

**Comments of the Institute of Chartered Accountants of Sri Lanka on the Draft SEC Bill**

| Issue  | Suggestion   | Justifications   |
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| <p>Section 3(1)(b)(iii) of the Securities and Exchange Commission Act, No. 36 of 1987, states that the President of the Institute of Chartered Accountants shall be ex-officio of the Securities and Exchange Commission.</p> <p>This provision has been removed from the Section 5 (1) of the Draft Bill.</p> | <p>The Institute of Chartered Accountants of Sri Lanka (CA Sri Lanka) strongly maintains that the Ex-Officio position allocated to CA Sri Lanka be kept.</p> | <p>CA Sri Lanka plays a key role in adopting and implementing Accounting and Auditing Standards in Sri Lanka.</p> <p>The Financial Statements of the public listed entities, financial institutions and financial intermediaries should be prepared in compliance with the Accounting Standards and the Audit of such Financial Statements are carried out in compliance with the Auditing Standards adopted by CA Sri Lanka. Thus, there is a need for CA Sri Lanka to be aware of the issues that the listed entities and the Commission faces, or encounters while following the Accounting and Auditing Standards.</p> <p>Furthermore, there should be a close nexus between the CA Sri Lanka and the Securities and Exchange Commission to carry on SEC's functions effectively in pursuance of its objectives including the protection of the interests of the investors in securities in Sri Lanka. The Ex-Officio position given to the President of CA Sri Lanka assisted in achieving these objectives.</p> <p>The knowledge offered by the President of CA Sri Lanka in serving as a Commissioner will help in the adopting and implementation of Accounting and Auditing Standards in Sri Lanka.</p> <p>We understand that the removal of the Ex-Officio position of the President of CA Sri Lanka from the SEC Commission stems from the argument that CA Sri Lanka is responsible for issuing certificates to practice to the auditors and monitor the quality of audits, hence there is a conflict of interest. Please note that, CA Sri Lanka is only responsible for adopting and implementing the Sri Lanka Auditing Standards and issuing certificate to practice to the auditors. The quality of audit work is monitored by SLAASMB.</p> |

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| <p>According to the Section 161 of the draft SEC Bill, all auditors carrying out external audits of accounts of market institutions, market intermediaries and listed public companies should be registered with the Commission on the terms and conditions issued by the Commission.</p> | <p>We suggest that, SEC Should publish a list of criteria and specific conditions that should be followed in selecting auditors who have valid certificate to practice issued by CA Sri Lanka for the audit of all regulated entities under the purview of SEC.</p> <p>In the event that auditor is black-listed for some reason SEC should communicate this to CA Sri Lanka.</p> | <p>Registration of auditors is a duplication of the process. CA Sri Lanka does not recommend to establish a parallel process. All auditors hold a certificate to practice issued by CA Sri Lanka.</p> <p>CA Sri Lanka is responsible for evaluating the qualifications and the experience of the auditors. SEC has no technical knowledge of evaluating auditors and SEC is not equipped to evaluate the auditors' experience and qualifications.</p> <p>SEC is also not in a position to ensure continuous professional development which is required for auditors to maintain to ensure they meet the necessary quality standards.</p> |
| <p>According to the Section 5 (2), the Minister shall nominate the Chairman of the Commission from amongst the members of the Commission.</p>   | <p>Appointment of the Chairman should be done in accordance with the best practice. For an example; the "Monetary Authority of Singapore Act" states that a chairman of the Commission shall be appointed with the recommendation of the Cabinet.</p>   | <p>The Chairman should be acceptable to the majority of the Commissioners for the smooth functioning of the Commission.</p> <p>Furthermore, this position should be acceptable to a wider cross section of the stakeholders and the society.</p>   |
| <p>There is no provision for the appointment and the qualifications of the Chief Financial Officer (CFO) for the regulated entities under SEC.</p>  | <p>All entities regulated under SEC should have the professionally qualified CFOs, ideally who is bound by the IFAC code of ethics.</p> <p>The draft Act should include the necessity of appointing CFOs and the qualifications of the CFOs.</p>  | <p>The Chief Financial Officer plays an important role. Hence, the appointment of the CFO and his selection criteria/ qualifications to be included in the draft Act because qualified personnel are bound to internationally accepted ethical standards.</p>  |
| <p>According to the Section 7 (2), the Minister <u>"may"</u>, by order published in the Gazette, remove an appointed member from office.</p>  | <p>The word "may" need to be replaced with the word "shall".</p>  | <p>The legal meaning of "may" allows the discretionary power to the Minister.</p> <p>The legal meaning of 'shall' make it compulsory to the Minister to gazette.</p>   |

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| According to the Section 87 and 92 of the draft bill requires the market intermediaries to obtain license and register with Commission. The purpose of having two processes (licensing and registration) is not clear.   | Clearly identify the need of having two processes namely, licensing and registration. | To provide more clarity and define the need for having two process.  |
| According to the Section 22 limits fair criticism of the Commission and its activities and anyone who criticize the Commission or any official of SEC shall be guilty of an offence and fine not exceeding one million rupees or to imprisonment up to six months. | CA Sri Lanka suggests to modify this section allowing fair criticisms.                | There should be space to criticize in good faith and must not be used to prevent the criticism for the purpose of good governance. This section will create a dominant power to SEC. |