to believe is rendered false or misleading by reason of omission of that fact.

(2) A person commits an offence if he, directly or indirectly, takes advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about securities while having previously taken positions on that securities, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.

PART XII

SUPERVISION AND INVESTIGATION

137. Power of the Commission to call for information.—(1) Notwithstanding anything contained in any other law for the time being in force, the Commission may, by notice in writing, require any person to furnish it with such information as it may require during the course of inquiry, inspection or investigation and for the purposes thereof, within such time and verified in such manner as it may specify.

(2) The Commission may by notice in writing require any person to appear before it or a Commissioner or an officer authorized by the Commission or produce such record and documents as are required by the Commission.

(3) Every person required under sub-section (2), —

(a) shall be bound to answer all reasonable questions put to him and state the truth; and

(b) may be asked to make a statement of the facts which shall be reduced into writing and signed by him or affixed with his signature or thumb print.

(4) A Commissioner or an employee to whom any of the functions or powers of the Commission have been delegated under this section may, for the purposes of a proceeding, require anyone, —

(a) to produce before him, and to allow to be examined and kept, any books, accounts or other documents in the custody or under the control of such person, being documents relating to any matter the examination of which may be considered necessary for disposing of the proceedings by such Commissioner or officer; and

(b) to furnish such information and documents in his possession relating to any matter as may be necessary for the purpose of the proceeding.

(5) The duty to supply information under this section applies notwithstanding any other enactment or law in Pakistan.

(6) Any person who does not provide information required by the Commission commits an offence and is liable to be punished under this Act.

138. Inspection.—(1) For the purpose of ascertaining whether a person who is or at any time has been, a licensed person is complying or has complied with any provision of or requirement under this Act or of any rule or regulation made under this Act or the terms and conditions of his licence, the Commission may from time to time inspect any record or document relating to the business to which the licence applies.

(2) The Commission may through a written order authorize any person, hereinafter referred to as the "authorized person", to exercise the powers of the Commission under this section.

(3) In the exercise of his powers under this section, an authorized person may—

(a) require the licensed person or any other person whom he believes is in possession of or has under his control, any record or document referred to in sub-section (1), to produce it to him;

(b) make inquiries of a licensed person or any other person whom he has reasonable cause to believe has information relating to any record or document, referred to in sub-section (1), concerning any such record or document or concerning any transaction or activity which was undertaken in the course of or which may affect, the business conducted by the licensed person; and

(c) inspect and make copies or take extracts from, and where necessary take possession of, such documents.

(4) For the purpose of an inspection under this section, the licensed person or other person mentioned in sub-section (3) shall afford to an authorized person access to the records or documents as may be required for the inspection and shall produce to the authorized person such records or documents as he may require.

(5) Any person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence.

139. Investigation.—(1) Where the Commission has reasonable cause to believe, either on its own motion or as a result of a complaint received, that—

- (a) an offence has been committed under this Act or under any rules or under any regulations made under this Act or is about to be committed;
- (b) a licensed person may have or is about to engaged in defalcation, fraud, misfeasance or other misconduct in connection with his licensed activity; or
- (c) the manner in which a licensed person has engaged or is engaging or about to engage in his licensed activity is not in the interest of the customer or the public interest,

the Commission may in writing direct one or more of its employees or one or more other persons, hereinafter referred to as "the investigator", to investigate any of the matters referred to in clauses (a), (b) or (c) and to report the results of the investigation to the Commission.

(2) Any person who is reasonably believed or suspected by the investigator to have in his possession or under his control any record or document relevant to an investigation under this section or who is so believed or suspected of otherwise having such information in his possession or under his control shall—

- (a) produce to the investigator, within the time and at the place as the investigator requires in writing, any record or document specified by the investigator which is or may be, relevant to the investigation and which is in his possession or under his control;
- (b) if required by the investigator, give the investigator an explanation or further particulars in respect of any record or document produced under clause (a);
- (c) attend before the investigator at the time and place as the investigator requires in writing, and answer under oath administered by the investigator truthfully and to the best of his ability all questions relating to the matters under investigation as the investigator may put to him; and
- (d) give the investigator all assistance in connection with the investigation which he is reasonably able to give, including responding to any written question by the investigator.

(3) A person commits an offence and shall be liable to be punished under this Act if he—

- (a) fails to produce any record or document required to be produced under clause (a) of sub-section (2);
- (b) fails to comply as required under clause (b) of sub-section (2);
- (c) fails to attend before the investigator as required under clause (c) of sub-section (2);
- (d) fails to answer a question put to him by the investigator under clause (c) of sub-section (2) or gives a false or misleading answer or who in giving an answer recklessly makes a false statement or omits material information known to him; or
- (e) fails to comply with clause (d) of sub-section (2).

140. Destruction of documents.—A person who destroys, falsifies, conceals or disposes of or causes or permits the destruction, falsification, concealment or disposal of any document, which he knows or ought to know is relevant to an inspection under section 138 or an investigation under section 139, commits an offence.

141. Powers of the investigator in relation to investigations.—(1) The investigator shall, for the purposes of investigations, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit, in respect of the following matters, namely:—

- (a) Summoning and enforcing the attendance of any witness and examining him on oath or affirmation;
- (b) compelling the discovery or production of any document or other material object;
- (c) receiving evidence on affidavit; and
- (d) issuing commissions for the examination of witnesses and documents.

(2) Any person who contravenes the requirements of clause (a), (b) or (c) of sub-section (1) and if such contravention is deliberate the investigator may, with the prior approval of the Commission, make an application to the Court for attachment of his property or require him to furnish security for his appearance.

(3) Any proceeding before the investigator shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

(4) Any contravention of or non-compliance with any orders or directions of the investigator exercising powers under sub-section (1) shall be an offence punishable under sub-section (8) of section 159.

PART XIII

POWERS OF INTERVENTION BY COMMISSION IN RELATION TO LICENSED PERSONS

142. Scope of powers under this Part.—(1) The powers conferred on the Commission under this Part may be exercised in relation to any licensed person if it appears to the Commission that—

- (a) the exercise of the powers is desirable for the protection of customers or in the public interest; or
- (b) he is not a fit and proper person to be a licensed person; or
- (c) the licensed person has contravened or failed to comply with any provision of or requirement under this Act, any rule or any regulation made by the Commission under this Act or, in purported compliance with any such provision or requirement, has furnished the Commission with information that is false, inaccurate or misleading.

(2) The Commission for reasons to be recorded may on its own motion exercise its powers conferred by section 143, 144 or 145.

(3) For the purposes of this section, the Commission may take into account any matters that could be taken into account in deciding whether to suspend or revoke a licence.

(4) The powers conferred on the Commission by this Part may be exercised in relation to a person whose licence has been suspended or revoked or other punitive action has been taken against him, whether or not the suspension or revocation or other punitive actions taken is the subject of appeal.

143. Restriction of business.—(1) The Commission may prohibit a licensed person and its customers from doing any one or more of the following, namely:—

- (a) entering into —
 - (i) transactions of a specified description or other than of a specified description; or
 - (ii) transactions in specified circumstances or other than in specified circumstances; or
 - (iii) transactions to a specified extent or other than to a specified extent;
- (b) soliciting business from persons of a specified description or from persons other than of a specified description; or
- (c) carrying on business in a specified manner or other than in a specified manner.

(2) A prohibition under this section may relate to transactions entered into in connection with or for the purposes of the regulated activity or to other business that is carried on in connection with or for the purposes of any such regulated activity.

144. Restriction on dealing with property.—The Commission may, after recording reasons in writing, as regards any property whether in Pakistan or elsewhere and whether it is the property of a licensed person not—

- (a) prohibit a licensed person from disposing of such property or prohibit him from dealing with it in a specified manner or other than in a specified manner; or
- (b) require a licensed person to deal with such property in, and only in, a specified manner.

145. Maintenance of property.—(1) The Commission may require a licensed person to maintain in Pakistan property of such value as appears to the Commission to be desirable with a view to ensuring that the licensed person will be able to meet his liabilities in respect of his regulated activity.

(2) The Commission may direct that, for the purposes of any requirement under this section, property of any specified class or description shall or shall not be taken into account.

146. Rescission and variation of prohibition or requirement.—The Commission may, either of its own motion or on the application of a licensed person and its customers on whom a prohibition or requirement has been imposed under this Part, rescind or vary the prohibition or requirement if it appears to the Commission that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

147. Notices.—(1) The power to impose, rescind or vary a prohibition or requirement under this Part shall be exercisable by written notice served by the Commission on the licensed person concerned and any such notice shall take effect on such date as is specified in it.

(2) If the Commission refuses to rescind or vary a prohibition or requirement on the application of the licensed person to whom it applies, it shall serve notice on him to that effect.

(3) A notice imposing a prohibition or requirement, varying a prohibition or requirement otherwise than on the application of the licensed person to whom it applies, and any notice under sub-section (2) shall state the reasons for which the prohibition or requirement has been imposed or varied or, as the case may require, why the application for variation or rescission was refused.

(4) The Commission may give public notice of any prohibition or requirement imposed by it under this Part and of any rescission or variation thereof, and any such notice may, if the Commission considers necessary, include a statement of the reasons for the prohibition, requirement, variation or rescission.

148. Winding up orders.—(1) In the case of a licensed person which is a company, if it appears to the Commission that it is desirable for the protection of customers that the company should be wound up under the Companies Ordinance, 1984 (XLVII of 1984), the Commission may present a petition for it to be wound up under that Ordinance on the ground that it is just and equitable that it should be wound up and that Ordinance shall apply to such petition as it applies in relation to a petition presented under that Ordinance.

(2) Notwithstanding anything contained in the Companies Ordinance, 1984 (XLVII of 1984),—

(a) a licensed person shall not file a petition for winding up unless it satisfies the Commission in the manner prescribed that it has settled all outstanding investors claims as per default regulations and has obtained prior approval of the Commission and the Commission may, in the

interest of the public or interest of investors, impose such conditions as it deems appropriate.

- (b) The Court may refuse to entertain petition for winding up of a company, if the Court is satisfied that—
- (i) requirements of clause (a) have not been fulfilled;
 - (ii) petitioner intends to avoid or prejudice investigation of offences under this Act; or
 - (iii) any other ground that the Court deems fit in the facts and circumstances of the case.

149. Orders of Court.—(1) Where, on the application of the Commission, it appears to the Court that a licensed person has contravened any provision of this Act or any condition of his licence or is about to do an act that, if done, would be such a contravention, the Court may, without prejudice to any order it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders, namely:—

- (a) an order restraining the licensed person from acquiring, disposing of or otherwise dealing with any property specified in the order;
- (b) an order appointing a person to administer the property of the licensed person;
- (c) an order declaring a contract to be void or voidable;
- (d) for the purpose of securing compliance with any other order under this section, an order directing a licensed person to do or refrain from doing any act specified in the order; or
- (e) any ancillary order which the Court considers necessary in consequence of the making of any other order under this section.

(2) The Court may, before making an order under sub-section (1), direct that notice of the application be given to such persons as it considers fit or direct that notice of the application be published in such manner as it considers fit or both.

(3) The Court may, of its own motion or on the application of an interested party, reverse, vary or discharge an order made by it under this section or suspend the operation of such an order.

PART XIV

DISCIPLINE OF LICENSED PERSON

150. Disciplinary action in respect of licensed person.—(1) Subject to section 154, where—

- (a) a licensed person is or was at any time, guilty of misconduct; or
- (b) the Commission is of the opinion that a licensed person is not a fit and proper person to remain a licensed person,

the Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case—

- (i) suspend his licence, whether in relation to all or any of its activities for which he is licensed, for such period or until the occurrence of such event as the Commission may specify; or
- (ii) cancel his licence, whether in relation to all or any of the its activities for which he is licensed; or
- (iii) publicly reprimand the licensed person.

(2) Subject to section 151, where a licensed person is or was at any time, guilty of misconduct, the Commission may make one or more of the following orders, separately or in addition to any power exercisable under clause (i), (ii) or (iii) of sub-section (1) that the licensed person shall pay to the Commission by way of penalty such sum,—

- (a) not exceeding fifty million rupees;
- (b) not exceeding the amount of any profit gained or loss avoided by the licensed person as a result of the misconduct in question;
- (c) appropriate to reimburse the Commission for the costs and expenses it has reasonably incurred in relation or incidental to the investigation of the licensed person's conduct.

(3) A licensed person ordered to make a payment under sub-section (2) shall pay the sum ordered to the Commission within fifteen days or such further period as the Commission may specify by notice under section 151, after the order has taken effect.

(4) A licensed person commits an offence if he fails to comply with an order under sub-section (2).

(5) In this section "misconduct" means—

- (a) a contravention of any of the provisions of this Act, the rules, regulations made by the Commission or regulations made under this Act;
- (b) a contravention of any of the terms or conditions of a licence granted under this Act;
- (c) failure to comply with a direction of the Commission; or
- (d) an act or omission by a licensed person in relation to his activity which, in the opinion of the Commission, is or is likely to be prejudicial to the public interest,

and the expression "guilty of misconduct" shall be construed accordingly.

(6) For the avoidance of doubt, any disciplinary action taken by the Commission under this section or section 149 shall be without prejudice to any other action, whether civil or criminal, that may be taken against the licensed person in respect of the same conduct.

(7) In determining whether a licensed person is a fit and proper person for the purposes of clause (b) of sub-section (1), the Commission shall have regard to the matters specified in section 151.

151. Determination of "fit and proper".—(1) Subject to sub-section (2), the Commission shall prescribe the fit and proper criteria for licensed person or in case of company, member of the board of directors and senior management officers of licensed person.

(2) In considering whether a licensed person, in case of company, member of the board of directors or senior management officers is fit and proper person for the purposes of this Act, the Commission shall, in addition to any other matter that the Commission may consider relevant, have regard to—

- (a) the financial status or solvency;
- (b) the educational or other qualifications or experience;
- (c) the ability to carry on their activity competently, honestly and fairly; and
- (d) the reputation, character, reliability and financial integrity of,—
 - (i) where the licensed person is an individual, the individual himself; or

- (ii) where the licensed person is a company, the company and any officer of the company.
- (3) Without limiting the generality of sub-section (2), the Commission may, in considering whether a licensed person is a fit and proper person, take into account—
 - (a) any information in the possession of the Commission whether provided by the licensed person or not, relating to—
 - (i) any person who is to be employed by, associated with or who will be acting for or on behalf of, the licensed person for the purposes of his regulated activity;
 - (ii) where the licensed person is a company in a group of companies—
 - (A) any other company in the same group of companies; or
 - (B) any substantial shareholder or officer of the company or any company referred to in sub-sub-clause (a);
 - (b) whether the regulated person has established effective internal control procedures and risk management systems to ensure his compliance with all applicable regulatory requirements applicable to him;
 - (c) the state of affairs of any other business which the licensed person carries on or proposes to carry on.
- (4) In sub-clause (ii) of clause (a) of sub-section (3), "group of companies" means any two or more companies one of which is the holding company of the other or others as the case may be.

152. Other circumstances for disciplinary action in respect of licensed persons.—(1) Subject to section 151, the Commission may cancel the licence, whether in relation to all or any of the activities for which he is licensed, or suspend his licence, whether in relation to all or any of the activities for which he is licensed, for such period or until the occurrence of such event as the Commission may specify, if—

- (a) where the licensed person is an individual, he—
 - (i) is shown by certified medical evidence to have become mentally or physically incapable of performing the activities to which the licence relates;

- (ii) has been adjudged a bankrupt, in Pakistan, or elsewhere;
 - (iii) has been adjudged as a defaulter in repayment of a loan in a sum exceeding one hundred thousand rupees by a court of competent jurisdiction;
 - (iv) is convicted, whether in Pakistan or elsewhere, of fraud or other offences involving dishonesty;
 - (v) is in breach of this Act, any rule or any regulation made by the Commission or a securities exchange under this Act;
 - (vi) contravenes or fails to comply with any condition applicable in respect of the licence;
 - (vii) fails to comply with a direction of the Commission;
 - (viii) fails to provide the Commission with information required or provides false or misleading information;
 - (ix) ceases to carry on the business for which he is licenced;
 - (x) is the holder of a representative's licence and the licence of the principal to whom he is accredited is cancelled or suspended; or
 - (xi) by reason of any other circumstances, is no longer a fit and proper person to hold a licence;
- (b) where the regulated person is a company, —
- (i) the company goes into liquidation or is ordered to be wound up;
 - (ii) a receiver of all or a substantial part of the property of the company is appointed;
 - (iii) the company ceases to carry on the business for which it is licensed;
 - (iv) the Commission has reason to believe that the company or any of its directors or employees has not performed his duties honestly and fairly;
 - (v) the company contravenes or fails to comply with any condition applicable in respect of the licence;

- (vi) the company is in breach of this Act, any rule or any regulation made under this Act;
- (vii) fails to comply with a direction of the Commission;
- (viii) fails to provide the Commission with information required or provides false or misleading information; or
- (ix) by reason of any other circumstances, the company is no longer a fit and proper person to hold a licence.

(2) Where the Commission suspends a licence under this section, the suspension shall be for a period not exceeding three months, provided that the Commission may, if it considers it necessary, extend the suspension for such other period as may be specified by the Commission at the expiry of which the Commission shall either lift the suspension or proceed to cancel the licence, as it deems appropriate.

(3) The licence of a person shall be deemed to be suspended if he fails to pay the prescribed annual fee and, subject to sub-section (4), the suspension shall remain in force until such time as the Commission considers it appropriate that his licence should no longer be suspended and informs the licensed person to that effect by notice in writing.

(4) Where a licence is suspended under sub-section (3) and the prescribed fee has not been paid within thirty days after the day on which the suspension becomes effective under sub-section (3) or such further period as the Commission may specify by notice in writing to the regulated person, the licence shall be deemed to be revoked.

(5) The Commission may cancel or suspend a licence at the request of the licensed person.

(6) For the purposes of sub-clause (vi) of clause (a) and sub-clause (iii) of clause (b) of sub-section (1), a licensed person shall be deemed to have ceased to carry on the business for which he is licensed if —

- (a) he has for more than thirty days ceased to carry on the business for which he is licensed unless he has obtained prior approval of the Commission to do so; or
- (b) he has ceased to carry on business under a direction issued by the Commission.

(7) Where the Commission suspends or cancels the licence of a licensed person under this section, it shall cause notice of that fact to be disseminated in such manner as the Commission deems appropriate.

153. Effect of cancellation or suspension of licence.—(1) The cancellation or suspension of a licence under this Act shall not operate so as to—

- (a) avoid or affect an agreement, transaction or arrangement entered into by the licensed person on the securities market of a securities exchange where the agreement, transaction or arrangement was entered into before the revocation or suspension; or
- (b) affect a right, obligation or liability arising under the agreement, transaction or arrangement.

(2) Where a licence is cancelled or suspended under this Part, the Commission may by notice in writing and subject to such conditions as the Commission may specify in the notice,—

- (a) require the regulated person to transfer to or to the order of, his customer such records relating to customer property or to the affairs of the customer held at any time for the customer, in such manner, as the Commission may specify in the notice; or
- (b) permit the licensed person to,—
 - (i) in the case of a cancellation, carry on business operations for the purpose of closing down the business connected with the cancellation; or
 - (ii) in the case of a suspension, carry on only essential business operations for the protection of interests of customers during the period of suspension,

154. Procedural requirements for exercise of disciplinary powers under this Part.—(1) The Commission shall not exercise any power under section 147 or 148 without first giving the licensed person in respect of whom the power is to be exercised a reasonable opportunity of being heard:

Provided that where the Commission is satisfied that delay in the suspension of licence shall cause risk of serious financial damage to the customer of that licensed person or is detrimental to the interest of investors or the public in general, the Commission may, after recording reasons in writing, immediately suspend its

TRE certificate till the time an opportunity of hearing is provided to the licensed person and a final decision is taken within a period of not more than thirty days.

(2) The Commission may prescribe the manner in which the licensed person shall be given an opportunity to be heard.

(3) Where the Commission decides to exercise any power under section 127 or 148, the Commission shall inform the licensed person in respect of whom the power is exercised of its decision to do so by notice in writing and the notice shall include—

- (a) a statement of the reasons for which the decision is made;
- (b) the time at which the decision is to take effect;
- (c) in so far as applicable, the duration and terms of any cancellation or suspension to be imposed under the decision;
- (d) in so far as applicable, the terms in which the licensed person is to be reprimanded under the decision;
- (e) in so far as applicable, the amount of any pecuniary penalty to be imposed under the decision and the period, being specified as a period after the decision has taken effect, within which it is required to be paid.

PART XV

MISCELLANEOUS

155. Indemnity.—No suit, prosecution, other legal proceedings or action in damages shall lie against the Commission, commissioners, officers and employees of the Commission for anything done or omitted in the exercise or performance of any function, power or duty conferred or imposed by or under this Act or the rules and regulations made under this Act unless the act or omission is shown to have been done or made in bad faith.

156. Rights of applicants and holders of licence.—(1) The Commission shall not—

- (a) refuse an application for the grant of any licence in respect of any activity; or

(b) cancel or suspend any licence granted under this Act,

without first giving the applicant or the licence holder, as the case may be, an opportunity to be heard.

(2) The Commission shall, if it refuses an application, notify the applicant in writing of the refusal.

(3) The Commission shall, if it cancels or suspends a licence, notify the licence holder in writing of the cancellation or suspension and of—

(a) the date on which the cancellation or suspension takes effect; and

(b) the duration of a suspension or the event which will terminate it.

(4) The manner in which a person shall be given an opportunity to be heard may be prescribed.

157. Civil liabilities.—(1) Every contract made in contravention of any provision of this Act or any rule or regulations made thereunder shall be voidable as regards the rights of any party to the contract contravening such provision or any person not being a party to the contract who acquires any right under the contract with actual knowledge of the facts by reason of which its making or performance was in such contravention and any person affected by such contract not being himself a party to the contravention may sue to rescind any such contract to the extent it has been consummated or for damages when rescission is not possible.

(2) Any person who makes or causes to be made, in any application, report or document filed with the Commission or a securities exchange pursuant to this Act or any rules or regulations made thereunder, any statement which was false or misleading with respect to any material fact, at the time and in the light of the circumstances under which it was made, shall be liable to any person who has purchased or sold a security in reliance on such statement for damages caused by such reliance, without regard to the presence or absence of any contractual relationship between the two, unless the person who made or caused to be made the application, report or document proves that he acted in good faith and had no knowledge or reasonable ground to believe that the statement was false or misleading.

(3) Any person who participates in any act or transaction in contravention of the provisions contained in Part XI (market abuse) shall be liable to any person who has purchased or sold a security in reliance on such act or transaction for damages caused by such reliance, without regard to the presence or absence of any contractual relationship between the two, unless the person so contravening

159. Offences and penalties.—(1) Any person who commits an offence under section 128 (insider trading) shall be liable—

- (a) in the case of an individual, to imprisonment of either description for a term which may extend to three years or to a fine which may extend to two hundred million rupees or three times the amount of gain made or loss avoided by such person, or loss suffered by another person, whichever amount is higher; and
- (b) in the case of a company, to a fine which may extend to three hundred million rupees or three times the amount of gain made or loss avoided by such company, or loss suffered by another person, whichever amount is higher.

(2) Any person who commits an offence under sections 132, 133, 134, 135 and 136, Part XI (other market abuses) shall be liable—

- (a) in case of an individual, to imprisonment of either description for a term which may extend to three years or a fine not exceeding two hundred million rupees, or both; and
- (b) in the case of a company, to a fine which may extend to three hundred million rupees.

(3) Any person who contravenes the provisions of sections 3 and 22 and sub-section (1) of section 64 (operating without a licence or other authority) shall be liable to pay to the Commission, by way of penalty,—

- (a) in the case of an individual, such sum which may extend to hundred million rupees;
- (b) in the case of a company, such sum which may extend to two hundred million rupees; and
- (c) in the case of a continuing offence, a further sum which may extend to two hundred thousand rupees for every day or part thereof during which the offence continues.

(4) Any person who commits an offence under section 92 (criminal liability for defective prospectus) shall be liable to imprisonment of either description for a term which may extend to three years or with fine not exceeding one hundred million rupees or with both unless he proves that either the statement was immaterial or that he had reasonable ground to believe and did up to the time of issue of prospectus, that the statement was true.

(5) Notwithstanding sub-sections (1), (2), (3) and (4), any person who—

- (a) contravenes or fails to comply with any provision of this Act, or of any rules or of any regulations made under this Act;
- (b) furnishes or produces any return, document or statement for the purposes of this Act or any requirement imposed under the provisions of this Act or of any rules or regulations made under this Act, the contents of which, to his acknowledge, are untrue, incorrect or misleading; or
- (c) obstructs or contravenes or does not comply with any order or direction of the Commission, including an employee of the Commission, or an authorized person or investigator, in the performance of his duties under this Act,

shall be liable to pay by way of penalty—

- (i) in the case of an individual, such sum which may extend to one hundred million rupees; and
- (ii) in the case of a company, such sum which may extend to two hundred million rupees and

(6) Where the offence under sub-section (5) involved fraud, deceit or deliberate disregard of the regulatory requirement such person shall be liable to pay by way of penalty—

- (a) in the case of an individual, such sum which may extend to one hundred million rupees; and
- (b) in the case of a company, such sum which may extend to two hundred million rupees;

(7) Where the offence under sub-section (5) involved fraud, deceit or deliberate disregard of the regulatory requirement and such offence resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the offence such person shall be liable to pay by way of penalty,—

- (a) in the case of an individual, such sum which may extend to one hundred million rupees or twice the amount of loss caused or gain made whichever is higher; and

- (b) in the case of a company, such sum which may extend to two hundred million rupees or twice the amount of loss caused or gain made whichever is higher.

(8) Notwithstanding sub-sections (1), (2), (3), (4), (5), (6) and (7), the Commission may impose an additional penalty, not exceeding the amount of loss caused, on an individual or a company if the individual or the company has failed to comply with any provision of this Act, or of any rules or of any regulations made under this Act or direction given by the Commission under this Act and the non-compliance has resulted in a loss to any other person.

160. Penalty to be imposed by the Commission.—Wherever a penalty is provided for any offence, contravention of or default in complying with, any of the provisions of this Act, rules or regulations made under this Act, such penalty shall be imposed by the Commission after providing a reasonable opportunity of hearing to the party.

161. Appeal.—(1) Any person aggrieved by the final decision of the Commission may, within sixty days of the decision communicated to him, prefer an appeal to the Court.

(2) The Court may, on an appeal made to it under sub-section (1), accept, set aside or vary the decision of the Commission or make such other order as the interests of justice require.

Explanation.—For the purposes of sub-section (1), “final decision of the Commission” means a decision of the Appellate Bench of the Commission under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

(3) The Court shall, at the stage of admission of the appeal or at any time thereafter on the application of the aggrieved person and after due notice to the Commission, decide by means of a reasoned order whether the appeal is to be admitted in part or in whole depending on the facts and circumstances of the case.

Provided that the admission of the appeal shall not per se operate as a stay and nor shall any stay be granted therein unless the Commission has been given an opportunity of being heard.

(4) Notwithstanding anything contained in any other law, the hearing of appeal shall continue day-to-day, unless sufficient cause has been shown by the parties jointly or severally which is beyond the control of the parties, the Court may adjourn the hearing for maximum of two dates and such adjournment shall not be more than fifteen days at any one time or for more than thirty days in all.

(5) Where on third hearing any party fails to appear and address arguments before the Court the Court shall proceed and decide appeal on merits and it shall be deemed that such party has relinquished its rights to address arguments.

162. Recovery of penalties—(1) Any penalty imposed by the Commission in the exercise of its powers under this Act or any rules or any regulations made under this Act, shall be payable to the Commission and may be recovered by the Commission as a decree for the payment of money in case where the person aggrieved by such order has -

- (a) preferred an appeal under section 161 of this Act and the Court upheld the final order of the Commission and it will automatically be converted into execution proceeding and no fresh notices need to be issued to appellant; or
- (b) not preferred an appeal to the Appellate Bench of the Commission under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (Act XLII of 1997) and the Court on application of the Commission has confirmed and allowed conversion or initiation of execution proceedings after notices to the parties as deemed appropriate by the Court.

(2) The Court shall exercise all the powers of executing court as provided in the Code of Civil Procedure 1908 (Act V of 1908), for the purposes of recovery of penalties:

Provided that the Court may, for reasons to be recorded, dispense with any procedure in the Code of Civil Procedure 1908 (Act V of 1908), and follow such procedure as it may deem fit in the circumstances of the case for expeditious disposal.

(3) The executing Court may attach any immovable property or sale of any movable property, including bank accounts, of the person or company on whom a penalty has been imposed under this Act by the Commission and any transaction or attempt to alienate, transfer, encumber or mortgage such property shall be void, illegal and without any lawful authority.

(4) All government departments, authorities, bodies, private entities, housing societies or schemes, by whatever name called, banks and any other concerned entity shall on the orders of the Court be bound to assist the Commission in providing details of moveable or immovable property of judgment debtor.

163. Cognizance of offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), no court shall take cognizance of any offence punishable with imprisonment or fine or both, under this Act except on a complaint, in writing of the facts constituting the offence, by an officer authorized in this behalf by the Commission signed by a commissioner and no court inferior to that of court of session shall try any such offence.

164. Prosecution of offences by the Commission.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), all prosecution of offences under this Act, any rules or regulations made under this Act, against any person shall be conducted by a special public prosecutor appointed by the Commission.

(2) On receipt of complaint, the court shall issue summons as for the attendance of the accused in the first instance and on failure of the accused to appear before the court, warrant of arrest shall be issued by the court.

Explanation.—For the purposes of this section, the term “complaint” shall include the report in writing of facts constituting the offence of the investigation officer of the Commission as referred to in section 139.

(3) Personal attendance of the officer authorized by the Commission to file a complaint before the court trying the offence shall not be necessary on each date during the trial proceedings in the presence of special public prosecutor referred to in sub-section (1).

(4) The court shall adopt procedure provided for under Chapter XXII-A of the Code of Criminal Procedure, 1898 (Act V of 1898) and all prosecutions before the court under this Act shall be disposed of and the judgment pronounced, as expeditiously as possible.

(5) The hearing of the matters referred to in sub-section (1) shall not be adjourned except for sufficient cause to be recorded, or for more than fourteen days at one time and court may impose such cost as it may deem fit.

(6) The court may, for reasons to be recorded, dispense with any procedure in the Code of Criminal Procedure, 1898 (Act V of 1898) and follow such procedure as it may deem fit in the circumstances of the case for expeditious disposal of the complaint.

165. Register of notifications issued by the Commission.—The Commission shall maintain and make available for general public on its website a register of notifications issued by the Commission under this Act.

166. Liability of directors, etc. for offences by companies.—(1) Where an offence under this Act, any rules or any regulations made under this Act, committed by a company is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of an officer of the company, that officer as well as the company shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a company are managed in accordance with the instructions of any other person, not being a professional advisor sub-section (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the company.

(3) In this section "officer" means a director, member of the committee of management, chief executive, manager, secretary or any person who was purporting to act in any such capacity.

167. Liability of licensed person for acts of representative, etc.— For the purposes of this Act, an act, omission or failure of a representative, employee or other person acting for or on behalf of a licensed person within the scope of his office or employment shall be deemed to be the act, omission or failure of the licensed person as well as of the representative, employee or other person.

168. Securities acquired in good faith.—(1) A person who, without fraud and for a lawful consideration, becomes the possessor of a certificate of an equity security, scrip, debenture, debenture stock or bond and who is without notice that the title of the person from whom he derived his own title was defective shall hold such certificate and all rights attached thereto free from any defect of title of prior parties and free from defences available to prior parties among themselves.

(2) A securities exchange may regulate the documentation, procedures and guarantees required to transfer property in securities and the effects thereof on the respective rights and liabilities of the parties and such regulations, if approved by the Commission, shall constitute binding and enforceable terms and conditions of contracts effected on the exchange, shall govern the rights and liabilities of the parties thereto, and shall govern the rights and liabilities with respect to transfers of shares on its books of the issuer of listed securities notwithstanding any provisions to the contrary contained in the Contract Act, 1872 (IX of 1872), the Negotiable Instruments Act, 1881 (XXVI of 1881), the Transfer of Property Act, 1882 (IV of 1882) or the Companies Ordinance, 1984 (XLVII of 1984), or any other law for the time being in force.

169. Power of the Commission to make regulations.—(1) In addition to the powers conferred by any other provision under this Act, the Commission may

make regulations for carrying out the purposes and provisions of this Act and for the due administration of this Act.

(2) Without prejudice to the generality of sub-section (1), the Commission may make regulations for or with respect to –

- (a) applications for licences, the issue of licences and incidental matters;
- (b) the standards for the qualifications, experience and training of applicants for licensing under Part V;
- (c) the conditions for the conduct of business on a securities market;
- (d) capital requirements in relation to any regulated securities activity or other activity licensed or authorized under this Act, with the power to the Commission to vary such capital requirements by order as the Commission deems fit;
- (e) securities broker's financial responsibility whether by way of minimum capital or a ratio between net capital or aggregate indebtedness, or both;
- (f) classification of securities brokers into different categories and conditions attached thereto;
- (g) the class or classes of securities that may be traded by securities broker and the terms and conditions governing trading in securities by securities broker;
- (h) the compulsory provision by securities exchanges of a centralized customer protection compensation fund;
- (i) short selling;
- (j) matters pertaining to takeovers under Part IX;
- (k) best efforts and other levels of underwriting commitment;
- (l) the registration, operation and regulation of quotation and trade reporting systems;
- (m) misalignment of incentives and conflict of interest between regulated persons, its employees and its clients;

- (n) processing and determination of customer complaints;
- (o) form and content of contract confirmation notes, customer agreements and risk disclosure statements;
- (p) form, content, distribution, reporting and publication of written, printed or visual material or advertisements or prospectus with respect to any regulated securities activity, securities issue, securities investment or trading;
- (q) persons who produce or disseminate research concerning listed securities or issuers of listed securities and persons who produce or disseminate other information recommending or suggesting investment strategy, intended for distribution channels or for the general public;
- (r) information to be contained in auditors' reports required to be lodged under this Act on the annual accounts of licensed persons ;
- (s) appointment, remuneration and responsibilities of an auditor appointed under this Act and the costs of an audit carried out under this Act;
- (t) registration, functioning and operations of qualified institutional buyers;
- (u) establishment and regulation of a secondary market in privately placed securities amongst qualified institutional buyers;
- (v) display of licences and the issue of duplicates;
- (w) making and filing of annual or other regular returns to the Commission by licensed persons;
- (x) requirements and procedure for shelf registration;
- (y) disclose conflict of interest by directors and management of licensed persons and regulated persons;
- (z) appointment and conduct of directors and management of licensed person and regulated person;
- (aa) fit and proper criteria for director and management of licensed persons and regulated persons;
- (bb) preemptive measure and actions for market monitoring and surveillance, promoting level playing field for investors and public at large;

- (cc) special or general inspection and examination and investigation and audit of licensed person or regulated person;
- (dd) orderly conduct, prohibition of fraudulent activities and unfair trade practices and prevention of market abuse in securities markets;
- (ee) the code of conduct for securities brokers, securities advisors and analysts;
- (ff) effective surveillance and monitoring to detect and prevent insider trading and market abuse practices;
- (gg) effective know your customer and customer due diligence policies and procedures and other matters ancillary to anti-money laundering;
- (hh) manner of outsourcing important functions by a securities exchange, clearing house or a central depository;
- (ii) provide for a mechanism for conducting inspections and investigations of regulated persons in coordination with securities exchanges, clearing houses and central depositories including the establishment of a specialized entity for this purpose;
- (jj) manner and procedure for providing applicants and holders of licence opportunity of hearing; and
- (kk) all matters or things which by this Act are required or permitted to be prescribed or which are necessary or expedient to give effect to this Act.

(3) For the avoidance of doubt, the powers of the Commission to make regulations under this section are in addition to and not in derogation of any other power of the Commission to make regulations under any provision of this Act or any other Act.

(4) Before any regulations are made or amended under this Act the Commission shall publish a draft of the regulations in the official Gazette and place it on its website, for eliciting public opinion on the draft regulations, for a period of not less than fourteen days starting from the date of its placement on the website.

(5) Every regulations made or amended by the Commission shall be published in the official Gazette and shall come into effect on such date as may be specified in the notification.

170. Power of the Commission to issue directions to a securities exchange, clearing house and central depositor.—(1) In addition to the powers conferred by any other section, where the Commission considers it necessary or expedient, in the public interest or for the protection of investors or proper administration of securities exchanges, clearing houses and central depositories, it may, notwithstanding anything contained in any other law for the time being in force, issue directions, by notice in writing, either of a general or specific nature.

(2) Without prejudice to the generality of sub-section (1), any direction issued under that sub-section may cover areas, including but not limited to, —

- (a) the enhanced corporate Governance polices;
- (b) the specified structure of board of directors to ensure independence and avoidance of conflict of interest;
- (c) stringent qualification and fit and proper criteria of directors;
- (d) stringent qualification and fit and proper criteria of its senior management officers;
- (e) the enterprise risk evaluation and measurement and mitigation measures;
- (f) the segment risk evaluation and measurement and mitigation measures;
- (g) the risk mitigation against frauds, forgeries, etc.;
- (h) the internal audit, internal controls and compliance;
- (i) the composition and terms of reference of committees, including, audit and compliance, human resources, IT security, etc.
- (j) punitive and disciplinary actions by the Commission against the board of directors and management in case of non-compliances or violations of any law for the time being in force, rules, regulations and directives issued there under;
- (k) the distribution of dividends, retention and reinvestments of profits towards development, protection of stakeholders and investing public, insurance against risks and threats, etc.; and
- (l) any other matter as the Commission deems appropriate.

and securities exchanges, clearing houses and central depositories shall comply with any such direction.

171. Forms.—The Commission may, by notice in the official Gazette, specify forms that are required to be used for any purpose under this Act or the rules or regulations made under this Act.

172. Codes and guidelines, etc.—(1) The Commission may issue such codes, guidelines or regulatory or policy statements as it considers appropriate for providing guidance, in relation to—

- (a) any of its regulatory objectives under this Act;
- (b) any matter relating to any of the functions of the Commission under this Act;
- (c) providing guidance to licensed person;
- (d) the operation of any provision of this Act.

(2) The Commission may publish any such code, guideline or regulatory or policy statement in such manner as it deems fit.

173. Act not to affect the powers of the State Bank of Pakistan.—Nothing in this Act shall be read or construed as diluting, interfering with or affecting the powers and functions of the State Bank of Pakistan under any law.

174. Act to override other laws.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

175. Power to make rules.—(1) The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of sub-section (1), the Federal Government may make rules for or with respect to—

- (a) the practice, conduct, functioning and regulation of share registrars, underwriters, balloters, debenture trustees, banker to an issue, advisors and consultants to the issue;
- (b) the registration, functioning and operation of credit rating agencies;
- (c) the establishment and operation of compensation fund arrangements for customers;
- (d) public offerings and private placement of securities;

- (e) for establishment of various classes of securities brokers;
- (f) the establishment of alternative trading platforms;
- (g) for establishment and orderly conduct of bond pricing agencies and matters related thereto;
- (h) extension of credit, lending and borrowing of securities and pledging of customer's securities by securities brokers; and
- (i) for establishment and orderly conduct of a centralized know your customer organization and matters related thereto.

(3) The power to make rules under this section shall be subject to the condition of previous publication and before making any rules the draft thereof shall be published in the official Gazette and also be placed on the website of the Commission for soliciting public opinion thereon within the period of not less than thirty days starting from the date of its placement on the website.

176. Removal of difficulties.—If any difficulty arises in giving effect to any provision of this Act, the Federal Government may, make such order as it may deem necessary for removing the difficulty.

177. Transitional provisions.—(1) A company that, immediately prior to the commencement of Part II of this Act, is registered as a stock exchange under section 5 of the Securities and Exchange Ordinance, 1969 (XVII of 1969), shall thereupon be deemed to be licensed under this Act as a securities exchange and shall be allowed to offer facilities necessary for trading in futures contracts until such time as it may be required to obtain a separate licence as a futures exchange.

(2) A stock exchange, immediately prior to the commencement of this Act, registered under section 5 of the Securities and Exchange Ordinance, 1969 (XVII of 1969), shall obtain licence under section 3 within a period of one year from the date of commencement of this Act.

(3) A person who, immediately prior to the commencement of Part V of this Act, is registered as a broker under section 5A of the Securities and Exchange Ordinance, 1969 (XVII of 1969), shall be deemed to be licensed under this Act as a securities broker till the time his existing certificate of registration remains valid and shall thereupon be required to obtain a licence under this Act and such person shall also be allowed to effect transactions in futures contracts until such time as it may be required to obtain a separate licence as a futures broker.

(4) A person who, immediately prior to the commencement of Part V of this Act, is registered as an agent under section 5A of the Securities and Exchange Ordinance, 1969 (XVII of 1969), shall thereupon be deemed to be licensed under this Act as a representative till the time his existing certificate of registration remains valid and shall thereupon be required to obtain a licence under this Act.

(5) A company that, immediately prior to the commencement of Part II of this Act, is registered as a clearing house under rule 4 of the Clearing Houses (Registration and Regulation) Rules, 2005, shall thereupon be deemed to be licensed under this Act as a clearing house till the time its existing certificate of registration remains valid and shall thereupon be required to obtain a licence under this Act.

(6) A person who, immediately prior to the commencement of Part IV of this Act, is registered as a central depository under rule 4 of the Central Depository Companies (Establishment and Regulation) Rules, 1996, shall thereupon be deemed to be licensed under this Act as a central depository till the time his existing certificate of registration remains valid and shall thereupon be required to obtain a licence under this Act.

(7) From the commencement of this Act, rules made under the Securities and Exchange Ordinance 1969 (XVII of 1969), which are in force immediately prior to the commencement of this Act and which have not been specifically repealed by this Act shall continue to be in force and have effect as they have been made by the Federal Government under this Act.

(8) From the commencement of this Act, regulations made by the Commission under the Securities and Exchange Ordinance, 1969 (XVII of 1969), which are in force immediately prior to the commencement of this Act shall continue to be in force and have effect as they have been made by the Commission under this Act.

(9) From the commencement of this Act, regulations made by the Commission under the Listed Companies (Substantial Acquisition of Voting Shares and Take-Overs) Ordinance, 2002 (CIII of 2002), which are in force immediately prior to the commencement of this Act shall continue to be in force and have effect as they have been made by the Commission under this Act.

(10) From the commencement of this Act, regulations made by a stock exchange under the Securities and Exchange Ordinance, 1969 (XVII of 1969), which are in force immediately prior to the commencement of this Act shall continue to be in force and have effect as they have been made by the securities exchange under this Act.

(11) From the commencement of this Act, regulations made by a clearing house under the Securities and Exchange Ordinance, 1969 (XVII of 1969), which are in force immediately prior to the commencement of this Act shall continue to be in force and have effect as they have been made by the clearing house under this Act.

(12) Any condition that has been attached by the Commission to a person registered under the Securities and Exchange Ordinance, 1969 (XVII of 1969), and that is in force immediately prior to the commencement of Part V of this Act, shall be treated as being attached to any licence which is regarded as subsisting by virtue of these transitional provisions.

(13) Anything done, actions taken, orders passed, instruments made, notifications issued, proceedings initiated and instituted, prosecutions filed, processes or communications issued and powers conferred, assumed or exercised by the Commission under the Securities and Exchange Ordinance, 1969 (XVII of 1969) and the Listed Companies (Substantial Acquisition of Voting Shares and Take-Overs) Ordinance, 2002 (CIII of 2002), shall, on the coming into operation of any provision of this Act, be deemed to have been validly done, made, issued, taken, initiated, conferred, assumed and exercised and every action, prosecution or proceeding instituted and every order, directive, notification, circular, code, guidelines etc. issued by the Commission shall be deemed to have been initiated, instituted or issued under this Act and shall be proceeded with to completion and be enforced and have effect accordingly.

(14) Every order or directive or notification, circular, code, guidelines etc. issued by the Commission which are in force on the coming into operation of any provision of this Act shall continue to be in force and have effect as they have issued by the Commission under this Act.

178. Repeal and savings.—(1) The enactments specified in the Schedule to this Act are hereby repealed to the extent mentioned in the fourth column thereof.

(2) Notwithstanding the repeal of any enactments by this section,—

(a) any notifications, rules, regulations, bye-laws, orders or exemption issued, made or granted under any such enactment shall have effect as if had been issued, made or granted under the corresponding provision of this Act;

(b) any official appointed and anybody elected or constituted under any such law shall continue and shall be deemed to have been appointed, elected or constituted, as the case may be, under the corresponding provision of this Act;

- (c) any document referring to any enactment hereby repealed shall be construed as referring, as far as may be, to this Act, or to the corresponding provision of this Act;
- (d) mortgages recorded in any register book maintained at any office under any enactment hereby repealed shall be deemed to have been recorded in the register book maintained under the corresponding provision of this Act;
- (e) any licence, certificate or document issued made or granted under any enactment hereby repealed shall be deemed to have been issued, made or granted under this Act and shall, unless cancelled in pursuance of the provision of this Act, continue in force till the date specified in the certificate or document.

THE SCHEDULE

[See section 178]

Short title	Extent of repeal
(1)	(2)
Securities and Exchange Ordinance, 1969 (XVII of 1969).	<p>(i) Clauses (a), (ab), (ac), (ad), (ca), (ce), (cf), (d), (dd), (de), (e), (f), (g), (h), sub-clauses (i), (ii) and (iii) of clause (l), clauses (m), (n), (o), (p) and (q) of sub-section (1) of section 2;</p> <p>(ii) in section 2, in sub-section (1), in clause (da) the words "a Stock Exchange or";</p> <p>(iii) sections 8, 9, 10, 15A, 15 B, 15C, 15D, 15E, 16, 17, 18A, 31, 32, 32A, 32B, 32C and 32E.</p>
The Listed Companies (Substantial Acquisition of Voting Shares and Take-Overs) Ordinance 2002 (CIII of 2002).	The whole Ordinance.
Companies Ordinance, 1984 (XLVII of 1984)	Sections 52 to 66 and sections 220 to 224.

ABDUL JABBAR ALI,
Acting Secretary.