

RULES APPLICABLE TO UNDERWRITERS

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

RULES made by the Securities and Exchange Commission of Sri Lanka, in terms of Section 183 of the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021.

VIRAJ DAYARATNE PC
Chairman
Securities and Exchange Commission of Sri Lanka.

Colombo,
15th March, 2022.

Rules

These Rules may be cited as the Rules applicable to Underwriters.

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| General interpretation | <p>1. The words and terms defined in the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021 shall unless the context requires otherwise have the same meaning assigned to them in the said Act:</p> <p>“Client” means a person who is desirous of selling or offering for sale securities listed on a licensed exchange and has signed an underwriting agreement with an Underwriter;</p> <p>“Commission” means the Securities and Exchange Commission of Sri Lanka established in terms of the SEC Act;</p> <p>“Key Management Person” means directors (executive or otherwise) and shall include alternate directors, a chief executive officer, a compliance officer and persons having authority and responsibility for planning, directing and controlling the activities of a company/entity either directly or indirectly;</p> <p>“Liquid Capital” means unencumbered cash or investments which can be readily converted to cash such as bank/call deposits, re-purchase agreements with maturity of less than three months (3), commercial papers which are endorsed or guaranteed by a licensed commercial bank or licensed specialized bank with a term to maturity of less than three (3) months and government issued securities with a term to maturity of one year (1) or less or any other form of instruments as determined by the Commission;</p> |
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| | <p>“SEC Act” means the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021;</p> <p>“Shareholders’ Funds” mean the amount of equity of the entity, which belongs to the shareholders of the entity;</p> <p>“Underwriter” shall have the same meaning as defined in Section 188 of the SEC Act;</p> |
| <p>Applicability</p> | <p>2. The Rules set out herein shall apply to Underwriters licensed under the SEC Act.</p> <p>3. Every Underwriter shall comply with:</p> <p>(a) the Rules set out herein and any amendments made thereto;</p> <p>(b) provisions of the SEC Act;</p> <p>(c) directives issued from time to time by the Commission; and</p> <p>(d) Rules issued by the Commission on the Fitness and Propriety of a Key Management Person of a Market Intermediary as stipulated out in Schedule II of these Rules.</p> |
| <p>Requirement for a licence</p> | <p>4. No entity shall engage in the function of an Underwriter without having first obtained a licence from the Commission.</p> <p>5. The period of validity of a licence granted to an Underwriter shall be twelve (12) months.</p> |
| <p>Procedure to obtain a licence</p> | <p>6. The grant of a licence shall be a two (2) stage process. An applicant may in the first instance apply for in-principle approval upon satisfying the requirements as set out in (a) hereof and after having obtained in-principle approval may thereafter apply for final approval upon satisfying the requirements as set out in (b) hereof:</p> <p>(a) In order to obtain in-principle approval an applicant shall submit to the Commission:</p> <p>(i) a duly completed application form according to the specimen provided on the website of the Commission along with the supporting documents mentioned therein;</p> <p>(ii) documents outlining the business model to carry on the functions of an Underwriter;</p> <p>(iii) a declaration by the applicant as per the specimen in Schedule I of these Rules;</p> <p>(iv) a copy of the internal compliance manual as set out in Schedule IV of these Rules;</p> <p>(v) documentation in support of measures taken to acquire an information processing system as stated in Rule 24 of these Rules;</p> |

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| | <ul style="list-style-type: none"> (vi) documentation in support of steps taken to recruit adequate human resources to effectively discharge the obligations in keeping with the identified organizational structure of the applicant; and (vii) the fee payable for processing the application for in-principle approval specified by way of regulations made by the Minister from time to time. <p>(b) No later than (6) months from the date of obtaining in-principle approval, the applicant shall fulfill the following requirements and submit the following documents as proof thereof in order to obtain the licence:</p> <ul style="list-style-type: none"> (i) confirmation from the auditor that applicant has met the requirements as spelt out in Rule 19 (a) and (b) of these Rules; (ii) declarations by Key Management Persons and persons dealing with Clients relating to their fitness and propriety to hold such office in terms of the Fitness and Propriety of a Key Management Person of a Market Intermediary as stipulated in Schedule II of these Rules. Such declaration shall be in the form of an affidavit prepared in accordance with the specimen provided in Schedule III of these Rules; (iii) a confirmation from the chief executive officer and a director of the Underwriter confirming the implementation of an information processing system as stated in Rule 24 of these Rules; (iv) a confirmation from the chief executive officer and a director of the Underwriter confirming the recruitment of adequate human resources along with their names and designations; (v) the licence fee specified by way of regulations made by the Minister from time to time. <p>7. Upon obtaining the licence to function as an Underwriter under the SEC Act, the persons dealing with Clients shall follow Continuous Professional Development (CPD) programmes conducted by the Commission annually on rules and other applicable regulations.</p> <p>8. It shall be the duty of the Underwriter to notify the Commission and obtain its prior consent of any change in particulars specified in an application to be licensed as an Underwriter.</p> <p>9. The Commission may refuse an application made to be licensed as an Underwriter on any of the grounds morefully set out in Section 95 of the SEC Act.</p> |
| <p>Renewal of a licence</p> | <p>10. An Underwriter shall submit an application for renewal three (3) months prior to the expiry of the licence along with the renewal fee.</p> <p>11. An application for renewal shall be in the format provided by the Commission on its website along with the supporting documents mentioned therein.</p> <p>12. Any Underwriter who fails to submit an application for renewal within the aforesaid time period shall be charged a late fee as prescribed by way of regulations made by the Minister from time to time.</p> |

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| | <p>13. In the event the licence of an Underwriter expires as a result of an Underwriter failing to take steps to renew it, the provisions contained in Rule 63 with regard to cessation of operations shall apply.</p> <p>14. An Underwriter which has neither taken steps to cease its business operations as an Underwriter nor taken steps to renew its licence in terms of these Rules shall not be entitled to the grant of a new licence as an Underwriter.</p> <p>15. This disqualification shall also apply to a company whose board of directors comprises of any individual(s) who functioned as a director(s) of the company which has failed to have its licence renewed as aforesaid.</p> <p>16. It shall be the duty of the Underwriter to notify the Commission and obtain its prior consent of any change in particulars contained in an application for the renewal of a licence as an Underwriter.</p> <p>17. The Commission may refuse an application made for the renewal of a licence as an Underwriter on any of the grounds morefully set out in Section 95 of the SEC Act.</p> |
| Licensing fee | <p>18. An Underwriter shall pay such licensing fee as prescribed by way of regulations made by the Minister from time to time.</p> |
| Minimum financial requirements and submission of reports | <p>19. An Underwriter shall:</p> <ul style="list-style-type: none"> (a) at all times maintain minimum Shareholders' Funds as determined by the Commission from time to time; (b) at all times, maintain minimum Liquid Capital as determined by the Commission from time to time; (c) inform the Commission immediately if Shareholders' Funds and/or Liquid Capital falls below the requirement as stipulated in Rule 19 (a) and (b) above; (d) not carry on its activities as an Underwriter if the minimum financial requirements as determined by the Commission are not met, unless the prior written approval of the Commission is obtained. <p>Provided however if an Underwriter is regulated as a licensed or registered Financial Institution by the Central Bank of Sri Lanka, the above requirements shall not apply.</p> <p>20. An Underwriter shall provide the information as set out below to the Commission:</p> <ul style="list-style-type: none"> (a) financial statements prepared quarterly in conformity with the Sri Lanka Accounting Standards signed by a director and the chief executive officer before the twentieth (20th) day of the following month; (b) a copy of the statement of audited accounts prepared annually in accordance with the Sri Lanka Accounting Standards and audited in accordance with the Sri Lanka Auditing Standards within a period of four (4) months from the close of each financial year. <p>21. An Underwriter shall, within three (3) months from the date of the auditor's report or any additional period of time permitted by the Commission, take steps to rectify the deficiencies if any, made out in the auditor's report, in so far as they relate to the function of underwriting.</p> |

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| <p>Change in shareholding of an Underwriter</p> | <p>22. A change in the shareholding of twenty per centum (20%) or more of the total shareholding of an Underwriter shall be made only with prior written consent of the Commission.</p> <p>Provided however if the Underwriter is a listed public company this requirement shall not apply.</p> <p>23. An Underwriter shall keep the Commission informed in writing of the percentage holdings in it/by it, its parent/owning company(s), subsidiary company(s), associate company(s) and partnership(s) and of shareholders holding more than twenty per centum (20%) or more of its equity.</p> |
| <p>Infrastructure and related requirements</p> | <p>24. An Underwriter shall at all times:</p> <p>(a) maintain proper systems including information technology processes and human resources suitable and adequate to support the proper conduct of its business as an Underwriter;</p> <p>(b) ensure that an effective system of functional barriers is in place to prevent the flow of information that may be confidential and/or price sensitive between the functions; and</p> <p>(c) have appropriate information recording and retrieval systems and maintain such information for inspection by the Commission.</p> <p>25. The Underwriter shall not be entitled to outsource any part of its work, which has a direct bearing on the act of underwriting.</p> <p>26. The Underwriter shall enter into a written agreement with the party to whom any work is outsourced. Such agreement shall contain an undertaking from the party to whom any work is outsourced that they will comply with the laws, rules and directives that the Underwriter is bound to follow.</p> |
| <p>Qualifications and experience of those dealing with Clients</p> | <p>27. Any person who on behalf of an Underwriter is involved in the function of Underwriting for and on behalf of a Client and an individual who wishes to deal with Clients shall possess the qualifications set out in subsection (a) and the experience set out in subsection (b) or possess the experience set out in subsection (c):</p> <p>(a) (i) a degree from a recognized university in the fields of Finance, Accountancy, Business Administration, Commerce or Economics;</p> <p>(ii) Member/Associate of a professional body of Accountants recognized by the International Federation of Accountants;</p> <p>(iii) Chartered Financial Analyst;</p> <p>(iv) Associate of the Chartered Institute of Bankers;</p> <p>(v) Associate of the Institute of Bankers of Sri Lanka;</p> <p>(vi) Associate of the Chartered Institute for Securities and Investments;</p> <p>(vii) any other professional and/or academic qualification acceptable to the Commission;</p> <p style="text-align: center;"><i>and</i></p> <p>(b) experience in the financial/securities market for a minimum period of two (2) years. The Commission shall consider the relevance, nature, the scope and experience in determining such adequacy;</p> <p style="text-align: center;"><i>or</i></p> <p>(c) experience in the financial/securities market for a minimum period of seven (7) years. The Commission shall consider relevance, nature, scope and experience gained in determining its adequacy.</p> |

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| <p>Requirement for a minimum number of persons to deal with Clients</p> | <p>28. The Underwriter shall ensure that a minimum of two (2) persons possessing qualifications and/or experience set out in these Rules are employed to deal with Clients.</p> <p>29. The Commission may direct the Underwriter to vary the number of such qualified persons on account of the volume of business proposed to be undertaken or currently undertaken by such Underwriter.</p> |
| <p>Commission approval to engage in other businesses</p> | <p>30. An Underwriter shall disclose to the Commission all other business activities it is engaged in at the time of applying for its licence and inform the Commission in writing prior to engaging in any other business activity after obtaining a licence from the Commission.</p> <p>31. An Underwriter shall not engage in any other business which in the view of the Commission creates a conflict of interest unless prior written approval of the Commission is obtained.</p> <p>32. In the conduct of any such other business activity, the Underwriter shall ensure that proper processes are in place to have a clear demarcation of the different functions pertaining to such businesses.</p> <p>Provided however, if such Underwriter is a licensed or a registered financial institution regulated by the Central Bank of Sri Lanka, there shall be no requirement for such an Underwriter to obtain the approval of the Commission to carry out such activities.</p> |
| <p>Approval of the Commission for underwriting obligations</p> | <p>33. An Underwriter shall obtain the approval of the Commission in writing on a case-by-case basis for any underwriting obligation prior to entering into any underwriting agreement.</p> <p>34. In considering the grant of approval for the purpose of Rule 33 above, the Commission shall require the Underwriter to demonstrate its financial capacity to meet a particular underwriting obligation.</p> <p>35. Approval of the Commission may be conditional on the Underwriter fulfilling further requirements as specified by the Commission as may be deemed to be relevant to the Commission having regard to a particular case.</p> |
| <p>Written underwriting agreement and material information</p> | <p>36. An Underwriter shall execute a written underwriting agreement prior to carrying out any business for and on behalf of a Client containing all the terms and conditions agreed upon by and between itself and the Client.</p> <p>37. An Underwriter shall ensure that the underwriting agreement entered into is in a language mutually agreed upon by the parties. Subsequent amendments to the underwriting agreement, if any, shall be mutually agreed upon by the parties and be in writing.</p> <p>38. An Underwriter shall:</p> <ul style="list-style-type: none"> (a) in the event of being called upon to subscribe to the securities underwritten pursuant to an underwriting agreement, subscribe such securities within such time as specified in the underwriting agreement but shall not exceed fifteen (15) days starting from the date of issue of such information/notice/invitation by the issuer or offeror, as the case may be; (b) sell the securities subscribed pursuant to an underwriting agreement in the secondary market or to persons other than the directors, sponsors and associates of the issuer or the offeror as the case may be, within a period of not more than two (2) years from the date of such subscription or in such time period extended by the Commission on written request by the Underwriter. |

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| <p>Maintenance of records</p> | <p>39. An Underwriter shall maintain the following records pertaining to Clients:</p> <ul style="list-style-type: none"> (a) all underwriting agreements entered into between the Underwriter and the Clients; (b) records of all transactions relating to the Clients; and (c) a written record of all complaints received from Clients and action taken thereon by the Underwriter. <p>40. All of the above records shall be retained by the Underwriter for a period of six (6) years.</p> <p>41. All of the above records pertaining to Clients whose underwriting agreements have been terminated shall be retained by the Underwriter for a period of six (6) years from the date of such termination.</p> <p>42. An Underwriter shall ensure confidentiality of all information relating to Clients including such Client's identity, their beneficial owner and transactions carried out for such Client, unless and to the extent such disclosure is required by law.</p> |
| <p>Keeping of books and furnishing of returns</p> | <p>43. An Underwriter shall:</p> <ul style="list-style-type: none"> (a) maintain or cause to be maintained, such accounting records and other books as will truly reflect the transactions and financial position of its business and enable the preparation of a true and fair Income Statement and a Statement of Financial Position in keeping with the Sri Lanka Accounting Standards adopted by the Institute of Chartered Accountants of Sri Lanka; (b) maintain or cause to be maintained such accounting records and other books in such manner as will enable them to be accurately audited; and (c) retain such accounting records and other books for a period of not less than six (6) years. |
| <p>Duty to furnish information and co-operate with auditors appointed by the Commission</p> | <p>44. Where the Commission having considered that it is in the interests of the Underwriter or those of its Clients, appoints an independent auditor or such other person or a body of persons to examine, audit and report either generally or in relation to any particular matter, it shall be the duty of such Underwriter:</p> <ul style="list-style-type: none"> (a) to produce any books, accounts and records of any assets held by the Underwriter relating to its business; (b) to produce any records of any systems, processes or procedures adopted by the Underwriter relating to its business; (c) to provide all information within its knowledge or which it is capable of obtaining; and (d) to ensure that all the information which is furnished to the auditor or independent auditor as the case may be is not false or misleading in any particulars. <p>45. An Underwriter shall not destroy, conceal or alter any records, property or books relating to the business of the Underwriter which are in its possession or under its control with the intention of defeating, preventing, delaying or obstructing the carrying out of any examination.</p> |

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| <p>Submission of information to the Commission</p> | <p>46. An Underwriter shall furnish such returns and provide such information relating to its business as the Commission may require from time to time.</p> <p>47. The Commission may determine that any information required herein shall be submitted within such period at such intervals in such manner or in such form as the Commission may specify and the Underwriter shall comply with such requirements.</p> <p>48. The Underwriter shall keep the Commission informed in writing of the percentages of holdings in it/ by it, its parent/owning Company(s), subsidiary company(s), associated company(s) and partnership(s) and of shareholders holding more than twenty per centum (20%) or more of its equity.</p> |
| <p>Compliance manual</p> | <p>49. An Underwriter shall have an internal compliance manual applicable to its directors and employees which shall include amongst others adequate compliance procedures and practices as set in Schedule IV of these Rules.</p> <p>50. An Underwriter and its directors shall be responsible for due compliance with such internal compliance manual.</p> |
| <p>Regulatory compliance and internal controls</p> | <p>51. An Underwriter shall have a compliance officer employed by the Underwriter on a full-time basis who shall:</p> <ul style="list-style-type: none"> (a) be an Attorney-at-Law having a minimum period of five (5) years of experience in matters relating to compliance or possesses any other qualification/ experience as specified in Rule 27 of these Rules; (b) report directly to the board of directors/board sub-committee dealing with risk of the Underwriter; and (c) not perform any other duties that may compromise or be in conflict with the responsibilities of the compliance officer. <p>52. The Underwriter shall inform the Commission on the appointment of such compliance officer no later than one (1) week prior to the effective date of appointment. In the event of a cessation of employment of a compliance officer, the Underwriter shall also give notice to the Commission no later than two (2) weeks from its effective date.</p> <p>53. The compliance officer on behalf of the Underwriter shall make a quarterly compliance report which shall include amongst others the contents specified in Schedule V of these Rules, approved by the board of directors and signed by a director and the chief executive officer confirming compliance with the provisions of the SEC Act, the criteria set out herein, any other rules or directives issued by the Commission from time to time and the Financial Transactions Reporting Act, No. 06 of 2006 where applicable and forward same to the Commission, before the twentieth (20th) day of the following month.</p> <p>However, in the event any non-compliance or breach is detected, the compliance officer shall immediately report such matter to the board of directors for rectification and inform the Commission within a period of twenty-eight (28) days from the date on which the board of directors were informed as to the steps that have been taken by the board of directors to rectify such non-compliance.</p> |

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| | <p>54. Employees of the Underwriter shall obtain the prior written approval from the compliance officer in respect of all personal account dealings. Such dealings shall be conducted in a manner that will not prejudice the interests of its Clients.</p> <p>55. An Underwriter shall maintain procedures to ensure that complaints of Clients relating to the conduct of its business are handled in a timely and effective manner.</p> <p>56. An Underwriter shall adhere to the Know Your Client (KYC) and due diligence procedures specified by the Financial Intelligence Unit (FIU) of the Central Bank of Sri Lanka where applicable from time to time.</p> |
| <p>Operational matters</p> | <p>57. An Underwriter shall not:</p> <ol style="list-style-type: none"> a) undertake underwritings exceeding five (5) times its equity (including unrealized gain and revaluation surplus) at any time; b) enter into any buy-back or repurchase arrangement with the issuer or offeror or any other person with respect to the securities underwritten by it; c) derive any undue benefits directly or indirectly, from any underwriting other than the commission payable to it under the underwriting agreement; and/or d) willfully make false statement or conceal any material fact in any document, report or paper furnished to the Commission. |
| <p>Notification on the happening of certain events</p> | <p>58. Without prejudice to the generality of the duties imposed under the SEC Act, these Rules or directives, the Underwriter shall forthwith provide written notice to the Commission if:</p> <ol style="list-style-type: none"> (a) the Underwriter is in the course of being wound up or otherwise dissolved whether within or outside Sri Lanka or where a receiver, liquidator or an equivalent person has been appointed in respect of any property of the Underwriter; (b) the Underwriter ceases to carry on the business to which the licence relates; (c) the Underwriter has failed to comply with the provisions of the SEC Act, Rules relating to Fitness and Propriety of a Key Management Person of a Market Intermediary and the Rules specified herein or any other directive issued by the Commission from time to time; (d) it comes to know that any information or document furnished to the Commission is false or misleading; or there is any change in any information or document furnished to the Commission; (e) any execution against the Underwriter in respect of a judgment debt has been returned unsatisfied in whole or in part; (f) the Underwriter whether within or outside Sri Lanka has entered into a compromise or scheme of arrangement with its creditors being a compromise or scheme of arrangement that is still in operation; (g) any director, or the chief executive officer has been convicted of any offence involving fraud or dishonesty or a violation of securities law within or outside of Sri Lanka; or (h) any director or the chief executive officer of the Underwriter becomes an undischarged bankrupt. |

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| Advertisements | <p>59. An Underwriter shall ensure that the content in advertisements promoting its services is accurate, complete and is not misleading.</p> <p>60. An Underwriter shall submit a copy of all advertisements proposed to be published, for the perusal of the Commission at least one (1) week prior to its publication in the media.</p> |
| Cancellation or suspension of a licence | <p>61. The cancellation or suspension of a licence granted to an Underwriter shall be governed by the provisions contained in Section 105 of the SEC Act.</p> |
| License of an Underwriter deemed to be revoked | <p>62. A licence of an Underwriter shall be deemed to be revoked if the company to whom a licence has been granted is wound up or otherwise dissolved.</p> |
| Ceasing of operations and surrender of a licence | <p>63. In the event an Underwriter decides to cease its business operations as an Underwriter, it shall:</p> <ul style="list-style-type: none"> (a) submit to the Commission within seven (7) working days from the date of the decision of the board of directors to cease business operations together with a certified extract of the board resolution and a status report of its Clients as at that date; (b) within fourteen (14) working days of the decision of the board of directors to cease business operations, communicate to its Clients in writing its decision to cease operations as an Underwriter and the procedure to be followed by the Clients with regard to their intention to transfer to any other Underwriter or return of any funds of the Client in the custody of the Underwriter setting out specific timelines; (c) within twenty one (21) working days of the decision of the board of directors to cease business operations, publish a notice in all three (3) languages in national newspapers announcing its decision to cease business operations as an Underwriter and indicating a time period within which its Clients are required to respond regarding their intention to transfer to any other Underwriter or return of any funds of the Client in the custody of the Underwriter setting out specific time lines and to call upon them to intimate if there are any complaints; (d) the Underwriter shall keep the Commission informed in writing upon the completion of the steps (b) and (c) mentioned above. <p>64. The Underwriter shall complete the tasks of transferring their portfolios to any other Underwriter/returning of any funds of the Client in the custody of the Underwriter and resolving any complaints within a period of not more than three (3) months from the date of the decision of the board of directors to cease business operations (or any extended period permitted by the Commission in writing) and submit to the Commission a declaration from the board of directors of the Underwriter in the form of an affidavit confirming that:</p> <ul style="list-style-type: none"> (a) all of its underwriting agreements entered into with Clients have been terminated; (b) together with the affidavit as stated in Rule 64 hereof, the Underwriter shall return the licence to the Commission; (c) all outstanding amounts to Clients if any have been returned or has transferred the portfolio balances of the respective Clients to any other Underwriter upon obtaining their consent; (d) the Underwriter has published the paper notice; (e) there are no pending complaints in relation to the operations of the Underwriter. <p>65. The surrender of a licence shall not take effect until the Commission informs the Underwriter in writing that such surrender has been accepted upon satisfying itself that all steps with regard to the cessation of operations have been duly satisfied in terms of these Rules.</p> |

SCHEDULE I

Declaration by the Applicant

To: Chairman
Securities and Exchange Commission of Sri Lanka
Level 28 & 29, East Tower
World Trade Centre
Echelon Square, Colombo 01, Sri Lanka.

In consideration of being licensed to operate as (category of the market intermediary), we (name of the applicant entity) being duly incorporated and having our registered office/ principal place of business at (address) hereby undertake and agree:

1. to be licensed at the sole discretion of the Commission and for such period as may be determined by the Commission; and
2. to be bound by the applicable laws, rules, regulations and directives of the Commission as amended or replaced from time to time.

We further declare that no finding has been made against the applicant entity by a court of law in Sri Lanka or abroad for the commission of any criminal offence/ capital market offence or any other act which involves fraud, deceit, dishonesty, misrepresentation, breach of contract or breach of fiduciary duty and that the statements made and information provided along with the application for the grant /renewal of a licence are true and accurate to the best of our knowledge.

Given under the common seal of the entity on this day of in the presence of

.....
(Name)

Director

.....
(Name)

Director/Secretary

or,

Signed by the duly authorized signatories of the entity on this day of

.....
(Name)

Authorized Signatory

Note: Please attach a certified true copy of the board resolution/Power of Attorney in proof of such authority.

SCHEDULE II

Fitness and Propriety of a Key Management Person of a Market Intermediary

General interpretation

1. The words and terms defined in the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021 shall unless the context so requires have the same meaning assigned to them in the said Act.

“Commission” means the Securities and Exchange Commission of Sri Lanka established in terms of the SEC Act;

“Key Management Person” means directors (executive or otherwise) and shall include alternate directors, a chief executive officer, a compliance officer and persons having authority and responsibility for planning, directing and controlling the activities of a company/entity either directly or indirectly;

“SEC Act” means the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021.

“Market Intermediary” shall have the same meaning as defined in Section 188 of the SEC Act;

Submission of an affidavit to the Commission

2. No individual shall be appointed, elected, nominated or continue to serve as a Key Management Person of a Market Intermediary unless that individual is a fit and proper person to hold such office in such entity as morefully described in these Rules.

3. An individual proposed to be appointed, elected or nominated or who intends to continue to serve in the capacity of a Key Management Person and employees dealing with Clients shall submit an affidavit to the Commission affirming that such person is not subject to any of the infirmities morefully described in these Rules prior to such individual being appointed and at the time Market Intermediary seeks a licence or a renewal of licence.

4. The information contained in the affidavit shall not be misleading or vague and shall contain a statement that the contents are true and accurate.

5. Adherence to these Rules shall be a continuous requirement and the compliance officer of a Market Intermediary shall immediately inform the board of directors of any matter that may disqualify the appointment or the continuation in office of a Key Management Person and the board of directors shall immediately notify the Commission the decision made in respect of such matter.

Honesty, integrity and reputation

6. The Key Management Person and employees dealing with Clients shall not:
 - (a) be a person who has been found guilty/held responsible by a court of law in Sri Lanka or abroad for the commission of any criminal offence;
 - (b) be a person who has been found guilty/held responsible by a court of law in Sri Lanka or abroad for the commission of a capital market offence or against whom an offence has been compounded in terms of the SEC Act during a period of three (3) years immediately preceding the date of the application;

- (c) have been a Key Management Person of a body corporate who has been found guilty/held responsible by a court of law in Sri Lanka or abroad for the commission of any criminal offence or capital market offence having proved to have been committed with the knowledge or involvement or negligence attributable to such person;
- (d) be a person who has been subject to an administrative sanction by the Commission during a period of three (3) years immediately preceding the date of the application;
- (e) be a Key Management Person of a company, partnership or other organization whose licence has been suspended or cancelled by the Commission for violating any provision of the SEC Act or any rules or regulations made thereunder;
- (f) be a person who has been censured, disciplined, suspended or refused membership or registration by the Commission and any other regulatory authority in Sri Lanka or elsewhere during a period of three (3) years immediately preceding the date of the application;
- (g) be a person against whom a finding has been made by the Commission or any other regulatory/supervisory authority/professional body in Sri Lanka or abroad that such individual has committed any act which involves fraud, deceit or dishonesty;
- (h) be a person who has been disqualified from acting as a director of a company, or has been dismissed or requested to resign from any position or office due to mismanagement of funds or the commission of financial fraud by the Commission, any other regulatory body or professional body;
- (i) be a person against whom an inquiry and/or investigation by the Commission and/or an Exchange or any other regulatory/professional body in Sri Lanka or elsewhere is presently pending for the commission of suspected capital market offences or any matter that involves fraud, deceit or dishonesty; and/or
- (j) be a person who has contravened any written law enacted for the protection of the members of the public against financial loss due to dishonesty or malpractice of such person.

Financial soundness

7. The Key Management Person and employees dealing with Clients shall not:
- (a) have proceedings instituted to be declared bankrupt or have been declared bankrupt and/or had assets sequestered;
 - (b) have been subject to any judgement debt or award in Sri Lanka or abroad that remains unpaid in whole or in part; and/or
 - (c) have been a person of a company in a position that exercises significant influence in a company that:

- i. has been subject to any judgement debt or award in Sri Lanka or abroad that remains unpaid in whole or in part; or
- ii. has in Sri Lanka or abroad, made any arrangements in composition with its creditors, filed for bankruptcy, been declared bankrupt, had assets sequestered, involved in winding-up proceedings ordered by a court of law or been involved in proceedings relating to any of the foregoing.

Competence and capability

8. The Key Management Person and Employees dealing with Clients shall:

- (a) not have been declared by a court of competent jurisdiction in Sri Lanka or abroad to be of unsound mind;
- (b) possess the qualifications required to provide the services for which a licence has been sought/obtained from the Commission;
- (c) have satisfied the relevant training and competence requirements in relation to the regulated function the person performs or intends to perform;
- (d) possess adequate time to perform the regulated function and meet the responsibilities associated with that function; and/or
- (e) have not contravened any written law enacted for the protection of the members of the public against financial loss due to incompetence of such person.

SCHEDULE III

Specimen of an Affidavit for Fitness and Propriety of a Key Management Person of a Market Intermediary

I, _____ [Full name] holder of NIC No./Passport No. (In the case of a foreign national) _____ of _____ [Address], being a [Buddhist/Hindu/Muslim do hereby solemnly, sincerely and truly declare and affirm] / [Christian/Catholic make oath and swear as follows]:

1. I am the [affirmant/deponent] above named.
2. I affirm/state that I am a _____ [Designation] of _____ [Name of the applicant entity].
3. I affirm/state that I possess the following academic and/ or professional qualification/s:
.....
.....
.....
4. I affirm/state that I have not been found guilty / held responsible by a court of law in Sri Lanka or abroad for the commission of any criminal offence / capital market offence.
5. I affirm/state that I have not been a Key Management Person of a body corporate which has been found guilty / held responsible by a court of law in Sri Lanka or abroad for the commission of any criminal offence/ capital market offence, proved to have been committed with the knowledge or involvement or negligence attributable to me.
6. I affirm/state that I am not a person against whom an offence has been compounded in terms of the Securities and Exchange Commission of Sri Lanka Act, No.19 of 2021 ('SEC Act') nor an administrative sanction has been imposed by the Commission during a period of three (3) years immediately preceding the date of this affidavit.
7. I affirm/state that I have not been a Key Management Person of a company, partnership or other organization whose licence has been suspended or cancelled by the Commission for violating any provision of the SEC Act, any rules or regulations made thereunder.
8. I affirm/state that I have not been a person who has been censured, disciplined, suspended or refused membership or registration by the Commission, an Exchange or any other regulatory authority in Sri Lanka or abroad during a period of three (3) years immediately preceding the date of this affidavit.
9. I affirm/state that I have not been a person who has been disqualified by the Commission, an Exchange or any other regulatory body or professional body from serving as a director of a company or has been dismissed or requested to resign from any position or office due to mismanagement of funds or the commission of a financial fraud.
10. I affirm/state that I am not a person against whom an inquiry and/or investigation by the Commission/an Exchange or any other regulatory/ supervisory authority/ professional body in Sri Lanka or abroad is presently pending, for the commission of suspected capital market offences or any act which involves fraud, deceit or dishonesty or that a finding has been made by the Commission/an Exchange or any other regulatory/ supervisory authority/ professional body in Sri Lanka or abroad that I have committed any act which involves fraud, deceit or dishonesty.
11. I affirm / state that I have not contravened any written law enacted for the protection of the members of the public against financial loss by dishonesty, incompetence or malpractice.

12. I affirm / state that no proceedings have been instituted in a court of law in Sri Lanka or abroad requesting that I be declared bankrupt or that I have not been declared bankrupt and that my assets have not been sequestered.
13. I affirm/state that I have not been subject to any judgment debt or award in Sri Lanka or abroad that remains unpaid in whole or in part.
14. I affirm/state that I am not a person/ director of a company or a shareholder in a position that exercises significant influence in a company that:
 - (a) has been subject to any judgment debt or award in Sri Lanka or abroad, that remains unpaid in whole or in part; or
 - (b) has in Sri Lanka or abroad made any arrangements in composition with its creditors, filed for bankruptcy, been declared bankrupt, had assets sequestered, involved in winding-up proceedings ordered by a court of law or been involved in proceedings relating to any of the foregoing.
15. I affirm/state that I have not been declared as a person of unsound mind by a court of competent jurisdiction in Sri Lanka or abroad.
16. I affirm/state that I have the relevant training, competence and expertise in the nature of the business being conducted by the entity.
17. I affirm/state that I have adequate time to perform the regulated functions and meet the responsibilities associated with such function of the entity.
18. I affirm/state that I have the technical knowledge and ability to perform the prescribed duties which I am engaged in, especially recognised professional qualifications and membership of relevant professional institutions.
19. I affirm/state that I have not contravened any written law enacted for the protection of the members of the public against financial loss due to my incompetence.
20. I affirm/state that all of the above are true and accurate to the best of my knowledge.

The averments contained herein were read over to the [affirmant/deponent] who having understood the contents hereof and having accepted same as true, [affirmed/ swore] to and placed his/her signature at on this day of.....

Affix stamps as applicable

Before me

JUSTICE OF THE PEACE/
COMMISSIONER FOR OATHS

SCHEDULE IV

Minimum Contents of a Compliance Manual

1. Conflicts of Interest :

- (a) an effective internal control framework to prevent abuse or detect inappropriate practices or conflicts of interest between proprietary transactions, employees' transactions and Client's transactions;

Provided that, in the event such conflict cannot be avoided there shall be full disclosure thereof to its Clients and the Underwriter shall obtain consent of the Trustee in writing prior to carrying out the material transaction.

- (b) procedures to prevent or control the exchange of information between persons engaged in activities that give rise to a risk of a conflict of interest;
- (c) procedures to ensure that key duties and functions of the front office and back office are clearly segregated to avoid any conflicts of interest;
- (d) procedures for the prevention or limitation of any person from exercising inappropriate influence over the manner in which a relevant person carries out services or activities;
- (e) a mechanism to monitor and identify non-compliance with the conflicts of interest policy and steps to address such non-compliance in an appropriate and in a timely manner;
- (f) procedures to minimize and manage any conflicts of interest that may arise in carrying out a combination of regulated activities.

2. Corporate Governance:

- (a) good business practices and just and fair principles in the conduct of its business;
- (b) compliance requirements contained in any Code or Best Practices introduced by the Commission in respect of Underwriters;
- (c) an effective complaint handling process.

3. Risk Management:

- (a) sound risk management policies and processes.

SCHEDULE V

Minimum Matters to be Disclosed in a Compliance Report

1. Confirmation that the business has been conducted in conformity with the:

- (a) Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021;
- (b) Rules issued by the Commission;
- (c) Rules of an Exchange; and
- (d) Rules and Regulations of the Financial Intelligence Unit (FIU) of the Central Bank of Sri Lanka including Rules and Regulations pertaining to Anti Money Laundering.

2. If not:

- (a) give information as to the nature of the non-compliance or breach;
- (b) action taken to prevent or mitigate the non-compliance or breach; and
- (c) the outcome.

3. Whether any Suspicious Transaction Reports (STRs) have been generated.

If so:

- (a) the number generated and submitted to the FIU; and
- (b) outcomes if any.