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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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PART I : SECTION (I) — GENERAL

Government Notifications

L.D.-B. 172/36II.

REGISTERED STOCK AND SECURITIES ORDINANCE (CHAPTER 420)

REGULATIONS made by the President of the Democratic Socialist Republic of Sri Lanka under Section 55 of the Registered Stock and Securities Ordinance (Chapter 420) read with paragraph (2) of Article 44 of the Constitution.

MAHINDA RAJAPAKSA
President & Minister In-charge
of the subject of Finance and Planning.

Colombo,
24th June, 2009.

Regulations

1. These Regulations may be cited as the “Registered Stock and Securities (Primary Dealers) Regulations No.01 of 2009”.

APPOINTMENT OF PRIMARY DEALERS

2. (a) The Central Bank may, from time to time, determine the criteria for the appointment of Primary Dealers for the purposes of this Ordinance.

(b) A Primary Dealer appointed by the Monetary Board—

- (i) may enter into transactions in Treasury Bonds directly as a counterparty with the Central Bank in the primary and the secondary market and may transact in Treasury Bonds for its own account and for the account of customers in accordance with the Ordinance, any other written law, directions, guidelines, operating instructions and contracts applicable, as the case may be ;
- (ii) shall be bound by and comply with these regulations and any directions and guidelines issued by the Central Bank in respect of such Primary Dealers.

3. (a) An application for appointment as a Primary Dealer under regulation 2 shall be made to the Central Bank by a Licensed Commercial Bank or any other company or in the case of a company to be formed for the purpose of carrying on the activities of a Primary Dealer, by the promoter of such company, in the Form set out in Schedule I or Schedule II, as the case may be, and shall be accompanied by the documents referred to in the Annex to such Schedules.
- (b) The applicant shall furnish to the Central Bank such other information and documents as the Central Bank may consider necessary for the purpose of considering the suitability of the applicant to be appointed as a Primary Dealer.
- (c) The Central Bank may conduct such inquiries as it may consider necessary to ascertain the eligibility of the applicant to be appointed as a Primary Dealer, including inquiries as regards the competence, character, integrity and suitability of its directors and principal officers.
- (d) The Central Bank may, having regard to the eligibility of the applicant to be appointed as a Primary Dealer on the basis of the criteria adopted by the Central Bank for the approval of Primary Dealers, and in the interest of the primary dealer system, appoint an applicant as a Primary Dealer.

CONDITIONS APPLICABLE TO LICENSED COMMERCIAL BANKS WHICH ARE APPOINTED AS PRIMARY DEALERS

4. Where the Central Bank appoints a Licensed Commercial Bank as a Primary Dealer, such Bank shall comply with the following conditions :—

- (a) the Licensed Commercial Bank shall maintain separate books of accounts in respect of activities relating to Primary Dealers (Government Securities) ;
- (b) the Licensed Commercial Bank shall not have on its Board of Directors, a director or an employee of another Primary Dealer Company ;
- (c) the Primary Dealer (Government Securities) operations of a Licensed Commercial Bank shall be headed by a qualified and competent person holding a senior management position in such Bank who shall devote his time to such Primary Dealer operations ;
- (d) the Licensed Commercial Bank shall be subject to operating guidelines and prudential requirements imposed by the Central Bank, from time to time, in respect of primary dealer activities and operations ;
- (e) the Primary Dealer (Government Securities) activities and operations of a Licensed Commercial Bank shall be monitored and supervised by the Central Bank.

CONDITIONS APPLICABLE TO COMPANIES WHICH ARE APPOINTED AS PRIMARY DEALERS

5. Where the Central Bank appoints a company as a Primary Dealer (hereinafter referred to as a “Primary Dealer Company”) such Company shall comply with the following conditions :—

- (a) the Articles of Association of the Company shall limit its objects to carrying on the activities set out in Schedule III and to activities ancillary to, or in connection with such activities ;
- (b) the Company shall maintain a minimum capital as may be determined by the Monetary Board, from time to time, of which the Tier II capital shall not exceed fifty per centum of the Tier I capital ;
- (c) the Company shall not have on its Board of Directors, a director or an employee of another Primary Dealer or except for the Chief Executive Officer an employee of the Company ;
- (d) the company shall not have on its Board of Directors any person who is subject to any disqualification applicable to directors of a Licensed Commercial Bank in terms of the Banking Act, No. 30 of 1988 :

Provided however, an employee or a director of a Licensed Commercial Bank and where such bank is not a Primary Dealer, shall not be disqualified to be a director of a Primary Dealer Company ;

- (e) the Company shall not register, without prior written approval of the Monetary Board, any shareholding of a person if such shareholding results in a change in the controlling interest in the Primary Dealer Company. For this purpose “controlling interest” shall mean the holding of Fifty-one *per centum* or more of the paid-up share capital of the Company ;
- (f) the Company shall not without the prior written approval of the Monetary Board register any shareholding of more than Ten *per centum* of the issued capital of the Company of a person if such person is the holding company or a subsidiary of any other Primary Dealer.

VARIATION IN THE CAPITAL OF A PRIMARY DEALER COMPANY

6. (1) The Monetary Board may having regard to the viability and stability of the Primary Dealer system, determine the capital required to be maintained by a Primary Dealer Company and may vary such determination, from time to time. A determination or a variation made by the Monetary Board under this regulation shall be communicated to all Primary Dealer Companies in writing ;

(2) Where a Primary Dealer Company is required by a variation made under paragraph (1), to increase its capital, it shall upon an application made to the Monetary Board, be given a period of six months, or such longer period as may be determined by the Monetary Board ;

(3) A Primary Dealer Company of which the capital falls below the minimum required to be maintained in terms of this regulation shall forthwith notify the Central Bank in writing of such fact ;

(4) The Monetary Board may, if it considers it to be in the interest of the Primary Dealer system or the national economy to grant time as may be determined by the Monetary Board to meet the shortfall in capital, without prejudice to the right of the Monetary Board to suspend or cancel the appointment of a Primary Dealer Company which fails to maintain the minimum capital required to be maintained in terms of this regulation, grant such permission subject to such terms and conditions as it may impose.

(5) The Monetary Board may, if it considers it to be in the interest of the Primary Dealer to grant permission to reduce its capital, grant such permission with prior written approval of the Monetary Board, after considering the financial viability of such Primary Dealer and subject to such terms and conditions as it may impose.

MATERIAL INTEREST

7. A Primary Dealer shall not acquire or hold either directly or indirectly any material interest in another Primary Dealer Company. For this purpose, ‘material interest’ means the holding of over Ten *per centum* of the issued capital of such Primary Dealer Company.

DUTIES AND PRIVILEGES OF PRIMARY DEALERS

8. A Primary Dealer shall—

- (a) have the right to deal with the Central Bank as a counterparty in the primary and secondary markets for securities ;
- (b) participate in the primary market in the manner and at such levels may be determined by the Central Bank, from time to time, and communicated to the Primary Dealer ;

- (c) be responsible for creating and maintaining a secondary market in securities ;
- (d) comply with levels for maintenance of stocks of securities and for participation in the secondary market as may be determined by the Central Bank, from time to time, and communicated to the Primary Dealer ;
- (e) have the right to engage in any transaction relating to securities for its own account and for the account of any customer ;
- (f) maintain standards of competence and infrastructural facilities as may be determined by the Central Bank, from time to time, and communicated to the Primary Dealer ;
- (g) act in fiduciary capacity in respect of its customers in the holding of and in the collection and payment of maturity proceeds and interest on securities and shall for this purpose segregate the assets of its customers from its own assets. The assets of customers shall not form a part of the assets of the Primary Dealer in winding up ;
- (h) maintain strict confidentiality in respect of its dealings with its customers ; and
- (i) conduct its business and activities in accordance with the operations manual, code of conduct and any other guidelines for Primary Dealers formulated by the Central Bank, from time to time.

SUPERVISION, EXAMINATION AND INVESTIGATION OF PRIMARY DEALERS

9. (1) The Registrar of Public Debt appointed under the Registered Stock and Securities Ordinance (Chapter 420), on behalf of the Central Bank may supervise and examine a Primary Dealer and may conduct investigations into any specific matter or activity of a Primary Dealer for the purpose of ensuring that the conduct of business by the Primary Dealer is not prejudicial to the interest of the customers of the Primary Dealer and to the Primary Dealer system and/or that the Primary Dealer is acting in compliance with the provisions of the Ordinance, and the Regulations made under the Ordinance, operations manual, code of conduct, guidelines and any other applicable written law ;

(2) A Primary Dealer shall make available to the Registrar of Public Debt, its books, accounts, registers, files and other records kept in relation to its activities as a Primary Dealer, including records maintained in electronic and magnetic media and shall furnish any information as may be required for the purposes set out in paragraph (1) ;

(3) A Primary Dealer, its directors and officers shall submit any books, accounts, registers, files or any other information required to be submitted under paragraph (2).

EVALUATION OF PERFORMANCE

10. (1) The Central Bank shall periodically evaluate the performance of a Primary Dealer —

- (a) on its effective participation at primary auctions in securities ;
- (b) in creating and maintaining a secondary market in securities ; and
- (c) its record of compliance with applicable laws, rules, regulations, directions, guidelines and the code of conduct.

(2) The Central Bank shall inform a Primary Dealer of any shortcomings found in the course of such evaluation and such Primary Dealer shall take any measures that may be recommended by the Central Bank to remedy such shortcomings.

DIRECTIONS

11. (1) The Central Bank may issue directions to a Primary Dealer to ensure compliance by the Primary Dealer with these Regulations. Without prejudice to the generality of the foregoing and to the power of the Central Bank to issue directions under the Ordinance or any other written law, such directions may provide for all or any of the following matters :-

- (a) the procedures to be followed by Primary Dealers in respect of any auction of securities carried out by the Central Bank and secondary market operations of the Primary Dealer ;
- (b) the minimum level of participation and minimum effective level of participation by Primary Dealers in primary auctions of securities carried out by the Central Bank ;
- (c) the conditions to be complied with by Primary Dealers in the collection and payment of maturity proceeds and interest on securities to customers ;
- (d) the maintenance of books, records and accounts by Primary Dealers ;
- (e) the adequacy of internal controls and risk management systems ;
- (f) the submission of periodic reports or any information to the Central Bank by Primary Dealers ;
- (g) the minimum level for secondary market operations of Primary Dealers ;
- (h) the maintenance of stocks of securities to meet the demand for such securities in the secondary market ;
- (i) charges that may be imposed by Primary Dealers on customers ;
- (j) the qualifications required of the Chief Executive Officer of the Primary Dealer Company or the person who heads the primary dealer operations of a Licensed Commercial Bank and of the other senior executive officers ;
- (k) the infrastructure and other facilities to be maintained by the Primary Dealer for the proper discharge of its duties ;
- (l) the activities and business which may be carried on by a Primary Dealer Company as activities or business connected or incidental to the activities set out in Schedule III ;
- (m) the rectification of any situation arising from any failure or shortcoming which has come to light in the course of supervision, examination, investigation or evaluation conducted by the Central Bank ;
- (n) the discharge of the obligations and duties to the Central Bank, other Primary Dealers, direct participants and customers of a Primary Dealer whose business and activities as a Primary Dealer has been suspended under regulation 12 ;
- (o) capital, reserves, capital adequacy and other prudential and operating requirements ; and
- (p) directions on any other matter considering the development of the Government Securities Market, Primary Dealer System and Customer Protection.

(2) The Monetary Board may in the event of a Primary Dealer failing to comply with any provisions of the Ordinance, or carrying on business in a manner which is detrimental to the interest of its customers, conduct such investigations as it may consider necessary and may issue to such Primary Dealer a direction to comply with such provisions or to cease to carry on business in such manner and in such time as may be specified in such direction, where the Primary Dealer fails to comply with such direction, the Monetary Board shall without prejudice to any action specified in regulation 12, publish for the information of the public, in a local newspaper in all three languages, the direction so issued to such Primary Dealer.

SUSPENSION AND CANCELLATION OF APPOINTMENT OF A PRIMARY DEALER

12. (1) The Central Bank may, where a Primary Dealer has failed to comply with any law, regulation, direction, guideline or code of conduct applicable to it or acts in a manner detrimental to the interest of the Primary Dealer system or to the national economy suspend such Primary Dealer from carrying on the business and activities of a Primary Dealer for a period which shall not exceed six months or may cancel the appointment of a Primary Dealer.

(2) Where the Central Bank suspends a Primary Dealer from carrying on the business and activities of a Primary Dealer under paragraph (1), the Central Bank may at or before the expiry of the period of such suspension, extend the period of suspension for a further period—

- (a) if the Monetary Board is of the opinion that further time is required to ensure the proper discharge by the Primary Dealer of its obligations and duties to the Central Bank, other Primary Dealers, direct participants and customers ; or
- (b) if a request for such extension is made by the Primary Dealer and the Central Bank considers it to be in the interest of the Primary Dealer system to grant such extension.

Provided that suspension may be extended in terms of this sub-paragraph notwithstanding that by such extension the maximum period of time specified in sub-paragraph (1) will be exceeded.

(3) The Central Bank may revoke the suspension imposed on a Primary Dealer under this regulation if it is of the opinion that the grounds for such suspension has been rectified and the revoke of such suspension is not detrimental to the interest of the Primary Dealer system or to the national economy.

(4) The Central Bank may at the expiry of a period of suspension, cancel the appointment of a Primary Dealer if it is of the opinion that the continuance of business by the Primary Dealer is detrimental to the interest of the Primary Dealer system and to the national economy.

(5) A Primary Dealer whose appointment is suspended or cancelled shall not have the right to deal with the Central Bank as counterparty in the primary and secondary markets in securities and shall not transact new business with customers and shall not be entitled to utilize the facilities provided by the Central Bank to Primary Dealers except to the extent permitted by the Central Bank for the discharge of such Primary Dealer's obligations and duties to the Central Bank, other Primary Dealers, customers and others in accordance with directions issued by the Monetary Board.

CENTRAL BANK

13. Where by these Regulations any power has to be exercised or any act has to be done by the Central Bank such power shall be exercised or such act shall be done by an officer of the Central Bank authorized by the Monetary Board in that behalf.

INTERPRETATION

14. In these Regulations, unless the context otherwise requires:—

“Banking Act” means the Banking Act, No. 30 of 1988 ;

“Capital” means the aggregate of Tier I Capital and Tier II Capital ;

“Central Bank” means the Central Bank of Sri Lanka established by the Monetary Law Act, No. 58 of 1949 ;

“company” means a company within the meaning of the Companies Act, No. 7 of 2007 excluding a Licensed Commercial Bank ;

“customer” means in relation to a Primary Dealer any person who purchases from such Primary Dealer or sells to such Primary Dealer or otherwise acquires or disposes of securities or any interest therein through such Primary Dealer or who negotiates with such Primary Dealer for the possible acquisition or disposition of such securities ;

“Licensed Commercial Bank” means a Licensed Commercial Bank within the meaning of the Banking Act, No. 30 of 1988 ;

“Monetary Board” means the Monetary Board of the Central Bank of Sri Lanka ;

“Ordinance” means the Registered Stock and Securities Ordinance (Chapter 420) ;

“Tier I Capital” means the total of : –

- (a) issued and paid up ordinary share capital ;
- (b) issued and paid up perpetual non-cumulative preference shares (non redeemable or redeemable at issuer’s option, with the prior approval of the Central Bank) ;
- (c) share premium account ;
- (d) reserves created or increased by appropriations of retained earnings or other surpluses *eg.* Retained profits and other reserves (excluding fixed asset revaluation reserves and retained profits on unaudited financial statements. Retained profits on unaudited financial statements can be included if the certification of a statutory auditor is provided) ;

Less : Goodwill and other intangible assets, accumulated losses including losses on unaudited financial statements ;

“Tier II Capital” means the total of : –

- (a) short term subordinated debt (maturity period of more than three years) ;
- (b) long term subordinated debt (maturity period of more than five years) ;
- (c) cumulative preference shares ;
- (d) perpetual subordinated debt ;

15. Registered Stock and Securities Ordinance (Primary Dealers) Regulations, No. 1 of 2002 published in *Gazette Extraordinary* No. 1221/28 dated February 1, 2002 is hereby rescinded. :

Provided that notwithstanding of the Registered Stock and Securities Ordinance (Primary Dealers) Regulations No. 1 of 2002 being rescinded—

- (a) any Licensed Commercial Bank and other companies appointed as a Primary Dealer under the above regulations shall be deemed to be a Primary Dealer appointed under these Regulations ;
- (b) any directions or guidelines issued under the regulations repealed hereby shall be valid and effective as if they were issued under these Regulations.

SCHEDULE 1

APPLICATION TO BE A PRIMARY DEALER IN GOVERNMENT/TREASURY SECURITIES AND CENTRAL BANK SECURITIES
LICENSED COMMERCIAL BANK

- (1) Name of the Bank :
- (2) Date of Incorporation of the Bank in Sri Lanka/Date of Establishment
of the Branch in Sri Lanka* :
- (3) Directors of the Bank :
- (4) Capital and Reserves of the Bank/Branch* :
(As per the latest audited financial statements)
- (5) Evidence of Experience in activities relating to the government securities
market, money and capital market :
- (6) Specific reasons to apply for a Primary Dealer :
- (7) Limit on the investment in Government Securities, if any, imposed by the Head Office :

.....
Secretary to the Board of Directors
of the Bank/Chief Executive*

Seal of the Bank

Date :

* *In the case of a branch office of a Bank incorporated outside Sri Lanka.*

ANNEX TO SCHEDULE 1

DOCUMENTS TO BE SUBMITTED WITH THE APPLICATION
(LICENSED COMMERCIAL BANK)

- (1) A Resolution of the Board of Directors of the Bank/Head Office approving the Bank functioning as a Primary Dealer.
- (2) An undertaking from the Bank/Branch to abide by the rules and regulations, code of conduct and related guidelines and directions pertaining to Primary Dealer operations, issued by the Central Bank from time to time.
- (3) List of Senior Managers involved in activities relating to Primary Dealers with qualifications and experience.
- (4) A detailed work plan with projections for the expansion of the institutional network and customer base relating to Government Securities and Central Bank Securities operations.
- (5) Latest available audited financial statements of the Bank.

SCHEDULE II

Superintendent,
Public Debt Department,
Central Bank of Sri Lanka,
Colombo 1.

APPLICATION TO BE A PRIMARY DEALER COMPANY IN GOVERNMENT/TREASURY SECURITIES AND CENTRAL BANK SECURITIES

We..... (Name of the Company) hereby apply to be appointed as a Primary Dealer in terms of the Local Treasury Bills Ordinance and the Registered Stock and Securities Ordinance. Particulars relating to the company are given below.

Section A - General Information :

1. Name of the applicant Company :
2. Registered Address :
Telephone No. : Fax No. :
E-mail :
3. Date of Incorporation :
4. Type of Organization (Public Ltd. Or other) :
5. Details of bank account/s :

| <u>Name of the Bank & Branch</u> | <u>Current Account No.</u> | <u>Savings Account No.</u> |
|--|--------------------------------|--------------------------------|
|--|--------------------------------|--------------------------------|

Section B - Evaluation :

- (1) Share Capital

| | Rs. | Mn. |
|-----------------------|-------|-------|
| Authorised | | |
| Issued and fully paid | | |

(pl. indicate names of share holders)

- (2) Names of Directors :

(List out separately their academic/professional qualifications and experience).

- (3) Management :

(List out all key officials including CEO with their academic/professional qualifications and experience).

(4) Details of Employment :

| <i>Grade</i> | <i>Existing</i> | | | | <i>Proposed</i> | | | |
|---------------|-----------------|---|---------------|---|-----------------|---|---------------|---|
| | <i>Male</i> | | <i>Female</i> | | <i>Male</i> | | <i>Female</i> | |
| | P | C | P | C | P | C | P | C |
| Executive | | | | | | | | |
| Non-executive | | | | | | | | |
| Total | | | | | | | | |

P = Permanent

C = Casual

- (5) Evidence of experience in activities relating to Government Securities and money and capital markets.
- (6) Evidence with regard to the necessary infrastructure facilities to undertake primary/secondary market transactions.
- (7) Any specific reasons for the application to be considered for Primary Dealer status.
- (8) Any other matters which the applicant considers useful for the Central Bank of Sri Lanka to evaluate the application.
- (9) Documents referred to in Annex to Schedule II.
(Please annex the documents)
- (10) We further undertake to provide any further information of documents that Central Bank of Sri Lanka may consider necessary for the purpose of considering our suitability to be appointed as a Primary Dealer.

Signature of authorized officer :

Name of the Applicant Company :

Date:

Note: Where the space provided is insufficient, information may be given in an additional sheet of paper under the same reference number.

ANNEX TO SCHEDULE II

DOCUMENTS TO BE SUBMITTED WITH THE APPLICATION

1. Articles of Association of the Company :
2. Certificate of Incorporation of the Company :
3. Resolution of the Board of Directors to make an application to the Central Bank of Sri Lanka for appointment as Primary Dealers and authorizing the signatory of the application to sign the application on behalf of the applicant.
4. An undertaking from the Company to abide by the rules and regulations, directions, code of conduct and related guidelines pertaining to Primary Dealer and to primary/secondary market transactions issued by the Central Bank from time to time.
5. Last audited financial statements of the Company.

SCHEDULE III

ACTIVITIES OF PRIMARY DEALER COMPANIES

- (1) Bidding at Primary auctions conducted by the Central Bank of Sri Lanka for Treasury Bills, Treasury Bonds and instruments issued by the Government and the Central Bank and purchasing such securities in such primary market ;
- (2) Engaging in the secondary market in Treasury Bills, Treasury Bonds, and other Government and Central Bank Securities with the Central Bank and others ;
- (3) Promoting and developing a secondary market in Treasury Bills, Treasury Bonds and other Government and Central Bank Securities ;
- (4) Any activity connected with or incidental to the activities set out in paragraph (1) to (3) above ;
- (5) To manage and invest in mutual funds up to a maximum percentage/amount determined by the Monetary Board from time to time ;
- (6) To invest in ordinary shares or debentures of its own group companies either in subsidiaries or associates according to the limits imposed by the Monetary Board, from time to time ;
- (7) To invest in other quoted shares/quoted debentures or bonds and commercial papers according to the limits imposed by the Monetary Board, from time to time ;
- (8) To act as a broker in quoted corporate bonds/debentures ;
- (9) To engage in services to earn fee income such as portfolio management, project appraisal, loan syndication services, merger and acquisition advisory services, consultancy services, brokering and any other related activities with the prior written approval of the Monetary Board ;
- (10) To borrow through debt instruments in accordance with the directions or guidelines issued by the Monetary Board from time to time ; and
- (11) Any other business activity which the Monetary Board may authorize a Primary Dealer to engage in.

07-292