

P.N.D.C.L. 333
SECURITIES INDUSTRY ACT, 1993

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P.N.D.C.L. 333SECURITIES INDUSTRY ACT, 1993¹

AN ACT to regulate the securities industry and to provide for related matters.

1. This Act was issued as the Securities Industry Law, 1993 (P.N.D.C.L. 333) made on the 5th day of January, 1993 and notified in the *Gazette* on the 19th July, 1993.

PART ONE

*Securities Regulatory Commission**Establishment***1. Establishment of the Commission**

(1) There is hereby established a commission to be known as the Securities and Exchange Commission.²

(2) The Commission is a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name.

(3) The Commission may, for the performance of its functions under this Act, acquire, hold and dispose of movable and immovable property and may enter into a contract or any other transaction.

2. Composition of the Board

(1) The governing body of the Commission is a Board consisting of

- (a) the chairman,
- (b) the Director-General,
- (c) the two deputy Directors-General,
- (d) one representative of the Bank of Ghana not below the rank of a director,
- (e) one representative of the Ministry of Finance not below the rank of a director,
- (f) the Registrar-General or the representative of the Registrar-General, and
- (g) four other persons including a Justice of the Superior Court of Judicature or a lawyer qualified to be appointed a Justice of the Superior Court of Judicature.

(2) The President shall, in making appointment under paragraph (g) of subsection (1), consider the expertise, knowledge and experience of those persons in matters relating to securities and investment.

(3) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.³

3. Terms of membership

(1) A member of the Board shall hold office for three years and is eligible for re-appointment.

(2) A member of the Board may resign from membership by notice in writing addressed to the President.⁴

2. Amended by section 1 of the Securities Industry (Amendment) Act, 2000 (Act 590). Section 1 also provided that a reference in any other enactment or document to the Securities Regulatory Commission shall be read and construed as a reference to the Securities and Exchange Commission.

3. Amended by section 2 of the Securities Industry (Amendment) Act, 2000 (Act 590).

4. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

- (3) A member may be removed from membership of the Board where the member
- (a) becomes a person of unsound mind;
 - (b) is absent from three consecutive meetings of the Board without permission or reasonable cause;
 - (c) is proved guilty of a grave misconduct in relation to duties as a member of the Board;
 - (d) is sentenced to death or to imprisonment for a term not exceeding twelve months without the option of a fine, or is convicted of an offence involving dishonesty;
 - (e) is declared bankrupt under a law in force in the Republic or in any other country; or
 - (f) being person possessed of professional qualifications, is disqualified or suspended, otherwise than at the member's request, from practicing that profession in the Republic or in any other country by an order of a competent authority made in respect of that member.

4. Meetings of the Board

(1) The Board shall ordinarily meet at least once in every two months for the dispatch of business at the times and places determined by the chairman.

(2) The chairman shall, at the request in writing of not less than four members of the Board, call an extraordinary meeting of the Board at the time and place determined by the chairman.

(3) The chairman shall preside at the meetings of the Board and in the absence of the chairman a member of the Board designated by the chairman shall preside at the meeting.

(4) Where a member of the Board is not so designated the members of the Board present shall elect one of their number to preside at the meeting.

(5) The quorum at a meeting of the Board is five including the Director-General or in the Director-General's absence a Deputy Director-General.⁵

(6) Questions proposed at a meeting of the Board shall be determined by a simple majority of the members present and voting and where the votes are equal the chairman or the person presiding shall have a casting vote.

(7) The Commission may request the attendance of a person to act as an adviser at any of its meetings but that person shall not vote on a matter for decision by the Board.

(8) The validity of an act or the proceedings of the Board shall not be affected by a vacancy among its members or a defect in the appointment of a member.

(9) Subject to this section the Board shall regulate its own procedure.

5. Chief executive and other staff of the Commission

(1) The President, in accordance with article 195 of the Constitution shall appoint

- (a) a Director-General of the Commission who shall be the chief executive of the Commission and shall hold office on the terms and conditions specified in the letter of appointment, and

5. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

- (b) two Deputy Directors-General of the Commission on the terms and conditions specified in the letter of appointment.

(2) The Deputy Directors shall assist the Director-General in the performance of functions and perform any other functions directed by the Commission.

(3) The President may, in accordance with article 195 of the Constitution, appoint any other employees as are necessary for the proper performance of the Commission's functions on the terms and conditions determined by the President; but the President may, in accordance with clause (2) of article 195 of the Constitution delegate the powers of appointment of public officers.⁶

Finance

6. Funds of Commission

(1) The funds of the Commission include

- (a) grants received from the Government for the performance of its functions;
- (b) the loans granted to the Commission by the Government or any other body or person;
- (c) the moneys accruing to the Commission in the course of the performance of its functions under this Act; and
- (d) the grants made by donors approved by the Minister.

(2) The moneys received by or on behalf of the Commission shall be deposited to the credit of the Commission in a bank approved by the Commission.

6A. Imposition of transaction levy

(1) The Commission shall by legislative instrument, make Regulations to impose a levy in respect of investments in securities that it may determine.

(2) The levy shall be of a rate and payable by a buyer and a seller on the investment transactions.⁷

7. Accounts and audit

(1) The Commission shall keep proper books of accounts and prepare proper records in relation to the accounts in the form approved by the Auditor-General.

(2) The books and accounts of the Commission shall be audited by the Auditor-General within six months after the end of every financial year.

(3) The Auditor-General shall make a report on the accounts to the Commission.

(4) The financial year of the Commission shall be the same as the financial year of the Government.⁸

(5) Repealed.⁹

6. Substituted by section 3 of the Securities Industry (Amendment) Act, 2000 (Act 590).

7. Inserted by section 4 of the Securities Industry (Amendment) Act, 2000 (Act 590).

8. Substituted by section 5 of the Securities Industry (Amendment) Act, 2000 (Act 590).

9. Repealed by section 5 of the Securities Industry (Amendment) Act, 2000 (Act 590).

7A. Annual and other reports

(1) The Board shall submit to the Minister as soon as practicable and in any event not more than six months after the end of each financial year, an annual report dealing generally with the activities and operations of the Commission during the year to which the report relates which shall include

- (a) the audited accounts of the Commission and the Auditor-General's report on the accounts, and
- (b) any other information that the Board may consider necessary.

(2) The Minister shall within two months after receipt of the annual report submit the report to Parliament with the statements that the Minister considers necessary.¹⁰

8. Allowances for members of the Board

The members of the Board other than the Director-General and the two Deputy Directors-General shall be paid the allowances determined by the Minister.¹¹

8A. Committees of the Board

The Board may, for the performance of the functions of the Commission under this Act appoint committees composed of members of the Board or non-members or both and may assign to the committee any of its functions determined by the Board, except that a committee composed exclusively of non-members may only advise the Commission.¹²

*Administration***8B. Establishment of administrative hearings committee**

(1) Without limiting the scope of section 8A there is hereby established an administrative hearings committee of the Board.

(2) The hearings committee shall be composed of the chairman of the Board as the chairman of the hearings committee and four other members of the Board elected by the members.

(3) The functions of the hearings committee are,

- (a) to examine and determine complaints and disputes related to, in respect of, or arising out of a matter to which this Act applies; and
- (b) to discharge a duty related to the functions specified under paragraph (a) as may be referred to it by the Board.

8C. Submission of complaint and examination of issues

(1) A complaint, dispute or a violation arising under this Act shall, before a redress is sought in the Courts, be submitted to the Board for hearing and determination in accordance with this Part.

10. Inserted by section 6 of the Securities Industry (Amendment) Act, 2000 (Act 590).

11. Substituted by section 7 of the Securities Industry (Amendment) Act, 2000 (Act 590).

12. Inserted by section 8 of the Securities Industry (Amendment) Act, 2000 (Act 590).

(2) A matter to which subsection (1) applies shall be submitted in writing to the Director-General and where it is not in writing the Director-General shall cause the matter to be reduced into writing.

(3) The Director-General shall cause the matter to be investigated and shall unless the Director-General

- (a) considers the matter to be frivolous or vexatious, or
- (b) can settle the disputed matter or complaint to the satisfaction of parties concerned,

refer the matter together with the findings of the investigations to the hearings committee within thirty days from the date of receipt of the written complaint, dispute or violation and shall at the same time inform the complainant or persons concerned of the submission to the hearings committee.

(4) Subject to section 8F, the hearings committee shall on receipt of a complaint or a matter under this Part examine and determine the complaint or matter.

(5) The hearings committee shall not determine a complaint or matter which is the subject matter of an action before a Court unless the parties to the action so agree.

8D. Representation before hearings committee

A person appearing before the hearings committee may

- (a) make a representation to the hearings committee;
- (b) be represented by a lawyer or any other expert of that person's choice;
- (c) produce the evidence which that person considers necessary for the adjudication of the complaint or matter.

8E. Proceedings of the hearings committee

(1) The hearings committee may exclude persons from its proceedings, other than parties to the proceedings and their lawyers or experts, where it considers it necessary in the interest of public order, public morality or the protection of the private lives and interest of persons concerned in the proceedings.

(2) The hearings committee may call witnesses and request the production of documents which it considers necessary to determine the issue before it.

(3) Witnesses appearing before the hearings committee may be paid the allowances determined by the Board.

(4) The hearings committee shall give a fair hearing to the persons who appear before it and shall be guided by natural justice in its proceedings.

(5) Where a complaint is submitted to the hearings committee under subsection (1) of section 8C, the hearings committee shall, within thirty days from the date of receipt of the complaint or matter, examine and determine the complaint or matter unless there is delay caused by the complainant, the representative or witness of the complainant.

(6) Except as otherwise provided in this Part the hearings committee shall determine the procedure for its hearings.

8F. Decisions of hearings committee subject to approval of the Board

(1) A decision of the hearings committee on a matter submitted to it for determination shall be referred to the Board.

(2) The Board on receipt of the decision may

- (a) approve of the decision,
- (b) remit the issue to the hearings committee for further consideration, or
- (c) modify the decision.

8G. Appeals from decision of hearings committee

A person dissatisfied with a decision of the hearings committee under this Part confirmed by the Board may appeal to the High Court.¹³

*Functions of the Commission***9. General functions of the Commission**

The functions of the Commission are

- (a) to advise the Minister on matters relating to the securities industry;
- (b) to maintain surveillance over activities in securities to ensure orderly, fair and equitable dealings in securities;
- (c) to register, licence, authorise or regulate, in accordance with this Act or the Regulations, stock exchanges, investment advisers, unit trust schemes, mutual funds, securities dealers, and their agents and to control and supervise their activities with a view to maintaining proper standards of conduct and acceptable practices in the securities business;
- (d) to formulate principles for the guidance of the industry;
- (e) to monitor the solvency of licence holders and take measures to protect the interest of customers where the solvency of the licence holder is in doubt;
- (f) to protect the integrity of the securities market against abuses arising from the practice of insider trading;
- (g) to adopt measures to minimise and supervise conflict of interests that may arise for dealers;
- (h) to review, approve and regulate takeovers, mergers, acquisitions and any form of business combinations in accordance with the law or code of practice requiring it to do so;
- (i) to create the necessary atmosphere for the orderly growth and development of the capital market;
- (j) to perform the functions referred to in section 279 of the Companies Code, 1963 (Act 179);
- (j) examine and approve invitations to the public;

13. Sections 8B to 8G are inserted by section 9 of the Securities Industry (Amendment) Act, 2000 (Act 590).

- (k) to undertake any other activities that are necessary or expedient for giving full effect to this Act; and
- (l) to perform any other functions specified under this Act.¹⁴

10. Production of books by a stock exchange and certain persons

(1) The Board may by notice in writing where it considers that there is sufficient cause to do so, give directions to

- (a) a stock exchange;
- (b) a member of the council of a stock exchange;
- (c) a manager of a unit trust scheme or a mutual fund;
- (d) a person who is or has been, alone or together with another person, a dealer or an investment adviser or is or has been a dealer's representative;
- (e) a nominee controlled by a person referred to in paragraph (a) or (d) jointly controlled by two or more persons at least one of whom is a person referred to in these paragraphs;¹⁵
- (f) a person who is or has been an officer or an employee of, or an agent, a lawyer, an auditor or any other person acting in a capacity for or on behalf of, a stock exchange or a person referred to in paragraph (b), (c), (d) or (e);
- (g) any other person who is or has been a party to a dealing in securities; or
- (h) any other person,

to produce to a person authorised by the Board the books, subject to subsection (2), specified in the direction.

(2) For the purposes of subsection (1), books in respect of which a request to produce may be made relate to

- (a) the business or affairs of a stock exchange;
- (b) a dealing in securities;
- (c) a dealing in unit trusts and mutual funds;
- (d) an advice concerning securities or the issuing or publication of a report or analysis concerning securities;
- (e) the character or financial position of, or a business carried on by, a person referred to in paragraph (c), (d) or (e) of subsection (1); or
- (f) an audit of or a report of an auditor concerning a dealing in securities or the accounts or records of a dealer or of an investment adviser.

(3) A direction to produce shall not be made to a person under section 10 (1) (h) unless the Board believes that that person has in his custody or under the control of that person books which relate to a matter specified under subsection (2).

(4) Books shall not be directed to be produced by a person under paragraph (f) of subsection (1) at a time or place that may unduly interfere with the proper conduct of the normal daily business of that person.

14. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

15. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

(5) The Board may in writing authorise a person possessed of a qualification that it considers adequate to exercise the power to request for the production of books conferred on it under this section.

(6) A reference in subsection (1) to a dealing in securities or to a business carried on by a person includes a reference to a dealing in securities by a person as a trustee.

(7) An authorisation from the Board to a person under subsection (5) may be of general application or may be limited to making requirements of a particular stock exchange, manager of a unit trust scheme or manager of a mutual fund or any other person.

(8) Where the Board, or a person authorised by the Board, requires the production of books under this section and a person has a lien on the books, the production of the books shall not prejudice the lien.

(9) An authorised officer shall, where required to do so, produce evidence of the authorisation of that officer.

(10) An action shall not lie against a person for complying with a direction or requirement made or given under this section to produce books.

(11) A power conferred by this section to make a requirement of a person extends, where the person is a body corporate, to making that requirement of a person who is or has been an officer of the body corporate whether that body corporate is in the course of being wound up or has been dissolved.

11. Action on production of the books

(1) Where the required books are produced under section 10, the person to whom they are produced

- (a) may take possession of them, make copies of them, or take extracts from them;
- (b) may require the other person or a person who was party to the compilation of the books to make a statement providing an explanation of any of the books;
- (c) may retain possession of the books for as long as the Board considers necessary to enable the books to be inspected and copies of or extracts from the books to be made or taken by or on behalf of the Commission; and
- (d) shall permit the person who produced them, on giving a reasonable notice and specification of the books, to have access to them.

(2) Where the books are not produced, the Board or the authorised person may require the person who should have produced the books

- (a) to state, to the best of the knowledge and belief of that person, where the books may be found;
- (b) to identify the person who, to the best of the knowledge and belief of that person last had custody of the books and where the identified person may be found; or
- (c) to state the reasons why the books cannot be produced.

12. Order by magistrate to search premises

(1) Where it appears to a District Magistrate, on written information on oath, and after the necessary enquiry, that there are reasonable grounds for suspecting that there are on any premises books, the production of which has been directed and have not been produced in compliance with the direction, the magistrate may issue a warrant authorising the Commission or any other person named in it

- (a) to search the premises and to break open and search a cupboard, drawer, container or any other receptacle, whether a fixture or not, in the premises; and
- (b) to take possession of, or secure against interference, the books that appear to be books the production of which was so directed.

(2) The powers conferred under subsection (1) are in addition to and not in derogation of, any other powers conferred by the Criminal Offences Act, 1960 (Act 29) relating to searching of premises.

(3) In this section “**premises**” includes a structure, building, a place, vehicle, vessel or an aircraft.

13. Incriminating statement

(1) It is not an excuse for a person to fail to provide a statement explaining a matter relating to the compilation of the books or a matter requested under section 10 on the grounds that the statement might tend to incriminate that person.

(2) Where that person claims before making a statement that the statement might tend to incriminate that person, the statement provided in answer to the request is not admissible in evidence against that person in any criminal proceedings other than proceedings under section 10, 11 or 12 of this Act.

(3) Subject to subsection (2), a statement made by a person in compliance with a requirement under section 10 may be used in evidence in any criminal or civil proceedings against that person.

14. Penalties

A person who

- (a) without reasonable excuse, refuses or fails to comply with a direction given under section 10, 11 or 12, or
- (b) furnishes information or makes a statement that is false or misleading in a material particular for the purposes of section 10, 11 or 12, or
- (c) without reasonable excuse, obstructs or hinders the Commission or a person in the exercise of a power under section 10, 11 or 12,

commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.¹⁶

16. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

15. Admission in evidence of copies or extracts of books

(1) Subject to this section and to section 17, a copy of or an extract from a book relating to a matter specified in subsection (1) or (2) of section 10 is admissible in evidence as if it were the original book.

(2) A copy of or an extract from a book is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the book or of the relevant part of the book.

(3) For the purposes of subsection (2), evidence that a copy of or an extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given orally or by an affidavit or statutory declaration.

16. Savings for lawyers

Section 10, 11 or 12 shall not compel a legal practitioner to produce a document that contains privileged communication made by or to the legal practitioner in a professional capacity or authorise the taking of possession of that document which is in the possession of the legal practitioner but if the legal practitioner refuses to produce the document, the legal practitioner shall nevertheless be obliged to give the name and address of the person to whom or by or on whose behalf the communication was made.

17. Secrecy of information from books

(1) An information obtained from a book that has been produced under section 10, 11 or 12 shall not, without the previous consent in writing of the person who has custody or control of the books, be published or disclosed, except to the Commission and its officers and employees, unless the publication or disclosure is required

- (a) with a view to the institution of or for the purposes of, criminal proceedings, or
- (b) for the purpose of proceedings under section 10, 11 or 12.

(2) A person who publishes an information in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.¹⁷

18. Disclosure to the Commission

(1) The Board may, where it considers it necessary for the protection of investors, require a dealer or an exempt dealer to disclose to it, in relation to an acquisition or a disposal of securities, the name of the person from or through whom or on whose behalf the securities were acquired or disposed of and the nature of the instructions given to the dealer in respect of the acquisition or disposal.

(2) The Board may require a person who has acquired, held or disposed of securities to disclose to it

- (a) whether the person acquired, held or disposed of securities as a trustee for or on behalf of another person or as a nominee,

17. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

- (b) the name of that other person, and
- (c) the nature of the instruction given as trustee or nominee in respect of the acquisition, holding or disposal.

(3) The Board may require a stock exchange to disclose to it, in relation to an acquisition or a disposal of securities on the stock market of that stock exchange, the names of the members of that stock exchange who acted in the acquisition or disposal.

19. Suspicion regarding breach of specified provisions

(1) Where the Board considers

- (a) that it may be necessary to prohibit trading in securities of, or made available by a body corporate pursuant to section 31, or
- (b) that a person may have contravened a provision of Part Eight in relation to securities of, or made available by a body corporate, or
- (c) that a person may have contravened a provision of Part F of Chapter II of the Companies Act, 1963 (Act 179) in relation to securities in a body corporate,

it may require a director, secretary or an executive officer of the body corporate referred to in paragraph (a), (b) or (c) to disclose to the Commission an information of which the director, secretary or the executive officer is aware, being information that might have affected a dealing that has taken place, or that might affect a future dealing in securities of, or made available by, the body corporate.

(2) For the purposes of paragraph (a), (b) or (c) of subsection (1), the Board may require a person whom the Board believes on reasonable grounds to be capable of giving information concerning

- (a) a dealing in relevant securities,
- (b) an advice given by a dealer, an investment adviser, a dealer's representative or an investment representative concerning securities,
- (c) the issuing or publication of a report or analysis by a dealer, an investment adviser, a dealer's representative concerning relevant securities,
- (d) the financial position of a business carried on by a person who is or has been, alone or together with any other persons, a dealer or an investment adviser and has dealt in, or given advice concerning relevant securities,
- (e) the financial position of a business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by two or more persons at least one of whom is a person referred to in that paragraph, or
- (f) an audit of, or a report of an auditor concerning the accounts or records of a dealer or of an investment adviser, being accounts or records relating to dealings in relevant securities,

to disclose to the Commission the information that person has in relation to any of the matters specified in this subsection.

(3) For the purposes of subsection (2) "**relevant securities**" means securities of, or made available by, the body corporate referred to in subsection (1).

(4) A person is not excused from disclosing information to the Commission pursuant to a requirement made under subsection (1) and (2) on the grounds that the disclosure of the information might tend to incriminate that person.

(5) Where a person claims, before making an oral statement disclosing information required to be disclosed under subsection (1) or (2), that the statement might tend to incriminate that person, the statement provided in answer to the request is not admissible in evidence against that person in criminal proceedings other than proceedings under this section.

(6) A person who, or stock exchange which, without reasonable excuse, refuses or fails to comply with a requirement of the Board under subsection (1), (2), or (3) of section 18 or subsection (1) or (2) of this section, commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.¹⁸

(7) A person who, for the purposes of subsection (1), (2) or (3) of section 18 or subsection (1) or (2) or this section, discloses information, or makes a statement, which is false or misleading in a material particular commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.¹⁹

(8) It is a defence to a prosecution for an offence under subsection (7) for the defendant to prove belief on reasonable grounds that the information or statement was true and was not misleading.

(9) In this section a reference to disclosing information includes, in relation to information that is contained in a document, the furnishing of the document.

(10) A person shall not be subject to a liability for having complied with a requirement made or purported to have been made under this section.

20. Investigation of certain matters

Where the Board has reason to suspect that a person has committed an offence under this Act or the Companies Act, 1963 (Act 179) or has been guilty of fraud or dishonesty in relation to dealing in securities, it may make the investigation that it thinks proper in pursuance of this Act.

21. Inspection by the Commission

(1) The Board may inspect the books, accounts, documents and transactions of a stock exchange, a unit trust scheme, a mutual fund, a dealer or an investment adviser.

(2) The Board may appoint a person possessed of the qualification that it considers adequate to exercise the power of the Commission under subsection (1).

(3) For the purposes of an inspection under this section, the stock exchange or any of the persons referred to in subsection (1), shall afford the Commission access to, and shall produce books, accounts and documents and shall give the information or facilities that may be required to conduct the inspection.

18. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

19. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

(4) A person appointed by the Board may copy or take possession of the books, accounts and any other documents of a stock exchange, the manager of a unit trust scheme or mutual fund, a dealer or investment adviser.

(5) A person, stock exchange or unit trust scheme, or mutual fund which fails, without reasonable excuse, to produce any book, account or document, information or facilities in accordance with subsection (3), commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.²⁰

22. Orders of the Court

(1) Where,

- (a) on the application of the Commission, it appears to a Court that a person has committed an offence under this Act, or has contravened the conditions or restrictions of a licence or the rules or listing rules of a stock exchange or is about to do an act with respect to dealing in securities that, if done, would be an offence or a contravention, or
- (b) on the application of a stock exchange, it appears to the Court that a person has contravened the rules or listing rules of the stock exchange,

the Court may, without prejudice to any other orders it may make, make an order,

- (c) in the case of persistent or continuing breaches of this Act or of the conditions or restrictions of a licence, or of the rules or listing rules of a stock exchange, restraining the person from carrying on a business of dealing in securities, acting as an investment adviser or as a dealer's representative or investment representative, or from posing as carrying on that business or so acting;
- (d) restraining a person from acquiring, disposing of or otherwise dealing with the securities that are specified in the order;
- (e) appointing a receiver of the property of a dealer or of property that is held by a dealer for or on behalf of another person whether on trust or otherwise;
- (f) declaring a contract relating to securities to be void or voidable;
- (g) for the purposes of securing compliance with any other order under this section, directing a person to do or refrain from doing a specified act; or
- (h) ancillary to any of the orders specified in this paragraph considered necessary.

(2) The Court may, before making an order under subsection (1), direct that notice of the application should be given to a person who it thinks fit, or direct that notice of the application should be published in a manner that it thinks fit, or both.

(3) A person appointed by order of the Court under subsection (1) as a receiver of the property of a dealer may

- (a) require the dealer to deliver to the receiver property of which the latter has been appointed receiver or to give to the receiver the information concerning that property that may reasonably be required;

20. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

- (b) acquire and take possession of property of which that person has been appointed receiver;
- (c) deal with property which that person has acquired or taken possession of in a manner in which the dealer might lawfully have dealt with the property; and
- (d) exercise any other powers in respect of the property that are specified in the order.

(4) In subsections (1) and (3), “**property**” in relation to a dealer, includes moneys, securities and documents of title to securities or any other property entrusted to or received on behalf of any other person by the dealer or another person in the course of or in connection with a business of dealing in securities carried on by the dealer.

(5) A person who, without reasonable excuse, contravenes or fails to comply with

- (a) an order applicable under subsection (1), or
- (b) a requirement of a receiver appointed by order of the Court under subsection (1),

commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.²¹

(6) Subsection (5) does not affect the powers of the Court to punish for contempt of court.

(7) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of an order.

23. Statements of principle

(1) The Commission may issue statements of principle with respect to the conduct and financial standing expected of persons licensed under this Act.

(2) The conduct expected may include compliance with a code or standard issued with the permission of the Commission by a person or body other than the Commission.

(3) Failure to comply with a statement of principle under this section is a ground for the taking of disciplinary action or the exercise of powers of intervention, but does not constitute an offence or give rise to a right of action by investors or any other persons affected or affect the validity of a transaction.

(4) The exercise of disciplinary action under subsection (3) includes the exercise of power under section 57 or 62 and those sections shall be construed accordingly.

(5) Where a statement of principle relates to compliance with a code or standard issued by a person or body other than the Commission, the statement of principle may provide

- (a) that failure to comply with the code or standard shall be a ground for taking disciplinary action or exercising a power under section 57 or 62, in the cases and to the extent as may be specified; and

21. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

- (b) that an action shall not be taken, or a power exercised, except at the request of the person or authority by whom the code or standard in question was issued.

(6) The Commission shall exercise its power in the manner that appears to the Board appropriate to secure compliance with statements of principal under this section.

PART TWO

Stock Exchanges

24. Establishment of stock markets

A person shall not establish or assist in establishing or maintaining or pose as providing or maintaining a stock market unless it is authorised under this Act.

25. Approval by the Commission of a stock exchange

(1) Application for approval as a stock exchange may be made to the Commission in the prescribed form.

(2) An approval shall not be granted to a person to operate as a stock exchange other than a body corporate.

(3) The Commission may in consultation with the Minister approve a body corporate as a stock exchange if it is satisfied

- (a) that at least three members of the body corporate will carry on the business of dealing in securities independently of and in competition with each other;
- (b) that the rules of the body corporate make satisfactory provision
- (i) for the exclusion from membership of persons who are not of good character and of high business integrity;
 - (ii) for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of or a failure to comply with the rules of the stock exchange or a provision of this Act;
 - (iii) for the making of a report to the Commission by the body corporate where it rejects an application for membership or where it suspends or expels a member;
 - (iv) for the terms and conditions of the chief executive officer of the body corporate, including a term that the chief executive officer is not liable to dismissal or removal from office without the prior approval of the Commission;
 - (v) with respect to the conditions under which securities may be listed for trading in the market proposed to be conducted by the body corporate;
 - (vi) with respect to the conditions governing dealing in securities by members;

- (vii) with respect to the class of securities that may be dealt in by members;
- (viii) with respect to a fair representation of persons in the selection of its council members and administration of its affairs and provide that one or more council members is or are representative of listed companies, investors, and the professions relevant to securities trading and not be associated with a stock broker, or dealer; and
- (ix) generally, for the carrying on of the business of the stock exchange with due regard to the interest of the public; and

(c) that the interests of the public will be served by the granting of the approval.

(4) This section does preclude the Commission from appointing a person who is knowledgeable in the securities industry and who is not associated with a stockbroker or dealer, to be on the council of a stock exchange representing the public interest.

(5) The person appointed under subsection (4)

- (a) shall have the same rights, powers, duties and obligation, liberties and privileges as any other member of the council of the stock exchange, and
- (b) shall hold office for a period specified by the Board which may revoke the appointment.

(6) The Board shall publish in the *Gazette* a notice of approval for the establishment of a stock exchange and a cancellation or suspension of an approval.

(7) Where the Board is of opinion that an approval granted to a stock exchange under subsection (3) should be withdrawn in the public interest, it may serve on the council of that stock exchange a written notice that it is considering the withdrawal of the approval for the reasons stated in the notice, and after giving an opportunity to the council to be heard on the matter, it may cancel the approval made under subsection (3).

(8) A cancellation under subsection (7) shall not take effect until after the expiration of three months from the date on which the cancellation is published in the *Gazette*.

(9) With effect from the date on which a notice of cancellation of approval under subsection (8) is published in the *Gazette*, the council shall ensure that trading on the stock exchange ceases.

(10) During the three months between the publication and the effective date of the cancellation, the council shall take steps to wind up the business of the stock exchange.

26. Approval by the Commission of amendments to rules

(1) Where an amendment is made, whether by way of rescission, alteration or addition, to the rules of a stock exchange or the listing rules of a stock exchange, the council of the stock exchange shall forward a written notice of it to the Commission for approval.

(2) The Commission may give notice in writing to the stock exchange concerned that it approves the amendment or that it disapproves the whole or a specified part of the amendment and until that notice is given the amendment shall not have effect.

(3) This section does not preclude the Commission, after consultation with the council of a stock exchange, from amending the rules of an approved stock exchange by written notice specifying the amendments and the dates those amendments shall come into force, but the Commission may dispense with the consultation if it considers it necessary to do so for the protection of investors.

(4) A notice under this section may be served personally or by post.

27. Assistance to the Commission

(1) A stock exchange shall provide the assistance to the Commission that the Commission reasonably requires for the performance of its functions, including the furnishing of returns and providing the information relating to the exchange's business or in respect of its dealing in securities or any other specified information that the Commission may require for the proper administration of this Act.

(2) Where a stock exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the stock exchange, it shall, within seven days, give to the Commission written particulars of the name of the member, the reason for and the nature of the action taken, the amount of the fine, and the period of the suspension.

28. Disciplinary powers of the Commission

(1) The Commission may review a disciplinary action taken by a stock exchange under subsection (2) of section 27 and may affirm or set aside a stock exchange decision after giving the member and the stock exchange an opportunity to be heard.

(2) Subsection (1) does not preclude the Commission, in a case where a stock exchange fails to act against a member of the stock exchange, from suspending, expelling or otherwise disciplining a member of the exchange but before doing so the Commission shall give the member and the stock exchange an opportunity to be heard.

(3) A person who is aggrieved by the decision of a stock exchange or the Commission under this section may, within one month after notification of the decision, appeal to the Minister.²²

29. Observance or enforcements of rules of a stock exchange

(1) Where a person who is under an obligation to comply with, observe, enforce or give effect to the rules or regulations of a stock exchange fails in performing the duty, the Court, on the application of the Commission, a stock exchange or a person aggrieved by the failure, and after giving to the person against whom the order is sought an opportunity of being heard, may make an order instructing that person to discharge the duty.

(2) For the purposes of subsection (1)

(a) a body corporate which is admitted to an official list of a stock exchange and has not been removed from that official list, or

(b) a person associated with a body corporate which is admitted to an official list of a stock exchange and has not been removed from that official list,

is under an obligation to comply with, observe and give effect to the rules of that stock exchange to the extent to which those rules apply in relation to it or that person.

22. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

30. Directions to a stock exchange

(1) The Commission may, where it appears to be in the public interest, issue a direction to a stock exchange, and the stock exchange shall comply with the direction,

- (a) with respect to trading on or through the facilities of that stock exchange or with respect to a security listed on that stock exchange, or
- (b) with respect to the manner in which a stock exchange carries on its business, including the manner of reporting off-market purchases, or
- (c) with respect to any other matters which the Commission considers necessary for the effective administration of this Act.

(2) A stock exchange which, without reasonable excuse, fails or refuses to comply with a direction given under subsection (1), commits an offence and is liable on conviction to a fine of fifty penalty units and to a further fine of twenty-five penalty units for each day the non-compliance continues after conviction.²³

(3) *Repealed.*²⁴

(4) *Repealed.*²⁵

(5) Where the Board is satisfied that an executive officer of a stock exchange

- (a) has wilfully contravened a provision of this Act or of the Regulations or the rules of a stock exchange, or
- (b) has without reasonable justification or excuse, failed to enforce compliance with that provision by a member of the stock exchange or a person associated with that member,

the Board may, in the public interest or for the protection of investors, and after giving the executive officer an opportunity of being heard, direct by notice in writing to the stock exchange to remove from office or employment the executive officer, and the stock exchange shall comply with the direction; or the Board may instead censure the executive officer.

31. Prohibition of trading in particular securities

(1) Without prejudice to the generality of section 30, where the Board is of the opinion that it is necessary to prohibit trading in particular securities of, or made available by, a body corporate on the stock market of a stock exchange in order to protect the interest of the public, the Board may give notice in writing to the stock exchange stating that it has formed that opinion and setting out its reasons.

23. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

24. Repealed by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590). The subsection reads:

“(3) A stock exchange that is aggrieved by any direction of the Commission under subsection (1) may appeal to the Secretary within 30 days of the date of the direction.”

25. Repealed by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590). The subsection reads:

“(4) In any appeal under subsection (3), the decision of the Secretary shall be final.”
This contravenes clause (3) of article 125 of the 1992 Constitution.

(2) If, after the receipt of the notice, the stock exchange does not take action to prevent trading in the securities to which the notice relates on the stock market of the stock exchange and the Board is still of the opinion that it is necessary to prohibit trading in those securities on that stock market, the Board may, by notice in writing to the stock exchange, prohibit trading in those securities on that stock market during the period, not exceeding fourteen days, that is specified in the notice.

(3) Where the Board gives a notice to a stock exchange under subsection (2) the Board shall

- (a) at the same time send a copy of the notice to the body corporate together with a statement setting out the reasons for the giving of the notice, and
- (b) as soon as practicable furnish to the Minister a written report setting out the reasons for giving the notice and send a copy of the report to the stock exchange.

(4) *Repealed.*²⁶

(5) *Repealed.*²⁷

(6) A stock exchange which permits trading in securities on the stock market of the stock exchange in contravention of a notice under subsection (2) commits an offence and is liable on conviction to a fine of not more than fifty penalty units for each day the contravention continues.²⁸

PART THREE

*Unit Trust and Mutual Funds*²⁹

Unit Trust

32. Prohibition to operate unit trust without licence

(1) A person shall not, unless that person is licensed by the Commission,

- (a) establish or operate a unit trust,
- (b) issue an invitation to the public to acquire units in a unit trust, or

26. Repealed by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590). The subsection reads:

“(4) Where the Commission gives a notice to a stock exchange under subsection (2), the stock exchange may request the Commission in writing to refer the matter to the Secretary.”

27. Repealed by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590). The subsection reads:

“(5) Where such a request is made, the Commission shall forthwith refer the matter to the Secretary, who may, if he thinks fit, direct the Commission to revoke the notice or confirm the prohibition imposed by the Commission; and the decision of the Secretary shall be final.”

28. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

29. Substituted by section 10 of the Securities Industry (Amendment) Act, 2000 (Act 590). The substitution involved sections 32, 32A, 32B, section 33, section 33A, 33B, section 34, sections 34A, 34B, section 35, sections 35A, 35B, section 36, sections 36A, 36B, section 37, sections 37A, 37B, 37C, section 38, sections 38A, 38B, 38C, section 39, sections 39A, 39B, 39C, section 40, sections 40A, 40B, 40C, 40D, section 41, sections 41A, 41B, 41C, section 42, sections 42A, 42B, 42C, section 43, sections 43A, 43B, 43C, section 44, sections 44A, 44B, section 45, sections 45A, 45B, section 46, sections 46A, 46B, section 47, and section 47A.

- (c) maintain or pose as carrying on the business of dealing in units of a unit trust.

(2) A licence shall not be granted to a person to operate a unit trust unless that person is a company incorporated under the Companies Act, 1963 (Act 179).

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment; and where the contravention is by a body corporate, the body corporate is liable on conviction to a fine of not less than five hundred penalty units.

32A. A manager and trustee

(1) A company seeking to establish a unit trust shall be the manager of the unit trust.

(2) The manager shall appoint a trustee for the unit trust but the manager and the trustee shall be independent of each other.

32B. Trust deed

(1) A unit trust is constituted by a document made under seal between the manager of the unit trust and the trustee, and that document is the trust deed.

(2) The trust deed shall be in the prescribed form and contain the prescribed particulars.

33. Application for licence to operate a unit trust

(1) An application for a licence for a unit trust shall be made to the Commission and in the form determined by the Commission.

(2) The applying manager shall submit to the Commission

- (a) the names and qualifications of the directors and any other principal officers of the company and those of the trustee,
- (b) the certificate of incorporation,
- (c) a copy of the trust deed, and
- (d) the prescribed particulars.

33A. Licence to operate a unit trust

(1) The Board may license a unit trust if it is satisfied that

- (a) the manager and trustee are qualified to act in that capacity,
- (b) the manager is a company incorporated in the Republic,
- (c) the trustee is a bank, an insurance company or a financial institution or a wholly owned subsidiary of any of them approved by the Commission,
- (d) the trustee has the minimum paid up capital required by the Commission,
- (e) the business of the manager in relation to the unit trust is administered independently of the trustee, and
- (f) the trust deed complies with this Act and the Regulations.

(2) The Board shall within ninety days of receipt of an application for a licence communicate its decision on it in writing to the applicant.

(3) A licence granted under subsection (1) is subject to the conditions specified in it or in relation to it.

33B. Prohibition of activities in unlicensed unit trust

(1) A person shall not undertake an activity in or related to a unit trust directly or indirectly unless

- (a) the units are those of a unit trust licensed by the Commission, and
- (b) the particulars of the unit trust have been approved by the Commission.

(2) A person who acts contrary to subsection (1) commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment; and where that person is a body corporate to a fine of not less than five hundred penalty units.

34. Interest of investors in unit trust and pricing of unit

(1) The interest of a unit holder in a unit trust consists of units including fractions of a unit.

(2) The calculation of prices at which units of a unit trust may be bought or sold shall be in accordance with provisions prescribed by the Commission.

34A. Scheme particulars

(1) A letter, notice, circular, document or prospectus prepared by a manager of a unit trust for the purpose of offering its units to the public shall be approved by the trustee of the scheme and the Commission before publication.

(2) A document of the kind referred to in subsection (1), shall include information in relation to the matters prescribed or specified from time to time by the Commission.

34B. Redemption of units

(1) The manager of a licensed unit trust shall, if requested by a holder of units of the unit trust, buy from the holder a number of units which the holder may specify at the price at which the manager buys the units of the unit trust.

(2) Where the licence of a unit trust is revoked, the manager shall buy the units under the scheme at the last bid price at which the manager bought units of the unit trust before the revocation.

35. Functions of a manager of a unit trust

(1) The manager of a unit trust shall manage the assets of the unit trust on a day to day basis and shall select the investments to be made on behalf of the trust in the best interest of the unit holders.

(2) The manager shall act in accordance with the trust deed and comply with its investment objectives and policy under the directions given by the trustee.

(3) The manager shall provide the information on the management and administration of the unit trust that a trustee may request.

(4) The manager of a unit trust shall maintain the minimum capital requirement determined by the Commission.

(5) The manager shall ensure that its directors or any other persons concerned with the management of its business have the qualifications and experience that are specified by the Commission.

35A. Functions of trustee

(1) The trustee of a unit trust shall comply with this Act, the Regulations, the terms of the trust deed and the prescribed particulars of the unit trust.

(2) The trustee shall take into its custody or under its control the property of the unit trust and hold it in trust for the investors in accordance with this Act, the Regulations, the trust deed and any other applicable enactment.

(3) The trustee shall ensure that an asset attributable to a particular unit trust is separately identified.

(4) The trustee shall

(a) ensure that the method used by the manager in the calculation of prices at which interest is issued and redeemed is within the limits determined by the Commission; and

(b) maintain the minimum paid up capital determined by the Commission.

(5) The trustee may execute documents to secure acquisition, disposals and loans made by the manager in accordance with this Act or the Regulations and the trust deed.

(6) Subject to subsection (7), this Act or the Regulations and the terms of the trust deed, the trustee shall carry out the instructions of the manager in respect of investments which constitute the property of the scheme.

(7) The trustee may give notice to the manager that it is unwilling to accept the transfer of a property which contravenes this Act or the Regulation or the trust deed.

(8) The manager may, with the approval of the trustee, determine that each unit shall be subdivided into two or more units or that two or more units shall be consolidated.

35B. Prohibited transactions by manager

(1) A company which is a manager of a unit trust or is a subsidiary or holding company of the manager shall not

(a) borrow money on behalf of the unit trust for the purpose of acquiring securities or any other property for the unit trust;

(b) lend money that is subject to the unit trust to a person to enable that person to purchase units of the unit trust;

(c) mortgage, charge or impose any other encumbrance on the securities or any other property subject to the unit trust; or

(d) engage in a transaction which in the opinion of the Board is not in the interest of the holders of the units of the unit trust.

(2) Paragraphs (a) and (c) of subsection (1) do not apply to borrowings made on behalf of the trust solely for the purpose of meeting obligations to redeem units from the holders when requested.

(3) The borrowings under subsection (2) are subject to the conditions and restrictions prescribed by the Commission.

(4) A company which contravenes subsection (1) commits an offence and every officer of the company who acted in breach of the provision commits an offence and is liable on summary conviction

- (a) in the case of the company, to a fine of not less than five hundred penalty units; and
- (b) in the case of an officer to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment of not less than six months or to both the fine and the imprisonment.

Mutual Fund

36. Prohibition of operation of mutual fund without licence

(1) A person shall not, unless the mutual fund is licensed by the Commission,

- (a) establish or operate a mutual fund,
- (b) issue an invitation to the public to acquire shares in a mutual fund, or
- (c) maintain or pose as carrying on the business of dealing in a mutual fund.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment; and where the contravention is by a body corporate, the body corporate is liable on summary conviction to a fine of not less than five hundred penalty units.

36A. Appointment of a manager and custodian

(1) The directors of a company applying to operate as a mutual fund shall appoint for the mutual fund

- (a) a company incorporated in the Republic which is independent of the mutual fund company as manager, and
- (b) a custodian which is independent of the mutual fund company and is a bank, an insurance company or any other financial institution approved by the Commission or a wholly owned subsidiary of any of them approved by the Commission.

(2) The custodian shall have and maintain the minimum capital requirement determined by the Commission.

36B. Application for a mutual fund licence

(1) The Commission may license a company as a mutual fund company, on an application made to it by

- (a) a public company incorporated under the Companies Act, 1963 (Act 179), or

(b) an external company with a place of business in the Republic within the meaning of Chapter V of the Companies Act, 1963 (Act 179).

(2) The company referred to in subsection (1) must have been incorporated solely to hold and manage securities or any other financial assets.

(3) The application shall be in the form and contain the particulars specified by or under this Act and as directed by the Commission.

(4) The Commission shall within ninety days of receipt of the application communicate its decision on it in writing to the applicant.

37. Licence for operation of mutual fund

(1) The Commission shall not grant a licence to a company to operate as a mutual fund company unless the Board is satisfied that

- (a) if an invitation is made to the public to subscribe for its shares, the price at which the shares will be offered will be based on the net value of the company's assets at the time of the offer without an addition except for a reasonable service charge;
- (b) the company will repurchase the shares from the holder at a price based on the net value of its assets at the time of the repurchase without a deduction other than a reasonable service charge; but where the shares of the mutual fund company are to be listed on an approved stock exchange, the Board may waive or modify the requirements of this paragraph;
- (c) a manager and custodian for the scheme have been appointed by the directors;
- (d) the manager is a company incorporated in the Republic and is separate from and independent of the custodian; and
- (e) the custodian being a bank or an insurance company or a wholly owned subsidiary of either of them has and maintains the required minimum paid up capital.

(2) The licence may be subject to any other conditions that the Board may specify.

37A. Interest of an investor

The interest of an investor in a mutual fund consists of shares in the company.

37B. Exemption from specific provisions of the Companies Code

The following provisions of the Companies Act, 1963 (Act 179) shall not affect the mutual fund company unless otherwise specified in writing by the Registrar of Companies acting in consultation with the Commission

- (a) section 59 (acquisition by a company of its own shares);
- (b) section 60 (redemption of redeemable preference shares);
- (c) section 61 (purchase by company of its own shares);
- (d) section 62 (limit on number of shares acquired);

- (e) section 63 (opening of share deals account);
- (f) section 66 (stated capital);
- (g) section 67 (reduction of stated capital);
- (h) sections 275 to 279 (relating to invitation to the public and prospectus);
- (i) sections 281 to 284 (relating to waiting periods after publication of prospectus; withdrawal of application for shares; invitations in respect of securities to be dealt in on a stock exchange and minimum subscription); and
- (j) section 314 (control of public invitations relating to external companies).

37C. Regulations of a mutual fund

A mutual fund shall make regulations which shall be in the form and contain the matters that are prescribed by the Regulations or as may be directed by the Commission.

38. Directions by directors of a mutual fund

(1) Subject to the Companies Act, 1963 (Act 179) the directors of a mutual fund shall determine the investment and general policies of the company and shall give directions to the manager.

(2) A director shall not give a direction which is likely to make the manager act in contravention of this Act or of the Regulations, and the directors shall act in accordance with the terms of the regulations or the constitution of the mutual fund and the management agreement.

(3) A director who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units or a term of imprisonment not exceeding one year or to both the fine and the imprisonment.

38A. Custodian of mutual fund and its duties

(1) The directors of a mutual fund shall appoint a custodian for the mutual fund which shall take into its custody or put under its control the property of the mutual fund which shall be held in accordance with this Act and the relevant agreement not inconsistent with this Act.

(2) The custodian of a mutual fund shall have the minimum capital requirement determined by the Commission.

(3) The custodian may give notice to the manager that it is not prepared to accept the transfer of assets in contravention of this Act and may require the manager to give security for the transfer of assets.

(4) Subject to subsection (3), the terms of its contract of appointment and this Act, the custodian shall carry out the instructions of the manager as regards investments which comprise the assets of the company.

38B. Functions of directors of mutual fund

The directors of a mutual fund shall take reasonable care to ensure

- (a) that the property of the mutual fund is managed by the manager in accordance with this Act, the Regulations and the constitution or regulations of the mutual fund;
- (b) that the manager performs its functions under this Act and the Regulations; and
- (c) that the methods used by the manager to calculate prices at which shares are issued and redeemed are legal; and shall carry out periodic checks to verify whether the manager has determined prices within those limits.

38C. Functions of a manager of a mutual fund company

(1) The manager shall manage the mutual fund on a day to day basis, select investments to be owned by the company and perform any other functions assigned to it under contract from the mutual fund.

(2) The manager is subject to the directions of the directors of the mutual fund and shall perform the normal functions performed by the managing director of a company.

(3) Where the directions given to the manager by the directors of the mutual fund contravenes this Act, or any other enactment, the manager shall refer the matter to the Commission for guidance.

(4) The manager of a mutual fund shall maintain the minimum paid up capital and have the amount and type of financial and material resources directed by the Commission.

(5) The manager shall not allow the property of the company to be used or invested contrary to the investment restrictions under this Act or the Regulations.

(6) The manager shall ensure that its directors or any other persons concerned with the management of its business have the necessary qualifications and experience required by the Commission.

(7) The manager shall act in accordance with investment policies laid down by its directors under this Act.

*Spread of Investment and General Provisions on Unit Trust and Mutual Fund***39. Spread of investments**

(1) The value of a scheme's holding of securities issued by a single issuer shall not exceed twenty percent at book value or twenty-five percent at market value.

(2) A scheme shall not hold more than ten percent of a class of securities issued by a single issuer.

39A. Unlisted securities

The value of a scheme's holding of securities not listed or quoted on a stock exchange may not exceed fifteen percent of its total net asset value.

39B. Government securities

Up to thirty percent of a scheme's total net assets value may be invested in government securities of the same issue.

39C. Futures and commodities

A scheme shall not enter into a future financial contract or hold a physical commodity.

40. Investment in other schemes

(1) The value of a scheme's holding of units or shares in other collective investment schemes shall not in the aggregate exceed ten percent of its total net value.

(2) An increase in the total initial charges, the manager's annual fee or any other costs and charges borne by the investors or by the scheme shall not be made if the scheme is managed by the same manager or by the agent of that manager.

40A. Restriction on real estate investment

A scheme shall not invest more than ten percent of its net asset value in a type of real estate including buildings or interests in real estate except in the shares of real estate companies.

40B. Amendment of limits of spread of investment

The provisions on the level and spread of investments of a unit trust and a mutual fund and the prohibited investment of a unit trust and a mutual fund specified in sections 39 to 40A may be waived or modified by the Minister on the advice of the Commission in appropriate circumstances.

40C. Unit trust and mutual fund company annual licence fee

There shall be paid in respect of a licence issued under this Part the application fee and annual licence fee determined by the Commission.

40D. Inconsistency with this Act and the Regulations

Where a provision in a trust deed establishing a unit trust or a provision in the regulations or constitution of a mutual fund is inconsistent with a provision of this Act or of the Regulations, that provision is void to the extent of the inconsistency.

41. Changes in unit trust and mutual fund

(1) A proposal for change in a unit trust or a mutual fund is subject to approval by a special resolution of the holders of interests in the unit trust or mutual fund.

(2) The manager of a unit trust or mutual fund shall submit the proposal to the Commission for approval and the Commission shall acknowledge receipt in writing within seven days of receipt.

(3) Where the Board does not make a decision on the proposal within sixty days after its submission, the manager may assume that it has been approved.

41A. Change and retirement of trustee or custodian

(1) The manager of a unit trust or the directors of a mutual fund shall give written notice to the Commission of a proposal to replace the trustee or custodian of the scheme and seek the approval of the Commission; and the Commission shall acknowledge in writing the receipt of the proposal within seven days of receipt.

(2) A proposal for a change of a trustee or custodian is subject to approval by a special resolution of the holders of interest in the scheme.

(3) Where the Board does not indicate its decision on the proposal within sixty days after its submission, it may be assumed that the proposal has been approved.

(4) A trustee or a custodian may be replaced by a person who satisfies the requirements of this Act.

(5) A trustee or a custodian may retire on giving notice of not less than ninety days.

41B. Change of manager of unit trusts and mutual funds

(1) A trustee, or the directors of a mutual fund, shall give written notice to the Commission of a proposal to replace a manager of the scheme and seek the approval of the Commission; and the Commission shall acknowledge receipt in writing within seven days of receipt.

(2) Where the Board does not indicate its decision on the proposal within sixty days after its submission it may be assumed that it has been approved.

(3) The manager shall be replaced by a person who satisfies the requirements of this Act.

(4) The manager ceases to hold office if

- (a) it goes into liquidation, except a voluntary liquidation to reconstruct or amalgamate on terms previously approved in writing by the trustee or the directors;
- (b) a receiver is appointed in respect of the unit trust or the mutual fund;
- (c) the unitholders or shareholders decide to remove the manager in terms of this Act; or
- (d) the trustee of a unit trust states or the directors of a mutual fund state in writing giving reasons that a change of manager is desirable in the interest of the investors and the Commission approves.

(5) Where the name of the scheme makes reference to the name of the former manager, the former manager may require the new manager to propose a change in the name of the scheme.

(6) Where the manager ceases to act as a manager, the trustee of a unit trust or the directors of the mutual fund shall appoint a person eligible under this Act to be the manager of the scheme subject to that person entering into an agreement with the trustee of the unit trust or the directors of the mutual fund to secure the due performance of its functions as manager.

41C. Retirement of manager

(1) The manager may retire in favour of another eligible person on the written approval of the trustee or the directors of the mutual fund where

- (a) in the case of a unit trust, the appointment is made under the seal of the retiring manager;
- (b) the rights and duties of the retiring manager have been assigned to the new manager; and
- (c) any other act required to be done for the assumption of duty as manager has been done.

(2) The retiring manager shall be absolved from any obligation on retirement but without prejudice to the rights of a person for an act or omission of the retiring manager prior to retirement.

(3) On assuming office as the new manager, the manager shall enjoy the rights and exercise the powers as manager and subject to the duties and obligations of a manager.

42. Liability of manager, director, trustee and custodian

The manager of a unit trust, the trustee of a unit trust or the director, the manager or custodian of a mutual fund is liable to an investor for a loss suffered by the investor by reason of failure to perform the functions of office under this Act or the Regulations.

42A. Prohibited transactions under mutual fund

(1) A manager or custodian of a mutual fund shall not

- (a) borrow money on behalf of the mutual fund for the purpose of acquiring securities or any other property for the mutual fund;
- (b) lend money that is subject to the mutual fund to a person to enable that person to acquire an interest in the mutual fund or for any other purpose;
- (c) mortgage, charge or impose any other encumbrance on the securities or any other property subject to the mutual fund; or
- (d) engage in a transaction which in the opinion of the Board is not in the interest of the shareholders of the mutual fund.

(2) Paragraphs (a) and (c) of subsection (1) do not apply to borrowings made on behalf of the fund solely for the purpose of meeting obligations to redeem shares from the holders when requested.

(3) The borrowings are subject to the restrictions prescribed by the Commission.

42B. Limitation on securities in which officers have interest

A scheme shall not invest in the securities of a class in a company or any other body if an officer or collectively, officers of the manager own more than a percent of the total nominal amount of the issued securities of that class that the Commission may determine.

42C. Limitation on nil-paid or partly paid securities

(1) The portfolio of a scheme shall not include securities where a call is made for a sum of money unpaid on that security unless that call can be met in full out of cash by the scheme's portfolio.

(2) Subject to subsection (1), the portfolio of a scheme shall include a security where a call is to be made for a sum of money unpaid on that security if the issue has been allotted under the terms of a right issue or an existing holding.

43. Unlimited liability

A scheme shall not acquire an asset which involves the assumption of an unlimited liability.

43A. Register of investors

(1) The manager of a scheme shall keep at a prescribed place a register of persons who hold interest in the scheme containing the particulars prescribed by the Regulations.

(2) The Regulations shall provide for inspection of the registers of the licensed schemes.

43B. Register of unit trust and mutual fund

(1) The Commission shall keep a register of licensed unit trusts and mutual fund companies.

(2) A person may inspect the register and on payment of a fee obtain a copy of or extract from the register.

43C. Rectification by Court

The Court may, on an application

- (a) order the rectification of a register if it is just to do so, or
- (b) order the manager to pay for a loss or damage if it is satisfied that a person has suffered loss or damage by an error or defect in the register of investors.

44. Appointment of temporary manager of a scheme

(1) The Court may, on application, order the appointment of a person as a temporary manager of a scheme.

(2) The application may be made by

- (a) the Commission,
- (b) the manager,
- (c) the directors of a mutual fund,
- (d) the trustee or custodian, or
- (e) an investor in the scheme.

(3) The appointment shall be for not more than ninety days but the Court may, on application by the temporary scheme manager, extend the appointment.

(4) A temporary scheme manager shall, before the end of the appointment, report to the Court recommending a course of action to be taken in relation to the scheme.

(5) The Court may make the orders that are just, including orders to call an investors' meeting to consider a proposed resolution to nominate a replacement scheme manager or for the termination of the scheme.

(6) A temporary scheme manager shall have the same powers and rights in respect of the property of the scheme as the manager of the scheme.

44A. Termination of scheme

(1) A scheme is terminated when an event, date or state of affairs specified for the purpose in the scheme's constitution occurs.

(2) A provision in the constitution of a scheme, which provides or has the effect of providing that the scheme is terminated if the manager is removed as manager, is void.

44B. Termination by manager

(1) The manager of a scheme may, in writing and with the approval of the Commission, terminate the scheme on the grounds that the purpose of the scheme has been, or cannot be, accomplished.

(2) A manager shall not terminate a scheme unless the manager has given notice as required under subsection (3) and a period of sixty days has passed.

(3) The notice shall include

- (a) an explanation of the proposal,
- (b) a statement of the circumstances under which the purpose of the scheme has been, or cannot be, accomplished, and
- (c) a statement of the right of the investors to requisition a meeting of investors.

45. Termination by Court

The Court may, on an application by the manager of a scheme or by

- (a) the Commission,
- (b) an investor in the scheme,
- (c) a director of the manager, or
- (d) a temporary scheme manager,

make an order to terminate the scheme if it is just and equitable to do so or the scheme is insolvent.

45A. Winding-up of a unit of a scheme

(1) The trustee shall, after the termination of the scheme, realise the assets and after the payment from it of the liabilities and costs of the winding-up, distribute the proceeds of the realisation to the manager and the investors on the production by the manager and investors of evidence as to the proportion of their entitlement or interest in the scheme.

(2) The trustee shall pay into court an unclaimed net proceeds or any other cash held by the trustee after the expiration of twelve months after the day on which the net proceeds became payable.

(3) The trustee may deduct the reasonable expenses incurred by the trustee in making that payment into court from the unclaimed net proceeds.

(4) The trustee shall notify the Commission after the completion of the winding-up.

45B. Revocation of licence of a scheme

(1) The Commission may, subject to this Act and on notification revoke the licence of a scheme if

- (a) in the opinion of the Board the interests of the holders of the units or shares created or held under the scheme require that, or
- (b) the Board is satisfied that the scheme as operating no longer qualifies as provided under this Act.

(2) The Commission shall before revoking the licence notify the manager and trustee of the unit trust or the directors of the mutual fund of the intention to revoke the licence.

(3) The manager of the unit trust or the directors of the mutual fund may within twenty-one days of the notification make representations in writing in respect of the proposed revocation to the Commission.

(4) The Board shall consider the representations made before deciding whether to revoke the licence or not.

(5) The Commission shall communicate its decision to revoke the licence of the scheme within thirty days after representations have been made or if none is made, within thirty days after the last day for making the representation.

46. Suspension of licence of unit trusts and mutual funds

(1) This Part does not prevent the Commission from suspending the licence of a unit trust or mutual fund subject to the conditions that the Commission shall specify in writing.

(2) The Commission shall

- (a) before suspending a licence notify the unit trust or mutual fund of its intentions, and
- (b) by the notice, invite the unit trust or mutual fund to make, within a period of not more than thirty days from the date of the service of the notice, the representations it may desire to make in respect of the suspension of the licence.

(3) The Commission may revoke the licence of the unit trust or mutual fund if

- (a) after the expiration of the period, the unit trust or mutual fund has not made representations, or
- (b) it is not satisfied with the representations made by the unit trust or mutual fund.

46A. Winding-up of a mutual fund company

A mutual fund shall be wound up in accordance with the Companies Act, 1963 (Act 179).

46B. Cancellation of licence

The Commission shall cancel the licence of a scheme on the termination of the scheme in accordance with law.

47. General penalty

A person who does an act which constitutes a contravention of a provision of this Part commits an offence and except specifically provided in this Part in respect of that provision, that person is liable on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

47A. Unauthorised schemes

A person shall not operate any other form of collective investment scheme unless it is licensed by the Commission.

PART FOUR*Licences***48. Dealer's licence**

A person shall not carry on a business of dealing in securities or pose as carrying on that business unless that person is the holder of a dealer's licence issued under this Part.

49. Dealer's representative's licence

A person shall not act as a dealer's representative unless that person is the holder of a dealer's representative's licence issued under this Part.

50. Investment adviser's licence

A person shall not act as an investment adviser or pose as an investment adviser unless that person is the holder of an investment adviser's licence issued under this Part.

51. Investment representative's licence

A person shall not act as an investment representative unless that person is the holder of an investment representative's licence issued under this Part.

52. Applications for licence or renewal

(1) An application for a licence or for the renewal of a licence shall be made to the Commission in the prescribed form and shall be accompanied by the prescribed fee and, in the case of an application for renewal of a licence, shall be made not later than one month before the expiry of the licence.

(2) The Commission may require an applicant to supply it with any further information that it considers necessary in relation to the application.

(3) The Commission shall not refuse to grant or renew a licence without first giving the applicant or the holder of the licence an opportunity of being heard.

(4) Where the Commission rejects an application for a licence or the renewal of a licence, the prescribed fee is refundable to the applicant but the fee is not refundable on the withdrawal of an application.

53. Granting of dealer's licence or investment adviser's licence

(1) A dealer's licence shall only be granted to a body corporate including an incorporated private partnership.

(2) A dealer's licence shall only be granted if the dealer meets and continues to meet the minimum financial requirements determined by the Commission generally or specifically, or as are provided in the rules of a stock exchange approved by the Commission.

(3) Subject to section 52 (3) and the Regulations, where an application is made for the grant or renewal of an investment adviser's licence, the Commission shall refuse the application if, in the case of an applicant who is a natural person,

- (a) the applicant has been adjudged bankrupt anywhere;
- (b) the applicant has been convicted, within the Republic or elsewhere, within the period of ten years immediately preceding the date on which the application is made, of an offence involving fraud or dishonesty punishable on conviction with imprisonment for a term of three months or more;
- (c) the Commission is not satisfied as to the educational qualifications or experience of the applicant having regard to the nature of the duties of a holder of an investment adviser's licence;
- (d) the Commission has reason to believe that the applicant is not of good reputation or character; or
- (e) the Commission has reason to believe that the applicant will not perform the functions of a holder of an investment adviser's licence efficiently, honestly and fairly.

(4) Subject to section 52 (3) and the Regulations, where an application is made for the grant or renewal of a dealer's licence or for an investment adviser's licence by a body corporate including an incorporated private partnership, the Commission shall refuse the application if

- (a) the body corporate or the partnership is in the course of being wound up under the Companies Act, 1963 (Act 179); or Incorporated Private Partnership Act, 1962 (Act 152);
- (b) body corporate is one in respect of which a receiver, or a receiver and manager, has been appointed under the Companies Act, 1963 (Act 179);
- (c) the body corporate or partnership has, whether within or outside the Republic, entered into a compromise or scheme of arrangement with its creditors, which is still in operation;

- (d) the Board is not satisfied as to the educational qualifications or experience of the officers of, or partners of the applicant who are to perform functions in connection with the dealer's licence or investment adviser's licence; or
- (e) the Commission has reason to believe that the applicant will not perform the functions of a holder of a dealer's licence, efficiently, honestly and fairly.

54. Granting of representative's licence

Subject to section 52 (3) and the Regulations, the Commission shall grant or renew a dealer's representative's licence or investment representative's licence if after consideration of the application it considers that the applicant will perform the functions efficiently, honestly and fairly.

55. False statements

A person who, in connection with an application for a licence or for the renewal of a licence,

- (a) wilfully and knowingly makes a statement which is false or misleading in a material particular, or
- (b) wilfully omits to state a matter or thing without which the application is misleading in respect of a material particular,

commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.³⁰

56. Enquires into securities transactions

(1) In deciding whether a dealer or the dealer's representative or an investment adviser or the adviser's representative shall hold a licence under this Act, the Commission may enquire into the transactions involving the purchase or sale of securities entered into by that person, whether directly or indirectly, during a period of twelve months preceding the application for the licence or renewal of the licence, to ascertain if that person has in a transaction or series of transactions used dishonest, unfair or unethical methods or trading practices, whether the method or trading practices constitute an offence under this Act or not.

(2) For the purpose of subsection (1), the Commission may, in the form and within the time that it may specify by notice in writing, require a dealer or the dealer's representative or an investment adviser or the adviser's representative to submit detailed information of all or any transactions involving the purchase or sale of securities, whether the transactions were completed during the period of twelve months referred to in subsection (1) before or after the commencement of this Act.

(3) A person who, without reasonable excuse, fails or refuses to submit information to the Commission within the time specified in the notice referred to in subsection (2) or who gives false or misleading information is liable in addition to any other penalty that may be imposed under this Act in the case of an application for renewal of a licence to have the licence revoked under section 62, and in the case of first application for a licence to have the application refused.

30. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

57. Imposition of conditions or restrictions

(1) The Commission may grant or renew a licence subject to the conditions or restrictions that it thinks fit and the Commission may, at any time by written notice to a licence holder, vary a condition or restriction in relation to the licence.

(2) Without limiting the generality of subsection (1), the Commission may in granting or renewing an investment adviser's licence impose a condition or restriction as to the class of business that the investment adviser may carry on including a condition or restriction that the adviser

- (a) shall only carry on the class of business of advising others concerning securities; or
- (b) shall only carry on the class of business of issuing or promulgating analyses in reports concerning securities; or
- (c) shall only carry on a class or business involving the management of a portfolio of securities on behalf of clients for investment purposes; or
- (d) shall carry on any of the classes of business in paragraphs (a), (b) and (c) in combination with each other.

(3) The Commission may by written notice to a licence holder suspend, cancel, restrict or impose terms and conditions on the right of the licence holder to

- (a) call at a residence, or
- (b) telephone a residence in the Republic for the purpose of dealing in any securities.

(4) A person who contravenes or fails to comply with a condition of or restriction in the licence commits an offence, and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.³¹

(5) In this section “**residence**” includes a building or part of a building where the occupant resides permanently or temporarily.

58. Deposit to be lodged in respect of a dealer's licence

(1) The Commission shall not grant a dealer's licence unless there is lodged with the Commission, at the time of the application for the licence, a deposit in the sum of money equivalent to five hundred penalty units or a greater sum that the Commission may determine in respect of the licence.³²

(2) A deposit required under subsection (1) shall be in cash or in any other form that the Commission may in a particular case direct.

(3) The amounts paid under this section shall be deposited by the Commission in an account at the Bank of Ghana.

(4) A deposit lodged under subsection (1) shall be applied by the Commission subject to and in accordance with the Regulations.

31. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

32. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

59. Period of licence

- (1) Subject to subsection (2), a licence shall expire one year from the date of issue.
- (2) A licence that is renewed in accordance with this Part shall continue in force for a period of one year from the date of renewal.

60. Notification of change of particulars

Where

- (a) the holder of a dealer's licence or investment adviser's licence ceases to carry on the business to which the licence relates, or
- (b) the holder of a representative's licence ceases to be a representative of the dealer or investment adviser in relation to whom the representatives' licence was issued, or
- (c) a change occurs in a matter, the particulars of which are required by section 61 to be entered in the register or licence holders in relation to the holder of a licence,

the holder of the licence shall, not later than fourteen days after the occurrence of the event, give to the Commission, in the prescribed form, particulars in writing of the event.

61. Register of licence holders

(1) The Commission shall keep in the appropriate form a register of the holders of current licences, specifying

- (a) in relation to each holder of a dealer's or investment adviser's licence
 - (i) the name of the holder,
 - (ii) the address of the principal place of business at which the holder carries on the business, and
 - (iii) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and
- (b) in relation to each holder of a representative's licence
 - (i) the name of the holder,
 - (ii) the name of the dealer or investment adviser in relation to whom the licence was issued, and
 - (iii) where the business of that dealer or investment adviser is carried on under a name or style other than the name of the dealer or investment adviser, the name or style under which that business is carried on.

(2) A person may, on payment of the prescribed fee, inspect and take extracts from the register kept under subsection (1).

62. Revocation or suspension of licences

(1) A licence is revoked in the case of

- (a) an individual, if the individual dies, or
- (b) a body corporate or incorporated private partnership, if it is wound up.

(2) The Commission may revoke a licence

- (a) in the case of a licensed person who is an individual,
 - (i) if a levy of execution in respect of that individual has not been satisfied;
 - (ii) if the individual ceases to carry on business for which the licence was obtained;
 - (iii) if the individual is adjudged bankrupt in any jurisdiction;
 - (iv) if, in the case of a representative, the licence of the dealer or investment adviser, in relation to whom the licence was granted, is revoked;
 - (v) if the Commission has reason to believe that the licensed person has not performed that person's functions efficiently, honestly or fairly;
 - (vi) if the individual is convicted of an offence involving fraud or dishonesty punishable by imprisonment for a term of not less than three months; or
 - (vii) if the licensed person contravenes or fails to comply with a condition or restriction applicable in respect of the licence or any other provision of this Act;
- (b) in the case of a body corporate or an incorporated private partnership,
 - (i) if it is being or will be wound up;
 - (ii) if a levy of execution in respect of it has not been satisfied;
 - (iii) if a receiver or a receiver and manager has been appointed whether by a Court or creditors in respect of its property;
 - (iv) if it has entered into a composition or an arrangement with its creditors;
 - (v) if it ceases to carry on the business for which it was licensed;
 - (vi) if the Commission has reason to believe that the licensed body or any of its directors or employees, has not performed its or the director's functions efficiently, honestly or fairly; or
 - (vii) if the licensed body contravenes or fails to comply with a condition or restriction applicable in respect of the licence or any other provision of this Act.

(3) In a case to which subsection (2) applies, the Commission, may instead of revoking the licence, suspend the licence for a specific period and may remove the suspension.

(4) The Commission shall not revoke or suspend a licence under subsection (2) or (3) without first giving the licence holder an opportunity of being heard.

(5) A person whose licence is revoked under this section is not, for the purpose of this Part, licensed from the date that the Commission revokes or suspends the licence.

(6) A revocation or suspension of a licence of a person shall not operate so as to

- (a) avoid or affect an agreement, a transaction or an arrangement relating to the trading in securities entered into by that person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the licence; or

- (b) affect a right, an obligation or a liability arising under an agreement, a transaction or an arrangement.

63. Operations pending renewal of licence

Where a person who holds a licence issued under this Act has, before the expiration of the licence, applied for renewal of the licence and the licence has not been issued, that person shall not, until the licence is renewed or the application for the licence is refused or withdrawn, be held liable for not holding a licence.

64. Appeals

*Repealed.*³³

65. Exempt dealers

*Repealed.*³⁴

PART FIVE

Registers of Interests in Securities

Registers

66. Application of this Part

(1) This Part applies to a person who is

- (a) a dealer,
- (b) a dealer's representative,
- (c) an investment representative,
- (d) a financial journalist, or
- (e) an investment adviser.³⁵

(2) In this Part, "financial journalist" means a person who contributes advice concerning securities or prepares analysis or reports concerning securities for publication in a bona fide newspaper or periodical.

(3) In this Part, a reference to securities is a reference to securities of a body which is a public company within the meaning of the Companies Code, 1963 (Act 179) or securities which are quoted on a stock exchange in the Republic.

67. Register of securities

(1) A person to whom this Part applies shall maintain a register in the prescribed form of the securities in which that person has an interest.

(2) Particulars of the securities in which a person to whom this Part applies has an interest and particulars of the interest in them shall be entered in the register within seven days of the acquisition of the interest.

33. Repealed by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

34. Repealed by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

35. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

68. Notice of particulars to the Commission

(1) A person to whom this Part applies shall notify the Commission in the prescribed form of the particulars that are prescribed including the place at which the register will be kept.

(2) The notice shall be given

- (a) in the case of a person who is required by this Act to hold a licence, as part of the application for the licence; or
- (b) in the case of any other person, if that person becomes a person to whom this Part applies, within fourteen days after becoming that person.

(3) The notice shall be given although that person has ceased to be a person to whom this Part applies before the expiration of the period referred to in subsection (2).

(4) Where a person ceases to be a person to whom this Part applies, that person shall, within fourteen days of ceasing to be that person, give notice of the fact to the Commission.

(5) A person who fails or neglects to give notice as required by this section commits an offence and is liable on conviction to a fine of twenty-five penalty units.³⁶

69. Defence to prosecution

(1) It is a defence to a prosecution for failing to comply with section 67 or 68 if the defendant proves that the failure was due to unawareness of a fact or an occurrence the existence of which constitutes the offence and that the defendant

- (a) was not aware of the date of the summons, or
- (b) became aware not less than fourteen days before the date of the summons and complied with the relevant section within fourteen days after becoming aware.

(2) For the purposes of subsection (1), a person shall, in the absence of proof to the contrary, be conclusively presumed to have been aware of a fact or an occurrence at the time when an employee or agent of that person who has duties or acts in relation to the employer's or principal's interest in the securities concerned, became aware.

70. Production of register

(1) The Commission or a person authorised by it may require a person to whom this Part applies to produce for inspection the register required to be kept under section 67 and the Commission or a person authorised may make extracts from the register.

(2) A person who fails to produce a register for inspection or fails to allow a person authorised under subsection (1) to make a copy or extracts from the register commits an offence.

71. Particulars of financial journalists

(1) The Commission or a person authorised by it may by notice in writing require the proprietor or publisher of a newspaper or periodical to supply

- (a) the name and address of the financial journalist who has contributed an

36. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

advice or prepared an analysis or a report which has been published in a newspaper or periodical owned or published by that proprietor or publisher, or

- (b) the names and addresses of the financial journalists who have contributed advice or prepared an analysis or a report within a period specified in the notice.

(2) A proprietor or publisher of a newspaper or periodical who, without reasonable excuse, fails to comply with a notice under subsection (1) commits an offence and is liable in conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and imprisonment.³⁷

72. Extract of Registrar

The Commission may supply a copy of the extract of a register obtained under section 70 to a person who in the opinion of the commission, would, in the public interest, be informed of the dealing in securities disclosed in the register.

Conduct of Securities Business

73. Certain representations prohibited

(1) The holder of a licence shall not represent or imply or knowingly permit it to be represented or implied to any other person that the holder's abilities or qualifications have been approved by the Commission.

(2) A statement that a person is the holder of a licence under this Act is not a contravention of subsection (1).

74. Issue of contract notes

(1) A dealer shall, in respect of a transaction of sale or purchase of securities, issue a contract that complies with subsection (2)

- (a) to the person for whom the dealer entered into the transaction, where the transaction took place in the ordinary course of business at a stock exchange and the dealer entered into the transaction otherwise than as a principal;
- (b) to the person for whom the dealer entered into the transaction and the person with whom the dealer entered into the transaction, where the transaction does not take place in the ordinary course of business at a stock exchange and the dealer entered into the transaction otherwise than as principal;
- (c) to the person with whom the dealer entered into the transaction, where the transaction did not take place in the ordinary course of business at a stock exchange and the dealer entered into the transaction as a principal.

(2) A contract note given by a dealer under subsection (1) shall include

- (a) the name or style under which the dealer carried on the business as a dealer and the address of the principal place at which the business is carried on;

37. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

- (b) where the dealer is dealing as a principal with a person who is not the holder of a dealer's licence, a statement that the dealer is so acting;
- (c) the name and address of the person to whom the dealer gives the contract note;
- (d) the day on which the transaction took place and, if the transaction did not take place in the ordinary course of business at a stock exchange, a statement to that effect;
- (e) the number, or amount and description, of the securities that are the subject of the contract;
- (f) the price per unit of the securities;
- (g) the amount of the consideration;
- (h) the rate and amount of commission charged;
- (i) the amounts of the stamp duties or any other duties and taxes payable in connection with the contract; and
- (j) if an amount is to be added or deducted from the settlement amount in respect of the right to a benefit purchased or sold together with the securities, the amount and the nature of the benefit.

(3) A dealer shall not include in a contract note given under subsection (1), as the name of the person with or for whom the transaction was entered into, a name that the dealer knows, or could reasonably be expected to know, is not the name by which that person is ordinarily known.

(4) A reference in this section to a dealer dealing, or entering into a transaction, as principal includes a reference to a person

- (a) dealing or entering into a transaction on behalf of a person associated with the dealer;
- (b) dealing in securities on behalf of a body corporate in which the dealer has a controlling interest; or
- (c) where dealer carries on business as a dealer on behalf of a body corporate in which the dealer's interest and the interest of the directors together constitute a controlling interest.

(5) For the purposes of this section,

- (a) a dealer who is a member of a stock exchange shall not be taken to have entered into a transaction as principal by reason only that the transaction was entered into with another dealer who is a member of a stock exchange, and
- (b) a transaction takes place in the ordinary course of a business at a stock exchange if it takes place in prescribed circumstances or is a transaction that is a prescribed transaction for the purposes of this section.

(6) Despite section 144, a person is not associated with another person for the purposes of this section by reason only of that person being a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities.

75. Disclosure of certain interests in securities

(1) Where a person who is a dealer, investment adviser, dealer's representative or investment representative sends circulars or any other similar written communications in which that person makes a recommendation, whether expressly or by implication, with respect to securities or a class of securities, that person includes in each circular or communication, in type, not less legible than that used in the remainder of the circular or communication, a concise statement of the nature of the interest in, or the interest in the acquisition or disposal of those securities, or securities included in that class, that the dealer, adviser or a person associated with the dealer, adviser or representative has, at the date on which the circular or communication is sent.

(2) It is a defence to a prosecution for contravention of subsection (1) in relation to a failure to include in a circular or any other communication a statement of the nature of an interest as provided in subsection (1), for the defendant to establish that, at the time when the circular or communication was sent, the defendant was not aware and could not reasonably be expected to have been aware

- (a) that the defendant has an interest in, or an interest in the acquisition or disposal of those securities or securities included in that class; or
- (b) that the person associated with the defendant had an interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class.

(3) For the purposes of subsections (1) and (2),

- (a) an interest of a person in the disposal of securities includes a financial benefit or an advantage that will, or is likely to, accrue directly or indirectly to that person on or arising out of the disposal of the securities;
- (b) without limiting the generality of paragraph (a), a person who has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities; and
- (c) despite section 144, a person is not associated with another person by reason only of that person being a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities, unless they are acting jointly or together or in accordance with an arrangement made between them, in relation to the sending of the circular or communication or the making of the recommendation.

(4) Where a person

- (a) has subscribed for or purchased securities for purchase, and
- (b) offers any of those securities for purchase,

that person shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the securities offered for purchase, unless that person has informed each person to whom the recommendation is made of the acquisition of the securities for that purpose.

(5) Where

- (a) securities have been offered for subscription or purchase, and

- (b) a person has subscribed for or purchased or will or may be required to subscribed for or purchase, any of those securities under an underwriting or sub-underwriting agreement,

that person shall not, during the period of ninety days after the close of the offer

- (c) make an offer to sell those securities otherwise than in the ordinary course of trading on a stock exchange, or
- (d) make a recommendation with respect to those securities,

unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities which that person has acquired or will or may be required to acquire, under an underwriting or sub-underwriting agreement because some or all of the securities have not been subscribed for or purchased.

(6) A person who is a dealer, investment adviser, dealer's representative or investment representative shall not send to any other person a circular or any other communication or written offer or recommendation to which subsection (1), (4) or (5) applies unless the circular or communication or the offer or recommendation is signed by

- (a) that person if a natural person,
- (b) a director, executive officer or secretary of the body corporate if that person is a company, or
- (c) by a partner if that person is an incorporated private partnership.

(7) Where a person who is a dealer, investment adviser, dealer's representative or investment representative, sends to any other person a circular, communication, a written offer or recommendation to which subsection (1), (4) or (5) applies, that person shall preserve a copy of the circular, communication, the written offer or recommendation, duly signed as specified in subsection (6) for seven years from the date of signing.

(8) A reference in this section to an offer of securities shall be construed to include a reference to a statement, however expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire securities.

(9) For the purposes of this section, a circular, communication, a written offer or recommendation sent to a person is sent, if it is signed by a director, executive officer or secretary of a body corporate, by the body corporate and if it is signed by a partner in an incorporated private partnership sent by the partnership.

(10) The Commission may in the public interest, exempt a security or a class of securities from the application of this section.

(11) A person who contravenes a provision of this section commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.³⁸

76. Recommendations by adviser

(1) An adviser shall not make a recommendation with respect to securities or a class of securities to a person who may reasonably be expected to rely on the recommendations unless that adviser has a reasonable basis for making the recommendation to that person.

38. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

(2) For the purposes of subsection (1), an adviser does not have a reasonable basis for making a recommendation to a person unless

- (a) the adviser has, for the purposes of ascertaining that the recommendation is appropriate, given consideration to, and conducted investigation on the subject matter of the recommendation as is reasonable in the circumstances and having regard to the information possessed by the adviser concerning the investment objectives, financial situation and particular needs of that person, and
- (b) the recommendation is based on that consideration and investigation.

(3) An adviser who contrives subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred penalty units or to a term of imprisonment not exceeding one year.³⁹

(4) Where an adviser is liable to pay damages to a person in respect of a loss or damage

- (a) the adviser contravenes subsection (1) by making a recommendation to a person, and
- (b) that person relying on the recommendation does a particular act or refrains from doing a particular act, and
- (c) it is reasonable, having regard to the recommendation and any other relevant circumstances for the person relying on the recommendation to have done that act or have refrained from doing that act, and
- (d) that person suffers loss or damage as a result of doing that act or refraining from doing that act.

(5) For the purposes of this section

- (a) a reference to an adviser is a reference to a person who is a dealer, investment adviser, dealer's representative or investment representative, and
- (b) a reference to the making of a recommendation may be express or by implication.

77. Dealings as principal

(1) Subject to subsection (4), a dealer shall not deal in securities as principal with a person who is not a dealer, unless the dealer first informs the person with whom the dealer is dealing that the dealer is acting in the transaction as a principal and not as an agent.

(2) A reference in this section to a dealer dealing or entering into a transaction, as a principal includes a reference to a person

- (a) dealing or entering into a transaction on behalf of a person associated with the dealer;
- (b) dealing in securities on behalf of a body corporate in which the dealer has a controlling interest; or

39. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

- (c) where the dealer carries on business as a dealer on behalf of a body corporate in which the dealer's interest and the interests of the directors together constitute a controlling interest.

(3) A dealer who, as principal, enters into a transaction of sale or purchase of securities with a person who is not a dealer shall state in the contract note that the dealer is acting in the transaction as a principal and not as an agent.

(4) Subsection (1) does not apply in relation to a transaction entered into by a dealer who is a member of a stock exchange and specialises in transactions relating to odd lots of securities, being a transaction of sale or purchase of an odd lot of securities.

(5) Where a dealer fails to comply with subsection (1) or (3) in respect of a contract for the sale of securities by the dealer, the purchaser of the securities may, if the securities have not been disposed of, rescind the contract by a notice of rescission in writing given to the dealer not later than thirty days after the receipt of the contract note; and, where a dealer fails to comply with subsection (1) or (3) in respect of a contract for the purchase of securities by the dealer, the vendor of the securities may, in a like manner, rescind the contract.

(6) Subsection (5) does not affect a right that a person has apart from that provided under the subsection.

(7) A person who contravenes or fails to comply with a provision of this section commits an offence and is liable on conviction to a fine not exceeding one hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.⁴⁰

78. Dealings by employees of holders of licences

(1) A dealer or an investment adviser shall not give unsecured credit to the dealer's employee or to a person whom the dealer knows is associated with the employee where

- (a) the unsecured credit is given for the purpose of enabling or assisting the person to whom the unsecured credit is given to purchase or subscribe for securities, or
- (b) the person giving the unsecured credit knows or has reason to believe that the unsecured credit will be used to purchase or subscribe for securities.

(2) A person who contravenes or fails to comply with a provision of subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.⁴¹

79. Dealer to give priority to client's orders

(1) A dealer shall not, except as permitted by subsection (3), enter, as principal or on behalf of a person associated with the dealer, into a transaction of purchase or sale of securities that are permitted to be traded on the stock market of a stock exchange if a client of the dealer, who is not associated with the dealer, has instructed the dealer to purchase or sell, respectively, securities of the same class and the dealer has not complied with the instruction.

40. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

41. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

(2) A dealer who contravenes subsection (1) commits an offence and is liable on conviction to a fine of one hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.⁴²

(3) Subsection (1) does not apply in relation to the entering into of a transaction by a dealer as principal or on behalf of a person associated with the dealer where

- (a) the instructions from the client of the dealer required the purchase or sale of securities on behalf of the client to be effected only on specified conditions at which the securities were to be purchased or sold and the dealer has been unable to purchase or sell the securities because of those conditions, or
- (b) the transaction is entered into in the prescribed circumstances.

80. Use by dealer of client's money

(1) Where a client deposits money with or lends money to a dealer, the dealer shall

- (a) deposit the money in a bank account, not later than the next day on which the bank is open for business after the receipt of the money, and the account shall not contain moneys other than money deposited with or lent to the dealer;
- (b) furnish the client with a document, in the prescribed form, setting out the terms and conditions on which the deposit or loan is made and accepted, including the purpose for which and the manner in which the money is to be used by the dealer;
- (c) retain the money in the bank account until the client gives the dealer a written statement acknowledging that the client has received the document referred to in paragraph (b); and
- (d) use the money only
 - (i) for the purpose and in the manner set out in the document referred to in paragraph (b), or
 - (ii) for a purpose or in a manner agreed to by the client in writing after the document referred to in paragraph (b) was furnished to the client.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment and, in addition, is liable to refund the money, together with interest at the prevailing commercial bank rate, to the client.⁴³

81. Right to vest securities through sale

(1) Subject to this section and the Regulations, a person shall not sell securities to a purchaser unless, at the time when the securities are sold that person

- (a) has or, when selling as an agent, the principal has, or

42. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

43. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

- (b) believes on reasonable grounds as having or when selling as an agent, that the principal has,

an existing exercisable and unconditional right to vest the securities in the purchaser.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.⁴⁴

(3) For the purposes of this section, a person sells securities where that person

- (a) implies the sale of securities,
- (b) offers to sell securities,
- (c) poses as entitled to sell securities, or
- (d) instructs a dealer to sell securities.

(4) A sale of securities on or through a stock exchange outside the Republic does not contravene this section.⁴⁵

PART SIX

Accounts and Audit

82. Application of this Part

(1) This Part applies to the holder of a dealer's licence and to the business of dealing in securities carried on by the holder of a dealer's licence, whether in the Republic or elsewhere.

(2) In this Part, unless the contrary intention appears, a reference to a book, security, trust account or business or in relation to a dealer who carries on business in partnership is a reference to a book, security, trust account or business in relation to the partnership.

83. Accounts to be kept by dealers

(1) A dealer shall

- (a) keep the accounting records that will correctly record and explain the transactions and financial position of the business of dealing in securities carried on by the dealer,
- (b) keep the accounting records in a manner that will enable a true and fair profit and loss accounts and balance sheets to be prepared from time to time, and
- (c) keep the accounting records in a manner that will enable profit and loss accounts and balance sheets of the business of dealing in securities carried on by the dealer to be conveniently and properly audited.

(2) A dealer who contravenes a provision of subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.⁴⁶

44. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

45. Inserted by section 7 (a) of the Companies Code (Amendment) Act, 1994 (Act 474).

46. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

(3) A dealer has not complied with subsection (1) in relation to the records unless those records

- (a) are kept in writing in the English language or in a manner that will enable them to be readily accessible and readily converted into writing in the English language;
- (b) are kept in sufficient detail to show particulars of
 - (i) the moneys received or paid by the dealer, including moneys paid to, or disbursed from, a trust account;
 - (ii) the purchases and sales of securities made by the dealer the charges and credits arising from them, and the names of the buyer and seller, respectively, of each of those securities;
 - (iii) the income received from commissions, interests and any other sources and the expenses, commissions and interest paid, by the dealer;
 - (iv) the assets and liabilities, including contingent liabilities, of the dealer;
 - (v) the securities that are the property of the dealer, showing by whom the securities, or the documents of title to the securities, are held and, where they are held by any other person, whether or not they are held as security against loans or advances;
 - (vi) the securities that are not the property of the dealer and for which the dealer or a nominee controlled by the dealer is accountable showing by whom, and for whom, the securities or the documents of title to the securities are held and the extent to which they are held for safe custody or deposited with a third party as security for loans or advances made to the dealer;
 - (vii) the arbitrage transactions entered into by the dealer; and
 - (viii) the underwriting transactions entered into by the dealer;
- (c) are kept in sufficient detail to show separately particulars of every transaction by the dealer;
- (d) specify the day on which or period during which each transaction by the dealer took place; and
- (e) contain copies of acknowledgements of the receipt of securities or of documents of title to securities received by the dealer from clients for sale or safe custody clearly showing the name in which the particular securities are registered.

(4) Without prejudice to subsection (3), a dealer shall keep the records in sufficient detail to show separately, particulars of the transactions undertaken by the dealer with or for the account of

- (a) the dealer's clients excluding, where the dealer carries on business in partnership, the partners of the firm;
- (b) the dealer personally, or where the dealer carries on business in partnership, the partners of the firm;

- (c) any other dealers carrying on business in the Republic;
- (d) dealers outside the Republic; and
- (e) employees of the dealers.

(5) An entry in the accounting and any other records of a dealer required to be kept in accordance with this section shall be deemed to have been made by or with the authority of the dealer.

(6) Where a record required by this section to be kept is not kept in writing in the English language, the dealer shall, if required to convert the record into writing in the English language by a person who is entitled to examine the record, comply with the requirement within a reasonable time.

(7) Despite any other provision of this section, a dealer keeps a record referred to in subsection (1) if the record is kept as a part of, or in conjunction with, records that relate to a business other than dealing in securities that is carried on by the dealer.

(8) Where accounting or any other records are kept by a dealer at a place outside the Republic, the dealer shall send to and keep at a place in the Republic the particulars with respect to the business dealt with in those records that will enable true and fair profit and loss accounts and balance sheets to be prepared.

84. Security documents in custody of dealer

(1) Where a dealer receives for safe custody documents that are securities or are documents of title to securities of a client and for which the dealer or nominee controlled by the dealer is accountable, the dealer shall,

- (a) if the documents are not registered in the name of the client by the body corporate by whom the securities were issued, or made available and the client does not make a request as mentioned in paragraph (b) or (c) of this subsection, register the documents;
- (b) if the client requests the registration of the documents by the body corporate by whom the securities were issued or made available in the name of a nominee controlled by the dealer, register the documents; or
- (c) if the client requests the deposit of the documents in safe custody with the dealer's bankers, deposit the documents.

(2) A dealer shall not deposit a security for a loan or advance, documents that are securities or are documents of title to securities of a client and for which the dealer or a nominee controlled by the dealer is accountable, unless an amount of money is owed to the dealer by the client in connection with a transaction entered into on behalf of the client and the dealer

- (a) gives a written notice to the client, identifying the documents and stating that the dealer intends to deposit them as security for a loan or advance made to the dealer; and
- (b) deposits the documents as security for a loan or advance that does not exceed the amount owed to the dealer on the day of the deposit by the client, in connection with a transaction entered into on the client's behalf by the dealer.

(3) Where

- (a) a dealer has given notice to a person mentioned in subsection (2) and has deposited the documents referred to in the notice as security for a loan or advance, and
- (b) that person pays the amount owed by that person to the dealer,

the dealer shall withdraw the documents from deposit as soon as practicable after the dealer receives the amount owed.

(4) Where a dealer deposits, as security for a loan or advance made to the dealer documents that are securities, or are documents of title of another person, and for which the dealer or a nominee controlled by the dealer is accountable, the dealer shall, at the expiration of six months after the date on which the documents are deposited, and at the expiration of each subsequent period of six months, if the documents are still maintained on deposit, send to the other person written notice to that effect.

(5) A dealer who fails to comply with subsection (4) commits an offence and is liable on conviction to a fine not exceeding one hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.⁴⁷

85. Dealer's trust account

(1) A dealer shall open and maintain with a bank in the Republic an account designated as a trust account.

(2) A dealer shall pay into the account the moneys held by the dealer in trust for a client not later than the next day on which the bank is open for business following the day on which the moneys are received by the dealer.

(3) Subsection (1), where moneys that are required by this section to be paid into a trust account are received by a dealer in a place outside the Republic, the dealer may pay those moneys into a trust account maintained by the dealer in that place.

(4) For the purposes of subsection (2), the moneys received by a dealer from a client are moneys held in trust for that client.

(5) Subsection (4) does not apply to

- (a) moneys received in respect of brokerage and any other proper charges,
- (b) moneys received in payment or part payment for securities delivered to the dealer before the moneys are received, or
- (c) moneys to which section 80 applies.

(6) Subsection (2) does not apply to a cheque, bank draft, money order or postal order made payable to or to the order of a specified person or bearer which is not a cheque, bank draft, money order or postal order in which the payee is the dealer, a partner of the dealer or the firm in which the dealer is a partner, received from or on behalf of a client with instructions, express or implied, that the cheque, bank draft, money order or postal order should be delivered to the person to whom it is payable.

47. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

(7) A person who contravenes or fails to comply with a provision of this section that is applicable to that person commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.⁴⁸

(8) A person who, with intent to defraud, contravenes or fails to comply with a provision of this section that is applicable to that person, commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment; and is liable to refund the money of the client at the prevailing commercial bank rate with interest.⁴⁹

86. Withdrawal from a trust account

(1) A dealer who withdraws moneys from a trust account except for the purpose of

- (a) making a payment to a person entitled to the moneys or in accordance with the written directions of a person entitled to the moneys,
- (b) defraying brokerage and any other proper charges,
- (c) personally paying moneys to which the dealer is entitled, being moneys that were not required to be so paid, or
- (d) making a payment that is otherwise authorised by law,

commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.⁵⁰

(2) A dealer who, with intent to defraud, withdraws moneys from a trust account commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.⁵¹

(3) Except as otherwise provided in this Part, moneys held in a trust account are not available for payment of the debts of a dealer or liable to be paid or taken in execution under the order or process of a Court.

(4) This Part does not take away or affect a lawful claim or lien that a person has against or on the moneys for a trust account or the moneys received for the purchase of securities or from the sale of securities before those moneys are paid into a trust account.

(5) A dealer does not commit an offence under subsection (1) where the dealer withdraws from a trust account an amount of money that is the whole or a part of the amount of a cheque that has been deposited into the account but that has not been paid, and has not been refused payment by the banker on whom it is drawn.

(6) Where a dealer withdraws from a trust account an amount of money that is the whole or a part of the amount of a cheque that has been deposited into the account but that has not been paid by the banker on whom it is drawn and the banker on whom it is drawn refuses payment of the cheque, the dealer shall immediately pay into the trust account by a cash or bank cheque an amount equal to the amount withdrawn from the trust.

48. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

49. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

50. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

51. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act, 590).

(7) A dealer commits an offence where the dealer fails to comply with subsection (6), and where the dealer is a member of a stock exchange the failure is, for the purposes of Part Seven, a defalcation by the dealer.

(8) A dealer found guilty of an offence under subsection (7) is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.⁵²

87. Appointment and qualification of auditor

(1) Within one month after a person becomes the holder of a dealer's licence that person shall appoint an auditor to audit the accounts of that person.

(2) A person shall not consent to be appointed as an auditor of a dealer, act as an auditor of a dealer or prepare a report required to be prepared under this Act by an auditor of a dealer

- (a) if in the case of a natural person that person
 - (i) is not a qualified company auditor, or
 - (ii) is indebted in an amount exceeding three million cedis to the dealer, or
 - (iii) is a partner or employee of the dealer, or
- (b) in the case of a body corporate unless
 - (i) at least one member of the body is ordinarily resident in the Republic,
 - (ii) the members of the body ordinarily resident in the Republic are qualified company auditors,
 - (iii) a member of the body is not indebted in an amount exceeding six million cedis to the dealer, and
 - (iv) a member of the body is not a partner or employee of the dealer.

(3) The appointment of a company or a firm as auditor of a dealer is an appointment of the persons who are members of the firm or company, whether resident in the Republic or not, at the date of the appointment.

(4) Where a body corporate contravenes this section, each member of the company or firm commits an offence and on conviction is liable to a fine of not less than fifty penalty units each or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.⁵³

(5) A person appointed auditor of a dealer shall not, while the appointment continues, refrain from acting as auditor of the dealer.

(6) An auditor of a dealer shall hold office until removed or the auditor resigns from office in accordance with section 88, unless the auditor ceases to qualify as auditor under subsection (2).

52. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

53. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

(7) Within fourteen days after a vacancy occurs in the office of an auditor of a dealer, if there is no surviving or continuing auditor of the dealer, the dealer shall appoint another to fill the vacancy.

(8) While a vacancy in the office of an auditor continues, the surviving or continuing auditor may act.

(9) A dealer shall not appoint a person as auditor unless that person has, before the appointment, consented by notice in writing given to the dealer, to act as auditor and has not withdrawn the consent by notice in writing given to the dealer.

(10) A report or notice made or given by a firm or company appointed as auditor of a dealer for the purposes of this Part shall be signed in the name of the firm or company which is a qualified company auditor.

(11) Where a person is appointed as auditor under subsection (1), which is not an appointment made by virtue of subsection (8), the dealer shall, within fourteen days after the appointment lodge with the Commission a notice in writing stating that the appointment has been made and specifying the name of the person or firm.

(12) The provisions of this Part relating to an auditor apply in addition to the provisions applicable to auditors under the Companies Code, 1963 (Act 179).

88. Removal and registration of auditors

(1) A dealer may, with the consent of the Commission, remove the auditor from office.

(2) An auditor of a dealer may, by notice in writing given to the dealer, resign as auditor of the dealer if the auditor

- (a) has, by notice in writing given to the Commission, applied for consent to resign and has, at or about the same time that the notice was given to the Commission notified the dealer in writing to the application to the Commission; and
- (b) has received the consent of the Commission.

(3) The Commission shall, as soon as practicable after receiving a notice from an auditor under subsection (2), notify the auditor and the dealer whether it consents to the resignation of the auditor.

(4) A statement made by an auditor in an application to the Commission under subsection (2) or in answer to an inquiry by the Commission relating to the reasons for the application

- (a) is not admissible in evidence in civil or criminal proceedings against the auditor, other than proceedings for an offence under section 55; and
- (b) may not be made the grounds of a prosecution, other than a prosecution for an offence under section 55, or for an action or suit against the auditor, and a certificate of the Commission that the statement was made in the application or in answer to an inquiry by the Commission is conclusive evidence that the statement was so made.

(5) Subject to subsection (6) and to an order of a Court under subsection (8), the resignation of an auditor takes effect, whichever last occurs,

- (a) on the date, specified for the purpose in the notice of resignation, or
- (b) on the date on which the Commission consents to the resignation, or
- (c) on the date fixed by the Commission for that purpose.

(6) Where, on the retirement or withdrawal from a firm or company of a member, the body will not be capable, because of section 87 (2) (b) (i) from acting as auditor of a dealer, the member retiring or withdrawing shall, if not disqualified from acting as auditor of the dealer, be deemed to be the auditor of the dealer until the consent of the Commission is obtained to the retirement or withdrawal.

(7) Within fourteen days after the receipt of a notice of resignation from an auditor or a dealer or, where an auditor of a dealer is removed the dealer shall lodge a notice of the resignation or removal in accordance with the prescribed form with the Commission.

(8) A person aggrieved by the refusal of consent by the Commission to the removal or resignation of an auditor of a dealer may, within one month after the date of refusal, appeal to the Court against the refusal and the Court may confirm or reverse the refusal and may make a further order in the matter that it considers proper.

89. Fees and expenses of auditors

The reasonable fees and expenses of an auditor of a dealer are payable by the dealer.

90. Dealer's account

(1) A dealer shall, in respect of each financial year, other than a financial year that ended before the date of commencement of this Act, or ended on or after that date but before the date on which the dealer commenced to carry on business as a dealer, prepare a true and fair profit and loss account and balance sheet on the basis of accounting principles and containing the information and matters that are prescribed, and lodge them with the Commission before the prescribed day for that financial year, together with an auditor's report containing the prescribed information.

(2) The Commission may, on an application made by a dealer and the dealer's auditor before the expiration of the period of two months or as the case requires, the period of three months referred to in the definition as "prescribed day" in subsection (4) or, if that period has been extended pursuant to an approval previously given under this subsection, before the expiration of the extended period, approve an execution or further extension of the period, and the approval may be given subject to the conditions, that the Commission may impose.

(3) Where an approval under subsection (2) in relation to a dealer is given subject to conditions, the dealer shall comply with those conditions.

(4) For the purposes of this section,

"financial year" in relation to a dealer which is a body corporate, means the financial year of the body corporate within the meaning of the Companies Act, 1963 (Act 179); and

“**prescribed day**” in relation to a financial year of a dealer, which is a body corporate, means the day that is three months after the end of that financial year, or where time is approved under subsection (2), the day on which the extended time expires.

91. Auditor to report to the Commission in certain cases

(1) Where an auditor, in the performance of functions as auditor of a dealer, becomes aware of a prescribed matter, the auditor shall, within seven days after becoming aware of that matter, lodge with the Commission a written report on the matter and send a copy of the report to the dealer and to each stock exchange of which the dealer is a member.

(2) For the purposes of this section “**prescribed matter**” means a matter which, in the opinion of the auditor

- (a) has adversely affected, is adversely affecting or may adversely affect the ability of the dealer to meet an obligation as a dealer,
- (b) constitutes or may constitute a breach of section 83, 84, 85 or 86 or Part Seven, or
- (c) constitutes or may constitute a breach of a condition of a licence issued to the dealer under this Act.

92. Certain matters to be reported to the Commission

(1) Where, in relation to a dealer who is a member of a stock exchange, the stock exchange becomes aware of a prescribed matter, the stock exchange shall, as soon as practicable after becoming aware of the matter, lodge with the Commission a written report on the matter and send a copy of the report to the dealer.

(2) For the purposes of this section, “**prescribed matter**”, in relation to a dealer, means a matter which, in the opinion of the stock exchange concerned

- (a) has adversely, is adversely affecting or may adversely affect the ability of the dealer to meet an obligation as a dealer;
- (b) constitutes or may constitute a breach of section 83, 84, 85 or 86 or Part Seven; or
- (c) constitutes or may constitute a breach of a condition of a licence issued to the dealer under this Act.

93. Defamation

(1) An auditor is not liable in the absence of malice to an action for defamation in respect of a statement, whether oral or written made or issued by the auditor in the course of duties as auditor.

(2) A person is not liable in the absence of malice to an action for defamation in respect of the publication of a document prepared by an auditor in the course of duties as an auditor and required by or under this Act to be lodged with the Commission, whether or not the document has been lodged.

(3) This section does not limit or affect any other right, privilege or immunity that an auditor or any other person has as a defendant in an action for defamation.

94. Imposition of obligations on members not affected by this Part

This Part does not prevent a stock exchange imposing on members of that stock exchange obligations or requirements, not inconsistent with this Act, that the stock exchange thinks fit with respect to

- (a) the audit or accounts including the audit of accounts by an auditor appointed by the stock exchange,
- (b) the information to be furnished in reports from auditors, or
- (c) the keeping of books.

95. Restraining dealings with dealer's bank

Where the Commission shows to the satisfaction of the Court

- (a) that there are reasonable grounds for believing that there is a deficiency in a trust account, whether kept within or outside the Republic, or a person who is or has been a dealer or in an account kept by virtue of section 80 (1) (a), whether within or outside the Republic, by a person who is or has been a dealer,
- (b) that there has been an undue delay, or an unreasonable refusal, on the part of a person who is or has been a dealer, in paying, applying or accounting for trust moneys as required by this Act,
- (c) that a person who is or has been a dealer has not paid moneys into a trust account as provided by section 85 or into an account as provided by the section,
- (d) that a business of dealing in securities is carried on or was carried on by a person not in partnership,
- (e) that the dealer's licence of that person under Part Four has been revoked or suspended,
- (f) that a person is incapable, by reason of physical or mental infirmity of managing that person's affairs,
- (g) that a person has ceased to carry on a business of dealing in securities, or
- (h) that a person has died,

the Court may make an order restraining dealing in respect of all or any of the bank accounts of that person, subject to the terms and conditions that the Court may impose.

96. Full disclosure by banker

Where an order made under section 95 is directed to a banker, the banker shall

- (a) disclose to the Commission every account kept at the bank in the name of the person to whom the order relates, and an account that the banker reasonably suspects is held or kept at the bank for the benefit of that person; and
- (b) permit the Commission to make a copy of, or to take an extract from, an account of the person to whom the order relates or any of the banker's books relating to that person.

97. Power of court to make further orders and give directions

Where an order is made under section 95, the Court may, on the application of the Commission or of a person affected by the order, make further orders

- (a) dealing with the ancillary matters that the Court considers necessary or desirable;
- (b) directing that all or any of the moneys in an account affected by an order so made shall be paid by the bank to the Commission or to a person nominated by the Commission, on the appropriate terms and conditions; or
- (c) discharging or varying an earlier order.

98. Orders relating to payment of moneys

(1) An order made under section 97 may include directives to the person to whom the moneys are paid directing that person

- (a) to pay the moneys into a separate trust account, or
- (b) to prepare a scheme for distributing the moneys during a period of six months after the receipt of the moneys, to persons who claim to be entitled to the moneys and to the satisfaction of the Commission that they are so entitled,

and where the moneys received are not sufficient to pay the proved claims, to apportion the moneys among the claimants in proportion to their proven claims shown in the scheme.

(2) A person preparing a scheme for a distribution of moneys under subsection (1), shall apply to the Court for approval of the scheme and for directions in respect of it.

(3) The Court may give directions regarding

- (a) the moneys held in a separate trust account under subsection (1),
- (b) the persons to whom and in what amounts the whole or any portion of those moneys shall be paid, and
- (c) the payment of the balance of the moneys.

PART SEVEN*Fidelity Fund***99. Establishment of fidelity fund**

(1) A stock exchange shall establish and keep a fidelity fund which shall be administered by its council on behalf of the stock exchange.

(2) The assets of a fidelity fund are the property of the stock exchange but shall be kept separate from any other properties and shall be held in trust for the purposes set out in this Part.

100. Moneys constituting fidelity fund

The fidelity fund of a stock exchange shall consist of

- (a) the moneys paid to the stock exchange by member companies and member firms in accordance with this Part,

- (b) the interest and profits accruing from the investment of the fidelity fund,
- (c) the moneys paid to the fidelity fund by the stock exchange,
- (d) the moneys recovered by or on behalf of the stock exchange in the exercise of a right of action conferred by this Part,
- (e) the moneys paid by an insurer under a contract of insurance or indemnity entered into by the council of the stock exchange under section 119, and
- (f) any other moneys lawfully paid into the fidelity fund.

101. Fund to be kept in separate bank account

The moneys forming part of a fidelity fund shall, pending the investment or application of it in accordance with this Part, be paid or transferred into a bank in the Republic.

102. Payments out of fidelity fund

Subject to this Part, there shall be paid out of the fidelity fund of a stock exchange as required and in the order that the council of the stock exchange considers proper,

- (a) the amount of the claims, including costs, allowed by the council or established against the stock exchange under this Part;
- (b) the legal and any other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fidelity fund or in the exercise by the council of the rights, powers and authorities vested in it by this part in relation to the fund;
- (c) the premiums payable in respect of contracts of insurance or indemnity entered into by the council under section 119;
- (d) the expenses incurred or involved in the administration of the fund including the salaries and wages of persons employed by the council in relation to it; and
- (e) any other moneys payable out of the fund in accordance with this Act.

103. Accounts of fund

(1) A stock exchange shall establish and keep proper accounts of its fidelity fund and shall, within three months after the end of each financial year, prepare a balance-sheet of the account as at the end of that financial year.

(2) The council of the stock exchange shall appoint an auditor to audit the account of the fidelity fund.

(3) The auditor appointed by the council shall regularly and fully audit the accounts of the fidelity fund and shall audit each balance-sheet before the council not later than three months after the balance-sheet is made out.

104. Management committee

(1) The council of a stock exchange may appoint a management committee of not less than three and not more than five persons, of whom at least one is a member of the council.

(2) The council of a stock exchange may by resolution delegate to the management committee all or any of its functions under this Part, other than those under this section, sections 107 and 110 (3), (4), (5) and (6).

(3) A power, an authority or a discretion delegated may be exercised by a majority of the management committee.

(4) The delegation may in a like manner be rescinded or varied.

(5) The council of a stock exchange may remove a member of the management committee appointed by it under this section and may fill a vacancy in the committee.

105. Fidelity fund to consist of an amount of five million cedis

(1) The fidelity fund of a stock exchange shall consist of an amount of money not less than five million cedis, or any other sum of money that the Minister may, by legislative instrument, direct to be paid to the credit of the fund on the establishment of a stock exchange under this Act.

(2) The fidelity fund shall be increased by an annual payment into the fund of a sum of money that is equal to ten percent or more of the net income of a stock exchange for any one financial year, but the Minister may, after consultation with the stock exchange, increase that percentage.

106. Provisions if fund is reduced below five million cedis

Where the fidelity fund is reduced below the sum of five million cedis or any other sum that the Minister may, by legislative instrument determine, the council shall take steps to make up the deficiency,

- (a) by transferring an amount that is equal to the deficiency from other funds of the stock exchange to the fidelity fund; or
- (b) in the event that there are insufficient funds to transfer under paragraph (a), by determining the amount which each member company and member firm shall contribute to the fund.

107. Levy of liabilities

(1) Where a fidelity fund is not sufficient to satisfy the liabilities that are ascertained to relate to the stock exchange, the council may impose on every company and member firm a levy of an amount that it thinks fit or, if directed by the Minister, the council shall impose a levy of a sum of money which shall in the aggregate be equivalent to the amount so directed.

(2) The amount of the levy shall be paid within the time and in the manner specified by the council generally or in relation to a particular case.

108. Advances to fund

(1) A stock exchange may from its general funds give or advance on the terms that the council thinks fit a sum of money to its fidelity fund.

(2) A money advanced under subsection (1) may be repaid from the fidelity fund to the general funds of the stock exchange.

(3) For the purposes of this section the advance is not in contravention of a banking or money lending law.

109. Investment of fund

The moneys in a fidelity fund that are not immediately required for its purposes may be invested by the council in a manner in which trustees are authorised by law to invest trust funds.

110. Application of fund

(1) Subject to this Part, a fidelity fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss from a misappropriation of moneys committed by a member company or member firm or a director or partner or by an employee of the member company or member firm in relation to moneys or any other property which in the course of or in connection with the business of that company or firm

- (a) was entrusted to or received by a member company or a director or partner or an employee of the company or firm for or on behalf of any other person; or
- (b) was entrusted to or received by the member entrusted to or received by the member company or member firm or an employee of the company or firm as trustee or for or on behalf of the trustees of that money or property.

(2) Except as otherwise provided in this section, the total amount of moneys that may be paid under this Part to a person who suffers loss through misappropriations of moneys by a member company or member firm or a director or partner or through misappropriations of money by an employee of the company or firm shall not exceed in respect of that member company or member firm, the sum of two million cedis, but for the purposes of this subsection an amount paid from a fidelity fund shall to the extent to which the fund is subsequently reimbursed be disregarded.

(3) Where, after taking into account the ascertained or contingent liabilities of a fidelity fund, the council considers that the assets of the fund so permit, the council may decide to increase the total amount of moneys which may be applied from that fund under subsection (2) and shall inform the Commission accordingly.

(4) The Commission shall publish a notice of the decision in the *Gazette*; and from the date of the publication until the notice is revoked or varied, the amount specified in the notice shall be the total amount which may be applied for compensation for pecuniary loss.

(5) Where the council decides to revoke or vary the contents of the notice under subsection (4), the council shall inform the Commission which shall then publish the notice of the revocation or variation in the *Gazette*.

(6) Where, in a particular case after taking into account the ascertained or contingent liabilities of a fidelity fund, the council considers that the assets of the fund so permit, the council may apply out of the fund a sum of money in excess of the total amount limited by or under this section that the council thinks fit, towards the compensation of persons who have suffered pecuniary losses as provided in subsection (1).

(7) Despite a provision in subsections (2), (3), (4) and (6), the Minister may direct the council to increase the total amount of moneys which shall be applied from a fidelity fund of a particular member company or member firm in payment to persons who suffer loss through misappropriations of moneys by that particular member company or member firm or by a director or partner or by an employee of that company or firm.

(8) For the purposes of this Part, “**director of a member company**” or “**partner of a member firm**” includes a person who has been, but at the time of the misappropriation of the moneys has ceased to be a director or partner if, at the time of the misappropriation of the moneys the person claiming compensation has reasonable grounds for believing that person to be a director of a member company or a partner of a member firm.

111. Claims against fund

(1) Subject to this Part, a person who suffers pecuniary loss as provided in subsection (1) of section 110 is entitled to claim compensation from the fidelity fund and take proceedings in a Court against the stock exchange.

(2) Subject to subsection (3), a person does not have a claim against the fidelity fund in respect of a misappropriation of moneys in respect of money or any other property which, prior to the commission of the misappropriation, had in the course of the administration of a trust ceased to be under the sole control of the director of the member company concerned or the partner of the member firm concerned.

(3) Subject to this Part, the amount of money which a claimant is entitled to claim as compensation from a fidelity fund is the amount of the actual pecuniary loss suffered by the claimant, including the reasonable costs of the disbursements incidental to the making of proof of claim, less the amount or value of the moneys or any other benefits received or receivable by the claimant from sources other than the fund in reduction of the loss.

(4) In addition to the compensation payable under this Part, interest shall be paid out of the fidelity fund concerned on the amount of compensation, less an amount of money attributable to costs and disbursements, at the rate of five percent per annum calculated from the day on which the misappropriation of the moneys was committed and continuing until the day on which the claim is satisfied.

112. Notice calling for claims against fund

(1) The council of a stock exchange may publish in a daily newspaper published and circulating generally in the locality a notice, in or to the effect of the form prescribed, specifying a date, which is not earlier than three months after the publication, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.

(2) A claim for compensation from a fidelity fund in respect of a misappropriation of moneys shall be made in writing to the council

(a) where a notice under subsection (1) has been published on or before the date specified in the notice; or

(b) where a notice has not been published within six months after the claimant becomes aware of the defalcation,

and a claim which is not so made is barred unless the council otherwise determines.

(3) An action for damages does not lie against a stock exchange or against a member or an employee of a stock exchange or of a council or management committee as a result of a notice published in good faith and without malice for the purposes of this section.

113. Power of council to settle claims

(1) The council may, subject to this Part, allow and settle a proper claim for compensation from a fidelity fund after the commission of the misappropriation of moneys in respect of which the claim arose.

(2) Subject to subsection (3), a person shall not commence legal proceedings under this Part against a stock exchange without leave of the council unless

- (a) the council has disallowed the claim, and
- (b) the claimant has exhausted the relevant rights of action and any other legal remedies for recovery of the money or any other property, in respect of which the misappropriation of moneys was committed, available against the member company or member firm in relation to which the claim arose and against any other persons liable in respect of the loss suffered by the claimant.

(3) A person who is refused leave by a council may apply for leave to a Justice of the High Court who may make an appropriate order.

(4) A council after disallowing, whether wholly or partly, a claim for compensation from a fidelity fund shall serve notice of the disallowance in the prescribed form on the claimant or the claimant's lawyer.

(5) Despite the Limitations Act, 1972⁵⁴, proceedings against a stock exchange in respect of a claim which is disallowed by the council shall not be commenced after the expiration of three months after service of notice of disallowance under subsection (4).

(6) In proceedings brought to establish a claim, evidence of an admission or a confession, by, or other evidence which would be admissible against the member company, member firm, or any other person by whom it is alleged a misappropriation of moneys was committed, is admissible to prove the commission of the misappropriation, although the member company, member firm or any other person is not the defendant in or a part to those proceedings, and the defences which would have been available to that member company, member firm or any other person shall be available to the stock exchange.

(7) The council or, where proceedings are brought to establish a claim, the Court, if satisfied that the misappropriation of moneys on which the claim is founded was actually committed, may allow the claim and act accordingly, although the person who committed the misappropriation has not been convicted or prosecuted for the act or that the evidence on which the council or the Court acts would not be sufficient to establish the guilt of the person on a criminal trial in respect of the misappropriation.

54. N.R.C.D. 54.

114. Orders of court on establishment of claim

Where in proceedings brought to establish a claim the High Court is satisfied that the misappropriation of the moneys on which the claim is founded was actually committed and the claimant has a valid claim, the Court shall, by order

- (a) declare the fact and the date of the misappropriation and the amount of the claim, and
- (b) direct the council concerned to allow the claim as declared and deal with the claim in accordance with this Part.

115. Power of council to require production of securities

(1) The council may require a person to produce and deliver the securities, documents or statements of evidence necessary

- (a) to support a claim made by that person, or
- (b) for the purpose of exercising the rights of that person against a member company, a member firm or the director or partners of the stock exchange or any other person concerned, or
- (c) to enable criminal proceedings to be taken against a person in respect of a misappropriation of moneys.

(2) Where a person fails to deliver the securities, documents or statements of evidence, the council may disallow a claim by that person under this Part.

116. Rights of claimant on payment from fund

On payment out of a fidelity fund of the moneys in respect of a claim under this Part, the stock exchange is entitled to the extent of the payment to the rights and remedies of the claimant in relation to the loss suffered from the misappropriation of moneys.

117. Payment of claims only from fund

Moneys or any other property belonging to a stock exchange, other than the fidelity fund, shall not be available for the payment of a claim under this Part whether the claim is allowed by the council or is made the subject of an order of the Court.

118. Fund insufficient to meet claims

(1) Where the amount of credit in a fidelity fund is insufficient to pay the amount of the claims against it which have been allowed or in respect of which orders of the High Court have been made, the amount of credit in the fund shall, subject to subsection (2), be apportioned between the claimants in a manner that the Board thinks equitable, and a claim that then remains unpaid shall be charged against future receipts of the funds and paid out of the fund when moneys are available.

(2) Where the aggregate of the claims made in relation to misappropriation of moneys by or in connection with a member company or member firm exceeds the total amount which may, under section 110 (2) be paid under this Part in respect of that member company or member firm, then the total amount shall be apportioned between the claimants in a manner that the council thinks equitable.

(3) On payment out of the fund of the claims and any other claims against the fund which may later arise or be made in respect of misappropriations of money, by or in connection with the member company or member firm, the member company or firm is absolutely discharged.

119. Power of council to enter into contracts of insurance

(1) A stock exchange may enter into a contract with an insurer in the Republic to be insured or indemnified against liability in respect of claims under this Part.

(2) The contract may be entered into in relation to member companies and member firms generally, or in relation to a particular member company generally with the exclusion of a particular member company named in the agreement.

(3) An action does not lie against a stock exchange or against a member or servant of a stock exchange or its council or against a member of a management committee for injury alleged to have been suffered by a member company or member firm by reason of the publication in good faith of a statement that a contract entered into under this section does or does not apply in respect to it.

120. Application of insurance moneys

A claimant for money from a fidelity fund does not have

- (a) a right of action against an insurer with whom a contract of insurance or indemnity is made under this Part, or
- (b) a right or claim on moneys paid by the insurer under the contract.

121. Interpretation

In this Part, unless the context otherwise requires,

“**council**” in relation to a fidelity fund of a stock exchange, means the council of that stock exchange;

“**fidelity fund**” or “**fund**” means a fidelity fund established under section 99;

“**stock exchange**”, in relation to a fidelity fund, means the stock exchange which established the fidelity fund.

PART EIGHT

Trading in Securities

122. False trading and market rigging transactions

(1) A person who creates or causes to be created, or does anything that is calculated to create a false or misleading appearance of active trading in securities on a stock exchange in the Republic or a false or misleading appearance in respect of the market for, or the price of, the securities commits an offence.

(2) A person who by means of purchases or sales of securities that do not involve a change in the beneficial ownership of those securities, or by fictitious transactions or devices, maintains, inflates, depresses, or causes fluctuations in the market price of securities commits an offence.

- (3) Without prejudice to the general effect of subsection (1), a person who
- (a) effects, takes part in, is concerned in or carries out, directly or indirectly, a transaction of sale or purchase of securities, being a transaction that does not involve a change in the beneficial ownership of the securities, or
 - (b) makes or causes to be made an offer to sell or purchase securities at a specified price where that person has made or caused to be made or proposes to make, or knows that a person associated with that person has made or caused to be made or proposes to make, an offer to sell or purchase the same number, or substantially the same number of securities at a price that is substantially the same as the specified price,

has, for the purposes of this Part, created a false or misleading appearance of active trading in securities on a stock exchange.

(4) When prosecuting a person for an act referred to in subsection (3), it is a defence if the defendant establishes that the purpose for which the act was done was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on the stock exchange.

(5) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or a person associated with that person, acquired an interest in the securities after the purchase or sale.

(6) When prosecuting for an offence under subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose for which the defendant purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance in respect of the market for, or the price of, securities.

(7) A reference in subsection (3) to a transaction of sale or purchase of securities includes

- (a) a reference to the making of an offer to sell or purchase securities, and
- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase securities.

123. Stock market manipulation

(1) A person who effects, takes part in, is concerned in or carries out, directly or indirectly, two or more transactions in securities of a body corporate which are transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities of the body corporate on a stock exchange in the Republic with intent to induce other persons to sell, purchase or subscribe for securities of the body corporate or of a related body corporate, commits an offence.

(2) A reference in subsection (1) to a transaction in relation to securities of a body corporate, includes

- (a) a reference to the making of an offer to sell or purchase the securities of the body corporate, and

- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase the securities of the body corporate.

124. False or misleading statements

A person commits an offence if that person who makes a statement or disseminates information that is false or misleading in a material particular, that is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of raising, lowering, maintaining or stabilising the market price of securities if, when the statement or the dissemination of the information is made, that person

- (a) does not care whether the statement or information is true or false, or
(b) ought reasonably to have known that the statement or information is false or misleading in a material particular.

125. Fraudulently inducing persons to deal in securities

(1) A person commits an offence if that person induces or attempts to induce any other person to deal in securities

- (a) by making or publishing a statement, promise or forecast which that person knows to be misleading, false or deceptive;
(b) by a dishonest concealment of material facts;
(c) by the reckless making or publishing, dishonestly or otherwise, of a statement, promise or forecast that is misleading, false or deceptive; or
(d) by recording or storing in, or by means of a mechanical, an electronic or any other device, information which that person knows to be false or misleading in a material particular.

(2) It is a defence to a prosecution for an offence under subsection (1) (d) to establish that, at the time when the defendant recorded or stored the information, the defendant did not have reasonable grounds for expecting that the information would be available to any other person.

126. Dissemination of information about illegal transactions

A person who circulates or disseminates or authorises or is concerned in the circulation or dissemination of a statement or an information to the effect that, the price of the securities of a body corporate will or is likely to rise or fall or be maintained by reason of a transaction entered into or any other act or thing done in relation to the securities of that body corporate, or of a body corporate that is related to that body corporate, in contravention of a provision in this Part commits an offence where

- (a) that person, or a person associated with that person, has entered into that transaction or done an act or a thing, or
(b) that person has received, or expects to receive directly or indirectly, a consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination of the statement or information.

127. Employment of manipulative and deceptive devices

A person shall not directly or indirectly in connection with the purchase or sale of securities

- (a) employ a device, scheme or an artifice to defraud;
- (b) engage in an act, a practice or course of business which operates or would operate as a fraud or deceit on any other person; or
- (c) make an untrue statement of a material fact or omit to state a material fact necessary with the result that the statements made in the light of the circumstances under which they were made, appear truthful.

128. Prohibition of dealings in securities by insiders

(1) A person who is, or has during the six months immediately prior to a dealing in the securities of a body corporate been connected with that body corporate shall not deal in securities of that body corporate if by reason of the association that person is in possession of information that is not generally available but, if it were, might materially affect the price of those securities.

(2) A person who is, or has during the six months immediately prior to a dealing in the securities of a body corporate been connected with that body corporate shall not deal in the securities of any other body corporate if by reason of being, or having been, connected with the first-mentioned body corporate that person is in possession of information that

- (a) is not generally available but, if it were, would be likely to affect materially the price of those securities, and
- (b) relates to a transaction, actual or expected, involving both those bodies corporate or involving one of them and the securities of the other.

(3) Where a person in possession of information as provided in subsection (1) or (2), is not precluded by either of those subsections from dealing in these securities, that person shall not deal in those securities if

- (a) that person has obtained the information directly from another person and is aware, or ought reasonably to be aware of facts or circumstances by virtue of which that other person is precluded by subsection (1) or (2) from dealing in those securities; or
- (b) when the information was obtained, that person was associated with that other person or had an arrangement for the communication of information of a kind to which those subsections apply with a view to dealing in securities personally or with that other person.

(4) A person shall not, when precluded by subsection (1), (2) or (3) from dealing in securities,

- (a) cause or procure any other person to deal in those securities, or
- (b) communicate that information to any other person if
 - (i) trading in those securities is permitted on a stock exchange whether within or outside the Republic; and

- (ii) that person knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing or causing or procuring another person to deal in those securities.

(5) Without prejudice to subsection (3), but subject to subsections (6) and (7), a body corporate shall not deal in securities where an officer of that body corporate is precluded by subsection (1), (2) or (3) from dealing in those securities.

(6) A body corporate is not precluded by subsection (5) from entering into a transaction by reason only of information in the possession of an officer of that body corporate if

- (a) the decision to enter into the transaction was taken on its behalf by a person other than that officer, and
- (b) it had in operation at that time arrangements to ensure that the information was not communicated to a person and that an advice in respect of the transaction was not given to that person by a person in possession of the information, and
- (c) the information was not communicated and the advice was not so given.

(7) A body corporate is not precluded by subsection (5) from dealing in securities of any other body corporate by reason only of information in possession of its officer which was obtained by the officer in the course of duties as its officer but relates to proposed dealings by the first-mentioned body corporate in securities of the other body corporate.

(8) For the purpose of this section, a person is connected with a body corporate if, being a natural person, that person

- (a) is an officer of that body corporate or of a related body corporate;
- (b) is a substantial shareholder in that body corporate or in a related body corporate; or
- (c) occupies a position that may reasonably be expected to give that person access to information of a kind to which subsections (1) and (2) apply by virtue of
 - (i) a professional or business relationship existing between that person or the employer of that person or a body corporate of which that person is an officer and that body corporate or a related body corporate; or
 - (ii) that person being an officer of a substantial shareholder in that body corporate or in a related body corporate.

(9) This section does not preclude the holder of a dealer's licence from dealing in securities or rights or interests in securities of a body corporate, where the securities, rights or interests are permitted by a stock exchange to be traded on the stock market of that stock exchange, if

- (a) the holder of the licence enters into the transaction concerned as an agent for any other person in accordance with a specific instruction to effect that transaction, and

- (b) the holder of the licence has not given an advice to the other person in relation to dealing in securities, or rights or interests in securities, of that body corporate that are included in the same class as the first-mentioned securities, and
- (c) the other person is not associated with the holder of the licence.

(10) Where prosecution is instituted against a person for entering into a transaction whilst in possession of certain information contrary to this section, it is a defence if that person satisfies the Court that the other party to the transaction knew, or ought reasonably to have known, of the information before entering into the transaction.

(11) For the purposes of subsection (7), “**officer**”, in relation to a body corporate, includes

- (a) a director, secretary, executive officer or employee of the body corporate,
- (b) a receiver or receiver and manager of property of the body corporate,
- (c) an official manager or a deputy official manager of the body corporate,
- (d) a liquidator of the body corporate, and
- (e) a trustee or any other person administering a compromise or arrangement made between the body corporate and any other person.

129. Penalties

A person who contravenes a provision of this Part is liable on conviction,

- (a) in the case of a person who is not a body corporate, to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years; or
- (b) in the case of a body corporate, to a fine not exceeding five hundred penalty units.⁵⁵

130. Convicted persons liable to pay compensation

(1) A person convicted of an offence under this Part is liable to pay compensation to a person who, in a transaction for the purchase or sale of securities entered into with that first mentioned person or with a person acting for or on behalf of the first mentioned person suffers loss because of the difference between the price at which the securities were dealt in and the price at which they might have been dealt in at the time when the transaction took place if the contravention had not occurred.

(2) The amount of compensation for which a person is liable under subsection (1) is the amount of the loss sustained by the person claiming the compensation.

(3) Despite the Limitations Act, 1972⁵⁶, an action under this section for the recovery of a loss shall not be commenced after the expiration of two years after the date of completion of the transaction in which the loss occurred.

(4) Subsection (1) does not affect any other liability that a person may incur under any other law.

55. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

56. N.R.C.D. 54.

PART NINE

*Miscellaneous***131. Restriction on use of title “stock broker” or “stock exchange”**

(1) A person who is not a stockbroker within the meaning of this Act shall not use or by inference adopt the name or title of stockbroker or exhibit at a place a name, title or description implying or tending to create the belief of that person being a stockbroker.

(2) A body corporate that is not a stock exchange shall not use or by inference adopt the name or title of a stock exchange or exhibit at a place a name, title or description implying or tending to create the belief that the body corporate is a stock exchange.

132. Offences by directors or managers

(1) A director or manager of a stock exchange, unit trust scheme, mutual fund or of a dealer or of an investment adviser, who

- (a) fails to take reasonable steps to ensure compliance with this Act, or
- (b) fails to take reasonable steps to ensure the accuracy and correctness of a statement submitted by that person under this Act,

commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.⁵⁷

(2) In proceedings against a person under subsection (1), it is a defence for the accused to prove reasonable grounds for believing that another person was charged with the duty of ensuring compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate, and that person was competent and in a position to discharge that duty.

(3) A person shall not be convicted of an offence under subsection (1) unless the Court is satisfied that the offence was committed wilfully.

133. Falsification of records by directors, employees and agents

A director, manager, an auditor, employee or agent of a stock exchange or a dealer or an investment adviser, who

- (a) wilfully makes, or causes to be made, a false entry, or
- (b) wilfully omits to make an entry or causes the entry to be omitted, or
- (c) wilfully alters, abstracts, conceals or destroys an entry or wilfully causes the entry to be altered, abstracted, concealed or destroyed, in a book or report, slip, document or statement of the business affairs, transaction, conditions assets or accounts of that stock exchange, dealer or investment adviser,

commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.⁵⁸

57. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

58. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

134. False reports to the Commission or stock exchange

A person who, with intent to deceive makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of a false or misleading statement or report to the Commission, stock exchange or an officer of the Commission relating to

- (a) dealing in securities,
- (b) a matter or thing required by the Commission for the proper administration of this Act, or
- (c) the enforcement of the rules of a stock exchange,

commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.⁵⁹

135. Immunity of the Commission and its employees

An action or any other legal proceeding does not lie against the Commission or an officer or employee of the Commission or a person, including a stock exchange, acting under the direction of the Commission for an act done in good faith in the performance or intended performance, of a function, under this Act or the Regulations or for a neglect or default in the performance in good faith of that function.

136. Offences by body corporate

Where a body corporate commits an offence under this Act, a director, an executive officer, a secretary or an employee of the body corporate who was, by the act or omission, directly or indirectly, knowingly concerned in or a party to the commission of the offence also commits that offence.

137. Prohibition of payment or transfer of moneys, securities or other property

(1) Where,

- (a) an investigation which constitutes or may constitute an offence under this Act is being carried out in relation to an act or omission by a person, or
- (b) a prosecution has been instituted against a person for an offence under this Act, or
- (c) civil proceedings have been instituted against a person under this Act,

and the Court considers it necessary or desirable for the purpose of protecting the interests of a person to whom a relevant person, that is a person referred to in paragraph (a), (b) or (c) of this subsection, is liable or may become liable to pay any moneys, whether in respect of a debt or by way of damages or compensation or otherwise account for the securities or any other property, the Court may, on application by the Commission, make an order specified in subsection (2).

(2) The Court may make

- (a) an order prohibiting absolutely or subject to conditions, a person who is indebted to the relevant person or to a person associated with the relevant person, from making a payment in total or partial discharge of the debt;

59. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

- (b) an order prohibiting absolutely or subject to conditions, a person holding money or securities or any other property on behalf of the relevant person or on behalf of a person associated with the relevant person, from paying all or any of the money or transferring or otherwise parting with possession of the securities or any other property to any person;
- (c) an order prohibiting absolutely or subject to conditions, the taking or sending out of the Republic of money of the relevant person or of a person associated with the relevant person;
- (d) an order prohibiting absolutely or subject to conditions, the taking, sending or transfer of securities or any other property of the relevant person or of a person associated with the relevant person from a place in the Republic to a place outside the Republic, including the transfer of securities from a register in the Republic to a register outside the Republic;
- (e) an order appointing a receiver or receiver and manager with the powers that the Court may order of the property or part of the property of the relevant person;
- (f) an order where the relevant person is a natural person
 - (i) requiring the relevant person to deliver up to the Court the passport and any other documents of the relevant person as the Court thinks fit, or
 - (ii) prohibiting the relevant person from leaving the Republic without the consent of the Court.

(3) Where an application is made to Court for an order under subsection (1), the Court may, before considering that application, on a further application by the Commission grant an interim order pending the determination of the original application.

(4) Where the Commission makes an application to the Court for an order under subsection (1), the Court shall not require the Commission or any other person, as a condition of granting an interim order under subsection (3), to give an undertaking as to damages.

(5) Where the Court has made an order under this section, it may, on application by the Commission or by a person affected by the order, make a further order rescinding or varying the earlier order.

(6) An order made under this section may be expressed to operate for a period specified in the order or until the order is rescinded by a further order under subsection (5).

(7) A person who contravenes or fails to comply with an order by the Court under this section applicable to that person commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.⁶⁰

138. General penalty

A person who is convicted of an offence under this Act for which a specific penalty is not provided is liable on conviction to a fine not exceeding five hundred penalty units or to

60. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

a term of imprisonment not exceeding two years or to both the fine and the imprisonment.⁶¹

139. Proceedings and compounding of offences

(1) Prosecution for an offence against a provision of this Act shall be by the Attorney-General.⁶²

(2) The Board may, without proceeding against a person for an offence punishable by a fine under this Act or the Regulations demand the amount of the fine or a reduced amount that it thinks fit from the person liable and,

- (a) where that person pays the amount to the Commission within fourteen days of the demand, proceedings shall not be taken against that person in relation to the offence;
- (b) where that person does not pay the amount the Commission may commence proceeding in relation to the offence.

(3) The powers conferred on the Commission under subsection (2) shall only be exercised where a person admits the offence and agrees in writing to the offence being dealt with under that subsection.

(4) Offences under this Act shall be tried summarily.⁶³

140. Directions by the Minister

The Minister may give a direction of a general or specific character to the Commission as to the performance of a function of the Commission, and the Commission shall give effect to the direction.

141. Regulations

(1) The Minister may, on the recommendations of the Commission, by legislative instrument, make Regulations prescribing the matters required or permitted by this Act to be prescribed, and for carrying out or giving effect to this Act.

(2) Without prejudice to subsection (1), the Regulations may provide for

- (a) the forms to be used for the purposes of this Act;
- (b) the publication of advertisements offering the services of dealers or investment advisers or offering securities for purchase or sale, and the form and content of those advertisements;
- (c) the form of balance sheets and profit and loss accounts required to be prepared by dealers;
- (d) the furnishing of information to the Commission in addition to, or in variation of, the information contained in a prescribed form lodged with it;
- (e) the times within which information required to be furnished to the Commission shall be furnished;

61. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

62. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

63. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

- (f) the procedures under which and the conditions on which a public company may appeal to the Commission against a refusal of a stock exchange to list its securities;
- (g) the form and contents of trust deed of unit trusts and the regulations of mutual funds;
- (h) the matters relating to the content of scheme particulars of unit trusts and prospectus of mutual funds;
- (i) pricing, valuation and dealing in units and shares;
- (j) reports to unit holders or shareholders in unit trusts and mutual funds;
- (k) the matters relating to the criteria for identification, licensing and administration of collective investment schemes other than unit trusts and mutual funds;
- (l) the matters relating to the content of invitations to the public and the examination and approval of invitations;
- (m) the matters relating to the continuing disclosure of information and forms, content, frequency and standards of financial reporting by issuers of securities;
- (n) the matters relating to stock exchange and stock markets; and
- (o) generally on the management of unit trusts and mutual funds.⁶⁴

142. Interpretation

In this Act, unless the context otherwise requires,

“**advertising**” includes a form of advertising whether in a publication or by the display of notices or by means of circulars or any other documents or by an exhibition of photographs or films or videos or by any sound broadcasting or television or on computer screens or in any other manner;

“**agent**” in relation to a dealer, includes a person who is or has at any time been a banker of the dealer;

“**arbitrage**” means profiting from difference in price of the same security traded on two or more markets;

“**assets of the scheme**” means the capital and income of the scheme;

“**auditor**” means a company auditor qualified under the Companies Act, 1963 (Act 179);

“**Board**” means the governing body of the Commission as provided for under section 2;

“**body corporate**” includes an incorporated body under the Incorporated Private Partnerships Act, 1962 (Act 152);

“**book**” includes a document in any form and information stored in an electronic form;

64. Amended by the Schedule to the Securities Industry (Amendment) Act, 2000 (Act 590).

“**chairman**” means the chairman of the Commission;

“**collective investment scheme**” means an arrangement by which

- (a) contributions to the scheme by persons taking part in the scheme are pooled;
- (b) the contributions are invested in eligible assets by the manager of the scheme on behalf of the contributors;
- (c) persons making contributions to the scheme become shareholders or unit holders in the scheme but do not have day to day control over the management of the assets;
- (d) as shareholders or unit holders, contributors to the scheme participate in or receive profits or income or sums of money paid out of the profits or income arising from the acquisition, holding management and disposal of the assets or a part of the assets by the manager;

“**Commission**” means the Securities and Exchange Commission established by section 1;

“**company**” has the same meaning as is assigned to it in the Companies Act, 1963 (Act 179);

“**constitution of a scheme**” means, in the case of a unit trust, the first deed, and in the case of a mutual fund, means the regulations of the mutual fund;

“**council**” in relation to a stock exchange, means the persons in whom the management of the stock exchange is vested;

“**Court**” means the commercial division of the High Court;

“**dealer**” includes a person who carries on a business of dealing in securities whether that person carries on any other business or not and

- (a) a stock broker,
- (b) a share transfer agent,
- (c) a trustee of a collective investment scheme,
- (d) a person who provides custodial services with regard to securities,
- (e) a person who performs the functions of central securities depository or provides securities clearing and settlement facilities,
- (f) a registrar to a public issue of securities,
- (g) an underwriter,
- (h) a person including a bank as defined in the Banking Act, 2004 (Act 673), or a merchant bank approved by the Bank of Ghana that undertakes or performs the services of an issuing house or manager to a public issue of securities, and
- (i) any other persons performing securities or capital market related functions as the Minister by notice in the *Gazette* may prescribe;

“investment adviser” means a person who

- (a) carries on a business of advising others concerning securities;
- (b) as part of a regular business issues or publishes analysis or reports concerning securities; or
- (c) pursuant to a contract or arrangement with a client, undertakes on behalf of the client, whether on a discretionary authority granted by the client or otherwise, the management of a portfolio of securities for the purpose of investment, but does not include
 - (i) a bank as defined in the Banking Act, 2004 (Act 673)
 - (ii) a company registered under the Insurance Act, 1989;⁶⁵
 - (iii) a lawyer or accountant in practice whose carrying on of that business is solely incidental to the practice of that profession;
 - (iv) a dealer or the dealer’s employee or a dealer’s representative whose carrying on of that business is solely incidental to the conduct of the business of dealing in securities; or
 - (v) a person who is the proprietor of a newspaper where
 - (aa) in so far as the newspaper is distributed generally to the public, it is distributed only to subscribers to, and purchasers of, the newspaper for value;
 - (bb) the advice is given or the analysis or reports are issued or published only through that newspaper;
 - (cc) that person does not receive commission or any other consideration for giving the advice or for issuing or publishing the analysis or reports; and
 - (dd) the advice is given and the analysis and reports are issued or published solely as incidental to the conduct of that person’s business as a newspaper proprietor;

“investment representative” includes a person, in the direct employment of or acting for or by arrangement with an investment adviser, who performs for the investment adviser a function of an investment adviser, other than work ordinarily performed by accountants, clerks or cashiers, whether the remuneration is by way of salary, wages, commission or otherwise, and a director or officer of a body corporate who performs for the body corporate that function of an investment dealer;

“dealer’s representative” means a person, in the direct employment of, or acting for, or by arrangement with a dealer, who performs for that dealer a function of the dealer other than work ordinarily performed by accountants, clerks or cashiers, whether the remuneration is by way of salary, wages, commission or otherwise; and where the dealer is a body corporate, includes a director or an officer of the body corporate who performs for the body corporate a function of the body corporate;

65. P.N.D.C.L. 227.

“dealing in securities” means, whether as principal or agent making or offering to make with a person, or inducing or attempting to induce a person to enter into or to offer to enter into

- (a) an agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or
- (b) an agreement the purpose or intended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the price of securities;

“director” has the same meaning as is assigned to that expression in section 179 of the Companies Act, 1963 (Act 179);

“executive officer”, in relation to a body corporate, means a person by whatever name called who is concerned or takes part in the management of the body corporate whether or not the officer is a director of the body corporate;

“exempt dealer” means a person specified under section 65;

“functions” includes powers and duties;

“hearings committee” means the administrative hearings committee established by section 8B;

“independent” in relation to the trustee and manager of a unit trust or the mutual fund company and the manager or custodian of a mutual fund means

- (a) in the case of a unit trust, that the manager is not a substantial shareholder of the trustee and that the trustee is not a substantial shareholder of the manager; and
- (b) in the case of a mutual fund, that the mutual fund company is not a substantial shareholder of the manager or custodian;

“interest” in the case of a

- (a) unit trust means the beneficial interest held under the trust;
- (b) mutual fund, means the shares in the mutual fund;

“investor” in the case of a

- (a) unit trust means a unitholder;
- (b) mutual fund means a shareholder;

“licence” means

- (a) a dealer’s licence,
- (b) an investment adviser’s licence, or
- (c) a representative’s licence, issued under Part Four;

“listing rules”, in relation to a body corporate that maintains or provides a stock market of a stock exchange, means the rules made by its council governing or relating to

- (a) the admission to the official list of the body corporate, of bodies corporate, governments, unincorporated bodies or any other persons for the purpose

of the quotation on the stock market or made available by bodies corporate, governments, unincorporated bodies or any other persons or the removal from that official list and for other purposes; or

- (b) the activities or conduct of bodies corporate, governments, unincorporated bodies and any other persons who are admitted to that list, whether those rules
 - (i) are made by the body corporate or are contained in a constituent document of the body corporate; or
 - (ii) are made by another person and adopted by the body corporate;

“manager” in the case of a

- (a) unit trust means the manager referred to in section 32A;
- (b) mutual fund means a company appointed by the board of directors of the mutual fund company to manage the mutual fund;

“marketing” in relation to interests means

- (a) issuing or causing to be issued an advertisement inviting persons to become or offer to become investors in that scheme or containing information calculated to lead directly or indirectly to persons becoming or offering to become investors in that scheme; or
- (b) advising or procuring a person to become an investor in that scheme;

“member company” means a company which carries on a business of dealing in securities and is recognised as a dealing member by a stock exchange;

“member firm” means an incorporated private partnership which carries on a business of dealing in securities and is recognised as a dealing member by a stock exchange;

“Minister” means the Minister responsible for Finance;

“mutual fund” means a public or external company incorporated solely to hold and manage securities or any other financial assets and which has made satisfactory arrangements for ensuring that if an invitation is made to the public to subscribe to its shares the price at which the shares are offered shall be based on the net value of its assets at the time of the offer without an addition except for a reasonable service charge subject to the proviso in section 37 (1) (b) and is willing to repurchase any of its shares from the holder at a price based on the net value of its assets at the time of repurchase without a deduction except for a reasonable service charge;

“officers of a company” includes the directors and a person acting as a director;

“prescribed” means prescribed by this Act or the Regulations;

“prescribed interest” means a right to participate or an interest, whether enforceable or not and whether actual, prospective or contingent,

- (a) in the profits, assets or realisation of a financial or business undertaking or scheme whether in the Republic or elsewhere;

- (b) in a common enterprise, whether in the Republic or elsewhere, in relation to which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party;
- (c) in a class or kind of rights or interest, declared by the Regulations to be an exempt right or interest; or
- (d) in an investment contract, whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical assets, but does not include
 - (i) a share in, or debenture of a corporation;
 - (ii) an interest in, or arising out of a policy of life insurance; or
 - (iii) an interest in a partnership agreement, unless the agreement or proposed agreement
 - (aa) relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement; or
 - (bb) is or would be an agreement, within a class of agreements prescribed by the Regulations for the purposes of this paragraph;

“redemption” in relation to an interest in a scheme, means the purchase of interest from an investor by the manager as a principal;

“Regulations” means the Regulations made under this Act;

“relevant authority”

- (a) in relation to a member company or member firm, means the stock exchange by which the company is recognised; and
- (b) in relation to any other person, means the Commission;

“rules”, in relation to a stock exchange, includes the rules governing the conduct of the stock exchange or its members and the regulations made by the council of a stock exchange for that purpose;

“scheme” means a unit trust or a mutual fund;

“scheme particulars” means particulars of a unit trust or a mutual fund prepared and published in accordance with the Regulations;

“securities” means

- (a) shares or debentures within the meaning of the Companies Act, 1963 (Act 179);
- (b) bonds or other loan instrument of the Government or the government of any other country;
- (c) bonds or other loan instruments of a corporation established under an enactment;

- (d) rights or interest whether described as units or otherwise under a unit trust;
- (e) any other instruments that the Minister may by notice in the *Gazette* prescribe;

“**share**” means the interest of members of a body corporate who are entitled to share in the capital or income of the body corporate;

“**stockbroker**” means a person who is

- (a) a director of a member company, or
- (b) a partner of a member firm;

“**stock exchange**” means a body corporate which has been approved by the Commission under section 25;

“**stock market**” means a market, exchange or any other place, at which, or a facility by means of which securities are regularly offered for sale, purchased or exchanged;

“**substantial shareholder**” means a shareholder entitled to exercise or control the exercise of thirty percent or more of the voting power at general meetings of the company or one who is in a position to control the composition of a majority of the board of directors of a company;

“**trust account**” means a trust account opened and maintained under section 85;

“**trust deed**” means a trust deed as specified in section 32B;

“**trustee**” means the corporate body in which the property subject to a trust created in pursuance of the scheme is or may be vested in accordance with the terms of the trust deed;

“**units**” means a portion or division of a unit trust fund, whether described as units or otherwise, into which are divided the beneficial interest in the assets subject to a trust created under the scheme;

“**unit trust scheme**” means an arrangement by which securities or any other charge, other than a charge to secure the debentures of one body corporate, are vested in trustees and the beneficial interest in it is divided into units, sub-units or any other interests by whatever name called with a view to an invitation being made to the public to acquire the units or any of them.⁶⁶

143. Associated person

(1) A reference in this Act to a person associated with another person shall be construed,

- (a) where the other person is a body corporate,
 - (i) as a director or secretary of the body corporate;
 - (ii) as a body corporate that is related to the other person; or
 - (iii) as a director or secretary of the related body corporate;

66. Section 142 has been, extensively amended by section 12 of the Securities Industry (Amendment) Act, 2000 (Act 590).

- (b) where the matter to which the reference relates is the extent of power to exercise or to control the exercise of the voting power attached to voting shares in a body corporate, as a person with whom the other person has or proposes to enter into an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied
- (i) by reason of which either of those persons may, directly or indirectly, control the exercise of or substantially influence the exercise of a voting power attached to a share in the body corporate;
 - (ii) with a view to controlling or influencing the composition of the board of directors or the conduct of affairs of the body corporate; or
 - (iii) under which either of those persons may acquire from each other shares in the body corporate or may be required to dispose of the shares in accordance with the directions of the other body;
- (c) as a person in concert with whom the other person is acting or proposes to act in relation to the matter to which the reference relates;
- (d) where the matter to which the reference relates is a matter, other than the extent of power to exercise or to control the exercise of the voting power attached to voting shares in a body corporate
- (i) subject to subsection (2), as a person who is a director of a body corporate that carried on a business of dealing in securities and of which the other person is also a director;
 - (ii) subject to subsection (2), as a person who is a director of a body corporate of which the other person is a director, which is not a body corporate that carried on a business of dealing in securities; or
 - (iii) as a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
- (e) as a person with whom the other person is, by virtue of a regulation that may be introduced, regarded as associated in respect of the matter to which the reference relates;
- (f) as a person with whom the other person is, or proposes to become associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
- (g) where the other person has entered into, or proposes to enter into a transaction or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as mentioned in paragraph (a), (b), (c), (d), (e) or (f).

(2) Where, in proceedings under this Act, it is alleged that a person referred to in subsection (1) (d) (i) and (ii) was associated with another person at a particular time, that person shall be deemed not to have been associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) A person shall not be regarded as associated with another person by virtue of subsection (1) (b), (c), (e), or (f) by reason only that one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of functions that relate to professional capacity or to the business relationship with the other person.

144. Interest in securities

(1) Where property held in trust consists of or includes securities in which a person knows or has reasonable grounds for believing that that person has an interest, that person shall be deemed to have an interest in those securities.

(2) A right does not constitute an interest in a security where

- (a) the right was issued or offered to the public for subscription or purchase;
- (b) the public was invited to subscribe for or purchase the right, and the right was subscribed for or purchase; or
- (c) the right is held by the management company and was issued for the purpose of an offer to the public within the meaning of section 266 of the Companies Act, 1963 (Act 179).

(3) A person has an interest in a security where a body corporate has an interest in a security and

- (a) the body corporate is, or its directors are under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person in relation to that security;
- (b) that person has a controlling interest in the body corporate; or
- (c) that person is, or the associates of that person are entitled to exercise or control the exercise of not less than thirty percent of the votes attached to the voting shares in the body corporate.

(4) For the purposes of subsection (3) (c), a person is an associate of another person if that person is

- (a) a body corporate which, by virtue of section 3 of the Companies Act, 1963 (Act 179) is an associated company in relation to the other person;
- (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed to or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (3);
- (c) a body corporate which is, or the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security; or
- (d) a body corporate in accordance with the directions, instructions or wishes of which, or the directors of which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.

(5) A person has an interest in a security where that person

- (a) has entered into a contract to purchase a security;

- (b) has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to or to the order of that person, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
- (c) has the right to acquire a security or an interest in a security, under an option; or
- (d) is entitled, otherwise than by reason of having been appointed a proxy or representative to vote at a meeting of members of a body corporate or of a class of its members, to exercise or control the exercise of a right attached to a security, which is not a security of which that person is the registered holder.

(6) A person has an interest in a security if that security is held jointly with another person.

(7) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.

(8) There shall be disregarded

- (a) an interest in a security if the interest is that of a person who holds the security as a bare trustee;
- (b) an interest in a security of a person whose ordinary business includes the lending of money if that person holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
- (c) an interest of a person in a security which is an interest held by that person by reason of holding a prescribed office; and
- (d) any other interest in securities as may be prescribed.

(9) An interest in a security shall not be disregarded by reason only of

- (a) its remoteness,
- (b) the manner in which it arose, or
- (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.

145. Consequential amendment to Companies Act

(1) Section 279 of the Companies Act, 1963 (Act 179) is amended by the insertion immediately after subsection (9) of the following new subsection,

“(9A) In a case not falling within subsection (6) or (7) of this section the registrar may, for the purpose of reaching an opinion on whether a prospectus⁶⁷

- (a) does not comply with the provisions of this Act, or
- (b) contains an untrue statement, or
- (c) omits to state a material fact, or

67. Amended by section 7 (b) of the Companies Code (Amendment) Act, 1994 (Act 474).

(d) is otherwise incomplete or misleading, refer the prospectus to the Securities Regulatory Commission for its opinion and the Commission shall give its opinion within the period of twenty-one days, in relation to the prospectus, referred to in subsection (8).”

(2) Section 280 of the Companies Act, 1963 (Act 179) is amended by the substitution for subsection (1) of the following subsection,

“(1) For the purposes of this Act, “**approved stock exchange**” means a body corporate approved as a stock exchange under section 25 of the Securities Industry Act, 1993.⁶⁸”

146. Repeals

(1) Section 318 of the Companies Act, 1963 (Act 179) and the Stock Exchange Act, 1971 (Act 384) are hereby repealed.

(2) Section 319 of the Companies Act, 1963 (Act 179) is hereby repealed.

(3) Despite the repeal under subsection (2) a unit trust or a mutual fund authorised to operate under the Companies Act, 1963 (Act 179) and in existence on the date of the coming into force of this Act shall be deemed to have been approved and licensed under the Securities Industry Act, 1993⁶⁹ as amended by this Act.

(4) A scheme to which subsection (3) applies shall continue to operate under its conditions of authorisation and other terms specified in the applicable legislative instrument for a period of twelve months from the date of the coming into force of this Act.

(5) Where a scheme continued in operation under this section desires to continue in operation after the expiry of the period of twelve months, it shall before the expiration of the twelve months apply to the Commission for the requisite licence.⁷⁰

147. Savings

(1) Despite the repeal of the Stock Exchange Act, 1971 (Act 384), a stock exchange authorised under section 1 of that Act shall be deemed to have been approved by the Commission under section 25 of this Act and this Act, shall apply accordingly in relation to the stock exchange.

(2) The regulations and rules governing the conduct of a stock exchange referred to in subsection (1) which are in force immediately before the commencement of this Act shall, after the commencement of this Act, be deemed to be the regulations and rules of the stock exchange, and this Act shall apply accordingly in relation to those rules and regulations.

148. Interim powers of the Governor of the Bank of Ghana

Until the Commission commences operations, its functions shall be exercised by the Governor of the Bank of Ghana, and a reference in this Act to the Commission shall be construed accordingly.

68. P.N.D.C.L. 333.

69. P.N.D.C.L. 333.

70. Amendment effected by virtue of section 14 of the Securities Industry (Amendment) Act, 2000 (Act 590).

149. Modifications

A thing done for the purpose of stabilising the price of securities on a stock market outside the Republic in compliance with the applicable relevant regulations does not contravene sections 122, 123 and 128 of this Act.⁷⁰

70. Inserted by section 7 (c) of the Companies Code (Amendment) Act, 1994 (Act 474).