PEOPLE: International Journal of Social Sciences
ISSN 2454-5899

Shanthi Segarajasingham, 2017

Volume 3 Issue 2, pp.1416-1439

Date of Publication: 16th October, 2017

DOI-https://dx.doi.org/10.20319/pijss.2017.32.14161439

This paper can be cited as: Segarajasingham, S. (2017). Beauty Pageant of Companies: A Comparative Study of Public Issue of Shares Focusing Sri Lankan Law. PEOPLE: International Journal of Social Sciences, 3(2), 1416-1439.

This work is licensed under the Creative Commons Attribution-Non-commercial 4.0 International License. To view a copy of this license, visit http://creativecommons.org/licenses/by-nc/4.0/ or send a letter to Creative Commons, PO Box 1866, Mountain View, CA 94042, USA.

BEAUTY PAGEANT OF COMPANIES: A COMPARATIVE STUDY OF PUBLIC ISSUE OF SHARES FOCUSING SRI LANKAN LAW

Shanthi Segarajasingham
Department of Commercial Law, Faculty of Law, University of Colombo, Sri Lanka
shanthisegha@law.cmb.ac.lk
shanthisegha@yahoo.com

Abstract

Public issue of shares, popularly known as IPO (Initial Public Offer), is a method adopted by public quoted companies to raise capital. It is regulated in most of the countries although the standard of regulation differs. Author describes IPO as a beauty pageant since the companies expose themselves by disclosure in order to be selected for the purpose of investment by the public. The regulation of IPO is important due to many reasons, including the involvement of money of the general public and the intangible nature of the financial product that is under issue. The main objective of this study is to analyse the law relating to IPO in Sri Lanka on a comparative analysis in order to identify loop holes. In this regard the comparative jurisdictions selected for this study (United Kingdom and Malaysia) have moved forward by taking away the provisions pertaining to disclosure documents/prospectuses from their companies legislation and have them included under the securities legislation, while Sri Lanka has not done so. The reality, very often, is that the public who subscribe for public issue of shares is not profited because the share prices decline from the purchase price. This is due to shortcomings in the law. The writer finds that the scrutiny mechanism of the regulator/s is unsatisfactory and there is no method adopted to monitor the utilization of

funds received by the companies. This research is done mostly using secondary data and a minor part is based on primary data.

Keywords
IPO/Initial Public Offer or Public Issue of Shares, Disclosure

---

1. Introduction

Every nation depends on the contribution by the private sector for their economic development and it can be said that the economic growth in a country has its parallel in the growth of the public quoted companies. The IPO serves the economic function in this regard by effecting transfers between those segments of a society with surplus funds for investment and those seeking funds for productive enterprises.

Fund raising activities are integral part in the life of any company. Such activities vary depending on the needs, type of companies and the particular time period at which funds are raised. Public offer of shares or initial public offer (IPO) is the most popular method whereby efficient means of capital formation with the participation of general public is facilitated for.

As such, raising finance through the IPO has become a widespread method for providing economic expansion and development, using both local and foreign investments. 'Is this done with the underlying objective of investor protection at all times?' is the center point for analysis in this paper.

The protection of investors and the promotion of an efficient securities market can be identified as the dominant themes in the process of raising capital. The regulation of public issue in the capital market should be therefore designed to promote investor confidence by ensuring that appropriate levels of protection are in place.

1.1 Research Problem

Although it is well accepted that the law relating of public issue of shares should be stringent in order to provide adequate protection to investors, the existing law of Sri Lanka was not amended for more than three decades to cater for the requisite protection to investors. As a result the investor protection is at stake which affects the integrity of the securities market of the country.

1.2 Limitations

Due to the extensive research done on public issue the law relating to misstatements and omission in prospectuses is omitted.

2. Raising of Capital

Fund raising activity may be divided mainly into two kinds, i.e, without a large-scale issue of securities[1] and large-scale issue of securities. The latter type is done by rights issues, open offers, bonus issues, placing and public offers. The last two methods mentioned are usually done by obtaining listing in a Stock Exchange and thereby complying with its regulations. Nevertheless, public companies are free to seek capital without obtaining Stock Exchange listing by adhering to the relevant legislation and rules.

The methods adopted by different companies to raise capital depend on the purpose of the issue and the preferences of their directors and financial advisors as well. One cannot afford to ignore the capital market dynamics in this regard. However, the underlying feature in each method is, generally, how quickly and cheaply the capital can be raised. A small company, which is interested in new equipment, will not issue securities to the public because the cost of public issue and the time taken to do so would be too much when compared with the money raised. In addition, it would be difficult for a small company to attract the public to invest in them. Generally, large companies choose public issue when they desire to raise large amounts of capital. Nevertheless, the stock exchanges have now introduced measures to encourage small and medium size companies to choose public issue. Public issue/offer of shares raises several legal issues and causes many legal consequences, and therefore the writer will now move to analyse in detail the aspect of public issue.

3. Public Issue of Shares

"It takes money to make money" is an appropriate saying for a public company when it desires to "go public." It is because public issues involve many regulations and procedures and the adoption of same takes time and money. The application of rules relating to public offers can vary depending on the type of security the company offers, but the broad framework of the regulation is generally the same.

A public issue is an invitation made by the issuer company to the general public to subscribe for or to purchase securities of the issuer company. Legally, public issue includes

[1] Fund raising without a large-scale issue of securities is done by way of internal financing out of the respective company's profits and reserves, hire-purchase or leasing agreements, factoring or discounting of debts owed to the company, privately negotiated loans, private placing of shares or by restricted rights issues and open offers.

an invitation by the company itself to subscribe for shares as well as an offer for sale by an issuing house.

Under the strict sense of the Law of Contract, a public offer is not an 'offer**'**, but an 'invitation to treat'.[2] As explained by Mc Gravie J in *O'Brien v. Melbank Corp. Ltd*.,[3] the word 'offer' in a public offer of shares, means an invitation to treat. It is well known that public issues of popular or profit earning companies are over-subscribed

When there is a general invitation to the public at large to purchase or subscribe securities, it will be a public offer to which prospectus requirements have to be complied with. The problem arises when the invitation is made to a restricted class of people. Therefore, it is important to consider the interpretation for the word 'public' in the concept of public issue in order to decide whether the particular issue has to comply with the requirements of the law relating to a prospectus or other disclosure documents. The phrase 'public offer' or 'offer to the public' was traditionally defined to mean and to include any section of the public.[4] The Companies Act No. 7 of 2007 of Sri Lanka however does not define the term.

Case law authorities are available relating to the issue of a document to a particular group or section of the people. The question was usually whether such an issue was an offer to the public and therefore whether the document involved was to be treated as a prospectus. The decisions differ and no one case lays down a concrete principle.[5] However, the cases

---

[2] It is because, if it is to be treated as a contractual offer, the issuer company will become the offeror and it is bound to accept when the investing public subscribe for shares when the offers are opened. On the other hand, when the IPO is an invitation to treat, it is the investing public who are making offer when they subscribe for shares relying on the invitation, as decided in many cases including the symbolic case of *Carlill v. Carbolic Smoke Ball Co* [1893] 1 QB 256, although *Carlill* case was under a different context.

[3] [1991] 7 ACSR 19 at 37

[4] S.4(6) of the CA 1965 of Malaysia provides that, 'any reference in this Act to offering shares or debentures to the public shall, unless the contrary intention appears, be construed as including a reference to offering them to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner…; the repealed s.4(6) of the CA 1967 of Singapore was similar to the Malaysian provision.

[5] In the UK *Nash* v. *Lynde* [1929] AC 158 the MD of a company prepared a document relating to the financial status of the company for raising new capital and marked it 'strictly private and confidential'. One of the directors sent the document to a solicitor and it reached the plaintiff who subscribed for shares in the company and suffered losses. It was held by the House of Lord that the circumstances involved a private communication, and thus were not to be treated as an offer to the public. In the South African case of *S.* v. *National Board of Executors Ltd*. [1971] 3 S.A 817 the accused had issued a brochure worded 'strictly private and confidential' and 'for information of addressee only'. There were only 2 persons to whom the allotments were made and they were not the addressees. The opinions of the eminent writers, Palmer and Pennington, were considered in this case. As per Palmer, the issue was not to the public if it was directed to specified persons, and it was not calculated to result in the shares…. becoming available to other persons, or if the issue was a 'domestic concern' of the persons making and receiving the offer or invitation. [Schmitthoff CM Palmers Company Law, (1968), 21st Edition, 151.] Pennington opined that, 'An invitation to subscribe for securities may be a matter of domestic concern, so as to prevent the invitation being a prospectus, even though it may be accepted by persons other than those to whom it is addressed' [Pennington RR, Company Law,

have lost their significance due to the fact that the statutes have been now repealed. It may be because of the difficulty in determining whether a particular offer or invitation can be considered as an offer or invitation to the public. For example S.756 Companies Act 2006 of the UK explains what is meant by "offer to the public" for the purposes of the prohibition on public offers contained in s.755 for private companies. This section also sets out certain circumstances under which an offer is not to be regarded as an offer to the public. An offer will not be an offer to the public if it is not calculated to result in shares of the company becoming available to anyone other than those receiving the offer.[6]

In Malaysia, s.32 of the Securities Commission Act 1993 required all 'offers of securities to the public' require approval of the Securities Commission of Malaysia. The phrase 'offer to the public' created difficulties and as a result s.32 was amended in 1995[7] removing the concept of 'offer to the public'. Consequently, all offers of securities, unless exempted[8] were required to obtain regulatory approval.

It is important to look at the definition given under Article 2(1)(d) of Directive 2003/71/EC of the European Parliament and of the Council[9] which is very general and towards the modern trend.

Having analysed what public issue is, it is then necessary to ascertain as to why a company should go for public issue of shares.

(1967), 2nd Edition, 203] It was held, adopting a reasonable man yardstick, that it was not a public issue. In the Malaysian case of *Mahima Singh* v. *Buldev Singh* [1975] 1 MLJ 173the meaning of the words 'to the public' in s.4(6) of the Companies Act 1965 (which was amended in 2000 provided that offering shares to the public shall be construed as including a reference to offering them to any section of the public, whether selected as clients or not) was examined and held that the term 'public' had to be given its ordinary meaning unless otherwise provided for in the Act. It was further held that since the particular offer in question did not fall under exemptions to the section it constituted an offer to the 'public'. In the Singapore case of A.G. v. *Derrick Chong Soon Choy* [1985] 1 M.L.J 97 a letter inviting certain individuals and companies to become members of a country club with an anticipated membership of 2000 was held to be an offer to a section of the public. In the Australian case of *Lee* v. *Evans* [1964] 112 C.L.R. 276] when an invitation was targeted at a specific audience and capable of being accepted only by specific individuals was held as not a public offer. In *Corporate Affairs Commission* v. *Australian Central Credit Union,[* [1985] 10 A.C.L.R 59 a Credit Union with almost 23,000 members proposed an offer by way of a notice which expressly restricted it to the staff of the particular group of companies. It was held that an invitation which is restricted to a section of the public in the sense that, 'no one else may apply' cannot in any way be an invitation to the public. In *Broken Hill Proprietary Co Ltd.* v. *Bell Resources Ltd*. [1984] 2 ACLC 157 the respondent company made a tender offer of shares in the plaintiff company to a number of shareholders of the plaintiff company. It was held that the transaction was an offer to the public or to a section of the public. See: *Kirton* v. *Venture Acceptance Corp Ltd.* [1986] 4 A.C.L.C. 158; *Khania Nominees Pty Ltd.* v. *Hamilton.* [1986] 10 ACLR 737; *Prioris Pty Ltd.* v. *Ins Corp Holding Ltd.* [1995] 23 ACLR 915; *O'Brien v. Melbank* [1991]7 ACLR 644

[6] http://www.legislation.gov.uk/ukpga/2006/46/notes/division/10/20/1/2

[7] Securities Commission (Amendment) Act 1995 (A926)

[8] List of Exemptions were set out under schedule to the Act

[9] 'Offer of securities to the public' means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities. This definition shall also be applicable to the placing of securities through financial intermediaries'

4. Why 'Go Public'?

The underlying reason for going public was correctly stated as follows (Farrar et al, 1998)

> 'The basic function of companies is to provide a vehicle for entrepreneurial activity. Large-scale entrepreneurial activity may, however, require amounts of capital which can only be provided by inviting outside investors to pool their resources and invest in an enterprise.'

Other than this basic factor, there are various other reasons for companies to raise capital from the public and those are summarized as follows:

1. Public issue of shares brings in significant corporate recognition and publicity to public companies and provides higher public profile and prestige.
2. Growth or increase in earnings is obviously the key to the entire reason for public issue. Thus, going public facilitates new finance for the company and the company will be financially attractive among competitors. Shares also become more attractive to investors as they are liquid investment and readily marketable.
3. The company may require additional permanent capital for expansion purposes such as the development of a new product or to reduce bank borrowing. In these circumstances, when the company does not want to borrow or have another private share offering, it may go public.
4. Shareholder control becomes diluted by a public issue. A large-scale issue by way of a public offering has the obvious advantage that the shares will be spread among many shareholders. As a result no shareholder will be able to exercise influence or dominate the affairs of the company.
5. In a crisis situation, the company may not wish its shares to be accepted as a medium of exchange for acquisition or mergers, instead it may chose to go public.
6. The company, as well as the shareholders, may wish to avoid the tax disadvantages of a private company status.
7. Capital gain is an advantage not only to the company concerned but also to the State. Healthy and thriving businesses are established when institutional investors invest by way of public issue. It is said that economy of the United States of America has grown out of the capital gains of healthily growing corporations.

Although there are disadvantages in going public, the writer is of the opinion that the disadvantages of a public issue are negligible when compared to its tremendous advantages.

Therefore every country look forward to gain the maximum benefit from public issues by encouraging the public to get involved in the capital market, while maintaining regulatory control of many aspects of the public issue.

5. Why Regulate Public Issue of Shares?

As analysed, IPO is the most popular method of raising capital under a large-scale issue of securities. Because of the popularity of the public issue and the competition that the companies face, it is described by exponents as a ‘beauty contest’ where the companies expose themselves to the investors.

In the history of Company Law, dishonest persons have used public issue to defraud the public. Therefore, Company Law has, over the years, used various devices to protect investors from the very inception of public issue. A variety of rules are formulated in order to create an atmosphere that encourages investors and safeguards their interests while promoting issuer companies. For example, disclosure standard, which is one of the crucial matters in public issue, is highly regulated.

Further, all modern States encourage, by various ways and means, the ever increasing activities of quoted companies, especially their share issue activities. This is because countries depend on the capital market to some extent for their economic development and the conduct of business of investment in shares has become each State’s concern.[10]

The two major parties to a public issue are the issuer companies and the investors. The investors who deposit money are reliant on the issuer company and are thereby considered as the weaker party who should be provided protection by the State.

6. Control Measures by the Regulatory Authorities over Public Issues

The role of a regulator in a capital market is to find ways of accommodating the process of investment in a smooth way while ensuring proper protection and confidence for investors and minimizing systemic risk. It is not the role of the regulators to insulate investors from sustaining losses in the transaction. The regulators only seek to protect investors from any form of unfair market conduct. The market becomes fair only when all the information regarding an issue is disclosed on time. Therefore, the modern regulator operates under a strict disclosure system.

[10] This is evident from the Annual Reports of the Central Bank of Sri Lanka. The equity market capitalization for the year 2012 was Rs.2.17 trillion and it was 29% of the GDP. This includes 6 new listings via IPO and 12 via introduction and 19 right issues. [Source: The Central Bank of Sri Lanka Annual Report 2012, p.210]

Hence, the quoted public companies (PLC) will be under the surveillance of -

a) Statutory Control by the Companies Act that is generally regulated by the Registrar of Companies.

b) Regulatory Control by the rules and regulations of a Stock Exchange, the front runnig regulator.

c) Statutory as well as supervisory control by the Securities Legislation which is regulated by a body called Securities Commission. Countries like the UK do not have a Securities Commission. Instead, the functions that are carried out by the Financial Conduct Authority (FCA).

The major controlling factor with regard to a public issue is the requirements relating to a prospectus, which is emphasized by all three authorities stated above.

7. The Law Relating to Prospectus

A public company, which is desirous of raising funds by way of issue of shares, may directly invite the public to subscribe for its shares by setting out a document called 'prospectus'. By publishing a prospectus directly, the company seeks to attract investors. Thus, a prospectus performs as a bridge between the company and the investors. The statutory requirements relating to a prospectus are comprehensive and mandatory. The prevailing laws of most developed countries do not require any special format for the prospectus while some countries specify the contents of prospectus either in a statutory provision or by way of a schedule to the legislation concerned.[11] In addition, the listing requirements of a Stock Exchange relating to a prospectus are designed to ensure confidence of investors.

7.1 Prospectus under the Law of the United Kingdom

The main statute is relation to public issues is the Financial Services and Markets Act 2000 (FSMA 2000) while the Financial Services Act 2012 (FSA 2012) plays a very minimal role. The Companies Act 2006 has no place in this regard.[12] However, the bases of certain principles, such as 'disclosure' are found in the common law. The Financial Control Authority (FCA), being the competent authority, regulates public issue of shares. The FSMA 2000

[11] For example, the Companies Act No.7 of 2007 of Sri Lanka in its Fourth Schedule to Part I and the Capital Markets and Services Act 2007 of Malaysia under s. 235 provide for the contents of prospectus.

[12] In addition, the EC directives that deal with the requirements for a valid prospectus, the EU regulations that govern the issue of shares to the public and Listing Rules of the LSE form part of the regulation.

seeks to maintain a balance between protecting the consumer on the one hand while promoting innovations on the other.[13]

The word 'prospectus' was defined in the Companies Act 1948 under s.38 and 455 and later under of s.744 of Companies Act 1985. The definition for prospectus under the said s.744 was quite wide and included many types of documents including circulars. The Companies Act 2006 repealed the old s.744,[14] but no replacement available. The entire regime of public issue is now handled by the FSMA 2000 and the terminology used is 'listing particulars' when it is done by quoted companies and the term 'prospectus' is used only with regard to new securities and unlisted securities.

Admission to the official list is the 1st step that has to be taken by issuers when they wish to issue shares to the public. It is sought by way of an application by the issuers to the FCA which has the powers either to grant or refuse the application. S.79(1) FSMA provides that the listing rules may provide that listed securities **may** not be admitted to the official list unless listing particulars have been submitted, approved and published by the FCA.[15] Further, s.84 FSMA 2000 provides for matters that may be dealt with by Prospectus Rules.[16] S. 85 prohibit dealing in transferable securities unless an approved prospectus has been made available to the public before the offer is made. S.86 provides for exempt offers under which requirements of s. 85(1) is not required.[17]

S.87 contains a similar requirement relating to prospectuses when securities are offered to the public by unlisted companies.[18] This allows the prospectuses to be used in other member States of the EU and the relevant authorities where relevant authorities are obliged to give a full effect on a mutual recognition basis. Therefore, it is crystal clear from the legislation of the UK that all three types of securities that are issued to the public should have

---

[13] The introductory note to the FSMA 2000, Current Law Statutes 2000, Vol.1, pp.8-17.

[14] S.1295 of CA 2006 provides for the repeal and provides that enactments contained under Sch.16 are repealed. S.744 of CA 1985 is included under list of provisions those are repealed.

[15] Listing particulars is defined in sub-section (2) of this provision to mean a document that is in such a form and contains such information as specified in the listing rules. According to s.73A (2) listing rules means rules relating to admission to official list.

[16] This was to cater for The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 5 of the EU. Such Rules may make provision *inter alia* for the content of a prospectus including a summary, the determination of the persons responsible for a prospectus; the manner in which applications to the FCA for the approval of a prospectus are to be made, period of validity of a prospectus; and the disclosure of the maximum price or of the criteria or conditions for offer price, if that is not contained in a prospectus.

[17] It is considered exempt offer if the offer is made to or directed at qualified investors only or directed at fewer than 100 persons, other than qualified investors, per EEA State; the minimum consideration which may be paid by any person for transferable securities acquired by him pursuant to the offer is at least 50,000 Euros; or the total consideration for the transferable securities being offered cannot exceed 100,000 Euros.

[18] S.87(3) provides that listing rules may make provision as to the time and manner of publication of non-listing prospectuses and may specify the information that are to be contained in such a non-listing prospectus.

listing particulars or a prospectus. These are new securities of listed companies, securities other than new securities of listed companies and unlisted securities. Both 'listing particulars' and 'prospectus' mean the same, which means those must be in such a form and contain such information as may be specified in the listing rules.[19]It can be noted from the listing rules that the requirements are very stringent for listed entities and less rigorous for unlisted entities. However, both will have to fulfil the requirement of providing sufficient information about the shares those are offered by the issuer company. This process will, no doubt, inculcate confidence to the investing public that the issuer has complied with the procedure set by the listing rules.

It is to be noted that sections79 and 87 mentioned above use the word 'may' whilst s.84 uses the word 'must' which implies less coercive and coercive respectively. It is submitted that the use of the word 'may' for a mandatory requirement is inappropriate. The reason for using the term 'may' for a mandatory provision is not clear, and therefore, it is submitted that it is better to use the term 'must' for statutory provisions which lay down mandatory requirements in order to give a clear message to the investors.

Further, s.81 of the Act provide for supplementary listing particulars and supplementary prospectus respectively which have to be submitted if there has been significant changes to the original information submitted in the listing particulars.[20]

Apart from the above, a general duty of disclosure is contained in s.80(1) of the FSMA 2000 whereby listing particulars must contain all such information as investors and their professional advisers would reasonably require to make an informed assessment of the assets and liabilities, financial position, profit and loss and **prospects** of the issuer of securities and the rights attaching to the securities. This is commented as a 'twin filter' by an author since the requirement is to satisfy the investors and their advisers as well. (Paul, 2009) The writer do not agree with the term 'twin' for the reason that the category benefitted is only one and that is the investors who may be acting on the advice of the advisers. Further, the term 'prospects' can be criticized to the effect that it requires issuer company's forecast for the future performance that involves financial information. Such a statement may mislead potential investors.

[19] Listing rules contain various types of forms that have to be completed by the issuer and such forms are drafted in such a way to get all required information.

[20] The term 'significant' is defined under s.81(2) as 'significant for the purpose of making an informed assessment'. This guarantees reaching of latest information to the public domain on time.

There is no definite check-list available as to the type and extent of materials that are to be submitted in the listing particulars, but it becomes now the general duty of the issuer who prepares it to warrant that all required information has been provided for. This is looked at from the point of view of the likely investors. The old method of stipulating the contents of the prospectus is no longer required. Instead, the requirement is for whatever an investor/financial advisor would reasonably require and reasonably expect to find in the prospectus in order to make an informed assessment of the securities issued and the issuer and the securities. This makes the burden heavier on the issuer and it is strength to the law. This requirement is known as 'due diligence' which places an obligation on those who prepare the listing particulars/prospectus. 'Due diligence' ensures that the matters specified in the listing particulars/prospectus are verified and that no misleading statements are included. This concept of due diligent is not peculiar to a listing particulars/prospectus, but common to all documents that are submitted to the FCA. It was held in *Westminister CC* v. *Croyalgrange Ltd.*[21] that the extent of knowledge required by the statute to constitute an offence was knowledge not merely the particular facts, but that such use (within the facts of the case) was in breach of the statute. This judgment further strengthens the objective approach of the statute.

However, the same s.80 provides a defence to the issuer with regard to these requirements, and that is, the information should be within the knowledge of the person responsible for listing particulars or would be reasonable for him to obtain by making inquiries.[22] The knowledge of the group of persons is the measure of the offeror's actual or expected knowledge. (Redmond, 2009) It may be argued that the strength of the disclosure provision is weakened by the said defence which is subjective. However, a counter argument may be put forward that the role of the legislature is balancing the interest of both parties and that is what exactly the FSMA 2000 has done.

Moreover, the provision relating to the listing particulars, s.79 (1) FSMA 2000, specifically states that listing particulars have to be submitted and approved by the competent authority. This aspect of 'approval' implies pre-vetting, but in practice whether it is adopted is a question. The writer favours the position of approving the listing particulars since it establishes confidence among investors. It is to be noted that the repealed s.83 of the FSMA

[21] [1986] 2 All E R 353, The aspect of 'knowledge' was relevant though decided under a different context.
[22] S.80(3)(a) and (b) FSMA 2000

2000[23] provided that the listing particulars must be delivered for registration to the Registrar of Companies before they are published.

Besides, the issuer has to abide by all the requirements of the FCA and the listing rules. The requirements of the UKLA with regard to listing particulars are set out in Chapter 5 of the Listing Rules. This applies to prospectus, listing particulars and other similar offer documents. Chapter 16 of the Listing Rules imposes a number of obligations on issues relating to directors who may be personally responsible for information contained in listing particulars or supplementary listing particulars under FSMA 2000 and FSMA 2000 (Official Listing of Securities) Regulations 2001.[24]

The FCA is empowered to ensure compliance with the provisions. In this regard the FSA may discontinue the listing; suspend listing;[25]suspend trading;[26] suspend or prohibit offer to the public;[27] publish a statement of Public Censure after a warning notice.[28] The issuer has a right of appeal in these circumstances to the Financial Services Market Tribunal. This will carry away any doubt as to the due process on the part of the FCA.

7.2 Prospectus under the Law of Malaysia

Malaysia moved forward in its continuous effort of strengthening the capital market and thereby the Capital Markets and Services Act 2007 (CMSA 2007) was enacted.[29] It can be said that the CMSA 2007 did not make much changes to the law relating to the prospectus regime that existed under the SCA 1993. The CMSA 2007 sets the stage to achieve key regulatory outcomes in relation to investor protection, market integrity and systemic stability, said the SC's Chairman of Malaysia.[30]

Law of Malaysia uses the term 'prospectus' in all the relevant statutes. S. 4(1) of the Companies Act1965 defines 'prospectus' as follows:

> 'any prospectus notice, circular, advertisement, or invitation inviting applications or offers from the public to subscribe for or purchase or offering to the public for subscription or purchase any shares in or debentures or any units of shares in or any units of debentures of a corporation or proposed corporation **and in relation to any**

[23] S.83 was repealed in 2005 to give effect to the Prospectus Regulations S.I. 2005/1433, reg. 2(1), Sch. 1 para 4
[24] S.I. 2001/2958 para 16.1
[25] S.77 & 78 FSMA 2000
[26] S. 96C FSMA 2000
[27] S.87K. It also has similar powers under s. 87L to suspend or prohibit admission to trading.
[28] S.87M FSMA 2000
[29] The CMSA 2007 consolidates the Securities Industry Act 1983, Futures Industry Act 1993 and Part IV of SCA 1993 which deals with fund raising provisions
[30] Source: www.abcmoney.co.uk/news/272007141608.htm

prospectus registered under the Securities Commission Act 1993, means a prospectus as defined under the Act'.[31]

The types of documents that will be considered as prospectus, as mentioned in the first line of the definition above, are similar to the definition under s. 744 of the CA 1985 of the UK that has been repealed. S.226 of CMSA 2007 of Malaysia also defines prospectus similar to that of s.4(1) CA 1965, but the CMSA 2007 adds 'documents inviting applications' to the first line of the definition and prospectus includes a supplementary prospectus, profile statement, supplementary shelf prospectus, and abridged prospectus. This indicates that, unlike the UK law, Malaysian law also allows alternate disclosure documents.

Further, the phrase, "... inviting applications or offers from the public to subscribe..." for 'prospectus' in the said definition under s.4 CA 1965 of Malaysia includes both the 'invitation to treat' and the 'offer' in a formal contract, so that the traditional contractual argument whether a particular document is an 'invitation to treat' or an 'offer' is avoided.

The fund raising provisions under the CMSA 2007 are generally modelled on the Australian legislation. However, the key provision of s.212 has its uniqueness, claims Malaysian writers.[32](Geoffrey, 2010) S.212 regulates all offers of securities made by public companies in Malaysia and outside Malaysia.[33] It cannot be said that the SC of Malaysia has totally abandoned the merit based regulation. Some aspects of merit regulation is said to be still existing by way of list of factors that are considered by the SC which uses its regulatory discretion through Guidelines on the Equity Offering. (Geoffrey, 2010) It is very strange that when countries are moving away from merit based to disclosure based regulation, Malaysia still hangs on the merit based.

The important sub-section with regard to the powers of the SC as the regulator of public issues of shares is s.212(4) CMSA 2007 which provides that no person shall implement or carryout a proposal referred to in subsection (2) unless the SC has approved it. The matters referred in s.212(2) are **make available** offer for subscription or purchase; issuing of invitation to subscribe for or purchase of securities in Malaysia or outside Malaysia etc. The phrase 'make available' under s.212(2)(a) and (b) is wider than the

---

[31] The definition consolidates all amendments up to 2000 by Act No. A1081. The words in **bold** were included under the said amendment. The sub-section was not subjected to any amendment until January 2012.

[32] The functions under s.212 was previously governed by s.32 of SCA 1993 (as amended) under which merits of the particular offering were considered.

[33] S. 212(2(a) indicates a geographical limitation by stating 'in Malaysia', while s.212(2(b) includes all securities of a public company outside Malaysia. Securities available on line of another jurisdiction are governed using certain criteria as per SC press release, 'Primary Offers of Securities via internet, 18/08/1999. See: http://www.sc.com.my/eng/html/resources/press/1999/pr_19990818.pdf

traditional contractual terms of 'offer' and 'invitation to treat'. Writers opine that the said phrase includes holding out on the part of a person that securities are available or can be obtained. (Geoffrey, 2010)

The SC may, approve or approve with revision, the applications for carrying out proposals referred to above with terms and conditions as it thinks fit or reject the proposal.[34] Any contravention of the provision is an offence.[35] These specific powers of the SC are praiseworthy, in the opinion of the writer since the term approval encompasses vetting.

Another important provision is s.232 CMSA 2007 whereby issue and offer of securities and application for listing cannot be done unless a prospectus has been registered by the SC. When an application is made for the said purposes along with a prospectus, such prospectus is called a 'registrable prospectus' and the SC may publish registrable prospectus without taking responsibility for the correctness of the statements contained in the registrable prospectus. The SC is also empowered to a great extent with refusal to register under s.233. These aspects of approval as the 1st step and registration as a 2nd step are referred as a two-tiered system. One of the main objectives of the existing regulation is to create an efficient approval process which is also transparent and thereby the regulatory framework for fund raising brought in greater disclosure requirement to enhance investor protection.

In addition to the requirement of registration by the SC, an issuer shall cause a copy of the form of application accompanying such prospectus (in relation to securities other than a unit trust scheme or prescribed investment scheme) to be lodged with the Registrar.[36] The role of the Registrar of Companies is hereby reduced to a minimum.

The contents of the prospectuses regulated by the CMSA2007 are provided under s.235.[37] These are specific requirements of the law which imposes criminal sanction for non-compliance. However, the SC reserves its discretionary powers by way of granting waivers from the specific requirements. Certain criteria are adopted by the SC in making such an order[38] and the SC may impose, in its order, such terms and conditions as it thinks fit. This is

---

[34] S.212(5) CMSA 2007 (S.32(5) SCA 1993)

[35] S. 212(13) CMSA 2007. The penalty of not exceeding RM 1million or imprisonment not exceeding 10 years implies the gravity of contravention. (S.32(6) SCA 1993)

[36] S.234 CMSA 2007

[37] Contents include *inter alia* the date of the prospectus, a statement that the prospectus has been registered with the SC (other than unit trusts), a statement that no securities will be allotted after the expiry date determined by the SC and consent from persons responsible for reports are attached to the prospectus.

[38] Under s.235(5)(a) & (b) the SC shall not make such an order unless it is satisfied that the compliance with the requirements of this Act is unnecessary.

another commendable aspect under the law of Malaysia in the opinion of the writer. It is because there are regulations and guidelines in place in addition to the statutory provisions and due to some acceptable reason compliance with all those requirements may not be practically feasible. Therefore, the SC of Malaysia has taken a correct balanced position. Nevertheless, such a power of granting waiver may not be suitable for a country where there is political interference in the affairs of a securities commission either by way of ministerial appointments or otherwise.

The general duty of disclosure provision of s. 236(1) provides that three important matters should be disclosed in a prospectus. They are; (a) the assets, liabilities, the financial position, profits & loss and prospects of the issuer; (b) the rights attaching to securities; and (c) merits of investing in the securities including the **risks involved in doing so.** S.236(1) (a) and (b) are similar to s.80(1) FSMA 2000 of the UK, but sub-section (c) of Malaysia is novel. However, the same sub-section carries a controversy because it tends to make the issuer liable for any risk that the investor may face in investing in the securities that the prospectus had detailed. Though it may be argued as unfair from the point of view of the issuer to make them liable for the risk the investor has taken, the writer favours a counter argument that the legislature intended providing maximum possible protection to the investing public, who are always in a vulnerable position.

Section 236(2) CMSA2007 carries defence to the issuer that is similar to s.80(3) FSMA 2000 (UK). This may be taken as a measure taken to look into the interest of those who are responsible for prospectus in a subjective manner. The writer stands by the previous analysis that a defence should not undermine duties imposed.

Alternate disclosure documents in order to cater for new developments in the capital market are provided for under the law of Malaysia. Those are Supplementary prospectus or Replacement Prospectus[39]; Shelf Prospectus; Supplementary Shelf Prospectus;[40] Abridged prospectus; [41]Short form prospectus; and Profile statement.

A safeguard measure is provided under s. 242 CMSA2007 that states that any document that is issued for the purpose of an allotment of shares shall be deemed to be a prospectus and the law relating to prospectus including liability for misstatement shall apply. Hereby the law reiterates that it does not matter what the type of document is, but what

[39] S.238(3) CMSA2007. This is similar to supplementary listing particulars of the UK
[40] Until 2012 shelf prospectuses have been used for offers of debentures only.
[41] S.237 CMSA 2007. A renounceable rights issue can be issued by submitting an abridged prospectus.

matters is whether the issuer is offering shares to the public and if the answer is to the affirmative, then the issuer is under the strict surveillance of the law.[42]

Over and above the statutory requirements, a prospectus must follow 'Prospectus Guidelines on Public Offering' issued by the SC from time to time.[43] Though it remains a question whether the Guidelines do not have statutory force and whether those are not binding, it is a practice to keep these Guidelines as minimum requirements.[44]

7.3 Prospectus under the Law of Sri Lanka

The commercial law of Sri Lanka developed from the principles of English Law. The early legislations in Sri Lanka with regard to companies were very similar to the companies legislations of the UK which were prevailing at the relevant period. As such, the underlying principles, with regard to public issue and prospectus, are equivalent to UK and Malaysian Law. Part II of the Companies Act 1982 (CA 1982) dealt with the requirements of a prospectus. The CA 1982 was repealed and replaced by Companies Act No.7 of 2007 (CA 2007) which did not make changes to the provisions relating to prospectuses that existed in its predecessor.

A definition for 'prospectus' under the interpretation provision of s.529 is similar to the former s.449 of CA 1982 and it is as follows:

> "Prospectus means any prospectus notice, circular, advertisement or other invitation offering to the public for subscription to or purchase of any shares or debentures of a company and includes any such notice, circular, advertisement or other invitation **notwithstanding that it may contain on the face thereof that it is not a prospectus or offer of shares to the public."**

The first portion of the definition is similar to the laws that have been already examined, but the words in bold are peculiar to the Sri Lankan statute. It is submitted that the words in bold reiterate the position that any document inviting offers for subscription or purchase will be considered as a prospectus and therefore will have to comply with the requirements of the law relating to a prospectus. This strengthens the law since the question whether a document is a prospectus or not, cannot arise in the Sri Lankan context if that document is issued for the purpose of offering shares/debentures to the public.

---

[42] The instance under this may be an offer for sale. The issuer company may place an IPO with an institution which may decide to sell the stake after several months.

[43] Public Offering Prospectus Guidelines set out the minimum information for inclusion in a public offering.

[44] For example, a Guideline issued in 2005 required issuers to use plain English in prospectuses in an effort to ensure that information in offer documents were easily understood by investors, for them to make informed investment decisions. Source: http://www.dailyexpress.com.my/news.cfm?NewsID=32801

S. 37 deals with specific requirements as to the particulars in prospectus. S.37(1) specifies that the issuance of every prospectus shall contain information specified in Part I and reports specified in Part II of the Fourth Schedule to the Act. This provision can be looked at as an emphasis by the Registrar of Companies, the regulator, on the requirement of disclosure and the word 'shall' used in the provision making it mandatory is commendable. S.37(2) provides that any waiver pertaining to the requirements of the section shall be void. This is similar to s.235(2) CMSA 2007 of Malaysia. S.37(3) of the CA 2007 of Sri Lanka reiterates the requirement of compliance with the law. This type of mandatory requirement is common in the laws of other countries. For example, s.38(1) of CA 1965 of Malaysia provides similarly.

Alternate disclosure documents available under the laws of Malaysia are not available in Sri Lanka which the writer considers as a major weakness. Alternate disclosure documents are designed to suit the different needs of the issuer and it reduces costs as well.

Proviso to s. 37(3) CA 2007[45] provides exemptions to the mandatory requirement of prospectus, which say that the provision shall not apply:

(a) to a *bona fide* invitation to enter into an under writing agreement;
(b) when the shares are not offered to the public.
(c) offers of commercial papers by listed public companies to the public.[46](Wikramanayake, 2007)

These exemptions can be compared with the Malaysian provision of s.4(6)(a) of CA 1965 which provides that an offer or invitation to enter into an underwriting agreement shall not be an offer to the public. S.37(3)(b) of CA 2007 of Sri Lanka is similar to Malaysian provision in s.37 (2)(a) CA 1965 which is now applicable only to unlisted recreational clubs. These three exemptions can be summarized as attempts by the issuer company to raise capital without direct offers to the public. Similar exemptions are not available under FSMA 2000 of UK.

S.37(5) CA 2007 provides certain defences to issuers of a prospectus. It says that a person responsible for a prospectus shall not be liable in the event of non-compliance or contravention of the section if:

[45] Proviso (a) and (b) to s.37 (3) CA 2007 are similar to proviso (a) and (b) to s.40 (3) CA 1982.

[46] S.37(3)(c) CA 2007 is novel. Commercial paper is a short-term, unsecured, discounted, and negotiable notes or debt instrument sold by one company to another in order to satisfy immediate cash needs to meet short-term liabilities. Wikramanayake raises a doubt whether the exempted commercial paper is only those offered to the public through a stock exchange or any commercial paper offered by a limited public company.

(a) He is not cognizant with a matter, which is not disclosed;

(b) It is an honest mistake of fact on his part;

(c) The circumstances could be reasonably excused in the opinion of the court.

It is apparent that subsection (a) deals only with omission while (b) and (c) deal with any contravention or non-compliance. This may be compared with s.80(3) FSMA of (UK). The corresponding provision in Malaysia is s.236(2) CMSA 2007 which provides a defence and states that the information should be known to the person responsible or he should be able to obtain the required information by making such inquiries as were reasonable in the circumstances.

In addition to the three defences stated above, the proviso to s.37(5) states that no person shall incur liability in respect of the failure to comply with requirements for disclosure unless it can be proved that he had knowledge of the matter not disclosed. It is submitted that this proviso has weaknesses due to the following reasons. Firstly**,** as stated in the sub-section, the 'matter not disclosed' clearly relates to an omission and does not include misstatement. It is painless for a director to say that he was not aware of a particular fact that was omitted. Secondly, the phrase 'unless it be proved' indicate that it is the duty of the plaintiff to prove that the defendant (the issuer of prospectus) had the knowledge. It is clear from s.37(4) that the provision imposes criminal sanction, and as such, proving the case beyond reasonable doubt as in other criminal cases, will be a difficult task for the plaintiff, the person aggrieved. Thirdly**,** the defences are applicable only to the liability for contravention or non-compliance of s.37. Lastly the proviso to s.37(5) provides that if the information omitted are in relation to matters specified in paragraph17 of Fourth Schedule to the Act,[47] no director shall be liable unless it be proved that he had knowledge. As said, the burden of proof rests upon the aggrieved investor weakens the concept of investor protection.

Further, it is to be noted that the defences available differ from those in other countries under examination in this study. The defence mentioned under '(a)' and the proviso above may be compared to the 'due diligence' defence available under the UK (s.80(1) FSMA 2000) and Malaysian (s.236(2) CMSA 2007) laws, where the issuer could prove that the information was not actually known to him. The defence mentioned in '(b)' above provides for an honest mistake of fact on the part of the person who issued the prospectus, namely a director, promoter or officer. The word 'his' in this denotes a subjective

[47] Paragraph 17 includes *inter alia* the nature of interest of every director in the promotion, property acquired, interests of directors in other firms, amounts paid to them by other firms and services rendered by directors during the promotion of the company.

test and it is effortless for the person responsible for a prospectus to prove that any misstatement is an honest mistake of fact. Further, the defence mentioned in '(c)' above gives a wide discretion to the courts. It is submitted that these defences are too wide and may make the case easy for a person who wishes to dishonor the requirements of the Act, because the wide terms of 'mistake of fact', 'not cognizant' or 'reasonable excuse' have to be decided on a case by case basis. As such, the writer considers that these are weakness in the law of Sri Lanka.

The provision dealing with prospectus in Sri Lanka (s.37(6) CA 2007) declares that the specific requirements as to particulars in the prospectus is not applicable to rights/open issues of shares. These two types of issues will tend the shareholder to renounce it. The Listing Rules of Colombo Stock Exchange (Rule 5.2.f) provides that rights issues are only renounceable to the Central Depository System (CDS). It means that it can be marketed to third parties only by depositing such shares with the CDS. Therefore the law should be amended to the effect that, when the rights issues are coupled with renunciation to third parties, it should not be exempted from the requirements of a prospectus for the reason that it goes outside the ambit of 'existing shareholders'. Shortcomings in the statutory provision is rectified by the listing rule is incorrect in the opinion of the writer.

A copy of the prospectus has to be delivered to the Registrar of Companies for registration under s.40 CA 2007. This is similar to s.42 CA 1965 of Malaysia. It has been analysed already that the requirement of registration of prospectus that existed in the UK has been done away with.[48]This limited power is commendable since the aspect of registration with a power of refusal implies that all the prospectuses that are registered are complete ones as per the requirement of the law. This may be compared with s.42(2) CA 1965 of Malaysia. One of the grounds for refusal available under the Malaysian law, that unless the prospectus appears to comply with the requirements of this Act the Registrar shall not register, may be considered for improvement of Sri Lankan law.

Apart from all the other weaknesses that are stated above, non-availability of a general disclosure standard and the connected requirement of 'reasonable investor', like in the laws of the UK, and Malaysia are shortcomings in Sri Lanka law. General disclosure requirement shifts the burden to the issuer company which is statutorily expected to include in the disclosure document all information that a reasonable investor will require to make a decision. In the absence of such a general requirement, misstatement/omission in prospectus

[48] Registration requirement with the Registrar of Companies under s.83 FSMA 2000 of UK has been repealed.

will have to go through the detail checklist under Fourth Schedule to the CA 2007 of Sri Lanka.

Over and above the provisions contained in the CA 2007, the law of Sri Lanka has another important piece of legislation called the Securities and Exchange Commission Act No.36 of 1987. S.27A of the Act[49] provides that all listed public companies and public companies that have applied for listing shall not issue securities unless the issue has been approved by the Securities and Exchange Commission.[50] As mentioned under other jurisdictions, the terminology of 'approved' comprises within it the aspect of 'vetting'. The provision does not interfere with the power of registration of the Registrar of Companies. The aspect of approval is a welcome move in the law as it indicates that the interests of the investors are taken care of.

In addition to the statutory provisions, Listing Rules[51] govern contents of prospectuses and the requirements under this runs to eight and a half pages. One can imagine how lengthy a prospectus is expected to be by the regulators. The position satisfies the legal requirement of providing sufficient information. The question connected to this is that whether a reasonable investor will go through a document consisting of nearly 200 pages. Answers to this question by way of primary data were negative. There were only two IPO (equity) during the year 2015. The 2 equity listings at the CSE raised Rs. 329.5 million compared to 5 listings in 2014 which raised Rs 2,693.8 million.[52]

9. Conclusion

The prospectus requirements are made mandatory which does not mean that the investors are adequately protected. If the public issue is unregulated, companies will still disclose information in order to market their shares and each company will present various information under different names and formats. Investors will find it costly and difficult to evaluate the securities. Thus it is essential that public issue is regulated with a proper mandatory disclosure system. It can be seen that recent repeals and amendments of the relevant laws in England and Malaysia are focusing on providing protection to investors by a general disclosure requirement.[53] This is comprehensive and now it is clear as to what is expected from the issuers of prospectuses. This is strength to the laws relating to prospectus.

[49] Introduced by way of s. 17 of the Securities and Exchange Commission (Amendment) Act No.18 of 2003.
[50] This point will be revisited under Chapter 6, the Chapter on the role of Securities Commission.
[51] Colombo Stock Exchange Listing Rules of 2013, Chapter 3.
[52] Securities and Exchange Commission of Sri Lanka Annual Report 2015, p.24
[53] S.80 FSMA 2000(UK), s.236 CMSA 2007 (Malaysia)

The law of Sri Lanka has not kept up with the time and has only a specific disclosure requirement.

However, the exemption given in the provision relating to general disclosure creates some doubt. After providing an objective standard of 'reasonable requirement of the investor', the same section provides for a defence which is subjective. It may be argued that it is not difficult for the defendant to escape from liability by establishing his own state of mind that he was unaware. However, the counter argument may be that it is essential that the issuer also be given a reasonable opportunity; otherwise the law will not strike a balance between the investor and the issuer.

The merit does not lie in merely having a regulatory framework, but it also should be effective. Has the legislation achieved the goal of investor confidence by the requirement of registering a prospectus? This is a vexed question by many investors. The registration of a prospectus with the Registrar of Companies is being continued only in Sri Lanka. In Malaysia the prospectus is only lodged with the Registrar of Companies as the Securities Commission approves prospectuses. In the UK listing particulars and prospectuses are approved by the UKLA. Practically, going through all the prospectuses and approving them is not feasible and therefore investors' confidence is, in fact, not achieved by registering of prospectus unless it is scrutinized and approved.

Nevertheless, it is submitted that the general disclosure standard provision may not suit Sri Lanka. While accepting that the responsibility of providing information rests with the issuer, the law has not provided for any particular format for a prospectus. What will a reasonable investor understand from a 30-50-page document called a prospectus is the question posed by the writer. This problem mainly occurs in Sri Lanka rather than in England or Malaysia. A large portion of the prospectus gives accounting information in complex terms, which are difficult to understand without an accounting knowledge or background. A reasonable investor in Sri Lanka is different from a reasonable investor in the other countries mentioned. Therefore, due to differences in ability of comprehension, the general disclosure requirement which is appropriate for England or Malaysia will not suit Sri Lanka. The Sri Lanka law should state in simple terms the minimum requirement expected in a prospectus.[54] What Low Chee Keong said while commenting on sections 32 and 44 of SCA 1993 of Malaysia would be relevant here? 'In practice, these requirements mean that the presentation

[54] The writer framed this opinion based on primary source (interview) as to what stakeholders understand from a prospectus. The majority were of the view that they understand nothing but they still invest because they rely on the share broker.

of a prospectus is highly technical, legalistic and only understood by those with considerable financial expertise'. (Keong, 1997) The writer agrees with this view, because in the market some companies issue 2 different types of document, one to fulfil the statutory requirement in its technical form and other with same information in a simplified manner so that an ordinary investor can understand better.

Another shortcoming is that the disclosure requirement tends to measure up to what an investor should reasonably require. The writer is of the view that the requirement of the investor will differ depending on the amount the investor intends to invest and the issuer that he has selected. For example, the reasonable requirement of an investor who is willing to invest $500,000 will be different from the reasonable requirement of an investor who is willing to invest only $500. Similarly, the investor's reasonable requirement in selecting an issuer which is a multinational company would be different from one selecting a growing domestic concern. Therefore, it is submitted that a common standard of what an 'investor will reasonably require' will be difficult to achieve.

While providing for the contents of the prospectuses, the statutes are providing for exemptions to comply with such requirement and defences for contravention. In this regard the law of Malaysia has a unique provision. The SC of Malaysia preserves its discretionary powers by way of granting relief on adopting certain criterion. (S.235(3) CMSA 2007) Issuers with genuine reasons will get benefit out of this provision. Such a balanced stand should be a lesson for Sri Lanka, however, with caution.

10. Findings

The provisions relating to prospectus in Sri Lanka are archaic and the only provision in the securities legislation is too below the standard when compared to foreign jurisdictions. As a result, the protection of investors is at stake.

The writer recommends the following reforms to the existing law of Sri Lanka:

1) The definition available in the Companies Acts be amended and superseded by a new definition to the effect that 'prospectus' means and includes any document inviting offers from the public for subscription or purchase of securities, (unless exempted).
2) A definition for public issue be included in the Acts, in clear terms, to mean that an offer to any section of the public means an offer to the public.

3) The power of approving prospectuses should be given to a Securities Commission, along with the power to refuse to approve and issue a stop order for any contravention. (This is for the sake of investor protection)
4) Specific requirements for a prospectus should be included as a statutory provision, replacing the statement in the schedule, (as in Sri Lanka) and should clearly state the minimum requirements in a nutshell rather than running to pages. (This looks after both the parties, namely the investor and the issuer)
5) Defences available for non-compliance (s.37(5) CA 2007 of Sri Lanka) should be cautiously examined, if put forward . (This is to avoid misuse whereby investor protection may be at stake)
6) Rules to regulate electronic prospectuses should be formulated, to be in line with modern information technological advancement. (This will attract foreign investment)

References

Farrar John H and Hannigan Brenda, 'Farrar's Company Law', 4th Edition, (1998)

Geoffrey,S, Capital Market Laws of Malaysia, 2010, LexisNexis

Low Chee Keong, Securities Regulation in Malaysia, 1997

Paul L. Davies, Gower & Davies's Principles of Modern Company Law, 8th Edi.2008

Pennington RR, Company Law, 2001

Redmond Paul, Companies and Securities Law Commentary and Material, 5th Edi, 2009

Wijewardena, W.A 'Development of the capital market in Sri Lanka', Chapter 7, Development of Capital Market in the SEACEN Countries edited by Ng Beoy Kui (SEACEN Research & Training Center), (1989)

Wikramanayake Aritha R, Company Law in Sri Lank, 2007

Wong Yoke Eng, Securities Law for Public Listed Companies in Malaysia, 2003