

Listed companies get opportunity to hear about new SEC Act directly from regulator

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The Securities and Exchange Commission of Sri Lanka (SEC) and the Colombo Stock Exchange (CSE) organised a symposium on 6 December to enlighten senior officials of listed companies on the features of the new Securities and Exchange Commission Act No. 19 of 2021.

SEC Chairman Viraj Dayaratne PC delivered the keynote address with a presentation featuring the salient aspects of the new SEC Act particularly in relation to listed public companies.

He focused on Part III of the Act which particularly deals with 'Issue of Securities' and elaborated on the duties and obligations of listed public companies. It was stated that provisions with regard to the public offer of securities had been introduced to ensure accountability of funds solicited from the public.

He spoke about the ability of the Commission to issue stop orders preventing an issuer from allotting, issuing, offering or making an invitation to subscribe or purchase or sell further securities relating to public offers in situations where the prospectus contains a statement or information that is false or misleading. Another change that has been introduced was the expansion of the interpretation to the term 'relation' to include step children, step brother and step sister that becomes applicable in situations where securities are gifted.

The Chairman went on to brief the audience on obligations pertaining to public disclosures to be made by listed public companies and highlighted the requirement for directors of such companies to comply with fit and proper criteria specified by the Commission by way of its rules or the rules of an exchange approved by the Commission. In addition, he also touched on the specific duties of an auditor of a listed public company.

In his keynote delivery, Dayaratne also spoke about the main market offences and in particular Insider Trading and the criminal as well as civil proceedings that can be instituted. The various checks and balances on the powers and discretion of the Commission were also discussed. In conclusion, the Chairman emphasised that the companies need to embrace good corporate governance practices and thereby protect the interests of investors and ultimately to maintain a level playing field and ensure confidence in our capital market. He also noted that if companies function with self-regulation and act in compliance with the law, most provisions contained in the new SEC Act will have little bearing.

The keynote address was followed by a lively panel discussion moderated by CSE CEO Rajeeva Bandaranaike, where SEC Commissioner Manil Jayasinghe, Director General Chinthaka Mendis, CSE Chairman Dumith Fernando, Chief Regulatory Officer Renuke Wijayawardhane, JKH Chairman Krishan Balendra, Dialog Axiata Group Director Dr. Hans Wijayasuriya, Tokyo Cement Chairman Dr. Harsha Cabral PC, Integrated Reporting Council Chairman Asite Talwatte, SLID Chairman Faizal Salieh, and SEC Director Dr. Harshana Suriyapperuma shared their perspectives on the new SEC Act.

Mendis in response to the question raised stated, "The new piece of legislation encompasses a vast array of market development and regulatory initiatives which would facilitate in creating a fair and efficient stock market. Part V of the new SEC Act clearly includes provisions related to major market offences such as Insider Trading. Numerous salutary features in the new SEC Act envisages efficiency, predictability and consistency in regulation specifically ensuring that the sanctions imposed on wrongdoers are commensurate with the wrongdoings committed by them."

Mendis further remarked, "The Act imposes a statutory duty on the Exchange to ensure fair and orderly markets. In that regard Section 27 sets out the duties including a duty to ensure in so far as may be reasonably practicable an efficient, orderly and fair market and prudent risk management of its business operations. In fact, CSE's overriding objective in addition to discharging its statutory duties are investor protection, ensuring high standards of conduct and governance that guarantees technically market



SEC Chairman Viraj Dayaratne PC



SEC Director General Chinthaka Mendis



SEC Commissioner Manil Jayasinghe (right) and Dr. Harsha Cabral PC

integrity and that all relevant persons can engage in activities and participate in the market with confidence.”

Mendis also stated that a significant proportion of the SEC resources are devoted to ensure a level playing field for everyone, particularly on cases concerning possible insider trading activities. New legislation has departed from the restricted fiduciary notions of the term ‘insider’ as a nexus between the insider and the company is no longer required. The Act provides that any person regardless of a connection or a relationship with the company or entity whose shares being traded can be found guilty of this offence if the person is found to have misused non-public information. The mere act of improperly using price sensitive information is sufficient.

Fernando describing the new Act stated, “It is not a small improvement to what we had before, it is a step change. It is an Act that brings securities regulation to a modern world. The new SEC Act allows the market to develop in a way that the previous SEC Rules did not allow. So, it allows for new products; whether they be stock borrowing and lending, regulated short selling, derivative instruments. That ultimately solves the problem that pretty much every single listed company has complained about, which is the lack of liquidity in the market.” He further alluded that the new SEC Act brings an element of strength to the ability to impose and enforce the types of regulations that would bring much more confidence to the market and would open it up to a much wider range of investors.

Balendra was of the view that the new Act seems to lay more emphasis on corporate governance. He welcomed the greater emphasis and went on to say that he saw the value of governance in attracting quality institutional investors and how it can translate to a premium share price.

He mentioned, “The additions in the new Act will go a long way to help attract more interest from institutions locally and overseas and therefore the focus on governance can only be positive. While governance is welcome, we should avoid the red tape in achieving some of the requirements and the cost of achieving some of these.” He also mentioned the importance of both the SEC and CSE having experienced officers who truly understand how the market operates because sometimes there could be a disconnect between the regulator and the market.

Dr. Wijayasuriya remarked, “The impact of the SEC goes way beyond the publicly listed corporate community as it goes all the way to the reputation of the country in terms of governance and that becomes important not only for direct investments or for portfolio investments but any investment to the country. Investors look for capital formation opportunities and I think the SEC Act, the innovative platform it has put in place for the proliferation of new products, technologies, various options for primary, secondary markets, derivatives and the framework that has been put in place is world-class.”



Dr Hans Wijayasuriya

He also stated, “ESG has become a hot topic and this is something I have seen in most of the markets in which we operate in, and the importance of ESG and standards as well as mandated reporting on ESG dimensions. ESG is something we can put some effort into using the platform of the new Act to promulgate rules and guidelines on the ESG angle. When there are macro uncertainties and macro risks investors also look for macro insulation or special economic zone type of opportunities in order to invest in such countries which are otherwise very strong but could go through a special economic vehicle. The new SEC Act combined with the Port City Act could present some very exciting opportunities.”

Commenting on the fit and proper criteria pertaining to those who serve on Boards Salieh welcomed this very relevant and timely requirement imposed on listed companies. Since it will actually bring the SEC Act in sync with other regulatory Acts such as the Banking Act and Insurance Act, which are firmly focused on the fit and proper aspects of board directors, CEOs and key management personnel.

He further stated, “As markets keep growing and expanding the role and duties and responsibilities of board directors are also expanding and becoming ever more demanding. Therefore, it becomes imperative that directors are put through a fit and proper test to establish their suitability to serve on listed company boards. But such a process should not be limited to merely checking on a director’s integrity, reputation, mental soundness, court convictions, police records, etc.

“I think it should go beyond such basic checks and should be extended to include criteria that actually measure a director’s competence to serve on a Board like a director’s certification process and perhaps an annual testing process. In order to assess suitability and to ascertain how current a director is while he/she serves on the Board with regards to contemporary corporate governance requirements, compliance requirements, degree of independence, commercial judgment, relevant financial and legal and business risk awareness, etc.”

Dr. Cabral spoke on the additional responsibilities cast on directors of Boards of listed companies by the new Act. He added, “As far as the listed companies are concerned the most important feature of the new SEC Act is part five which deals with prohibited conduct a few sections from section 128 to 132 and Insider Trading which is dealt in sections 133 to 146.” He urged those on listed company boards to read these sections because now Insider Trading, etc. is put down specifically in black and white in very simple language.

Describing the new Act Dr. Cabral stated, “I do not call it draconian at all, it contains checks and balances and that if the regulator misuses any of the powers you have your appellate procedure you have your writ jurisdiction, you have your fundamental rights jurisdictions and you can challenge. And in all the mechanisms that are included in the new Act you would very clearly see there is natural justice protection. So, no one can say that

there is a lacuna in the law or that it is one sided.”

Jayasinghe commenting on the provisions in the new Act on duties of an auditor of a listed public company stated, “If an auditor of a listed public company in the ordinary course of the performance of his duties, becomes aware of any contravention or non-compliance with any requirement or provision of this Act, any matter which may in his opinion adversely affects or is likely to adversely affect the financial position of the listed public company to a material extent; or any irregularity that has or may have a material effect upon the accounts of a listed public company the auditor shall immediately report such matters to the audit committee in writing for rectification and if no remedial measure is taken within two weeks refer such matters to the Board of Directors in writing to rectify such matters if no action is taken by the Board of Directors to rectify such matters within two weeks to escalate to the Commission.” He went on to say that Listed Companies should be aware of this provision and the difficulty if at all would be the timing spelt out to escalate the matter to the Commission.

Talwatte remarked, “Not only financial information but a lot of non-financial information has a lot of relevance to capital markets, share price of companies’ performance, sustainability, etc. Even in a narrower sense in today’s context the economic factors, import restrictions can present opportunities and threats and imposition on the company’s ability to sustain its business case in the future. These are very important factors which also require market disclosures. In the context of value reporting. Sustainability of an organisation depends a lot more than on historic financial results but the potential for the future.”

Wijayawardhane added that as a result of the new SEC Act, the CSE/CDS is in the process of amending all its rules on two counts:

To amend the CSE/CDS Rules to be in line with the new provisions set out in the SEC Act. Ex: to harmonise the rules with the new Act in terms of terminology

To incorporate certain mandatory provisions required to be included in the CSE/CDS Rules. Ex: Dispute resolution relating to multiple stakeholders, delisting of securities, admission criteria for trading participants, etc.

Wijayawardhane further explained, “There are three market institutions specified in the new Act operating under the CSE group, which will have three sets of rules applicable to each of these market institutions; namely the Exchange, Clearing House and the Central Depository. The Exchange will have Listing Rules, Trading Participant Rules and Trading Rules. The other two Market Institutions, Clearing House and the Central Depository will also have separate sets of rules.”

In addition, the CSE will introduce new rules on fit and proper requirements applicable to directors and CEOs of listed companies, as part of Listing Rules, as required in the new SEC Act. The proposed criteria would be broadly based on honesty and integrity, competence and financial standing of the person.

Dr. Suriyapperuma sharing his thoughts on the new Act stated that there are no major changes to regulation of listed companies as a result of the new SEC Act. He went on to say that it is the natural evolution of the previous SEC Act to the current Act which provides more clarity and detailing and segmenting these provisions which we dealt with broadly under the broader powers of the previous SEC Act. He remarked, “Not only what is written in black and white in the SEC Act matters, but people matter, particularly when it comes to the level of commercial acumen that is required from the SEC side of it to understand the commercial urgency of listed companies, how quickly and swiftly we can respond and assist listed companies in the process as well.”

The new SEC Act is expected to play an important role in modernising the capital markets and give Sri Lanka a competitive edge and play a critical role in attracting global investment, supporting economic growth and innovation.



SEC Director Dr. Harshana Suriyapperuma and Faizal Salieh



CSE Chairman Dumith Fernando, Krishan Balendra and Asite Talwate

