

No. 11 of 1997.

Securities Act 1997.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 11 of 1997.

Securities Act 1997.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Securities Act 1997,

Being an Act to regulate the establishment of stock markets, and practices relating to the offering of securities to the public, and for related purposes.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) For the purposes of–

(a) [*Repealed.*]

(b) Section 41 of the *Organic Law on Provincial Governments and Local-level Governments,*

it is declared that this law relates to a matter of national interest.

(2) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C. (*qualified rights*) of the *Constitution*, namely–

(a) the right to freedom from arbitrary search and entry conferred by Section 48 of the *Constitution*; and

(b) the right to freedom of employment conferred by Section 48 of the *Constitution*; and

(c) the right to privacy conferred by Section 49 of the *Constitution*; and

(d) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public welfare.

2. INTERPRETATION.

(1) In this Act, unless the contrary intention appears—

“advertisement”, except in Section 51(1)(c), means any form of communication (not being a registered prospectus or a statement made in accordance with Section 51(6), or a statement or report made in accordance with Section 51(7)) that is to be, or has been, distributed to any person by any means, and which is authorized or instigated by or on behalf of the issuer, or prepared with the co-operation of, or by arrangement with, the issuer, and—

- (a) that contains or refers to an offer of equity securities, debt securities, or units to the public for subscription; or
- (b) that is reasonably likely to induce persons to subscribe for equity securities, debt securities, or units of the issuer, being securities to which that communication relates and which have been, or are to be, offered to the public for subscription,

whether or not consideration is to be, or has been, paid for the distribution of that communication;

“allot” includes sell, issue, assign, and convey and **“allotter”** and **“allotment”** have corresponding meanings;

“approved stock exchange” means a body corporate that has been approved as a stock exchange under Section 20;

“authorized advertisement” has the meaning assigned to it by Section 60;

“business rules”, in relation to a body corporate, means—

- (a) in the case of a body corporate that conducts or proposes to conduct a stock market, the provisions of the constitution of that body corporate and any other rules, regulations or by-laws made by the body corporate, other than rules, regulations or by-laws that are listing rules of the body corporate; and
- (b) otherwise, the provisions of the constitution of the body corporate and any other rules, regulations or by-laws made by the body corporate;

“chattel” includes livestock;

“company” means a company within the meaning of the *Companies Act 1997*, and includes an overseas company within the meaning of that Act;

“Court” means the National Court;

“date of balance sheet” or **“date of an interim balance sheet”** means the date as at which the statement of affairs contained in the balance sheet has been drawn up;

“date of a prospectus ” means the date specified on a prospectus under Section 63(a);

“date of a registered prospectus” means the date of the certificate of registration given under the hand of the Registrar under Section 66(5);

“deal”, in relation to securities, means acquire, dispose of, subscribe for or underwrite the securities, or make or offer to make, or induce or attempt to induce a person to make or to offer to make an agreement for or with respect to acquiring, disposing of, subscribing for or underwriting the securities, whether for profit or gain for a person or not, and **“dealing”** has a corresponding meaning;

“debenture” includes any debenture stock, bond, note, or certificate of deposit;

“debt securities” means any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a charge over any property), and includes—

- (a) a debenture; and
- (b) any securities, or class or kind of securities, that is declared by the Minister, acting on a recommendation of the Securities Commission, by notice in the National Gazette to be debt securities for the purposes of this Act; and
- (c) any option to acquire, or renewal or variation of the terms or conditions of, any such interest, right, debenture, or securities,

but does not include—

- (d) a life insurance policy; or
- (e) a unit of a unit trust; or
- (f) debt securities issued by—
 - (i) the State or a Government department, agency or authority; or
 - (ii) the National Provident Fund established under the *National Provident Fund Act 1980*; or
 - (iii) a bank, as defined in Section 3 of the *Banks and Financial Institutions Act 2000*; or
- (g) any securities, or class or kind of securities, that is declared by the Minister, acting on a recommendation of the Securities Commission, by notice in the National Gazette not to be debt securities for the purposes of this Act;

“director” means—

- (a) in relation to a company, any person occupying the position of a director of the company by whatever name called; and
- (b) in relation to a partnership, any partner; and

- (c) in relation to a body corporate or unincorporate, other than a company or partnership, any person occupying a position in the body that is comparable with that of a director of a company; and
- (d) in relation to any other person, that person;

“distribute” includes make available, publish, and circulate, and also includes disseminate by letter, newspaper, broadcasting, facsimile, computer transmission or image, television, cinematic film, or any other means whatsoever;

“document” means a document in any form and includes—

- (a) any writing on any material; and
- (b) information recorded or stored by means of a tape-recorder, computer or other device, and material subsequently derived from information so recorded or stored; and
- (c) a book, graph, or drawing; and
- (d) a photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced;

“equity securities” means any interest in or right to a share in the share capital of a company, and includes—

- (a) a share, a preference share, and company stock; and
- (b) any securities, or class or kind of securities, that is declared by the Minister, acting on a recommendation of the Securities Commission, by notice in the National Gazette to be equity securities for the purposes of this Act; and
- (c) any option to acquire, or renewal or variation of the terms or conditions of, any such interest, right, share, stock, or securities,

but does not include any securities, or class or kind of securities, that is declared by the Minister, acting on a recommendation of the Securities Commission, by notice in the National Gazette not to be equity securities for the purposes of this Act;

“expert” means any person who holds himself out to be of a profession or calling that gives authority to a statement made by him, and includes an accountant, lawyer, engineer, valuer, quantity surveyor, and geologist, but does not include a person acting in his capacity as an auditor or as a director or officer of a body;

“issuer” means—

- (a) in relation to equity securities or debt securities, or to an advertisement, prospectus, or registered prospectus that relates to equity securities or debt securities, or to a trust deed that relates to equity securities or debt securities, the person on whose

behalf any money paid in consideration of the allotment of the securities is received; and

- (b) in relation to a unit of a unit trust, or an advertisement, prospectus, or registered prospectus or to a trust deed that relates to a unit trust, the manager;

“life insurance policy” means a policy of life or endowment insurance and a policy securing an annuity;

“listing rules”, in relation to a body corporate that conducts or proposes to conduct a stock market, means rules, regulations or by-laws governing or relating to—

- (a) the admission to or removal from the official list of the body corporate of bodies corporate, governments, unincorporate bodies or other persons for the purposes of quotation on the stock market of the body corporate of securities of bodies corporate, governments, unincorporate bodies or other persons and for other purposes; or
- (b) the activities or conduct of bodies corporate, governments, unincorporate bodies and other persons who are admitted to that list,

whether those rules, regulations or by-laws—

- (c) are made by the body corporate or are contained in the constitution of the body corporate; or
- (d) are made by another person and adopted by the body corporate;

“manager”, in relation to a unit trust, means the person or persons acting in the management of the unit trust;

“money” includes money’s worth;

“offer” includes an invitation, and any proposal or invitation to make an offer, and **“to offer”** has a corresponding meaning;

“person” includes a corporation sole, a company or other body corporate (whether incorporated in the country or elsewhere), an unincorporated body of persons, a public body, and a Government department, agency or authority;

“prescribed” means prescribed by this Act;

“principal officer”, in relation to a body corporate or other body, means—

- (a) a director of the body; or
- (b) a person in accordance with whose directions or instructions any or all of the directors of the body are accustomed to act, other than a person in accordance with whose directions or instructions any or all of the directors of a body are accustomed to act by

reason only that the directors act on advice given by him solely in a professional capacity; or

- (c) in relation to any particular requirement of this Act, any person whose function it is, or who has undertaken, to ensure that that requirement is complied with by the body;

“promoter”, in relation to equity securities, debt securities, or units offered to the public for subscription, means—

- (a) a person who is instrumental in the formulation of a plan or programme under which the securities are offered to the public; and
- (b) where a body corporate is a promoter, includes every person who is a director of that body corporate,

but does not include a director or officer of the issuer of the securities or a person acting solely in his professional capacity;

“prospectus” means a document that contains an offer of equity securities, debt securities, or units to the public for subscription, and that is intended to be, or has been, submitted to the Registrar for registration under Section 66;

“qualified auditor” means a person registered as a Registered Company Auditor under the *Accountants Act 1996*, or a member, fellow, or associate of an association of accountants constituted outside the country who is for the time being approved for the purposes of this Act by the Registrar, provided that, for the purposes of this Act—

- (a) none of the following persons shall be qualified for appointment as auditor of the accounting or other records of an issuer of securities:—
 - (i) the issuer, or a principal officer, officer, or employee of the issuer;
 - (ii) a person who is a partner of or in the employment of a person specified in Subparagraph (i);
 - (iii) a body corporate; and
- (b) a person shall not be qualified for appointment as auditor of an issuer of securities if he is by virtue of Paragraph (a), disqualified for appointment as auditor of any person that is the issuer’s subsidiary or holding company, or a subsidiary of the issuer’s holding company, or would be so disqualified if that person were a company;

“registered prospectus” means—

- (a) except where Paragraph (b) of this definition applies—

- (i) a prospectus that has been registered under Section 66, and the registration of which has not been cancelled or suspended under Section 68; or
 - (ii) a document that, except in the matters specified in Section 65(a) and (b), is identical to such a prospectus; and
- (b) where a memorandum of amendments to a prospectus of the kind specified in Paragraph (a)(i) has been registered under Section 67, and the registration of that prospectus as so amended has not been cancelled or suspended under Section 68–
- (i) that prospectus as so amended; or
 - (ii) a document that, except for the matters specified in Section 65(a) and (b), is identical to that prospectus as so amended;

“Registrar” means the person for the time being holding the office of Registrar of Companies or Deputy Registrar of Companies in accordance with the *Companies Act 1997*;

“relative” has the same meaning as in the *Companies Act 1997*;

“Securities Commission” and **“Commission”** means the Securities Commission of Papua New Guinea established by this Act;

“security” or **“securities”** means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any body corporate, and includes–

- (a) equity securities, debt securities, or units, or any interest in or right thereto; and
- (b) any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by any person (whether or not the interest or right is secured by a charge over any property); and
- (c) an interest in or right to a share in the capital of a unit trust; and
- (d) any such interest or right, or class or kind of interest or right that is declared by the Minister, acting on a recommendation of the Securities Commission, by notice in the National Gazette to be securities for the purposes of this Act; and
- (e) any option to acquire, or renewal or variation of the terms or conditions of any thing, right or interest referred to in Paragraphs (a) to (d) (inclusive),

but does not include any such interest or right, or class or kind of interest or right that is declared by the Minister, acting on a recommendation of the Securities Commission, by notice in the National Gazette not to be securities for the purposes of this Act;

“securities holder”, in relation to securities offered to the public, means–

- (a) in the case of bearer securities or securities to which Section 75 does not apply, the holder of those securities; or
- (b) in the case of any other securities, the person who is registered as the holder of the securities in a register kept pursuant to Section 75;

“stock market” or “stock exchange” means a market, exchange, or other place at which, or a facility by means of which—

- (a) offers to sell, purchase, or exchange equity securities, debt securities, or units are regularly made or accepted; or
- (b) offers or invitations are regularly made, being offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange equity securities, debt securities, or units; or
- (c) information is regularly provided about the prices at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange equity securities, debt securities, or units;

“stockbroker” means any person who is in the business of, whether as principal or agent, dealing in securities;

“subscribe” includes purchase and contribute to, whether by way of cash or otherwise, and **“subscription”** and **“subscriber”** have corresponding meanings;

“this Act” includes the regulations made under this Act;

“trustee”, in relation to a unit trust, means a person appointed as trustee of a unit trust;

“unit” means an interest in, or right to a share of the capital of a unit trust, and includes any option to acquire, or renewal, or variation of the terms or conditions of, any such interest or right;

“unit trust” means any arrangement made for the purpose of, or having the effect of, providing facilities for the participation by persons as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management, or disposal of equity securities, debt securities or any other property, and includes any arrangement, or class or kind of arrangement that is declared by the Minister, acting on a recommendation of the Securities Commission, by notice in the National Gazette to be a unit trust for the purposes of this Act, but does not include any arrangement, or class or kind of arrangement that is declared by the Minister, acting on a recommendation of the Securities Commission, by notice in the National Gazette not to be a unit trust for the purposes of this Act.

(2) For the purposes of this Act where an advertisement (as defined in Subsection (1)) appears in association with another advertisement (not being an advertisement as so defined), those advertisements shall be deemed to be an advertisement as defined in that subsection.

(3) For the purposes of this Act, unless the contrary intention appears, associated persons or persons associated with each other are—

- (a) any persons who are relatives or partners, or where one is the employer of the other; or
- (b) any bodies corporate which consist of substantially the same shareholders or are under the control of the same persons; or
- (c) any body corporate and any person who has the power, directly or indirectly, to control the exercise of the right to vote attached to 20% or more of the voting shares of the body corporate; or
- (d) any body corporate and any person who is a director or principal officer of the body corporate; or
- (e) any person and another person who is accustomed to act in accordance with the directions of the first person; or
- (f) any trustee and any beneficiary of the trust.

3. ACT BINDS THE STATE.

This Act binds the State.

PART II. – SECURITIES COMMISSION.**4. SECURITIES COMMISSION.**

(1) The Securities Commission of Papua New Guinea is established.

(2) The Securities Commission—

(a) is a body corporate, with perpetual succession; and

(b) shall have a common seal; and

(c) may acquire, hold and dispose of real and personal property; and

(d) may sue and be sued in its corporate name and style.

(3) The Securities Commission shall consist of the Chairman.

(4) Upon this Act coming into force the person holding the office of Registrar shall be the Chairman, and subsequent appointments of the Chairman shall be made by the Minister by notice published in the National Gazette.

(5) The Chairman shall hold office for a period determined by the Minister not exceeding five years, and is eligible for re-appointment.

(6) The Chairman may be removed from office by the Minister for reason of disability, bankruptcy, neglect of duty, or may at any time resign his office by notice in writing delivered to the Minister.

(7) In the event of a vacancy in the position of Chairman the person holding the office of Registrar shall act as Chairman until a person is appointed as Chairman by the Minister under Subsection (4).

(8) The Chairman may appoint a person to act as Chairman during any period, or during all periods when he is absent from office, other than in the case of his removal or resignation under Subsection (6).

(9) The Chairman shall be charged with the general administration of this Act and the exercise of the functions and powers conferred by this Act on the Securities Commission.

5. DELEGATION OF FUNCTIONS AND POWERS.

(1) The Securities Commission may, by writing, delegate to a person all or any of its functions and powers, other than this power of delegation.

(2) Every delegation under this section shall be revocable at will and no delegation shall prevent the exercise of any function or power by the Commission.

6. EMPLOYEES OF COMMISSION.

The Securities Commission may from time to time appoint such officers and employees, including acting, or temporary, or casual officers and employees, as it thinks fit for the efficient carrying out of its functions, powers, and duties.

7. GENERAL POWERS OF COMMISSION.

Without limiting any other provision of any Act, the Commission shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions and duties.

8. POWER OF COMMISSION TO TAKE EVIDENCE.

(1) The Commission may receive in evidence any statement, book, document, information, or any other thing that may in its opinion assist it to inquire into, or dispense with a matter before it, whether or not the same would be otherwise admissible in a court of law.

(2) The Commission may take and record evidence on oath or affirmation and for that purpose the Chairman or a delegate of the Commission may administer an oath or affirmation.

(3) The Commission may, in relation to a matter before it, by notice served upon any person—

- (a) require the person to appear before the Commission to give evidence on oath or affirmation as to the matter; or
- (b) require the person to produce to the Commission all or any books, documents or papers in his possession or control in relation to the matter; or
- (c) require the person to provide any assistance requested of them to the Commission to assist it to inquire into or dispense with the matter; or
- (d) require the person to comply with a requirement under Paragraphs (a), (b) and (c),

and the person shall not unreasonably refuse to comply with the requirement of the Commission.

(4) Every notice under this section shall be served—

- (a) on a natural person—
 - (i) by delivering it to the person personally; or
 - (ii) by leaving it at, or by sending it by post to, his usual place of abode or business last known to the person serving the document; or
- (b) on a body corporate, in accordance with Section 431 of the *Companies Act 1997*, as if a reference in that section to a company included any other body corporate, with such adaptations as are necessary.

(5) The Commission may permit a person appearing as a witness before the Commission to give evidence by tendering a written statement, and if the Commission thinks fit require him to verify the statement by oath or affirmation.

(6) Where any person has appeared as a witness before the Commission pursuant to a notice issued pursuant to this section, or has given evidence before the

Commission, whether pursuant to a notice or not, the Commission may, if it thinks fit, order any sum to be paid to that witness on account of his expenses, not exceeding the amount that would be payable to him if his attendance had been as a witness for the State in a criminal case.

(7) It is not a reasonable excuse for a person to refuse or fail to comply with a requirement under Subsection (3) on the grounds that to do so might tend to incriminate him.

(8) No information given or book, document or paper produced by a person pursuant to a notice under Subsection (3) shall be admissible in evidence in any criminal proceedings against him where he has claimed it might tend to incriminate him, before it is given or produced, and it might in fact tend to incriminate him.

(9) A person attending before the Commission to give evidence shall not, without the written consent of the Commission disclose to any person other than his lawyer any question, information, book, document or paper put to him by the Commission, or any part of his evidence.

9. RELEASE OF INFORMATION.

The Commission may in its sole discretion give a copy of a written record of any evidence provided on oath or affirmation, or any information, book, document or thing in the possession of the Commission to any person requesting it on reasonable grounds, on such terms and conditions as the Commission shall impose.

10. COMMISSION MAY TAKE EVIDENCE FOR OVERSEAS COMMISSION OR BODY.

(1) Where any securities commission or exchange, or other body in any other country with functions corresponding to those of the Commission, requests the Commission to inquire into any matter related to the functions of that securities commission or exchange, or other body, the Commission may subject to Subsection (2), receive in evidence any statement, document, information or any other thing that in the Commission's opinion is likely to assist the Commission in complying with a request.

(2) The Commission shall not comply with a request under Subsection (1) unless the Commission is satisfied that compliance with the request will not substantially affect the performance of its other functions under this Act.

(3) The Commission may exercise the powers set out in Section 8, and the provisions of that section shall apply, as far as they are applicable, in relation to a request under this section.

(4) Evidence taken by the Commission under this section may be transmitted to the securities commission or exchange or other body on whose behalf the request was made in such manner as the Commission thinks fit.

11. EMPLOYMENT OF EXPERTS.

(1) The Commission may appoint any person, who in its opinion possesses expert knowledge or is otherwise able to assist it in connection with the exercise of its functions, to make such inquiries or to conduct such research or to make such reports as may be necessary for the efficient carrying out of any functions of the Commission.

(2) The Commission shall pay persons appointed by it under this section, for services rendered by them, fees and commission, or either, at such rates as it thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Commission.

12. COMMISSION MAY STATE CASE FOR OPINION OF COURT.

(1) The Commission may at any time state a case for the opinion of the Court on any question of law arising in any matter before it.

(2) The Court shall hear and determine the question, and shall remit the case with its opinion to the Commission.

13. APPEALS TO COURT ON QUESTIONS OF LAW ONLY.

(1) Subject to Subsections (2) to (6) (inclusive), every decision of the Commission shall be final and binding.

(2) Where any person is dissatisfied with any determination of the Commission as being erroneous on a point of law, he may appeal to the Court by way of case stated for the opinion of the Court on a question of law only.

(3) Within 14 days after the date of the determination the appellant shall lodge a notice of appeal with the Commission, and the appellant shall forthwith deliver or post a copy of the notice to every other party to the proceedings.

(4) Within 14 days after the lodging of the notice of appeal, or within such further time as the Commission may in its discretion allow, the appellant shall state in writing and lodge with the Commission, a case setting out the facts and the grounds of the determination and specify the question of law on which the appeal is made, and the appellant shall forthwith deliver or post a copy of the case to every other party to the proceedings.

(5) The Court may in its discretion, on the application of the appellant or intending appellant, extend any time prescribed or allowed under this section for the lodging of a notice of appeal.

(6) Subject to the provisions of this section, the case shall be dealt with in accordance with rules of the Court.

14. PROCEEDINGS PRIVILEGED.

(1) No proceedings, civil or criminal, shall lie against the following:—

(a) the Commission;

- (b) the Chairman or Registrar;
- (c) any employee of the Commission or Registrar;
- (d) any expert appointed by the Commission,

for anything it or they may do or fail to do in the course of the exercise or intended exercise of its or their functions, unless it is shown that it or they acted in bad faith.

(2) Neither the Chairman nor any employee of the Commission or any expert appointed by the Commission, shall be required to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the course of the operations of the Commission.

(3) Nothing in Subsections (1) or (2) applies in respect of proceedings for—

- (a) an offence against Sections 86, 87(1), 89, 90, 91, 92 or 93(1) of *The Criminal Code* 1974; or
- (b) the offence of conspiring to commit an offence against Sections 86, 87(1), 89, 90, 91, 92 or 93(1) of *The Criminal Code* 1974; or
- (c) the offence of attempting to commit an offence against Sections 86, 87(1), 89, 90, 91, 92 or 93(1) of *The Criminal Code* 1974.

(4) Anything said, or any information supplied, or any book or paper produced, by any person in the course of any proceedings before the Commission shall be privileged in the same manner as if the proceedings were proceedings in a court.

15. COMMISSION MAY PUBLISH REPORTS.

The Commission may publish any report or comment made by it in the course of the exercise or intended exercise of its functions.

16. EVIDENCE OF RESOLUTION OF COMMISSION.

In any proceedings for an offence against this Act, a certificate purporting to be signed by the Commission and certifying that a copy of a resolution set out in, or attached to, the certificate was passed by the Commission on a date specified in the certificate shall be sufficient evidence, until the contrary is proved, that such a resolution was so passed by the Commission.

17. OFFENCES.

Every person who—

- (a) having by notice served on the person been required to appear before the Commission for the purposes of any matter, refuses or wilfully neglects to appear before the Commission in pursuance of the notice, or to take an oath or make an affirmation as a witness, or to answer any question put to him concerning the matter, or to produce to the Commission any book or paper that he is required to produce; or

- (b) deceives or attempts to deceive or knowingly misleads the Commission on any evidence given or otherwise proffered to it; or
- (c) obstructs or hinders the Commission in the exercise of a power under this Part; or
- (d) breaches any term or condition imposed by the Commission under Section 9, or uses the material released for other than an authorized purpose,

is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

PART III. – STOCKBROKERS AND STOCK EXCHANGES.***Division 1.******Approved Stock Exchanges.*****18. LIMITATION ON ACTING AS STOCKBROKER.**

No person shall—

- (a) establish or carry on; or
- (b) assist in establishing or carrying on; or
- (c) hold out that the person carries on,

business as a stockbroker unless the person is, or is a director or employee of, a member of an approved stock exchange.

19. LIMITATION ON CONDUCTING STOCK MARKETS.

No person shall—

- (a) establish or conduct; or
- (b) assist in establishing or conducting; or
- (c) hold out that the person conducts,

a stock market, other than an approved stock exchange.

20. APPROVAL OF STOCK EXCHANGE.

(1) A body corporate may apply to the Commission in writing for approval as a stock exchange.

(2) The Commission may, by notice in the National Gazette, approve a body corporate as a stock exchange where, and only where, it is satisfied that—

- (a) the body corporate has business rules which make satisfactory provision—
 - (i) for the standards of training and experience, and other qualifications, for membership; and
 - (ii) for the exclusion from membership of—
 - (A) any person who is not of good character and high business integrity; and
 - (B) any body corporate where a director of the body corporate, a person concerned in the management of the body corporate or a person who has control, or substantial control, of the body corporate is not of good character and high integrity; and

- (iii) for the expulsion, suspension or disciplining of a member for conduct inconsistent with just and equitable principles in the transaction of business, or for a contravention of the body's business rules or of this Act; and
- (iv) for the monitoring of compliance with, and for enforcement of, the body's business rules; and
- (v) with respect to the conditions under which securities may be listed for trading on the proposed stock exchange; and
- (vi) with respect to the conditions governing dealings in securities by members; and
- (vii) with respect to the class or classes of securities that may be dealt with by members; and
- (viii) generally for the carrying on of the business of the proposed stock exchange with due regard to the interests of the public; and
- (b) the body corporate has made or adopted listing rules and, where the listing rules are adopted, has made provision to the effect that an amendment to the rules so adopted made by another person is of no effect until the body corporate adopts the amendment; and
- (c) the listing rules made or adopted by the body corporate make satisfactory provision—
 - (i) with respect to conditions under which securities may be traded on the proposed stock exchange; and
 - (ii) generally for the protection of the interests of the public; and
- (d) the interests of the public will be served by the granting of its approval.

21. COMMISSION TO BE NOTIFIED OF AMENDMENTS TO RULES.

(1) Within 21 days after—

- (a) an amendment is made, by way of rescission, alteration or addition, to the business rules of an approved stock exchange; or
- (b) an approved stock exchange makes or adopts an amendment, by way of rescission, alteration or addition, to its listing rules,

the approved stock exchange shall lodge written notice of the amendment with the Commission.

(2) The notice shall—

- (a) set out the text of the amendment; and
- (b) specify the date on which the amendment was made or adopted; and
- (c) contain an explanation of the purpose of the amendment.

(3) Where no notice is lodged with the Commission under Subsection (1) within 21 days after the amendment is made or adopted, the amendment ceases to have effect.

(4) Within 28 days after the lodgement of a notice under Subsection (1), the Commission may disallow the whole or a specified part of the amendment to which the notice relates.

(5) As soon as practicable after the whole or a part of an amendment is disallowed under Subsection (4), the Commission shall give notice of the disallowance to the approved stock exchange and, upon receipt by the exchange of the notice, the amendment, to the extent of the disallowance, ceases to have effect.

22. POWER OF COMMISSION TO PROHIBIT TRADING IN PARTICULAR SECURITIES.

(1) A reference in this section to trading in securities on a stock market is a reference to trading in securities on a stock market whether in this jurisdiction or elsewhere.

(2) Where the Commission forms the opinion that it is necessary to prohibit trading in particular securities on a stock market of an approved stock exchange in order to protect persons buying or selling the securities or in the interests of the public, the Commission may give written notice to the approved stock exchange stating that it has formed that opinion and setting out the reasons for that opinion.

(3) Where, after receiving the notice, the approved stock exchange does not take action to prevent trading in the securities on the stock market and the Commission is still of the opinion that it is necessary to prohibit such trading, the Commission may, by written notice to the approved stock exchange, prohibit trading in the securities on the stock market during a period of not more than 21 days.

(4) Where the Commission gives a notice to an approved stock exchange under Subsection (3), the Commission shall—

- (a) at the same time send a copy of the notice to the person that issued the securities together with a statement setting out the reasons for the giving of the notice; and
- (b) as soon as practicable send a copy of the report to the approved stock exchange.

(5) An approved stock exchange shall not permit trading in securities on a stock market of the exchange in contravention of a notice under Subsection (3), and where an approved stock exchange fails to comply with this subsection, the approved stock exchange and each director of the approved exchange who is in default is guilty of an offence.

23. STOCK EXCHANGES TO PROVIDE ASSISTANCE TO COMMISSION.

(1) An approved stock exchange shall provide such assistance to the Commission, or to a person acting on behalf of, or with the authority of, the

Commission, as the Commission reasonably requires for the performance of its functions.

(2) Where an approved stock exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the exchange, it shall as soon as practicable lodge with the Commission written particulars of the name of the member, the reason for and nature of the action taken, the amount of the fine (if any), and the period of the suspension (if any).

(3) A person authorized by the Commission is entitled at all reasonable times to full and free access for any of the purposes of this Act to the trading floor or trading floors of an approved stock exchange.

(4) A person shall not refuse or fail, without lawful excuse, to allow a person authorized by the Commission access in accordance with Subsection (3) to a trading floor of an approved stock exchange, and a person who fails to comply with this section is guilty of an offence.

(5) In this section—

“trading floor”, in relation to an approved stock exchange, means a place or facility maintained or provided by the exchange for—

- (a) the making or acceptance, by members of the approved stock exchange, or by such members and other persons, of offers to sell, buy or exchange securities; or
- (b) the making, by members of the approved stock exchange, or by such members and other persons, of offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, buy or exchange securities; or
- (c) the provision of information concerning the prices at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, buy or exchange securities.

24. POWER OF COURT TO ORDER COMPLIANCE WITH OR ENFORCEMENT OF BUSINESS RULES OR LISTING RULES OF STOCK EXCHANGE.

(1) Where a person who is under an obligation to comply with or enforce the business rules or listing rules of an approved stock exchange fails to comply with or enforce any of those rules, the Court may on the application of the Commission, the approved stock exchange or any other interested person, and after giving to the interested person and the person against whom the order is sought an opportunity of being heard, make an order giving directions concerning compliance with, or enforcement of, the business rules or listing rules to—

- (a) that last mentioned person; and

- (b) where that person is a body corporate, the directors of that body corporate.

(2) For the purposes of Subsection (1), a body corporate that issues securities that is, with its agreement, consent, or acquiescence, included in the official list of an approved stock exchange, and each associated person of the body corporate, shall be deemed to be under an obligation to comply with the listing rules of that exchange to the extent to which those rules purport to apply in relation to the body corporate or associated person, as the case may be.

25. GAMING AND WAGERING LAWS NOT APPLICABLE TO CERTAIN OPTION CONTRACTS.

Nothing in any law about gaming and wagering prevents the entering into of, or affects the validity or enforceability of, an option contract entered into on a stock market of an approved stock exchange.

26. QUALIFIED PRIVILEGE IN RESPECT OF DISCIPLINARY PROCEEDINGS.

- (1) In this section—

“disciplinary proceedings”, in relation to an approved stock exchange, means—

- (a) a proceeding under the business rules of the exchange that may result in the disciplining of a member of the exchange; or
- (b) an appeal under the business rules of the exchange from a proceeding of a kind referred to in Paragraph (a);

“disciplining”, in relation to a member of an approved stock exchange, includes expulsion from, or suspension of, membership of the exchange;

“member”, in relation to an approved stock exchange, includes a person who is under an obligation to comply with or enforce the business rules of the exchange;

“qualified privilege”, in relation to a person in respect of an act, matter or thing, means qualified privilege for that person in proceedings for defamation, however, nothing in this Act limits or affects any protection, right, privilege or immunity that a person has as defendant in proceedings, or an action for, defamation.

(2) An approved stock exchange, or a member, officer, or employee of an approved stock exchange, has qualified privilege in respect of a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of, or in connection with, a disciplinary proceeding of the approved stock exchange.

- (3) A person has qualified privilege in respect of the publication of—

- (a) a statement made by a person, orally or in writing, in the course of or otherwise for the purposes of or in connection with; or

(b) a document prepared, given or produced by a person, in the course, of, or otherwise for the purposes of or in connection with, a disciplinary proceeding of an approved stock exchange.

Division 2.
Fidelity Funds.

27. INTERPRETATION.

In this Division, unless the contrary intention appears—

“**board**”, means the committee of management, board of directors, council or other governing body of an approved stock exchange;

“**fidelity fund**” or “**fund**” means a fidelity fund established under Section 28;

“**member**” means a member of an approved stock exchange.

28. FIDELITY FUND TO BE ESTABLISHED.

(1) Every approved stock exchange shall establish and keep a fidelity fund which shall be administered by the board on behalf of the stock exchange.

(2) The assets of the fidelity fund shall be the property of the approved stock exchange but shall be kept separate from all other property and shall be held in trust for the purposes set out in this Division.

29. MONEYS CONSTITUTING THE FIDELITY FUND.

The fidelity fund of an approved stock exchange shall consist of—

(a) all moneys paid to the approved stock exchange by members in accordance with the provisions of this Division; and

(b) the interest and profits from time to time accruing from the investment of the fund; and

(c) all moneys paid to the fund by the approved stock exchange; and

(d) all moneys recovered by or on behalf of the approved stock exchange in the exercise of any right of action conferred by this Division; and

(e) all moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the approved stock exchange under Section 48; and

(f) all moneys lawfully paid into the fund.

30. FUNDS TO BE KEPT IN SEPARATE BANK ACCOUNT.

All moneys forming part of a fidelity fund shall, pending the investment or application thereof in accordance with this Division, be paid or transferred into a bank in the country.

31. PAYMENTS OUT OF FIDELITY FUND.

Subject to this Division, there shall from time to time be paid out of the fidelity fund of an approved stock exchange as required and in such order as the board considers proper—

- (a) the amount of all claims, including costs, allowed by the board or established against the approved stock exchange under this Division; and
- (b) all legal and other expenses incurred in investigating or defending claims made under this Division or incurred in relation to the fund or in the exercise by the board or the approved stock exchange of the rights, powers and authorities vested in it by this Division in relation to the fund; and
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the approved stock exchange under Section 48; and
- (d) the expenses incurred or involved in the administration of the fund including the salaries and wages of persons employed by the board or the approved stock exchange in relation thereto; and
- (e) all other moneys payable out of the fund in accordance with the provisions of this Division.

32. ACCOUNTS OF FUND.

(1) An approved stock exchange shall establish and keep proper accounts of its fidelity fund and shall before 31 March in each year prepare for the preceding 12 months ending 31 December financial statements within the meaning of Section 177 of the *Companies Act 1997*, in respect of such accounts.

(2) An approved stock exchange shall appoint an auditor registered as a Registered Company Auditor under the *Accountants Act 1996* to audit the accounts and the financial statements of the fidelity fund.

(3) The auditor appointed by the approved stock exchange shall audit the accounts and the financial statements referred to in Subsection (1) and give a report on the accounts and financial statements to the board not later than one month after the financial statements are prepared.

(4) The approved stock exchange shall submit to the Commission a copy of each report given to it under this section and of the financial statements to which the report relates within 14 days after the report was given to the board.

33. MANAGEMENT SUB-COMMITTEE.

(1) The board may, by resolution, appoint a management sub-committee of not less than three and not more than five persons, at least one of whom is also a member of the board.

(2) The board may, by resolution delegate to a sub-committee appointed by it under this section all or any of its powers, authorities and discretions under this Division (other than under this section, Sections 36 and 39(3), (5) and (6)).

(3) Any power, authority or discretion so delegated may be exercised by members forming a majority of the sub-committee as if by this Division that power, authority or discretion had been conferred on a majority of the members of the sub-committee.

(4) Any delegation under this section may at any time, by resolution of the board, be varied or revoked.

(5) The board may at any time, by resolution, remove any member of a sub-committee appointed by it under this section and may, by resolution fill any vacancy in the membership of the sub-committee.

34. MINIMUM AMOUNT OF FIDELITY FUND.

(1) The fidelity fund of an approved stock exchange shall consist of an amount of not less than K500,000.00, or such other sum as may, by notice published in the National Gazette, be determined by the Commission, to be paid to the credit of the fidelity fund on the establishment of the approved stock exchange.

(2) A person is not to be admitted to—

(a) membership of an approved stock exchange; or

(b) a partnership in a member firm of an approved stock exchange,

unless the person has paid to the approved stock exchange, as a contribution to its fidelity fund, such amount, being not less than K1,000.00, as is determined by the approved stock exchange in relation to that person or in relation to a class of persons that includes that person.

(3) A person who is a member of an approved stock exchange shall, on or before 31 March in each year, pay to the approved stock exchange, as a contribution to its fidelity fund, such amount, being not less than K1,000.00, as is determined by the approved stock exchange in relation to that person or in relation to a class of persons that includes that person.

35. FIDELITY FUND LESS THAN MINIMUM AMOUNT.

(1) Where a fidelity fund is reduced below the amount specified in Section 34(1) the board shall take steps to make up the deficiency—

(a) by transferring to the fidelity fund an amount that is equal to the deficiency from other funds of the approved stock exchange; or

(b) in the event that there are insufficient funds to transfer under Paragraph (a), by determining the amount which shall be paid to the fidelity fund by every member of the approved stock exchange who is liable to make annual payments of the contribution referred to in Section 34(3).

(2) The amount of any levy under Subsection (1)(b) shall be paid within the time and in the manner specified by the board either generally or in relation to any particular case.

36. LEVY TO MEET LIABILITIES.

(1) Where at any time a fidelity fund is not sufficient to satisfy all the liabilities that are required to be paid under Section 31, the approved stock exchange may impose on every member of the approved stock exchange who is liable to make annual payments of the contribution referred to in Subsection 34(3), a levy of such amount as it thinks fit or, where directed by the Commission, shall impose a levy of such sum which shall in total be equivalent to the amount so specified in the direction.

(2) The amount of any levy under Subsection (1) shall be paid within the time and in the manner specified by the board either generally or in relation to any particular case.

(3) No member shall be required to pay by way of levy under this section more than K5,000.00 in total in any period of 12 months.

37. ADVANCES TO FIDELITY FUND.

(1) An approved stock exchange may from time to time from its general funds give or advance on such terms as the board thinks fit any sums of money to its fidelity fund.

(2) Any moneys advanced under Subsection (1) may from time to time be repaid from the fidelity fund to the general funds of the approved stock exchange.

38. INVESTMENT OF FIDELITY FUND.

Any moneys in a fidelity fund that are not immediately required for its purposes may be invested by the approved stock exchange in any investment or manner of investment in which trustees may invest trust funds under the *Trustees and Executors Act 1961*.

39. APPLICATION OF FIDELITY FUND.

(1) Subject to this Division, a fidelity fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss from any defalcation or fraud committed by a member of the approved stock exchange, or any officer or employee of such a member, or any partner in a member firm, in relation to any money, securities or other property which, whether before or after the commencement of this Act, in the course of or in connection with the business of that member, was entrusted to or received by a member of the approved stock exchange, or any of its officers or employees, or any partner in a member firm—

(a) for or on behalf of any other person; or

- (b) because the member, or the firm or a partner in the firm, was either the sole trustee or trustees with any other person or persons of that money, securities or property.

(2) Except as otherwise provided in this section, the total amount that may be paid as compensation under this Division to all persons who suffer loss through defalcation or fraud by a member or any of its officers or employees, or any partner in a member firm, shall not, in any event, exceed in respect of that member of the approved stock exchange the sum of K250,000.00, and for the purposes of this Subsection any amount paid from a fidelity fund shall, to the extent to which that amount is repaid to the fund, be disregarded.

(3) Where, after taking into account all ascertained or contingent liabilities of a fidelity fund, an approved stock exchange considers that the assets of the fund so permit, the stock exchange may decide to increase the total amount which may be applied from that fund pursuant to Subsection (2), and from the date of the decision until it is revoked or varied the amount specified in the decision is the total amount that may be applied as provided in this section, and the stock exchange shall immediately inform the Commission of any increase in the total amount under Subsection (2), and of any revocation or variation of that increased amount.

(4) Where, in any particular case after taking into account all ascertained or contingent liabilities of the fidelity fund, an approved stock exchange considers that the assets of the fund so permit, the stock exchange may apply out of the fund such sums in excess of the total amount limited by or under this section as the stock exchange, in its discretion, thinks fit in or towards the compensation of persons who have suffered pecuniary loss as provided in Subsection (1).

(5) Notwithstanding any provision in Subsections (2), (3) and (4), the Commission may by direction in writing, direct an approved stock exchange to increase the total amount which may be paid under this Division to all persons who suffer loss through defalcation or fraud of a particular member or any of its officers or employees, or any partner in a member firm.

(6) For the purposes of this section, “**member, or any officer or employee of a member, or any partner in a member firm**”, includes a former member, officer, employee or partner as the case may be, where a person who has suffered pecuniary loss has reasonable grounds for believing and did believe that the former member, officer, employee or partner was still acting with full authority in that capacity.

40. CLAIMS AGAINST FIDELITY FUND.

(1) Subject to this Division, every person who suffers pecuniary loss as provided in Section 39 shall be entitled to claim compensation from the fidelity fund of the relevant approved stock exchange and to take proceedings in the Court against the approved stock exchange to establish such claim.

(2) A person shall in no case have any claim against the fidelity fund of an approved stock exchange in respect of a defalcation or fraud in respect of money or

other property which prior to the commission of the defalcation or fraud had in the due course of the administration of a trust ceased to be under the sole control of a member of the approved stock exchange, or any officer or employee of a member, or any partner in a member firm.

(3) Subject to this Division, the amount which any claimant is entitled to claim as compensation from a fidelity fund of an approved stock exchange is the amount of the actual pecuniary loss suffered by him (including the reasonable costs of, and disbursements incidental to, the making and proof of his claim) less the amount or value of all moneys or other benefits received or receivable by him from any source other than the fund in reduction of the loss.

41. NOTICE CALLING FOR CLAIMS AGAINST FIDELITY FUND.

(1) The board of an approved stock exchange may cause to be published in a daily newspaper circulating throughout the country a notice in the prescribed form specifying a date, not being earlier than three months after the publication of the notice, 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 of an approved stock exchange in respect of a pecuniary loss as provided in Section 39 shall be made in writing to the appropriate approved stock exchange—

- (a) where a notice under Subsection (1) has been published, on or before the date specified in the notice; or
- (b) where no such notice has been published, within six months after the claimant became aware of the pecuniary loss,

and any claim which is not so made shall be barred unless the approved stock exchange otherwise determines.

(3) No action for damages shall lie against an approved stock exchange, a member of a board or management sub-committee of an approved stock exchange, or against any member, officer or employee of an approved stock exchange in respect to any notice published in good faith and without malice under this section.

42. POWER OF BOARD TO SETTLE AND DISALLOW CLAIMS.

(1) The board of an approved stock exchange may, subject to this Division, allow and settle any proper claim for compensation from the fidelity fund of the stock exchange at any time after the pecuniary loss in respect of which the claim arose was suffered.

(2) Subject to Subsection (3), a person shall not commence proceedings under this Division against an approved stock exchange without leave of the board of an approved stock exchange unless—

- (a) the board has disallowed his claim; and

(b) the claimant has exhausted all relevant rights of action and other legal remedies for recovery of the money or other property, in respect of which the pecuniary loss occurred, available against the member in relation to whom the claim arose, and all other persons liable in respect of the loss suffered by the claimant.

(3) A person who has been refused leave by the board of an approved stock exchange may apply to the Court for leave to bring proceedings against the approved stock exchange and the Court may make such other orders in the matter as it thinks fit.

(4) The board of an approved stock exchange after disallowing (whether wholly or partly) any claim for compensation from a fidelity fund shall serve notice of such disallowance in the prescribed form on the claimant or the claimant's lawyer.

(5) No proceedings against an approved stock exchange in respect of a claim which has been disallowed by a board shall be brought after the expiration of three months after service of the notice of disallowance under Subsection (4).

(6) In any proceedings brought to establish a claim under this Division, evidence of any admission or confession by, or other evidence that would be admissible against, the member or other person by whom it is alleged a defalcation or fraud was committed shall be admissible to prove the commission of the defalcation or fraud, notwithstanding that the member or other person is not the defendant in or a party to those proceedings, and all defences which would have been available to that member or person shall be available to the approved stock exchange.

(7) The board of an approved stock exchange or, where proceedings are brought to establish a claim, the Court, if satisfied that the defalcation or fraud on which the claim is founded was actually committed, may allow the claim and act accordingly, notwithstanding that the member or other person who is alleged to have committed the defalcation or fraud has not been convicted or prosecuted or that the evidence on which the board or Court (as the case may be) acts would not be sufficient to establish the guilt of that person in a criminal trial in respect of the defalcation or fraud.

43. COURT ORDER WHERE VALID CLAIM.

(1) Where in any proceedings brought to establish a claim under this Division the Court is satisfied that the defalcation or fraud on which the claim is founded was actually committed and that the claimant has a valid claim, the Court shall by order—

- (a) declare the fact and the date of the defalcation or fraud and the amount of the claim; and
- (b) direct the board of the approved stock exchange concerned to allow the claim and dispense with it in accordance with the provisions of this Division.

(2) In any proceedings brought to establish a claim under this Division all questions of costs shall be in the discretion of the Court.

44. POWER OF BOARD TO REQUIRE PRODUCTION OF DOCUMENTS.

The board of an approved stock exchange may at any time require any person to produce and deliver any securities, documents or statements of evidence necessary to support any claim made under this Division or necessary for the purpose either of—

- (a) exercising its rights against a member of the approved stock exchange, or any officer or employee of a member, or any partner in a member firm, or any other person; or
- (b) enabling criminal proceedings to be brought against any person in respect of a defalcation or fraud,

and in default of delivery of any such securities, documents or statements of evidence by the person concerned, the board may disallow any claim by him under this Division, if any, and the person is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

Default penalty: A fine not exceeding K1,000.00.

45. SUBROGATION OF STOCK EXCHANGE.

On payment out of a fidelity fund of an approved stock exchange of any moneys in respect of any claim under this Division, the approved stock exchange shall be subrogated to the extent of such payment to all the rights and remedies of the claimant in relation to the loss suffered by him from the defalcation or fraud.

46. PAYMENT OF CLAIMS ONLY FROM FIDELITY FUND.

No moneys or other property belonging to an approved stock exchange, other than the fidelity fund, shall be available for the payment of any claim under this Division, whether the claim is allowed by the board of the approved stock exchange or is made the subject of an order of the Court.

47. FIDELITY FUND INSUFFICIENT TO MEET CLAIMS.

(1) Where the amount in a fidelity fund of an approved stock exchange is insufficient to pay the whole amount of all or any claims against it which have been allowed or in respect of which orders of the Court have been made, then the amount in the fund shall, subject to Subsection (2), be apportioned between the claimants in such manner as the board of the approved stock exchange thinks equitable, and any such claim so far as it then remains unpaid shall be charged against future receipts of the fund and paid out of the fund when moneys are available in the fund.

(2) Where the aggregate of all claims under this Division which have been allowed, or in respect of which orders of the Court have been made in relation to defalcation or fraud exceeds the total amount which may pursuant to Section 39 be

paid under this Division in respect of a member then that total amount shall be apportioned among the claimants in such manner as the board of the approved stock exchange thinks equitable, and upon payment out of the fund of that total amount in accordance with such apportionment, all the claims against the fund which may thereafter arise or be made in respect of defalcation or fraud by or in connection with that member shall be absolutely discharged.

48. POWER OF BOARD TO ENTER INTO CONTRACTS OF INSURANCE.

(1) An approved stock exchange may in its discretion enter into any contract with any person carrying on a fidelity insurance business whereby the approved stock exchange will be insured or indemnified to the extent and in the manner provided by the contract against liability in respect of claims under this Division.

(2) Any such contract may be entered into in relation to—

- (a) members of the approved stock exchange generally; or
- (b) any particular member or members; or
- (c) members generally with the exclusion of any particular member or members named in the contract.

(3) No action shall lie against an approved stock exchange or against any member, officer or employee of an approved stock exchange or the board or member of the board, or against any member of a management sub-committee for injury or loss alleged to have been suffered by any member by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to that member.

49. APPLICATION OF INSURANCE MONEYS.

A claimant against a fidelity fund does not have any right of action against any person or body of persons with whom a contract of insurance or indemnity is made under this Division in respect of such contract, or have any right or claim with respect to any moneys paid by the insurer in accordance with any such contract.

Division 3.

Offences.

50. OFFENCES.

(1) Every person who acts in contravention of Section 18 or 19 is guilty of an offence.

Penalty: A fine not exceeding K200,000.00 or imprisonment for a term not exceeding five years, or both.

Default penalty: A fine not exceeding K20,000.00.

(2) Every person who acts in contravention of a notice prohibiting trading under Section 22 is guilty of an offence.

Penalty: A fine not exceeding K200,000.00 or imprisonment for a term not exceeding five years, or both.

Default penalty: A fine not exceeding K20,000.00.

(3) Every person who acts in contravention of Section 23 is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

Default penalty: A fine not exceeding K5,000.00.

PART IV. – RESTRICTIONS ON OFFER AND ALLOTMENT OF SECURITIES TO THE PUBLIC.

Division 1.

Interpretation and Application.

51. CONSTRUCTION OF REFERENCES TO OFFERING SECURITIES TO THE PUBLIC.

(1) Any reference in this Act to an offer of securities, debt securities, equity securities, or units in a unit trust (referred to in this Division as an offer of securities) to the public shall be construed as including—

- (a) a reference to offering the securities to any section of the public, however selected; and
- (b) a reference to offering the securities to individual members of the public selected at random; and
- (c) a reference to offering the securities to a person where the person became known to the offeror as a result of any advertisement made by, or on behalf of the offeror, and that was intended or likely to result in the public seeking further information or advice about any investment opportunity or services,

whether or not any such offer is calculated to result in the securities becoming available for subscription by persons other than those receiving the offer.

(2) None of the following offers shall constitute an offer of securities to the public:—

- (a) an offer of securities made to any or all of the following persons only:—
 - (i) relatives or close business associates of the issuer;
 - (ii) persons whose principal business, or persons for whom a substantial part of business conducted by them, is the investment of money or who, in the course of and for the purposes of their business, habitually invest money;
 - (iii) any other person who in all the circumstances can properly be regarded as having been selected otherwise than as a member of the public;
- (b) an offer or invitation to a person to enter into a *bona fide* underwriting or sub-underwriting agreement with respect to an offer of securities;
- (c) an offer or invitation to holders of shares in relation to the issue or allotment of additional shares that would be in substitution for some or all of the dividends payable to the holders in respect of the first-mentioned shares, whether or not the dividends have been notionally paid before that issue or allotment;

(d) an offer or invitation for securities where the amount payable by each person to whom the offer is made is at least K500,000.00;

(e) a takeover offer permitted or authorized in the country under any Act.

(3) A person shall not be precluded from being regarded as a member of the public in regard to any offer of securities by reason only that he is a purchaser of goods from, or an employee or client of, or a holder of securities previously issued by, the issuer or any promoter of the securities.

(4) Any reference in this Act to an offer of securities to the public shall be construed as including a reference to distributing an advertisement, a prospectus, a registered prospectus, or an application form for the subscription of securities.

(5) Proof of an offer of securities to one person selected as a member of the public shall be *prima facie* evidence of an offer of securities to the public.

(6) A statement made by or on behalf of an issuer to the effect that the issuer intends to make an offer of securities to the public for subscription and which contains no information or matter other than—

(a) the name of the issuer; and

(b) a description of the securities intended to be offered, including a brief description of any rights or privileges to be attached to those securities; and

(c) a statement of the rate or rates of interest (if any) that may be earned by holding securities intended to be offered; and

(d) a statement of the total number of securities intended to be offered; and

(e) a statement of the intended use of the subscriptions; and

(f) the terms of the intended offer; and

(g) a description of the class of persons to whom it is intended the offer will be made; and

(h) the date at which the issuer expects that the offer will be made,

shall not constitute an offer of securities to the public.

(7) A statement or report—

(a) made to or for the purposes of a general meeting of the members of the issuer, or a report of the proceedings of such a meeting; or

(b) relating to the affairs of the issuer made to any approved stock exchange for the purposes of compliance with the listing rules relating to that approved stock exchange, by or on behalf of that issuer, or any report of such statement or report,

shall not constitute an offer of securities to the public.

52. APPLICATION OF THIS PART.

(1) The provisions of this Part shall have effect notwithstanding anything to the contrary in any deed, agreement, application, prospectus, registered prospectus, or advertisement.

(2) A condition of any agreement requiring or binding an applicant for securities to waive compliance with any requirement of this Part, or purporting to affect him with notice of any contract, document, or matter relating to the securities that is not specifically referred to in a prospectus or registered prospectus, shall be void.

53. PREVIOUSLY ALLOTTED SECURITIES.

(1) Subject to this section, nothing in Sections 55 to 61 (inclusive) or 63 to 84 (inclusive) shall apply in respect of securities that have previously been allotted.

(2) All the provisions of this Act shall apply in respect of securities that have previously been allotted (whether in the country or elsewhere) where the securities were originally allotted with a view to being offered for sale to the public in the country and the securities have not previously been offered for sale to the public in the country.

(3) All the provisions of this Act shall apply in respect of equity securities or a securities convertible into equity securities where the holder or offeror, not being the original allotter, offers the securities for sale to the public in the country and the original allotter advises, encourages, or knowingly assists the holder or offeror in connection with the offer or sale of the securities.

(4) Nothing in Subsection (3) applies in respect of—

- (a) an offer by the holder of securities, being an offer of the securities to the public, that is made only to persons who, at the time of the offer, are holders of securities of the original allotter under the terms of the articles of association or the constitution of the original allotter that require the offer to be made to those persons; or
- (b) an offer by the holder of securities, being an offer of the securities to the public, where the aggregate amount received by the holder, or persons associated with the holder, pursuant to offers of such securities to the public for subscription does not exceed K200,000.00 in any period of 12 months; or
- (c) an offer by the holder of securities that is made—
 - (i) to not more than six members of the public; or
 - (ii) where the offer is made to more than six members of the public, the offer is made in such a manner that it cannot be accepted by more than six members of the public.

(5) For the purposes of Subsection (2), unless the contrary is proved, securities shall be deemed to have been allotted with a view to being offered for sale to the public where it is shown—

- (a) that an offer of the securities for sale to the public was made within six months after the allotment; or
- (b) that, at the date when the offer was made, the consideration to be received by the allotter in respect of the securities had not been received.

(6) For the purposes of Subsection (4)(c), unless the contrary is proved, an offer shall be deemed to have been made with a view to its being accepted by more than six members of the public where, within the period of 12 months immediately following the making of the offer, more than six persons acquire an interest, whether direct or indirect, in securities of the same class offered to the public for subscription by the holder.

(7) Notwithstanding anything in Section 2, unless the context otherwise requires, in relation to securities to which Subsection (2) or Subsection (3) of this section applies, the term “**issuer**” means the original allotter of the securities, and except for the purposes of Sections 75 to 82 (inclusive), also includes the offeror of the securities.

54. APPLICATION OF THIS PART TO SECURITIES OFFERED OVERSEAS.

(1) Nothing in this Part shall apply in respect of any securities that are offered for subscription only to—

- (a) persons outside the country; or
- (b) persons outside the country, and persons in the country who in all the circumstances can properly be regarded as having been selected otherwise than as members of the public.

(2) Where it is proposed to offer securities for subscription to persons outside the country in circumstances that, if the offer were made in the country, this Part would apply to that offer, the issuer of the securities shall ensure that—

- (a) notice of the proposed offer is submitted to the Registrar before the offer is made; and
- (b) where required to do so by the Registrar and within such time as he may prescribe, identical copies of any documents specified by the Registrar (being documents issued or distributed in connection with the offer) are lodged with him.

Division 2.**Offer of Securities to the Public.****55. RESTRICTION ON OFFER OF EQUITY AND DEBT SECURITIES TO THE PUBLIC.**

(1) No securities shall be offered to the public for subscription, by or on behalf of an issuer, unless—

- (a) the offer is made in, or accompanied by, a registered prospectus that complies with this Act; or
- (b) the offer is made in an authorized advertisement.

(2) No person shall go from house to house, including a business house or any premises used to carry on any business, offering securities to the public or any member of the public.

56. RESTRICTION ON OFFER OF UNIT TRUSTS TO THE PUBLIC.

(1) No debt securities or units of a unit trust shall be offered to the public for subscription, by or on behalf of an issuer, unless—

- (a) the offer is—
 - (i) made in, or accompanied by, a registered prospectus that complies with this Act; or
 - (ii) made in an authorized advertisement; and
- (b) a person has been appointed as trustee in respect of the debt securities or unit trust, and both the issuer and that person have signed a trust deed relating to the debt securities or unit trust; and
- (c) a copy of the trust deed has been lodged with the Registrar pursuant to Section 70; and
- (d) where the provisions of the trust deed have been amended, a copy of the instrument amending the deed has been lodged with the Registrar pursuant to Section 71.

57. RESTRICTIONS ON DISTRIBUTION OF PROSPECTUSES.

No registered prospectus shall be distributed by or on behalf of an issuer—

- (a) after it has been amended unless all the amendments have been incorporated in every copy of the registered prospectus that is so distributed; or
- (b) where it is false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not it became so misleading as a result of a change in circumstances occurring after the date of the prospectus).

58. VOID IRREGULAR ALLOTMENTS.

(1) No allotment of securities shall be made unless at the time of the subscription for the securities there was a registered prospectus relating to the securities.

(2) No allotment shall be made of equity securities or units in a unit trust offered to the public for subscription where the allotment is the first allotment of such securities or units to the public unless the amount stated in the registered prospectus relating thereto as the minimum amount which, in the opinion of the directors of the issuer, must be raised by the issue of the securities or units in order to provide for the matters specified in regulations made under this Act, is subscribed, and that amount is paid to, and received by, the issuer within four months after the date of the registered prospectus; and, for the purposes of this subsection—

- (a) a sum shall be deemed to have been paid to, and received by, the issuer if a cheque for that sum is received in good faith by the issuer and the directors of the issuer have no reason to suspect that the cheque will not be paid; and
- (b) the amount so stated in the registered prospectus shall be reckoned exclusively of any amount payable otherwise than in cash.

(3) Any allotment made in contravention of the provisions of this section shall be invalid and of no effect.

(4) Where subscriptions for securities are received by or on behalf of an issuer, but, by virtue of this section, the securities may not be allotted, or for any reason the securities are not allotted, the issuer shall ensure that—

- (a) at all times while held by it, the subscriptions are kept in a trust account on behalf of the subscribers; and
- (b) the subscriptions, together with such interest (if any) as has been earned thereon, are repaid to the subscribers as soon as reasonably practicable.

(5) Where any subscriptions to which this section applies are not so repaid within two months after the date on which the subscriptions were received by or on behalf of the issuer (or, in any case to which Subsection (2) applies, within five months after the date of the registered prospectus), the issuer and all the directors of the issuer shall be jointly and severally liable to repay the subscriptions, together with simple interest at the rate of 10% per annum, or such other sum that is prescribed from the date on which the subscriptions were received by or on behalf of the issuer, but a director shall not be liable where he proves that the default in the repayment of the subscriptions was not due to any misconduct or negligence on his part.

59. VOIDABLE IRREGULAR ALLOTMENTS.

(1) No allotment of securities offered to the public for subscription shall be made where—

- (a) the form of application for securities does not contain the date of the registered prospectus in or with which it was distributed and, where the registered prospectus has been amended, the date of the amendment to the registered prospectus; or
- (b) the issuer of the securities does not hold, in respect of the securities, a form of application that is both properly completed and signed by or on behalf of the subscriber; or
- (c) the form of application for the securities was not distributed to the subscriber in or with a registered prospectus relating to the securities; or
- (d) the form of application for the securities was distributed to the subscriber in or with a registered prospectus that is known by the issuer of the securities, or any director of the issuer, at the time of allotment, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not the registered prospectus became so misleading as a result of a change of circumstances occurring after the date of the registered prospectus); or
- (e) the date of allotment would be more than nine months after the date of any balance sheet or interim balance sheet (whichever is the later) set out, or attached to, or referred to, in accordance with regulations made under this Act, in the registered prospectus relating to the securities or, where there is no such balance sheet or interim balance sheet, more than six months after the date of the registered prospectus; or
- (f) after the allotment, the total amount of securities allotted under the registered prospectus relating to the securities would (after deducting, in the case of an allotment of debt securities, the total amount of debt securities of the issuer redeemed since the date of the registered prospectus) exceed the amount specified in the registered prospectus as the maximum amount that will be so allotted.

(2) No allotment of equity securities or units in a unit trust offered to the public for subscription shall be made unless the amount payable on application for the securities or units is at least 10% of the issue price of the securities or units.

(3) An allotment made in contravention of this section shall (whether or not the issuer is being wound up) be voidable at the instance of the subscriber by notice in writing to the issuer at any time within the prescribed period.

(4) For the purpose of Subsection (3), the term “**prescribed period**” means the lesser of the following—

- (a) a period of one year, or such further period as the Court allows after the securities or units, or a certificate of the securities or units has been sent to the subscriber; or

(b) a period of six months after the subscriber knows, or ought reasonably to know, that the allotment was made in contravention of this section.

(5) Without limiting any enactment or rule of law, an allotment made in contravention of this section shall be valid unless notice avoiding the allotment is given by the subscriber in accordance with Subsection (3).

(6) Where an allotment made in contravention of this section is avoided by the subscriber under Subsection (3), the issuer shall forthwith upon receiving notice under that Subsection, repay the subscriptions to the subscriber.

(7) Where a subscription is not so repaid within one month after the date of the receipt by the issuer of notice under Subsection (3), the issuer and all the directors of the issuer shall be jointly and severally liable to repay the subscriptions with simple interest at the rate of 10% per annum, or such other sum that is prescribed from the date on which the notice was received, but a director shall not be liable where he proves that the default in the repayment of the subscriptions was not due to any misconduct or negligence on his part.

Division 3.

Authorized Advertisements.

60. AUTHORIZED ADVERTISEMENTS.

In this Act the term “**authorized advertisement**” means an advertisement that—

- (a) refers to a registered prospectus that relates to all the securities referred to in the advertisement, and states the date of registration thereof; and
- (b) states that allotments of the securities shall be made only on receipt of a form of application forming part of, or issued with, a registered prospectus; and
- (c) specifies the place or places at which a registered prospectus may be obtained, or contains a coupon or coupons to be completed by any person who wishes to be sent a registered prospectus, or both; and
- (d) complies with this Act.

61. STATEMENT IN ADVERTISEMENT BY EXPERT.

No advertisement shall contain a statement purporting to be made by an expert unless—

- (a) the expert has given and has not, before distribution of the advertisement, withdrawn his written consent to the distribution of the advertisement with the statement included in the form and context in which it is included; and
- (b) a statement of the expert’s qualifications appears in the advertisement; and

- (c) where the expert is, or is intended to be, an officer, director, or employee of, or professional adviser to, the issuer of the securities referred to in the advertisement, a statement appears in the advertisement to that effect.

62. PROHIBITION ON ADVERTISEMENTS.

(1) Where, at any time, the Securities Commission is of the opinion that an advertisement—

- (a) is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities to which it relates; or
- (b) is inconsistent with any registered prospectus referred to in it; or
- (c) does not comply with this Act,

the Commission may make an order prohibiting the distribution of that advertisement or any advertisement which relates to the offer of securities.

(2) An order under this section may be made on such terms and conditions as the Commission thinks fit.

(3) Where the Commission makes an order under this section—

- (a) it shall forthwith notify the issuer of the securities that the order has been made and the reasons for making it; and
- (b) it may notify any other person that the order has been made and the reasons for making it.

(4) At any time after an order has been made under this section, the issuer of the securities to which the advertisement relates shall be entitled to appear and be represented before the Commission, and the Commission, where it is satisfied that the order should not continue in force, may revoke the order.

(5) Every person who contravenes an order made under this section is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for two years, or both.

Default penalty: A fine not exceeding K5,000.00.

(6) It is a defence to a charge under Subsection (5) where the defendant proves that the advertisement was distributed—

- (a) without the defendant's knowledge; or
- (b) without the defendant's knowledge of the order.

Division 4.**Prospectuses.****63. FORM AND CONTENT OF PROSPECTUS.**

Every prospectus and registered prospectus shall—

- (a) be in writing and be dated; and
- (b) specify any documents required by Section 65 to be endorsed on or attached to the prospectus or registered prospectus for the purposes of that section; and
- (c) contain all information, statements, certificates, and other matters that it is required to contain under this Act.

64. STATEMENT IN PROSPECTUS BY EXPERT.

(1) No prospectus submitted to the Registrar for registration under this Act, and no registered prospectus, shall contain a statement purporting to be made by an expert unless—

- (a) the expert has given and has not, before submission of a copy of the prospectus for registration in accordance with Section 65, withdrawn his written consent to the distribution of the prospectus with the statement included in the form and context in which it is included; and
- (b) a statement that the expert has given and has not withdrawn his consent appears in the prospectus or registered prospectus; and
- (c) a statement of the expert's qualifications appears in the prospectus or registered prospectus; and
- (d) a statement which appears in the prospectus or registered prospectus states whether or not the expert is or is intended to be a director, officer, or employee of, or professional adviser to, the issuer of the prospectus; and
- (e) where the statement by the expert was made more than four months before the date of submission of the prospectus for registration in accordance with Section 65, a supplementary statement on the same matter made by the same or another expert less than four months before that date appears in the prospectus and registered prospectus.

(2) Where under Subsection (1)(e) a supplementary statement by an expert is required to appear in a prospectus or registered prospectus—

- (a) the supplementary statement shall specifically affirm, deny, or qualify all assertions of fact contained in the original statement; and
- (b) where in the opinion of the expert making the supplementary statement, any opinions expressed in the original statement require further comment because of any denial or qualification of any assertions

of fact, or for any other reason, the supplementary statement shall contain such comments.

65. REQUIREMENTS RELATING TO PROSPECTUSES SUBMITTED TO REGISTRAR FOR REGISTRATION.

Every prospectus submitted to the Registrar for registration under this Act shall—

- (a) have endorsed on it or attached to it—
 - (i) any consent to the issue required by Section 64 from any person as an expert; and
 - (ii) all documents, information, certificates, and other matters required to be endorsed on it or attached to it for the purposes of this section by regulations made under this Act; and
- (b) be signed by—
 - (i) the issuer of the prospectus (if an individual) and every person who is a director of the issuer at the time the prospectus is submitted to the Registrar, or by its or his agent authorized in writing; and
 - (ii) every promoter of the securities to which the prospectus relates, or by its or his agent authorized in writing.

66. REGISTRATION OF PROSPECTUS.

(1) Subject to Subsections (2) and (3), the Registrar shall register every prospectus submitted to him that complies with this Act.

(2) The Registrar may refuse to register a prospectus where—

- (a) it does not comply with this Act; or
- (b) it contains any misdescription or error or any matter that is not clearly legible or is contrary to law; or
- (c) the prescribed amount payable on registration is not paid.

(3) The Registrar shall refuse to register a prospectus where—

- (a) the date of registration would be earlier than the date of the prospectus; or
- (b) he is of the opinion that the prospectus contains a statement that is false or misleading in a material particular or omits any material particular.

(4) Notwithstanding Subsections (2) and (3), the Registrar shall not refuse to register a prospectus pursuant to either of those Subsections where—

- (a) the text, diagrams, illustrations, photographs, and other information, the size and style of the print, and the layout used in the prospectus are

(except for the colours used and any signatures) the same as those used or specified in a prospectus, including any attachment relating to it, previously approved by him as suitable for registration; and

- (b) he considers that the colours used in the prospectus are such that every word therein is clearly legible,

and the Registrar may register a prospectus that does not comply with Section 65 where he is satisfied that it complies with all provisions of this Act other than Section 65 and, except for the matters referred to in that section, it is a satisfactory copy of a registered prospectus.

(5) Upon registration of a prospectus pursuant to this section, the Registrar shall forthwith issue a certificate under his hand of that registration, and the certificate shall be conclusive evidence that the prospectus has been registered under this section.

67. AMENDMENT OF REGISTERED PROSPECTUS.

(1) A registered prospectus may be amended by a memorandum of amendments to the registered prospectus that is—

- (a) signed by—
- (i) the issuer of the prospectus (if an individual) and every person who is a director of the issuer at the time the memorandum is submitted to the Registrar, or by its or his agent authorized in writing; and
 - (ii) every promoter of the securities to which the prospectus relates at that time, or by its or his agent authorized in writing; and
- (b) dated; and
- (c) submitted to the Registrar and registered under this section.

(2) Every memorandum of amendments to a registered prospectus submitted to the Registrar shall be accompanied by a copy of the registered prospectus as amended.

(3) Subject to Subsections (4) and (5), the Registrar shall forthwith register every memorandum of amendments to a registered prospectus that is submitted to him in accordance with this section, and complies with this Act.

(4) The Registrar may refuse to register a memorandum of amendments to a registered prospectus where—

- (a) pursuant to Section 66(2), he could have refused to register the registered prospectus as amended if it had been submitted for registration at the time of the submission to him of the memorandum; or
- (b) the prescribed amount payable on registration is not paid.

(5) The Registrar shall refuse to register a memorandum of amendments to a registered prospectus where—

- (a) he is of the opinion that the registered prospectus as amended contains a statement that is false or misleading in a material particular or omits any material particular; or
- (b) the date of the registered prospectus is altered.

(6) Upon registration of a memorandum of amendments to a registered prospectus pursuant to this section, the Registrar shall issue a certificate under his hand of that registration, and the certificate shall be conclusive evidence that the memorandum has been registered under this section.

68. SUSPENSION AND CANCELLATION OF REGISTRATION OF REGISTERED PROSPECTUS.

(1) Where at any time the Securities Commission is of the opinion that a registered prospectus is false or misleading as to a material particular or omits any material particular (whether or not it was so false or misleading, or the omission was material, at the time the prospectus was registered), or does not comply with this Act, the Commission may exercise either or both of the following powers in respect of the registered prospectus:—

- (a) where it considers that suspension of the registration of the registered prospectus is desirable the Commission may suspend the registration of the registered prospectus for a period not exceeding 14 days, or such further period as the Court allows;
- (b) after giving the issuer named in the registered prospectus not less than seven days' written notice, and after considering any written submissions made by the issuer the Commission may cancel the registration of the registered prospectus.

(2) Where the Commission suspends the registration of a registered prospectus pursuant to this section—

- (a) it shall forthwith notify the issuer named in it, and the Registrar of the suspension and the reasons for the suspension; and
- (b) the Commission and the Registrar shall not, nor any of its or his officers or employees, or any person appointed under Section 11, except following cancellation of the registered prospectus under this section or in the course of any criminal proceedings, divulge or communicate to any other person the fact of the suspension or any matter relating to the suspension.

(3) Subject to Subsection (4), where the registration of a registered prospectus is suspended—

- (a) no allotment shall be made of any securities subscribed for whether before or after the suspension of the registration of the registered prospectus; and

- (b) all subscriptions received for securities, not being subscriptions for securities which have been allotted before the registration of the registered prospectus is suspended, shall be held in trust for the subscribers.

(4) Where the period of suspension of registration of a registered prospectus has expired and the registration of that registered prospectus has not been cancelled under this section, Subsection (3) shall cease to have any application.

(5) Where the Commission cancels the registration of a registered prospectus pursuant to this section—

- (a) it shall forthwith notify the issuer named in it, and the Registrar of the cancellation and the reasons for the cancellation; and
- (b) it may notify any other person of the cancellation and reasons for the cancellation.

(6) Where the registration of a registered prospectus is cancelled—

- (a) no allotment shall be made of any securities subscribed for whether before or after the cancellation of the registration of the registered prospectus; and
- (b) all subscriptions held on trust pursuant to Subsection (3)(b) shall forthwith be repaid to the subscribers entitled to them; and
- (c) all subscriptions received for securities, not being subscriptions for securities which have been allotted before the registration of the registered prospectus is cancelled and not being subscriptions required to be held in trust for the subscribers pursuant to Subsection (3)(b), shall be held in trust for immediate repayment to the subscribers entitled thereto.

(7) Subject to Subsection (8), where any subscriptions which are required to be repaid to the subscribers entitled to them are not so repaid within one month after the date of the cancellation of the registration of the registered prospectus, the issuer named in it and all the directors shall be jointly and severally liable to repay the subscriptions with simple interest at the rate of 10% per annum, or such other sum that is prescribed, from the date the subscriptions were received by or on behalf of the issuer.

(8) A director of an issuer shall not be liable to repay any subscriptions and interest pursuant to Subsection (7) where that director proves that the default in the repayment of the subscriptions was not due to any misconduct or negligence on his part.

Division 5.
Trust Deeds.

69. CONTENTS OF DEEDS.

(1) Every trust deed required for the purposes of this Act shall contain all information and other matters that are required to be included by this Act.

(2) Every trust deed required for the purposes of this Act shall be deemed to contain all clauses that are prescribed as clauses that are deemed to be contained in a trust deed, and every such clause shall have effect notwithstanding anything to the contrary in any deed in which it is deemed to be contained.

(3) A trust deed required for the purposes of this Act may expressly adopt all or any of the clauses that are prescribed as clauses that may be adopted in a trust deed.

70. REGISTRATION OF TRUST DEEDS.

(1) Subject to Subsection (2), the Registrar shall register every copy of a trust deed lodged for registration under this Act.

(2) The Registrar may refuse to register a trust deed where—

- (a) it does not comply with this Act; or
- (b) it contains any misdescription or error or any matter that is not clearly legible; or
- (c) the prescribed amount payable on registration is not paid.

(3) Upon registration of a copy of a trust deed pursuant to this section, the Registrar shall issue a certificate under his hand of that registration, and the certificate shall be conclusive evidence that the deed has been registered under this section.

71. AMENDMENT OF REGISTERED DEEDS.

(1) Where a trust deed that has been registered under this Act has been lawfully amended, the issuer shall ensure that there is lodged with the Registrar, as soon as practicable after the amendment, a copy of the instrument by which the amendment to the deed was made.

(2) Subject to Subsection (3), the Registrar shall register every copy of an instrument amending a deed that—

- (a) is lodged for registration under this section; and
- (b) where the Registrar so requires, is accompanied by a copy of the deed as amended.

(3) The Registrar may refuse to register a copy of an instrument amending a deed where—

- (a) pursuant to Section 70(2), he could have refused to register the deed as amended if it had been lodged for registration at the time of the lodgement of the copy of the instrument; or
- (b) the prescribed amount payable on registration is not paid.

(4) Upon registration of a copy of an instrument pursuant to this section, the Registrar shall issue a certificate under his hand of that registration, and the certificate shall be conclusive evidence that the copy has been registered under this section.

Division 6.

Trustees.

72. PERSONS WHO MAY ACT AS TRUSTEES.

(1) No person other than a person approved for that purpose by the Securities Commission in accordance with this section, shall accept an appointment or act as a trustee under this Act.

(2) No trustee shall, without the consent of the Commission, be discharged or retire from that position until—

- (a) all functions and duties of that position have been fulfilled and performed; or
- (b) another person has been appointed as trustee of the trust, and that person has accepted the appointment.

(3) The Commission may from time to time, by notice in the National Gazette, approve any person or persons, or class or classes of persons, to act as trustees, and any such approval may be in respect of specified securities, or a specified class or classes of securities only, or in respect of all securities, and may be on such terms and conditions as the Commission thinks fit.

(4) The Commission may at any time, by notice in the National Gazette revoke any approval of a person, or class of persons, given by it under this section, but no such revocation shall affect any appointment of that person or a person of that class made before the date of the revocation, or the powers, duties, or obligations of the person under or by virtue of any such appointment.

(5) Without limiting Subsection (1), a person may act as trustee in respect of all or any securities having the same issuer.

73. TRUSTEES MAY APPLY TO COURT FOR ORDERS.

(1) Where at any time, after due inquiry, a trustee of securities is of the opinion that—

- (a) the issuer and any guarantor of the securities are unlikely to be able to pay all moneys owing in respect of the securities when it becomes due; or

- (b) the provisions of the trust deed relating to the securities are no longer adequate to give proper protection to the securities holders,

the trustee may apply to the Court for an order or orders under this section.

(2) An application to the Court under this section shall be served on such persons as the Court may direct.

(3) On an application by a trustee under this section, the Court may, after giving the issuer and such other persons as it thinks fit an opportunity of being heard, by order do any one or more of the following:—

- (a) amend the provisions of the trust deed relating to the securities;
- (b) impose such restrictions on the activities of the issuer, including restrictions on advertising, as the Court thinks necessary for the protection of the interests of the securities holders;
- (c) direct the issuer or the trustee to convene a meeting of the securities holders for the purpose of having placed before them by the trustee such information relating to their interests, and such proposals for the protection of their interests, as the Court or the trustee considers necessary or appropriate, and for the purpose of obtaining their opinions or directions, and the Court may give such directions in relation to the conduct of the meeting as the Court thinks fit;
- (d) stay all civil actions or proceedings before any Court by or against the issuer or any guarantor of the securities;
- (e) restrain the payment of any money by the issuer or any guarantor of the securities to the securities holders or any class of such holders;
- (f) appoint a receiver or manager of such of the property as constitutes the security (if any) for the securities;
- (g) give such other directions as the Court considers necessary to protect the interests of the securities holders, other holders of securities of the issuer, any guarantor of the securities, or the public,

and in making any such order the Court shall have regard to the interests of all creditors of the issuer.

(4) The Court may at any time vary or rescind any order made under this section.

74. DUTY OF AUDITOR TO REPORT TO TRUSTEE.

(1) Whenever the auditor of a unit trust whose units have been offered to the public furnishes to the issuer or its unit holders any report, statement of accounts, certificate, or other document that is required by any Act or by any trust deed relating to the unit trust to be so furnished, he shall forthwith send a copy to the trustee of the unit trust.

(2) Whenever, in the performance of his duties as auditor, the auditor of a unit trust whose units have been offered to the public becomes aware of any matter that in his opinion is relevant to the exercise or performance of the powers or duties of the trustee of the unit trust, he shall, within 14 days of becoming so aware, send—

- (a) to the issuer, a report in writing on the matter; and
- (b) to the trustee, a copy of that report.

(3) The auditor of a unit trust whose units have been offered to the public shall from time to time, at the request of the trustee of the unit trust, furnish to the trustee such information or particulars relating to the unit trust as are requested and are within his knowledge and are in his opinion relevant to the exercise or performance of the powers or duties of the trustee.

(4) Nothing in this section shall affect the duties or liabilities of any trustee.

Division 7.

Obligations of Issuers.

75. ISSUERS TO KEEP REGISTERS OF SECURITIES.

(1) Every issuer of securities shall keep in the country a register of those securities.

(2) Every register kept for the purposes of this section shall contain in respect of all securities entered in it—

- (a) the name and address of the holder; and
- (b) the date on which the securities were allotted or transferred to the holder, as the case may be; and
- (c) the nature of the securities; and
- (d) the amount secured by the securities; and
- (e) the due date of the securities (if any); and
- (f) such other particulars as are required to be entered in it by this Act,

provided that nothing in Paragraphs (a) and (b) shall apply in respect of bearer securities.

(3) No notice of any trust, express, implied, or constructive, shall be entered on a register kept under this section.

(4) Every register kept under this section shall be *prima facie* evidence of any matters directed by this Act to be inserted in it.

(5) Every issuer of securities offered to the public (other than securities that have been redeemed) shall ensure that every register kept by it under this section is audited at least once a year by a qualified auditor, and where the auditor considers at any time that this section is not being complied with, he shall forthwith advise the Registrar and the trustee (where the specified securities are units) or the securities

holders at their next meeting (where the specified securities are equity securities or debt securities).

(6) Every issuer shall send notice to the Registrar of the place where its registers are kept and of any change in that place, but an issuer shall not be bound to send notice under this Subsection where the registers have, at all times since they came into existence or, in the case of a register in existence at the commencement of this Act, at all times since then, been kept at the registered office of the issuer where a company, or the principal place of business in the country of the issuer if otherwise.

(7) Nothing in this section shall in any way derogate from any provision of the *Companies Act 1997* or any other enactment.

76. RIGHTS OF INSPECTION OF REGISTERS OF SECURITIES AND TO COPIES OF REGISTERS AND DEEDS.

(1) Every register kept under Section 75 shall, except when duly closed (but subject to such reasonable restrictions as the issuer may impose, so that not less than four hours in each day shall be allowed for inspection), be open for inspection—

- (a) by any holder of the securities to which the register relates without charge; and
- (b) by any other person, on payment for each inspection of a reasonable fee determined by the issuer of securities, not exceeding the prescribed amount, if any, or where the issuer of securities does not require the payment of a fee, without charge.

(2) Any person may require a copy of a register kept under Section 75 of this Act, or any part of it, on payment of a reasonable fee determined by the issuer of securities, not exceeding the prescribed amount, if any, or where the issuer of securities does not require the payment of a fee, without charge.

(3) The issuer of any units in a unit trust shall ensure that a copy of the trust deed relating to the unit trust is forwarded to a unit holder on his request and on payment of a reasonable fee as determined by the issuer of securities.

(4) For the purposes of this section, a register shall not be closed for a period or periods exceeding a total of 30 days in any year.

(5) Nothing in this section shall in any way derogate from any provision of the *Companies Act 1997* or any other enactment.

77. ISSUERS TO KEEP PROPER ACCOUNTING RECORDS.

(1) Every issuer of securities offered to the public (other than securities that have been redeemed) shall at all times keep, in such manner as will enable an audit to be conveniently and properly carried out, accounting records that—

- (a) correctly record and explain the transactions of the issuer (in the case of equity securities or debt securities), or all transactions in respect of the unit trust (in the case of units); and

(b) will at any time enable the financial position of the issuer, or the unit trust, to be determined with reasonable accuracy.

(2) Without limiting the generality of Subsection (1), accounting records kept pursuant to that subsection shall contain—

(a) entries from day to day of all sums of money received and expended by—

(i) (in the case of equity or debt securities) the issuer; or

(ii) (in the case of units) the issuer of units in the unit trust,

and the transactions or matters to which such receipts and expenditure relate; and

(b) a record of the assets and liabilities of the issuer (in the case of equity or debt securities) or of the unit trust (in the case of units); and

(c) where the business of the issuer (in the case of equity securities or debt securities) or of the unit trust (in the case of units) involves trading in goods—

(i) a record of all goods purchased, and of all goods sold (except those sold for cash by way of ordinary retail trade), showing the goods and the sellers and buyers in sufficient detail to enable the goods and the sellers and buyers to be identified, and all related invoices; and

(ii) statements of stock held by the issuer (in the case of equity or debt securities) or held for the unit trust (in the case of units) at the end of each financial year, and all records of stocktakings from which any such statement of stock has been, or is to be, prepared; and

(d) where the business of the issuer (in the case of equity securities or debt securities) or of the unit trust (in the case of units) involves the provision of services, records of the services provided and all related invoices; and

(e) such other information required to be contained in the accounting records by this Act.

(3) The accounting records shall be kept at the registered office, if any, or at such other place as the issuer thinks fit, but where the accounting records are kept at a place outside the country there shall be sent to, and kept at a place in the country such documents with respect to the business dealt with in the accounting records so kept, as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months and will enable to be prepared the financial statements of the issuer (in the case of equity securities or debt securities), or the unit trust (in the case of units), and any document annexed to any of those documents giving information which is required by any Act.

(4) Accounting records required by this section to be kept and documents referred to in Subsection (3) shall be kept in written form in English.

(5) Accounting records kept under this section, or copies thereof, shall be retained by the issuer for a period of at least seven years after the date they are made or the date of completion of the transaction to which they relate, whichever is the later, but nothing in this subsection shall derogate from any other requirement to keep accounting records for a longer period of time.

(6) Every issuer shall make the accounting records required to be kept pursuant to this section and any documents referred to in Subsection (3) available at all reasonable times for inspection without charge by the directors of the issuer, any trustee and any other persons authorized or permitted to inspect the accounting records of the issuer.

(7) Every issuer of units in a unit trust offered to the public shall ensure that the accounting records relating to the unit trust are audited at least once a year by a qualified auditor, unless exempted by the Registrar by notice in the National Gazette.

(8) Every issuer of securities offered to the public shall supply, on demand and without charge, to every securities holder who so requests, a copy of the last audited financial statements, including every document required by law to be attached to the statements, of the issuer (in the case of equity securities or debt securities) or of the unit trust (in the case of units), except that no securities holder shall be entitled to more than one copy of each set of financial statements and attached documents.

78. ISSUERS TO PREPARE AND REGISTER FINANCIAL STATEMENTS.

(1) Every issuer shall at least once in each calendar year—

- (a) prepare financial statements; and
- (b) submit those financial statements to the Registrar for registration.

(2) Where an issuer is a company, compliance with Part XI of the *Companies Act 1997* shall be deemed to be compliance with this section.

(3) Where an issuer is not a company, Part XI of the *Companies Act 1997* shall apply to the preparation of the financial statements of that issuer as if references in that Part to a company were references to the issuer.

(4) The Registrar may on the application of the issuer, on such grounds as the Registrar thinks fit, extend the period for lodgement of the documents referred to in Subsection (1) even if as a result the period is extended beyond the calendar year.

79. ISSUERS TO ISSUE CERTIFICATES EVIDENCING SECURITIES.

(1) Every issuer of securities offered to the public shall send, or cause to be sent, to the securities holder either the securities or a certificate of the securities within one month of the allotment, or receipt by or on behalf of the issuer of a registrable transfer, of the securities.

(2) All securities or certificates sent to a securities holder pursuant to this section shall be executed by or on behalf of the issuer of the securities, but it shall be

sufficient compliance with the provisions of this subsection requiring securities or certificates to be executed by any person if a facsimile of the required signature and seal (if any) is reproduced on the securities or certificates.

(3) In this section, the term “**certificate**” means a certificate or other document that properly evidences the nature, ownership, terms, and conditions of the securities.

(4) Nothing in this section shall in any way derogate from any provision of the *Companies Act 1997* or any other Act.

Division 8.

Liability of Issuers, etc., and Offences.

80. INTERPRETATION OF PROVISIONS RELATING TO PROSPECTUSES.

(1) For the purposes of this Act—

- (a) a statement included in an advertisement or registered prospectus shall be deemed to be untrue where—
 - (i) it is misleading in the form and context in which it is included; or
 - (ii) it is misleading by reason of the omission of a particular which is material to the statement in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in an advertisement or registered prospectus where it is contained in it, or on the face of it, or in any report, memorandum, or document accompanying the advertisement or registered prospectus or by reference incorporated in it or distributed with it.

81. CIVIL LIABILITY FOR MISSTATEMENTS IN ADVERTISEMENT OR REGISTERED PROSPECTUS.

(1) Subject to the provisions of this section, the following persons shall be liable to pay compensation to all persons who subscribe for any securities on the faith of an advertisement or registered prospectus which contains any untrue statement, for the loss or damage they may have sustained by reason of such untrue statement:—

- (a) the issuer of the securities;
- (b) in the case of an advertisement, every person who is a director of the issuer at the time that the advertisement is distributed or who has authorized himself to be named, and is named in the advertisement as a director of the issuer or as having agreed to become a director either immediately or after an interval of time;
- (c) in the case of a registered prospectus, every person who has signed the prospectus as a director of the issuer or on whose behalf the prospectus has been so signed, or who has authorized himself to be named and is

named in the prospectus as a director of the issuer or has agreed to become a director either immediately or after an interval of time;

(d) every promoter of the securities.

(2) No person shall be liable under Subsection (1)(c) in respect of any untrue statement included in a registered prospectus where he proves that, having consented to become a director of the issuer, he withdrew his consent before the distribution of the registered prospectus, and that he gave written notice of his withdrawal and the reasons for withdrawing to the Commission, and that the registered prospectus was distributed without his authority or consent.

(3) No person shall be liable under Subsection (1) in respect of any untrue statement included in an advertisement or registered prospectus, as the case may be, where he proves that—

(a) the advertisement was distributed or the prospectus was registered, as the case may be, without his knowledge or consent, and on becoming aware of its distribution or registration he forthwith gave notice to the trustee (if any), the Registrar, and the Commission that it was distributed or registered without his knowledge or consent, and also gave reasonable public notice that it was distributed or registered without his knowledge or consent; or

(b) after the distribution of the advertisement or the registration of the prospectus, as the case may be, and before the securities were subscribed for, he, on becoming aware of any untrue statement in it, withdrew his consent and forthwith gave notice to the trustee (if any), the Registrar, and the Commission of the withdrawal and of the reason for the withdrawal, and also forthwith gave reasonable public notice of the withdrawal; or

(c) as regards every untrue statement not purporting to be made on the authority of an expert, he had reasonable grounds to believe and did, up to the time of the subscription for the securities, believe that the statement was true; or

(d) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert—

(i) it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and

(ii) he had reasonable grounds to believe and did, up to the time of the distribution of the advertisement or the registration of the prospectus, as the case may be, believe that the person making the statement was competent to make it; and

(iii) that person had given the consent required by Section 61 and 64 to the distribution of the advertisement or the registration of the prospectus, as the case may be, and had not withdrawn that

consent before distribution of the advertisement, or submission of the prospectus for registration or, to the defendant's knowledge, before the securities were subscribed for; or

(e) as regards every untrue statement purporting to be a statement made by a person or contained in what purports to be a copy of or extract from a document produced or distributed by a person, it was a correct and fair representation of the statement or copy of or extract from the document.

(4) Where—

(a) an advertisement or a registered prospectus contains the name of a person as a director of the issuer, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the distribution of the advertisement or registration of the prospectus, and has not authorized or consented to the distribution of the advertisement or registration of the prospectus; or

(b) the consent of a person is required under Section 61 or Section 64 to the distribution of an advertisement or registered prospectus and he either, has not given that consent, or has withdrawn it before the distribution of the advertisement, or submission of the prospectus for registration,

the directors of the issuer, except any without whose knowledge or consent the advertisement was distributed or the prospectus was registered, shall be liable to indemnify the person referred to in Paragraphs (a) or (b), as the case may be, against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the advertisement or registered prospectus or of the inclusion in it of a statement purporting to be made by him as an expert, as the case may be, or in defending any action or legal proceedings brought against him in respect thereof.

(5) Where any person acting in good faith, believing a statement in an advertisement or prospectus to be untrue, withdraws his consent to the distribution of the advertisement or registration of the prospectus, he shall not be liable in respect of the withdrawal to the issuer or any other person, whether or not the statement is untrue.

82. CIVIL LIABILITY FOR MISSTATEMENTS BY EXPERT.

(1) Subject to the provisions of this section, every person who gives consent to the distribution of an advertisement or registered prospectus required of him by Section 61 or Section 64, or otherwise by this Act, which contains an untrue statement purporting to be made by him as an expert, shall be liable to pay compensation to all persons who subscribe for any securities on the faith of the advertisement or registered prospectus for the loss or damage they may have sustained by reason of such untrue statement.

(2) No person shall be liable under Subsection (1) where he proves that—

- (a) having given his consent to the distribution of the advertisement or registered prospectus, he withdrew it in writing before distribution of the advertisement or registered prospectus; or
- (b) after distribution of the advertisement or registered prospectus and before the securities were subscribed for, he, on becoming aware of the untrue statement or omission, withdrew his consent in writing and gave notice to the trustee (if any), the Registrar, and the Commission of the withdrawal and of the reason for the withdrawal, and also gave reasonable public notice of the withdrawal; or
- (c) he was competent to make the statement and he had reasonable grounds to believe and did, up to the time of the subscription for the securities, believe that the statement was true.

(3) Where any person acting in good faith, believing a statement in an advertisement or registered prospectus to be untrue, withdraws his consent to the distribution of the advertisement or registered prospectus, he shall not be liable in respect of the withdrawal to the issuer or to any other person, whether or not the statement is untrue.

83. CRIMINAL LIABILITY FOR MISSTATEMENTS IN ADVERTISEMENT OR REGISTERED PROSPECTUS.

(1) Where an advertisement that includes any untrue statement is distributed—

- (a) the issuer of the securities referred to in the advertisement; and
- (b) every director of the issuer of the securities at the time the advertisement is distributed,

is guilty of an offence.

(2) Where a registered prospectus that includes any untrue statement is distributed, every person who signed the prospectus, or on whose behalf the registered prospectus was signed for the purposes of Section 65 (b), is guilty of an offence.

(3) Every person who is guilty of an offence against this section is liable to the following penalty—

Penalty: On conviction on indictment, a fine not exceeding K200,000.00 or imprisonment for a term not exceeding five years, or both, and on summary conviction, a fine not exceeding K20,000.00 or imprisonment for a term not exceeding six months, or both.

84. CRIMINAL LIABILITY FOR OFFERING, DISTRIBUTING, OR ALLOTING IN CONTRAVENTION OF THIS ACT.

(1) Subject to Subsection (2), where an offer of securities is made to the public, or a registered prospectus relating to securities is distributed, or securities are allotted, in contravention of this Act—

- (a) the issuer of the securities; and
- (b) every person who is a principal officer of the issuer at the time of the contravention; and
- (c) every promoter of the securities; and
- (d) every person who has authorized himself to be named, and is named in any advertisement or registered prospectus relating to the securities as a director of the issuer or as having agreed to become a director either immediately or after an interval of time,

is guilty of an offence.

(2) No person shall be convicted under Subsection (1) for any such contravention where—

- (a) the contravention was in respect of matters which in the opinion of the Court hearing the matter were immaterial, or was otherwise such as, in the opinion of the Court having regard to all the circumstances of the case, ought reasonably to be excused; or
- (b) in the case of a person other than the issuer, in the opinion of the Court hearing the matter, the contravention did not take place with his knowledge and consent.

85. OTHER OFFENCES.

(1) Every person who—

- (a) refuses or fails to produce for inspection any document when required to do so pursuant to Section 92; or
- (b) resists, obstructs, deceives, or attempts to deceive any person acting in the discharge of his functions or duties, or in the exercise of his powers, under this Act; or
- (c) makes a record of or divulges or communicates to any other person, otherwise than in accordance with Section 92(2) or for the purposes of this Act or in the course of any criminal proceedings, any information that he has acquired in the course of an inspection under Section 92; or
- (d) acts in contravention of, or fails to comply in any respect with Sections 55, 56, 71(1), 74, 75, 76, 82, and 84(1) or any requirement imposed pursuant to any of those sections,

is guilty of an offence.

Penalty: A fine not exceeding K200,000.00 or imprisonment for a term not exceeding five years, or both

Default penalty: A fine not exceeding K20,000.00.

(2) Subject to Subsection (3), where a person contravenes or fails to comply in any respect with Sections 54(2), 58(4), 72(1) and (2), and 77 or any requirement imposed pursuant to any of those sections, the person, and where a body corporate every principal officer, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

Default penalty: A fine not exceeding K5,000.00.

(3) No person shall be convicted under Subsection (2) in respect of any such contravention or failure to comply as specified in that subsection where the contravention or failure was in respect of matters which in the opinion of the Court hearing the matter were immaterial, or was otherwise such as, in the opinion of the Court having regard to all the circumstances of the case, ought reasonably to be excused, and no principal officer shall be convicted under Subsection (2) in respect of any such contravention or failure to comply where, in the opinion of the Court hearing the matter, the contravention or failure did not take place with his knowledge and consent.

86. LIABILITY OF AUDITORS.

(1) Subject to this section, any provision, whether contained in the constitution of an issuer or in any contract with an issuer or otherwise, for exempting any person (whether an officer of the issuer or not) employed or contracted by the issuer as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty, or breach of trust of which he may be guilty in relation to an issuer or any securities shall be void.

(2) Nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any provision referred to in Subsection (1) was in force, and notwithstanding anything in this section, an issuer may, in pursuance of any provision referred to in Subsection (1) indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted, or in connection with any application under Section 88 in which relief is granted to him by the Court.

87. LIABILITY OF TRUSTEES.

(1) Subject to Subsections (2) and (3), any provision of a deed or contract relating to a unit trust or to units shall be void in so far as it would have the effect of exempting a trustee of the unit trust from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee having regard to the provisions of the trust deed conferring on him any powers, authorities, or discretions.

- (2) Subsection (1) shall not invalidate—
- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
 - (b) any provision enabling such a release to be given—
 - (i) upon the agreement of a majority comprising not less than three-fourths in value of the unit holders voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the trustee being wound up or ceasing to act.
- (3) Subsection (1) shall not operate—
- (a) to invalidate any provision in force at the commencement of this Part; or
 - (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.

88. POWER OF COURT TO GRANT RELIEF IN CERTAIN CASES.

(1) Where in any proceedings against any person for negligence, default, breach of duty, or breach of trust in connection with—

- (a) an offer to the public or allotment of securities; or
- (b) the distribution of a registered prospectus or advertisement; or
- (c) the management of securities; or
- (d) any other related matter,

it appears to the Court hearing the matter that the person is or may be liable in respect of the negligence, default, breach of duty, or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty, or breach of trust, the Court may relieve him either wholly or partly from his liability, on such terms as the Court may think fit.

(2) Where any such person has reason to believe that any claim will or might be made against him in respect of any such negligence, default, breach of duty, or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him under this section as it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty, or breach of trust had been brought.

(3) In any case to which Subsection (1) applies the Court may, after hearing the evidence, where it is satisfied that the defendant ought in pursuance of that subsection be relieved wholly or partly from the liability sought to be enforced

against him, direct judgment to be entered for the defendant on such terms as to costs or otherwise as the Court may think proper.

89. TIME IN WHICH CIVIL ACTION MAY BE BROUGHT.

Unless otherwise provided, any civil action under this Part may be brought at any time within six years after the day on which the cause of action arose, or such further time as the Court allows.

90. SAVING OF LIABILITY UNDER GENERAL LAW.

Nothing in this Act shall limit or diminish any liability that any person may incur under any law other than this Act.

Division 9.

General Provisions.

91. REGISTERS TO BE KEPT BY REGISTRAR FOR PURPOSES OF THIS ACT.

(1) The Registrar shall cause to be kept such registers as he considers necessary for the purposes of this Act, and all matters required by this Act to be registered or recorded by the Registrar shall be recorded in the registers.

(2) Sections 395 and 398 of the *Companies Act 1997* shall apply in respect of any documents kept by the Registrar for the purposes of this Act as if they were documents kept for the purposes of the *Companies Act 1997*.

92. POWERS OF INSPECTION.

(1) The Registrar or the Securities Commission, or any person authorized by him or it in writing may—

- (a) require any issuer or promoter of securities, or any director, officer, or employee thereof, to produce for inspection any book or paper or other document kept by the issuer or the promoter; and
- (b) require any person to produce for inspection any book or paper or other document that contains information relating to any money or other property that is managed, supervised, controlled, or held in trust by any such issuer or promoter; and
- (c) inspect and make records of any such book or paper or other document; and
- (d) for the purpose of making records, take possession of and remove from the premises where they are kept any such book or paper or other document.

(2) A person who has made an inspection under Subsection (1) shall, upon being directed to do so by the Registrar or the Commission, give, divulge, or

communicate any records or information that he has acquired in the course of the inspection to such person or persons as the Registrar or Commission specifies.

(3) Nothing in this section shall in any way limit any power that the Registrar or any other person may have under the *Companies Act 1997* or any other enactment.

93. DISCLOSURE OF INFORMATION RELATING TO INSPECTION.

(1) A person authorized by the Registrar or the Commission for the purposes of Section 92 shall not make a record of, divulge, or communicate to any person, any information acquired in exercising the powers conferred by that Subsection except—

- (a) in accordance with Subsection (2) of that section; or
- (b) for the purposes of this Act; or
- (c) in the course of any criminal proceedings.

(2) Any person so authorized who contravenes Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for two years, or both.

(3) Notwithstanding anything in any other law, the Registrar or Commission may refuse to disclose any information in his or its possession—

- (a) as to whether an inspection under Section 92 is, or is proposed to be, or has been, carried out; or
- (b) obtained in making, or acquired as a result of, an inspection under Section 92.

94. APPEALS AGAINST REGISTRAR'S AND COMMISSION'S POWERS.

(1) Any person who is aggrieved by any act or decision of the Registrar or the Commission, or any person authorized by him or it, under this Act may within 21 days after being notified of such act or decision, or within such further time as the Court may allow, appeal against the act or decision to the Court.

(2) On hearing the appeal, the Court may confirm the act or decision of the Registrar, Commission, or person or may give such directions or make such determination in the matter as it thinks fit.

(3) Subject to Subsection (4), notwithstanding any other provision of any law, where a person appeals or applies to the Court in respect of an act or decision of the Registrar, Commission or any person authorized by him or it, under Section 92, until a decision on the appeal or application is given, the Registrar and the Commission, and any person authorized by him or it under that section for the purpose, may continue to exercise his powers under that section as if no such appeal or application had been made, and no person shall be excused from fulfilling his obligations under that section by reason of that appeal or application.

(4) To the extent that an appeal or application in respect of any act or decision of the Registrar, Commission, or any person authorized by him or it is allowed or granted, the Registrar or Commission, as the case may be shall ensure that, forthwith after the decision on the appeal or application is given, all records made by him, or by a person authorized by him for that purpose, under Section 92(1)(c) in respect of that act or decision are destroyed or returned.

PART V. – SECURITIES MARKET PRACTICES.**95. STOCK MARKET MANIPULATION.**

(1) A person shall not enter into or carry out, either directly or indirectly, two or more transactions in securities of a body corporate, being transactions that have, or are likely to have, the effect of increasing the price of securities of the body corporate on a stock market, with intent to induce other persons to buy or subscribe for securities of the body corporate, or securities of a related company or associated person.

(2) A person shall not enter into, or carry out, either directly or indirectly, two or more transactions in securities of a body corporate, being transactions that have, or are likely to have, the effect of reducing the price of securities of the body corporate on a stock market, with intent to induce other persons to sell securities of the body corporate, or securities of a related company or associated person.

(3) A person shall not enter into, or carry out, either directly or indirectly, two or more transactions in securities of a body corporate, being transactions that have, or are likely to have, the effect of maintaining or stabilising the price of securities of the body corporate on a stock market, with intent to induce other persons to sell, buy or subscribe for securities of the body corporate, or securities of a related company or associated person.

(4) A reference in this section to a transaction in relation to securities includes—

- (a) a reference to the making of an offer to sell or buy 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 buy securities.

(5) In this Part “**related company**” has the same meaning as in the *Companies Act 1997*.

96. FALSE TRADING AND MARKET RIGGING TRANSACTIONS.

(1) A person shall not create, or do anything, that is intended or likely to create, a false or misleading appearance of active trading in any securities on a stock market or a false or misleading appearance with respect to the market for, or the price of, any securities.

(2) A person shall not, by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities or by any fictitious transactions or devices, maintain, increase, reduce, or cause fluctuations in, the market price of any securities.

(3) Without limiting the generality of Subsection (1), a person who—

- (a) enters into, or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities; or

- (b) offers to sell any securities at a specified price where the person has made or proposes to make, or knows that an associated person has made or proposes to make, an offer to buy the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or
- (c) offers to buy any securities at a specified price where the person has made or proposes to make, or knows that an associated person has made or proposes to make, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price,

shall be deemed to have created a false or misleading appearance of active trading in those securities on a stock market.

(4) In a prosecution of a person for a contravention of Subsection (1) constituted by an act referred to in Subsection (3), it is a defence if it is proved that the purpose or purposes for which the person did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on the stock market.

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

(6) In a prosecution for a contravention of 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 where it is proved that the purpose or purposes for which the securities were bought or sold was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.

(7) The reference in Subsection (3)(a) to a transaction of sale or purchase of securities includes—

- (a) a reference to the making of an offer to sell or buy 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 buy securities.

97. FALSE OR MISLEADING STATEMENTS IN RELATION TO SECURITIES.

A person shall not make a statement, or disseminate information, that is false in a material particular or materially misleading and—

- (a) is likely to induce the sale or purchase of securities by other persons; or
- (b) is likely to have the effect of increasing, reducing, maintaining, or stabilising the market price of securities,

where, when the person makes the statement or disseminates the information—

- (c) the person does not take reasonable care to ensure that the statement or information is true; or
- (d) the person knows or ought reasonably to have known that the statement or information is false in a material particular or materially misleading.

98. FRAUDULENTLY INDUCING PERSONS TO DEAL IN SECURITIES.

(1) A person shall not—

- (a) by making or publishing a statement, promise or forecast that the person knows to be misleading, false or deceptive; or
- (b) by a dishonest concealment of material facts; or
- (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, any mechanical, electronic or other device, information that the person knows to be false in a material particular or materially misleading,

induce or attempt to induce another person to deal in securities.

(2) It is a defence to a prosecution for a contravention of Subsection (1) constituted by recording or storing information as mentioned in Subsection (1)(d) where it is proved that, when the information was so recorded or stored, the defendant had no reasonable grounds for expecting that the information would be available to any other person.

99. DISSEMINATION OF INFORMATION ABOUT ILLEGAL TRANSACTIONS.

A person shall not circulate or disseminate any statement or information to the effect that the price of any securities of a body corporate will or is likely to rise or fall or be maintained because of any transaction entered into or other act or thing done in relation to securities of that body corporate, or a related company or associated person, in contravention of any of Sections 95, 96, 97 or 98 where—

- (a) the person, or related company or associated person, has entered into any such transaction or done any such act or thing; or
- (b) the person, or related company or associated person, has received, or expects to receive, directly or indirectly, any consideration or benefit in respect of the circulation or dissemination of the statement or information.

100. LIABILITY FOR UNLAWFUL MARKET ACTIVITY.

(1) Where a person contravenes any of Sections 95, 96, 97, 98, or 99, any other person who entered into a transaction for the sale or purchase of securities with the first-mentioned person (or with a person acting on behalf of the first-mentioned

person) may recover the amount of any loss suffered by the other person as a result of the difference between—

- (a) the price at which the securities were dealt in, in that transaction; and
- (b) the price at which they would have been likely to have been dealt in, in such a transaction when the first-mentioned transaction took place, if the contravention had not occurred.

(2) An action under Subsection (1) may be brought at any time within six years after the day on which the cause of action arose, or such further time as the Court allows and the amount that a person may recover in an action under Subsection (1) shall be determined in accordance with Section 111(9).

(3) Without limiting Subsection (1), a person who contravenes Section 95, 96, 97, 98, or 99, is guilty of an offence.

Penalty: A fine not exceeding the greater of K200,000.00 or ten times the value of any profit or benefit derived from the commission of the offence, or imprisonment for a term not exceeding five years, or both.

PART VI. – INSIDER TRADING.

101. INTERPRETATION.

(1) In this Part–

“**information**” includes–

- (a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public; and
- (b) matters relating to the intentions, or the likely intentions, of a person;

“**inside information**”, in relation to any securities, means information that is not generally available but, if it were generally available, would be expected by a reasonable person to have a material effect on the price or value of the securities;

“**insider**”, in relation to any securities, means a person who possesses inside information and who knows, or ought reasonably to know, that–

- (a) the information is not generally available; and
- (b) if the information were generally available, it might have a material effect on the price or value of those securities;

“**securities**” means equity securities, debt securities, or units that are listed or quoted on a stock exchange, or an option contract under which a party acquires from another party an option or right, exercisable at or before a specified time, to buy from, or sell to, that other party equity securities, debt securities or units that are listed or quoted on a stock exchange, at a price specified in, or to be determined in accordance with, the contract;

“**officer**”, in relation to a body corporate, includes–

- (a) a director, secretary, manager, or employee of the body corporate; and
- (b) a receiver within the meaning of Section 254 of the *Companies Act 1997* of the body corporate; and
- (c) a liquidator of the body corporate;

“**procure**” includes to incite, induce, or encourage an act or omission by another person;

“**purchase**”, in relation to any contract under which a party acquires an option or right from another party, includes acquire the option or right under the contract, or take an assignment of the option or right, whether or not on another’s behalf;

“**sell**”, in relation to any contract under which a party acquires an option or right from another party, includes grant or assign the option or right

under the contract, or take, or cause to be taken, such action as releases the option or right, whether or not on another's behalf.

- (2) For the purposes of this Part, information is generally available where—
- (a) it consists of readily observable matter; or
 - (b) without limiting Paragraph (a)—
 - (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of a kind whose price or value might be affected by the information; and
 - (ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed; or
 - (c) it consists of deductions, conclusions or inferences made or drawn from either or both of the following:—
 - (i) information referred to in Paragraph (a);
 - (ii) information made known as provided in Paragraph (b)(i).

(3) For the purposes of this Part, a reasonable person would be taken to expect information to have a material effect on the price or value of securities where the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the first-mentioned securities.

(4) For the purposes of this Part, trading in securities that is ordinarily permitted on a stock market is deemed to be permitted on that stock market, even though trading in any such securities on that stock market is suspended or prohibited.

- (5) For the purposes of this Part—
- (a) a body corporate is taken to possess any information which an officer of the body corporate possesses and which came into his possession in the course of the performance of his duties as an officer of that body corporate; and
 - (b) where an officer of a body corporate knows or ought reasonably to know any matter or thing because he is an officer of the body corporate, it is to be presumed that the body corporate knows or ought reasonably to know that matter or thing.
- (6) For the purposes of this Part—
- (a) a partner of a partnership is taken to possess any information—
 - (i) which another partner possesses and which came into his possession in his capacity as a partner of the partnership; or

- (ii) which an employee of the partnership possesses and which came into his possession in the course of the performance of his duties as an employee; and
- (b) where a partner or employee of a partnership knows or ought reasonably to know any matter or thing because the partner or employee is such a partner or employee, it is to be presumed that every partner of the partnership knows or ought reasonably to know that matter or thing.

102. PROHIBITED CONDUCT BY INSIDERS.

(1) An insider shall not (whether as principal or agent)–

- (a) subscribe for, purchase, or sell, or enter into an agreement to subscribe for, purchase, or sell, any securities in respect of which he is an insider; or
- (b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase, or sell, any such securities.

(2) Where trading in securities is permitted on a stock market of an approved stock exchange, an insider in respect of those securities shall not, directly or indirectly, communicate any inside information that he has, or cause the inside information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to–

- (a) subscribe for, purchase, or sell, or enter into an agreement to subscribe for, purchase or sell, any of the securities; or
- (b) procure a third person to subscribe for, purchase, or sell, or to enter into an agreement to subscribe for, purchase or sell, any of the securities.

103. EXCEPTION FOR UNDERWRITERS.

(1) Section 102(1) does not apply in respect of–

- (a) subscribing for securities under an underwriting agreement or a sub-underwriting agreement; or
- (b) entering into an agreement referred to in Paragraph (a); or
- (c) selling securities subscribed for under an agreement referred to in Paragraph (a).

(2) Section 102(2) does not apply in respect of–

- (a) the communication of information in relation to securities to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any such securities; or
- (b) the communication of information in relation to securities by a person who may be required under an underwriting agreement to subscribe for

any such securities where the communication is made to another person solely for the purpose of procuring the other person to—

- (i) enter into a sub-underwriting agreement in relation to any such securities; or
- (ii) subscribe for any such securities.

104. EXCEPTIONS WHEN ACTING UNDER A LEGAL REQUIREMENT.

(1) Section 102(1) does not apply in respect of the purchase of securities under a requirement imposed by law.

(2) Section 102(2) does not apply in respect of the communication of information under a requirement imposed by the State, or the Registrar or the Securities Commission.

105. CHINESE WALL ARRANGEMENTS.

(1) A body corporate does not contravene Section 102(1) by entering into a transaction or agreement merely because of information in the possession of an officer of the body corporate where—

- (a) the decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than the officer; and
- (b) it had in operation at the time the decision was made arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by the officer; and
- (c) the information was not so communicated and no such advice was so given.

(2) The partners of a partnership do not contravene Section 102(1) by entering into a transaction or agreement merely because of information in the possession of one or more (but not all) of the partners, or an employee or employees of the partnership, where—

- (a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:—
 - (i) a partner or partners who are taken to have possessed the information merely because another partner or partners, or an employee or employees of the partnership, was or were in possession of the information;
 - (ii) an employee or employees of the partnership who was not or were not in possession of the information; and
- (b) the partnership had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that

no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and

- (c) the information was not so communicated and no such advice was so given.

106. EXCEPTION FOR KNOWLEDGE OF OWN INTENTIONS OR ACTIVITIES.

(1) An individual does not contravene Section 102(1) by entering into a transaction or agreement in relation to securities of a body corporate merely because the individual is aware that he proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to securities of that body corporate.

(2) A body corporate does not contravene Section 102(1) by entering into a transaction or agreement in relation to securities of a body corporate merely because the body corporate is aware that it proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to securities of that body corporate.

(3) Subject to Subsection (4), a body corporate does not contravene Section 102(1) by entering into a transaction or agreement in relation to securities of a body corporate merely because an officer of the body corporate is aware that the body corporate proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to securities of the other body corporate.

(4) Subsection (3) does not apply unless the officer became aware of the matters referred to in that subsection in the course of the performance of duties as such an officer.

(5) Subject to Subsection (6), a person does not contravene Section 102(1) by entering into a transaction or agreement on behalf of a body corporate in relation to securities of a body corporate merely because the person is aware that the body corporate proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to securities of the other body corporate.

(6) Subsection (5) does not apply unless the person became aware of the matters referred to in that subsection in the course of the performance of duties as an officer of the body corporate or in the course of acting as an agent of the body corporate.

107. TRANSACTIONS BY MEMBERS OF STOCK EXCHANGE.

A person (in this section called the “**agent**”) does not contravene Section 102(1) by subscribing for, purchasing, or selling, or entering into an agreement to subscribe for, purchase, or sell, securities that are permitted to be traded on a stock market of an approved stock exchange where—

- (a) the agent is a member of that approved stock exchange or an employee of such a member, or a partner in a member firm; and
- (b) the agent entered into the transaction or agreement concerned on behalf of another person (in this section called the “**principal**”) under a specific instruction by the principal to enter into that transaction or agreement; and
- (c) the member had in operation at the time when that transaction or agreement was entered into arrangements that could reasonably be expected to ensure that any information in the possession of the member or any employee of such a member, or any partner in a member firm as a result of which the person in possession of the information would be prohibited by Section 102(1) from entering into that transaction or agreement was not communicated to the agent and that no advice with respect to the transaction or agreement was given to the principal or to the agent by a person in possession of the information; and
- (d) the information was not so communicated and no such advice was so given; and
- (e) the principal is not an associated person of the member or of any employee of such a member, or any partner in a member firm,

but nothing in this section affects the application of Section 102(1) in relation to the principal.

108. CRIMINAL LIABILITY FOR CONTRAVENTION OF THIS PART.

(1) A person who acts in contravention of Section 102 is guilty of an offence.

Penalty: A fine not exceeding the greater of K200,000.00 or ten times the value of any profit or benefit derived from the commission of the offence, or imprisonment for a term not exceeding five years, or both.

(2) In a prosecution of a person for an act or omission that is alleged to constitute a contravention of Section 102(1) or (2), it is not necessary for the prosecution to prove the non-existence of facts or circumstances which, if they existed, would, by virtue of Sections 103, 104, 105, 106, and 107, preclude the act or omission from constituting a contravention of Section 102(1) or (2), as the case may be, but it is a defence where the Court is satisfied that the facts or circumstances existed, the onus of proving same being on the defendant.

(3) In a prosecution brought against a person for an offence against Section 102(1) because the person entered into, or procured another person to enter into, a transaction or agreement at a time when certain information was in the first-mentioned person’s possession—

- (a) it is a defence where the Court is satisfied that the information came into the first-mentioned person’s possession solely as a result of the

information having been made known as provided in Section 101(2)(b)(i); and

- (b) it is a defence where the Court is satisfied that the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement.

(4) In a prosecution against a person for an offence against Section 102(2) because the person communicated information, or caused information to be communicated, to another person—

- (a) it is a defence where the Court is satisfied that the information came into the first-mentioned person's possession solely as a result of the information having been made known as mentioned in Section 101(2)(b)(i); and
- (b) it is a defence where the Court is satisfied that the other person knew, or ought reasonably to have known, of the information before the information was communicated.

109. POWERS OF COURT.

Where, in a proceeding instituted under this Act, the Court finds that a contravention of Section 102 has occurred, the Court may, in addition to any other orders that it may make under any other provision of this Act, make such order or orders as it thinks just, including, any one or more of the following orders:—

- (a) an order restraining the exercise of any voting or other rights attached to securities;
- (b) an order restraining the issue or allotment, or the acquisition or disposal, of securities;
- (c) an order directing the disposal of securities;
- (d) an order vesting securities in the Commission;
- (e) an order cancelling an agreement for the acquisition or disposal of securities;
- (f) an order cancelling a person's membership of an approved stock exchange;
- (g) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act.

110. CIVIL LIABILITY FOR CONTRAVENTION OF THIS PART.

(1) A person who suffers loss or damage by the conduct of another person that was in contravention of a provision of this Part may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention, whether or not that other person or any person involved in the contravention has been convicted of an offence in respect of the contravention.

(2) An action under Subsection (1) may be brought at any time within six years after the day on which the cause of action arose, or such further time as the Court allows.

(3) This section does not affect any liability that a person has under any other law or rule of law.

(4) In a proceeding under this Part in relation to a contravention of this Part committed by the publication of an advertisement, it is a defence where it is proved that the defendant is a person whose business it is to publish or arrange for the publication of advertisements and that the person received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of this Part.

111. LIABILITY FOR INSIDER TRADING.

(1) This section applies where an insider (whether as principal or agent) in contravention of Subsection 102(1)–

- (a) subscribes for, purchases, or sells, or enters into an agreement to subscribe for, purchase, or sell, any securities in respect of which he is an insider; or
- (b) procures another person to subscribe for, purchase, or sell, or to enter into an agreement to subscribe for, purchase, or sell, any such securities.

(2) Where the insider subscribed for, or agreed to subscribe for, or procured another person to subscribe for or to agree to subscribe for, the securities, the issuer of the securities may, by action under Section 110 against the insider, the other person, or any other person involved in the contravention, recover, as a loss suffered by the issuer, the amount (if any) by which the price at which the securities were subscribed for, or agreed to be subscribed for, by the insider or the other person was less than the price at which they would have been likely to have been sold in a sale made at the time of the subscription or agreement, where the information had been generally available.

(3) Where the insider purchased, or agreed to purchase, or procured another person to purchase, or to agree to purchase, the securities from a person (in this subsection and Subsection (5) called the “**seller**”) who did not possess the information, the seller may, by action under Section 110 against the insider, the other person, or any other person involved in the contravention, recover, as a loss suffered by the seller, the amount (if any) by which the price at which the securities were purchased, or agreed to be purchased, by the insider or the other person from the seller was less than the price at which they would have been likely to have been purchased at the time of purchase or agreement, where the information had been generally available.

(4) Where the insider sold or agreed to sell, or procured another person to sell or agree to sell, the securities to a person (in this subsection and Subsection (5) called the “**buyer**”) who did not possess the information, the buyer may, by action under

Section 110 against the insider, the other person, or any other person involved in the contravention, recover, as a loss suffered by the buyer, the amount (if any) by which the price at which the securities were sold, or agreed to be sold, by the insider or the other person to the buyer was greater than the price at which they would have been likely to have been sold at the time of the sale or agreement, where the information had been generally available.

(5) In addition to any action that may be brought by a person as provided by Subsection (3) or (4), the issuer of the securities may, in the case of a purchase or sale of, or an agreement to purchase or sell, securities by the insider or another person in the circumstances mentioned in that subsection, by action under Section 110 against the insider, the other person or any other person involved in the contravention, recover—

- (a) in the case of a purchase or agreement to purchase securities, the amount (if any) by which the price at which the securities were purchased, or agreed to be purchased, by the insider or other person from the seller was less than the price at which they were likely to have been purchased in a purchase made at the time of the purchase or agreement where the information had been generally available; or
- (b) in the case of a sale or an agreement to sell securities, the amount (if any) by which the price at which the securities were sold, or agreed to be sold, by the insider or other person to the buyer was greater than the price at which they would have been likely to have been sold at the time of the sale or agreement where the information had been generally available.

(6) The Commission may, where it considers that it is in the public interest to do so, bring an action in accordance with Subsection (2) or (5) in the name of, and for the benefit of, an issuer of securities for the recovery of an amount that the body is entitled to recover by virtue of that Subsection.

(7) In an action brought against a person in accordance with this section because the person entered into, or procured another to enter into, a transaction or agreement at a time when certain information was in the person's possession, it is a defence if the Court is satisfied that the information came into the person's possession solely as a result of the information having been made known as provided in Section 101(2)(b)(i).

(8) Any right of action that a person has by virtue of this section is in addition to any right that any other person has under Section 110.

(9) The amount that a person may recover by action against another person in the circumstances provided in Section 100(1) and in this section is—

- (a) where the other person has been found by a Court to be liable, or has been ordered by a court, to pay an amount or amounts to any other person or persons under this Part or Part V because of the same action or transaction, the amount of the loss suffered by the first-mentioned person or the amount referred to in Subsection (5), as the case may be,

less the amount or the sum of the amounts that the other person has been so found to be liable, or has been so ordered, to pay; or

(b) otherwise, the amount of the loss or profit.

(10) For the purposes of Subsection (9), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.

PART VII. – SUBSTANTIAL SHAREHOLDINGS.

112. INTERPRETATION.

(1) In this Part, unless the contrary intention appears—

“**holding company**” has the same meaning as in Section 5 of the *Companies Act 1997*;

“**listed company**” means—

- (a) a company that is a party to a listing agreement with an approved stock exchange; or
- (b) a company that was previously a party to a listing agreement with an approved stock exchange, in respect of any action or event or circumstance to which this Part applied while the company was a party to such a listing agreement; or
- (c) a company that is for the time being declared by the Minister, by notice published in the National Gazette, to be a company to which this Part applies;

“**prescribed percentage**” means—

- (a) subject to Paragraph (b), 5%; or
- (b) another percentage for the time being prescribed for the purposes of this Part;

“**subsidiary**” has the same meaning as in Section 5 of the *Companies Act 1997*;

“**substantial shareholder**”, in relation to a listed company means a person who has a relevant interest in not less than the prescribed percentage of—

- (a) where the voting shares in the company are not divided into two or more classes, those voting shares; or
- (b) where the voting shares in the company are divided into two or more classes, the shares in one of those classes;

“**voting share**” in relation to a listed company or other body, means a share of the listed company or other body which confers a right to vote at any meeting of members (whether or not there is any restriction or limitation on the number of votes that may be cast by or on behalf of the holder of the share) not being a right to vote that, under the conditions attached to the share, is exercisable only in one or more of the following circumstances:—

- (a) during a period in which a dividend (or part of a dividend) in respect of the share is in arrears;
- (b) on a proposal that affects the rights attached to the share;

- (c) on a proposal to wind up the listed company or body;
 - (d) on a proposal for the disposal of the whole of the property, business and undertaking of the listed company or body;
 - (e) during the winding up of the listed company or body,
- and includes a share which, in accordance with the terms of the share, is convertible into a share of that kind.

(2) The Minister may, by notice published in the National Gazette, revoke or vary a notice published for the purposes of Paragraph (c) of the definition of the term “listed company” in Subsection (1).

113. MEANING OF “RELEVANT INTEREST”.

(1) For the purposes of this Part a person has a relevant interest in a voting share (whether or not that person is the registered holder of it) where that person—

- (a) is a beneficial owner of the voting share; or
- (b) has the power to exercise any right to vote attached to the voting share; or
- (c) has the power to control the exercise of any right to vote attached to the voting share; or
- (d) has the power to acquire or dispose of the voting share; or
- (e) has the power to control the acquisition or disposition of the voting share by another person; or
- (f) under, or by virtue of, any trust, agreement, arrangement, or understanding relating to the voting share (whether or not that person is a party to it) may at any time—
 - (i) have the power to exercise any right to vote attached to the voting share; or
 - (ii) have the power to control the exercise of any right to vote attached to the voting share; or
 - (iii) have the power to acquire or dispose of, the voting share; or
 - (iv) have the power to control the acquisition or disposition of the voting share by another person.

(2) Where a person has a relevant interest in a voting share by virtue of Subsection (1) and—

- (a) that person or its directors are accustomed or under an obligation, whether legally enforceable or not, to act in accordance with the directions, instructions, or wishes of any other person in relation to—
 - (i) the exercise of the right to vote attached to the voting share; or

- (ii) the control of the exercise of any right to vote attached to the voting share; or
- (iii) the acquisition or disposition of the voting share; or
- (iv) the exercise of the power to control the acquisition or disposition of the share by another person; or
- (b) another person has the power to exercise the right to vote attached to 20% or more of the voting share of that person; or
- (c) another person has the power to control the exercise of the right to vote attached to 20% or more of the voting share of that person; or
- (d) another person has the power to acquire or dispose of 20% or more of the voting share of that person; or
- (e) another person has the power to control the acquisition or disposition of 20% or more of the voting share of that person,

that other person also has a relevant interest in the voting share.

(3) A body corporate or other body has a relevant interest in a voting share in which another body corporate that is related to that body corporate or other body has a relevant interest.

(4) A person who has, or may have, a power referred to in any of Subsection (1)(b) to (f) (inclusive), has a relevant interest in a voting share regardless of whether the power—

- (a) is express or implied; or
- (b) is direct or indirect; or
- (c) is legally enforceable or not; or
- (d) is related to a particular voting share or not; or
- (e) is subject to restraint or restriction or is capable of being made subject to restraint or restriction; or
- (f) is exercisable presently or in the future; or
- (g) is exercisable only on the fulfilment of a condition; or
- (h) is exercisable alone or jointly with another person or persons.

(5) A power referred to in Subsection (1) exercisable jointly with another person or persons is deemed to be exercisable by either or any of those persons.

(6) A reference to a power includes a reference to a power that arises from, or is capable of being exercised as the result of, a breach of any trust, agreement, arrangement, or understanding, or any of them, whether or not it is legally enforceable.

(7) In this section, a body corporate is related to another body corporate if—

- (a) the other body corporate is its holding company or subsidiary; or

- (b) there is another body corporate to which both bodies are related by virtue of Paragraph (a),

and “**related body corporate**” has a corresponding meaning.

114. RELEVANT INTERESTS TO BE DISREGARDED IN CERTAIN CASES.

(1) For the purposes of this Part no account shall be taken of a relevant interest of a person in a voting share where—

- (a) the ordinary business of the person who has the relevant interest consists of, or includes, the lending of money or the provision of financial services, or both, and that person—
 - (i) has the relevant interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of that person; and
 - (ii) has been designated by the Commission, by notice in the National Gazette, as a person to whom this paragraph applies or is a member of a class of persons designated by the Commission, by notice in the National Gazette, as a class of persons to which this paragraph applies, as the case may be, and that designation has not been revoked by the Commission; or
- (b) that person has the relevant interest by reason only of acting for another person to acquire or dispose of that share on behalf of the other person in the ordinary course of business of a stockbroker and that person—
 - (i) is a member of an approved stock exchange; or
 - (ii) has been designated by the Commission, by notice in the National Gazette, as a person to whom this paragraph applies and that designation has not been revoked by the Commission; or
- (c) that person has the relevant interest by reason only that he has been authorized by resolution of the directors or other governing body of a body corporate to act as its representative at a particular meeting of members or class of members, of a listed company, and a copy of the resolution is deposited with the listed company not less than 48 hours before the meeting; or
- (d) that person has the relevant interest solely by reason of being appointed as a proxy to vote at a particular meeting of members, or of a class of members, of the listed company and the instrument of that person’s appointment is deposited with the listed company not less than 48 hours before the meeting; or
- (e) that person—
 - (i) is a trustee corporation or a nominee corporation; and

- (ii) has the relevant interest by reason only of acting for another person in the ordinary course of business of that trustee corporation or nominee corporation; and
 - (iii) has been designated by the Commission, by notice in the National Gazette, as a person to whom this paragraph applies and that designation has not been revoked by the Commission; or
- (f) that person has the relevant interest by reason only that the person is a bare trustee of a trust to which the voting share is subject.

(2) For the purposes of Subsection (1)(f) a trustee may be a bare trustee notwithstanding that he is entitled as a trustee to be remunerated out of the income or property of the trust.

(3) The Commission may issue to a person a certificate declaring that specified shares in which that person has a relevant interest are to be disregarded for the purpose of ascertaining the voting shares in which that person, or another person, specified in the certificate has a relevant interest for the purposes of this Part, and may, by written notice to the first-mentioned person, revoke the certificate.

115. SUBSTANTIAL SHAREHOLDER TO NOTIFY COMPANY OF INTEREST.

(1) A person who is a substantial shareholder in a listed company shall give a written notice to the company in accordance with this section.

(2) A notice by a person under Subsection (1) shall—

- (a) be in such form (if any) as is prescribed; and
- (b) state—
 - (i) the person's name and address; and
 - (ii) the prescribed particulars of the voting shares in the company in which the person has a relevant interest or relevant interests (including, unless the interest or interests cannot be related to a particular share or shares, the name of the person who is registered as the holder); and
 - (iii) the prescribed particulars of each such interest; and
 - (iv) the prescribed particulars of any agreement, or any other circumstances, because of which the person acquired that interest or has that interest; and
 - (v) such other particulars (if any) as are prescribed; and
- (c) be accompanied by any prescribed documents.

(4) A person required to give a notice under Subsection (1) shall give the notice before the end of two days after—

- (a) in the case of a person who is a substantial shareholder on the date of commencement of this Act, that date; and

(b) in any other case, the day on which the person becomes aware of the relevant interest that makes the person a substantial shareholder.

(5) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the end of the period referred to in Subsection (4).

116. SUBSTANTIAL SHAREHOLDER TO NOTIFY COMPANY OF CHANGES IN INTERESTS.

(1) Where—

- (a) there is a change in the relevant interests of a person in voting shares of any class in a listed company, and the change relates to 1% or more of the shares in that class; and
- (b) immediately before the change, the person was a substantial shareholder in the company; and
- (c) immediately after the change, the person is a substantial shareholder in the company—

the person shall give a notice to the company in accordance with this section.

(2) A notice by a person under Subsection (1) shall be in such form (if any) as is prescribed, and state—

- (a) the person's name; and
- (b) the prescribed particulars of the change; and
- (c) the prescribed particulars of any other change in the relevant interests of that person in voting shares of any class in that company, during the period from the time when the person last became required to give a substantial shareholding notice to the company; and
- (d) the prescribed particulars of any agreement, or any other circumstances, because of which the change, or any other change referred to in the notice, occurred; and
- (e) be accompanied by any prescribed documents.

(3) A person required to give a notice under Subsection (1) shall give the notice before the end of two days after the day on which that person becomes aware of the change referred to in Subsection (1)(a).

117. PERSON WHO CEASES TO BE A SUBSTANTIAL SHAREHOLDER TO NOTIFY COMPANY.

(1) A person who ceases at a particular time (in this section called the “**relevant time**”) to be a substantial shareholder in a listed company shall give a notice to the company in accordance with this section.

(2) A notice by a person under Subsection (1) shall—

- (a) be in such form (if any) as is prescribed; and
- (b) state the person's name; and
- (c) state, in relation to each change in the relevant interests of the person to voting shares in the company that occurred during the period beginning at the time when the person last became required to give a substantial shareholding notice to the company and ending at the relevant time—
 - (i) the prescribed particulars of the change; and
 - (ii) the prescribed particulars of any agreement, or any other circumstances, because of which the change occurred; and
- (d) state the date on which the person ceased to be a substantial shareholder in the company and the prescribed particulars of any agreement, or any other circumstances, because of which the person ceased to be a substantial shareholder in the company; and
- (e) be accompanied by any prescribed documents.

(3) A person required to give a notice under Subsection (1) shall give the notice before the end of two days after the day on which the person becomes aware that the person has ceased to be a substantial shareholder in the company.

118. COPY OF NOTICE TO BE SERVED ON STOCK EXCHANGE.

A person who gives a notice under Section 115, 116 or 117 to a listed company shall, on the day on which the person gives the notice, serve a copy of the notice on the Commission and the approved stock exchange on which the company is listed.

119. COMMISSION MAY EXTEND PERIOD FOR GIVING NOTICE UNDER THIS PART.

(1) The Commission may, on the application of a person who is required to give a notice under this Part, extend, or further extend, the period for giving the notice.

(2) An application for an extension under Subsection (1) may be made, and the power of the Commission under that subsection may be exercised, notwithstanding that the period referred to in that subsection has ended.

120. COMPANY TO KEEP REGISTER OF SUBSTANTIAL SHAREHOLDERS.

(1) A company shall keep a register in which it shall as soon as practicable enter—

- (a) in alphabetical order the names of persons from whom it has received notices under Section 115; and

(b) against each name so entered, the information given in the notice and, where it has received a notice under Section 116 or 117, the information given in that notice.

(2) The register shall be open for inspection—

(a) by any member of the company without charge; and

(b) by any other person, on payment for each inspection of a reasonable fee determined by the company, not exceeding the prescribed amount, if any, or where the company does not require the payment of a fee, without charge.

(3) A person may request a company to give to the person a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person—

(a) where the company requires payment of a reasonable amount, not exceeding the prescribed amount, if any, before the end of 21 days after the day on which payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) in a case to which Paragraph (a) does not apply, before the end of 21 days after the day on which the request is made or within such longer period as the Commission approves.

(4) A company is not, because of anything done under this Part—

(a) to be taken for any purpose to have notice of; or

(b) put upon inquiry as to,

a right of a person to or in relation to a share in a company.

121. CIVIL REMEDY WHERE PART CONTRAVENED.

(1) A person who contravenes Section 115, 116 or 117, whether or not the person has been convicted of an offence in respect of the contravention, is liable to pay, to any person who suffers loss or damage as a result of the contravention, damages in respect of that loss or damage, unless it is proved that the contravention was due to the inadvertence or mistake of the first-mentioned person or to the first-mentioned person not being aware of a relevant fact or occurrence.

(2) A person who contravenes Section 120 is liable to pay, to any person who suffers loss or damage as a result of the contravention, damages in respect of that loss or damage.

(3) Where two or more persons each contravene Section 120 because of the same act or omission, the liability of those persons under Subsection (2) in respect of the contravention is joint and several.

122. OFFENCES.

A person who acts in contravention of this Part is guilty of an offence.

s. 122.

Securities 1997

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years.

Default penalty: A fine not exceeding K5,000.00.

PART VIII. – POWER TO OBTAIN INFORMATION AS TO BENEFICIAL OWNERSHIP OF SHARES.

123. INTERPRETATION.

In this Part–

“**listed company**” has the same meaning as in Part VII;

“**primary notice**”, in relation to shares in a listed company, means a written notice addressed to the holder of the shares requiring the holder to give to the body giving the notice a written statement stating–

- (a) full particulars of the holder’s relevant interest in the shares and of the circumstances because of which the holder has that interest; and
- (b) so far as is known to the holder–
 - (i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the shares; and
 - (ii) full particulars of each such interest and of the circumstances because of which the other person has that interest; and
 - (iii) full particulars of the name and address of each person (if any) who has given to the holder of the shares relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given;

“**relevant instructions**”, in relation to shares, means instructions or directions–

- (a) in relation to the acquisition or disposal of the shares; or
- (b) in relation to the exercise of any voting or other rights attached to the shares; or
- (c) in connection with any other matter relating to the shares;

“**secondary notice**”, in relation to shares in a listed company, means a written notice addressed to a person requiring the person to give to the body giving the notice a written statement stating–

- (a) full particulars of any relevant interest that the person has in any of the shares and of the circumstances because of which the person has that interest; and
- (b) so far as is known to the person–
 - (i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the shares; and

- (ii) full particulars of each such interest, and of the circumstances because of which the other person has that interest; and
- (iii) full particulars of the name and address of each person (if any) who has given to the person to whom the notice is addressed relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given.

124. PRIMARY NOTICE.

(1) The Commission may give to the holder of particular voting shares in a listed company a primary notice in relation to those shares.

(2) A listed company may give to the holder of particular voting shares in the company a primary notice in relation to the shares.

125. SECONDARY NOTICE.

Where the Commission or a listed company receives, pursuant to a primary notice or secondary notice given to a person in relation to particular shares in a company, information that—

- (a) another person has a relevant interest in any of the shares; or
- (b) another person has given relevant instructions in relation to any of the shares,

the Commission or listed company may give to the other person a secondary notice in relation to the first-mentioned shares.

126. COMMISSION MAY PROVIDE INFORMATION OBTAINED PURSUANT TO A NOTICE.

Where the Commission receives information pursuant to a primary notice or secondary notice in relation to shares in a listed company, the Commission may provide all or any of the information to the company or to any member of the company.

127. REQUEST BY PERSON TO WHOM NOTICE GIVEN.

(1) A person who receives a primary notice or secondary notice in relation to shares in a listed company may, before the end of two days after the day on which the notice was received, lodge a written request with the Commission that, for special reasons set out in the request—

- (a) the information should not be given to the body that gave the notice; or
- (b) where the Commission gave the notice, the information, where given to the Commission, should not be provided under Section 126, or should be so provided only in a particular form; or

- (c) where the company gave the notice, the information should only be given to the company in a particular form.
- (2) Where the Commission is satisfied that there are special reasons why—
 - (a) particular information should not be given to the body that gave the notice; or
 - (b) where the Commission gave the notice, particular information, where given to the Commission, should not be provided under Section 126, or should be so provided only in a particular form; or
 - (c) where the company gave the notice, particular information should only be given to the company in a particular form,

the Commission may give to the person notice in writing referring to the information and stating that—

- (d) the information need not be given to that body; or
- (e) the information, when given to the Commission, will not be provided under Section 126, or will be so provided only in a specified form; or
- (f) the information need only be given to the company in a specified form,

as the case may be.

(3) Where the Commission is not satisfied as mentioned in Subsection (2), the Commission shall, by written notice to the person, refuse the request.

(4) Where a person lodges a request under Subsection (1), the person shall, forthwith after doing so, notify the company in writing of the request.

128. COMPLIANCE WITH NOTICES.

A person who receives a primary notice or secondary notice in relation to shares in a listed company shall, unless the person has lodged a request under Section 127 (1) in relation to particular information that the notice requires the person to give, comply with the notice before the end of two days after the day on which the person receives the notice.

129. CONSEQUENCES OF COMMISSION'S DECISION ON A REQUEST.

Within two days after the day on which the Commission notifies a person of its decision on a request that the person lodged under Section 127 (1) in relation to a primary notice or secondary notice in relation to shares in a listed company, the person shall—

- (a) where the Commission has given to the person pursuant to the request a certificate under Section 127(2)—
 - (i) except as provided in the certificate, comply with the notice; and
 - (ii) where the company gave the notice and the certificate states that the specified information need only be given to the company in a

specified form, give the information to the company in that form;
and

(iii) where the company gave the notice, give a copy of the certificate to the company; or

(b) otherwise, comply with the notice.

130. FEE FOR COMPLYING WITH A NOTICE GIVEN BY A COMPANY UNDER THIS PART.

(1) Regulations made under this Act may prescribe fees that listed companies are to pay to persons for complying with notices given under this Part.

(2) Where—

(a) a listed company gives to a person a notice under this Part; and

(b) regulations prescribe a fee that the company is to pay to the person for complying with the notice; and

(c) but for this subsection, the person would be required to comply with Section 128 or 129, in relation to the notice, before the end of a particular period,

the person is to be taken to be required to comply with that section before the end of—

(d) the period referred to in Paragraph (c); or

(e) the period of two days beginning on the day when the company so pays the fee,

whichever ends later.

(3) Where—

(a) because of Subsection (2), a listed company pays to a person a fee for complying with a notice given to the person by the company under this Part; and

(b) the person contravenes Section 128 or 129 in relation to the notice,

the company may recover from the person as a debt the amount of the fee, even if the person later complies with the notice.

(4) A company's rights and remedies under Subsection (3) are additional to, and do not prejudice, any other right or remedy of the company.

131. REGISTER OF NOTICES.

(1) A listed company shall keep in accordance with this section a register of the information received by the company under this Part.

(2) The register shall either contain—

(a) the name of each holder of voting shares in the company to whom the information relates; and

- (b) against each such name—
 - (i) the name and address of each other person (if any) who, according to information received by the company under this Part, has a relevant interest in any of the shares, together with particulars of the interest and of the circumstances because of which the other person has the interest; and
 - (ii) the name and address of each person who, according to information received by the company under this Part, has given relevant instructions in relation to any of the shares, together with particulars of the relevant instructions; and
- (c) in relation to each item of information entered in the register, the date on which the item was so entered,

or be in such other form as the Commission approves.

(3) The register under Subsection (1) shall be open for inspection—

- (a) by any member of the company without charge; and
- (b) by any other person, on payment for each inspection of a reasonable fee determined by the company, not exceeding the prescribed amount, if any, or where the company does not require the payment of a fee, without charge.

(4) A person may request a listed company to give to the person a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person—

- (a) where the company requires payment of a reasonable amount, not exceeding the prescribed amount, if any, before the end of 21 days after the day on which payment of the amount is received by the company or within such longer period as the Commission approves; or
- (b) in a case to which Paragraph (a) does not apply, before the end of 21 days after the day on which the request is made or within such longer period as the Commission approves.

(5) Information that is required by Subsection (2) to be entered in a register shall be so entered by the company before the end of two days after the day on which the company receives the information.

132. NO NOTICE OF RIGHTS.

A listed company is not, because of anything done under this Part—

- (a) to be taken for any purpose to have notice of; or
- (b) put upon inquiry as to,

the right of a person to or in relation to a share in the company.

133. CIVIL LIABILITY.

(1) A person who contravenes Section 128 or 129 is liable to pay, to any person who suffers loss or damage as a result of the contravention, damages in respect of that loss or damage, unless it is proved that the contravention was due to the inadvertence or mistake of the first-mentioned person or to the first-mentioned person not being aware of a relevant fact or occurrence.

(2) A person who contravenes Section 131 is liable to pay, to any person who suffers loss or damage as a result of the contravention, damages in respect of that loss or damage.

(3) Where two or more persons each contravene Section 128, 129 or 131 because of the same act or omission, the liability of those persons under this section in respect of the contravention is joint and several.

134. OFFENCES.

A person who acts in contravention of this Part is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

Default penalty: A fine not exceeding K5,000.00.

135. EXCEPTIONS TO CRIMINAL OR CIVIL LIABILITY.

A person—

(a) is not guilty of an offence by virtue of a contravention of Section 128 or 129; and

(b) is not liable to pay damages under Section 133(1),

in respect of a failure to give information that a primary notice or secondary notice in relation to shares in a listed company required the person to give if it is proved that—

(c) when the notice was received, the information appeared on a register kept by the company under Section 120 or 131; or

(d) the giving of the notice was for any reason frivolous or vexatious.

PART IX. – MISCELLANEOUS.***Division 1.******Exemptions and Regulations.*****136. EXEMPTIONS FROM THIS ACT.**

The Securities Commission may, in its discretion and upon such terms and conditions (if any) as it thinks fit, by notice in writing exempt any person or class of persons from compliance with any provision or provisions of this Act.

137. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, including but not limited to—

- (a) prescribing, or empowering the Registrar to prescribe forms and notices required for the purposes of this Act; and
- (b) regulating advertising, advertisements, prospectuses, and registered prospectuses, including—
 - (i) prescribing the information, statements, certifications, documents, or other matters that shall or shall not be contained in, or endorsed on, or attached to, advertisements, prospectuses, or registered prospectuses; and
 - (ii) prohibiting or restricting the use in advertisements, prospectuses, or registered prospectuses of prescribed words, information, statements, sounds, and images, graphics, or other matters; and
 - (iii) prescribing requirements as to the layout or method of presentation of any advertisement, prospectus, or registered prospectus, and the size of type used therein,
 - and different matters may be prescribed, prohibited, restricted, specified, or required in respect of advertisements, prospectuses, or registered prospectuses relating to different kinds of securities or different classes of issuers or offerees; and
- (c) providing that statements included in, or relating to an advertisement or registered prospectus or to securities to which an advertisement or registered prospectus relates, made for the purposes of regulations under this Act shall be deemed to be statements made in the advertisement or registered prospectus for the purposes of Sections 82 to 90; and
- (d) prescribing the information and other matters that shall be included in trust deeds for unit trusts, and the clauses that shall be deemed to be

contained in, or may be adopted by, such deeds, and different matters and the clauses may be prescribed in respect of deeds relating to different classes of issuers, and, without limiting the generality of the foregoing, clauses specifying the duties and powers of trustees, and the obligations of issuers may be prescribed as clauses that are deemed to be contained in such deeds, and

- (e) prescribing the places at which documents shall be submitted, and the number of copies of such documents required, for the purposes of this Act; and
- (f) prescribing transitional and savings provisions relating to the coming into operation of this Act, and without limiting the generality of the foregoing, any regulation may provide that, subject to such terms and conditions as are specified in the regulation, specified provisions of this Act shall not apply during a specified transitional period, or specified provisions of other Acts shall continue to apply, in respect of any specified person or class of persons; and
- (g) prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and prescribing the fines, not exceeding K50,000.00, that may be imposed in respect of any such offence;
- (h) prescribing fees and charges to be paid for the purposes of this Act; and
- (i) authorizing the Commission to require payment of any costs incurred by the Commission; and
- (j) providing for such other matters, not inconsistent with this Act, as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

Division 2.

Provisions Relating to Offences.

138. CONDUCT AND KNOWLEDGE.

(1) Where, in a proceeding under this Act in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body, it is sufficient to show that a director, employee or agent of the body, being a director, employee or agent by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind.

(2) Conduct engaged in on behalf of a body corporate—

- (a) by a director, employee or agent of the body within the scope of the person's actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body, where the giving of the direction, consent or agreement is within

the scope of the actual or apparent authority of the director, employee or agent,

shall be deemed to have been engaged in also by the body corporate.

(3) Where, in a proceeding under this Act in respect of conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a person other than a body corporate—

- (a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee,

shall be deemed to have been engaged in also by the first-mentioned person.

139. LIABILITY OF DIRECTORS AND EMPLOYEES.

Where a body corporate is guilty of an offence under this Act, any director or employee of the body corporate who was, in any way, by act or omission, directly or indirectly, knowingly concerned in, or a party to, the commission of the offence is also guilty of that offence.

140. FAILURE TO TAKE REASONABLE STEPS TO ENSURE COMPLIANCE.

(1) A director of a body corporate who—

- (a) fails to take all reasonable steps to ensure that that body corporate complies with the provisions of this Act; or
- (b) fails to take all reasonable steps to ensure the accuracy and correctness of any statement that the body corporate submits under this Act,

is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

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

(3) A person shall not be sentenced to imprisonment for any offence under Subsection (1) unless, in the opinion of the Court, he committed the offence wilfully.

141. FALSIFICATION OF RECORDS.

(1) Any person who—

- (a) wilfully makes, or causes to be made, a false entry in any document required by this Act; or
- (b) wilfully omits to make an entry in any document required by this Act, or wilfully causes any such entry to be omitted; or
- (c) wilfully alters, abstracts, conceals or destroys any entry in any document required by this Act, or wilfully causes any such entry to be altered, abstracted, concealed or destroyed,

is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

(2) Any person who, with intent to deceive, makes or furnishes, or knowingly, wilfully or recklessly authorizes or permits the making or furnishing of, any false or misleading statement or report to the Registrar, the Commission, an approved stock exchange, or any officer of such relating to—

- (a) any dealing in securities; or
- (b) any matter or thing required by the Registrar or the Commission for the proper administration of this Act; or
- (c) the enforcement of the listing rules or business rules of an approved stock exchange,

is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years or, both.

142. COURT ORDERS FOR BREACH OF PART V OR PART VI.

(1) Where, in a proceeding instituted for a contravention of Part V or Part VI the Court finds that a person who is a party to the contravention has suffered, or is likely to suffer, loss or damage because of conduct of another person that was engaged in, in contravention of Part V or Part VI, the Court may, whether or not it makes an order under any other provision of this Act, make such order or orders as it thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in Subsection (4)) where the Court considers that the order or orders concerned will compensate the first-mentioned person in whole or in part for the loss or damage, or will prevent or reduce the loss or damage.

(2) The Court may, on the application of a person who has suffered, or is likely to suffer, loss or damage because of conduct of another person that was engaged in, in contravention of Part V or Part VI, or on the application of the Commission in accordance with Subsection (3) on behalf of such a person or two or more such persons, make such order or orders as the Court thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders specified in Subsection (4)) where the Court considers that the order or orders concerned will compensate the person who made the application, or the person or any of the persons on whose behalf the application was made, in whole or in part for the loss or damage, or will prevent or reduce the loss or damage suffered, or likely to be suffered, by such a person.

(3) Where, in a proceeding instituted for a contravention of Part V or Part VI, a person is found to have engaged in conduct in contravention of Part V or Part VI, the Commission may make an application under Subsection (2) on behalf of one or more persons identified in the application who have suffered, or are likely to suffer, loss or damage by the conduct, but the Commission shall not make such an application except with the consent in writing given before the application is made, by the person, or by each of the persons, on whose behalf the application is made.

(4) The orders referred to in Subsections (1) and (2) are the following:—

- (a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, or of a collateral arrangement relating to such a contract, to be void and, where the Court thinks fit, to have been void *ab initio* or at all times on and after a specified day before the order is made;
- (b) an order varying such a contract or arrangement in such manner as is specified in the order and, where the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after a specified day before the order is made;
- (c) an order refusing to enforce any or all of the provisions of such a contract;
- (d) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to refund the money or return property to the person who suffered the loss or damage;
- (e) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to pay to the person who suffered the loss or damage the amount of the loss or damage;
- (f) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at the

person's own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage.

143. POWER OF COURT TO PROHIBIT PAYMENTS OR TRANSFERS.

(1) Where—

- (a) an investigation is being carried out under this Act in relation to any act or omission by a person, being an act or omission that constitutes or may constitute an offence under this Act; or
- (b) a prosecution has been instituted against a person for an offence under this Act; or
- (c) a civil proceeding has been instituted against a person under this Act, and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of any person (referred to in this section as the aggrieved person) to whom the person referred to in Paragraph (a) or (b) or this paragraph, as the case may be (referred to in this section as the relevant person), 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, or to account for any securities or other property,

the Court may, on application by the Commission or the Registrar or an aggrieved person, make any one or more of the following orders:—

- (d) an order prohibiting either absolutely or subject to conditions a person who is indebted to the relevant person or to any person associated with the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;
- (e) an order prohibiting, either absolutely or subject to conditions, a person holding money, or securities or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person from paying all or any of the moneys, or transferring, or otherwise parting with possession of the securities or other property, to, or to another person at the direction or request of, the person on whose behalf the money, or the securities or other property, is or are held;
- (f) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of the country of moneys of the relevant person or of any person associated with the relevant person;
- (g) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of securities or other property of the relevant person or of any person who is associated with the relevant person from a place in the country to a place outside the country (including the transfer of securities from a register in the country to a register outside the country);

- (h) an order appointing—
 - (i) where the relevant person is a natural person, a receiver or trustee, having such powers as the Court orders, of the property or part of the property of that person; or
 - (ii) where the relevant person is a body corporate, a receiver or receiver and manager, having such powers as the Court orders, of the property or part of the property of that person;
- (i) where the relevant person is a natural person, an order requiring that person to deliver up to the Court his passport and such other documents as the Court thinks fit;
- (j) where the relevant person is a natural person, an order prohibiting that person from leaving the country without the consent of the Court.

(2) Where an application is made to the Court for an order under Subsection (1), the Court may, where in the opinion of the Court it is desirable to do so, before considering the application, make an interim order.

(3) Where the Commission or the Registrar makes an application to the Court for the making of an order under Subsection (1), the Court shall not require the Commission or the Registrar, as a condition of granting an interim order under Subsection (2), to give any undertakings as to damages.

(4) Where the Court has made an order under this section, the Court may, on application of the Commission, the Registrar or by any person affected by the order, make a further order rescinding or varying the first-mentioned order.

(5) 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 (1) or (4).

(6) A person who contravenes or fails to comply with an order of the Court under this section is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

144. INJUNCTIONS.

(1) Where a person has engaged, is engaging in or is proposing to engage in any conduct that constitutes or would constitute a contravention of this Act, the Court may, on the application of—

- (a) the Commission; or
- (b) the Registrar with the written consent of the Commission; or
- (c) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, where in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that he is required by this Act to do, the Court may, on the application of—

- (a) the Commission; or
- (b) the Registrar with the written consent of the Commission; or
- (c) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

grant an injunction requiring the first-mentioned person to do that act or thing.

(3) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending the determination of an application under Subsection (1) or (2).

(4) The Court may rescind or vary an injunction granted under Subsections (1) to (3).

(5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised—

- (a) where the Court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the Court that the person intends to engage again, or to continue to engage in conduct of that kind; or
- (b) where it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind, and whether or not there will be an imminent danger of substantial damage to any person where the first-mentioned person engages in conduct of that kind.

(6) Where an application is made to the Court for the grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised—

- (a) where the Court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- (b) where it appears to the Court that, in the event that an injunction is not granted, it is likely the person will refuse or fail to do that act or thing, whether or not the person has previously refused or failed to do that act or thing, and whether or not there is an imminent danger of substantial

damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(7) Where the Commission or the Registrar makes an application to the Court for the grant of an injunction under this section, the Court shall not require the Commission or the Registrar, as a condition of granting an interim injunction, to give any undertakings as to damages.

(8) Where the Court has power under this section to grant an injunction restraining a person from engaging in conduct of a particular kind, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of an injunction, order that person to pay damages to any other person.

145. GENERAL PENALTY PROVISIONS.

(1) Notwithstanding anything to the contrary in any other law, proceedings for the prosecution of an offence against this Act may be brought or laid by—

- (a) the Commission; or
- (b) the Registrar with the written consent of the Commission,

at any time within the period of seven years after the commission of the offence or, with the written consent of the Minister, at any later time.

(2) In proceedings for the prosecution of an offence against this Act the Court may award costs against any party or claimant other than the Commission, or the Registrar, as the case may be, which costs the Commission, or the Registrar, as the case may be, may recover as a debt due and payable.

(3) Any fine or penalty to be paid by any person as a result of any proceedings for the prosecution of an offence against this Act brought by the Commission or the Registrar shall be paid to the Commission, or the Registrar, as the case may be and, in addition to any other remedy, the Commission or the Registrar, as the case may be, may recover such fine or penalty as a debt due and payable.

(4) A person who—

- (a) does an act or thing that the person is prohibited to do by or under a provision of this Act; or
- (b) does not do an act or thing that the person is required or directed to do by or under a provision of this Act; or
- (c) otherwise contravenes a provision of this Act,

is guilty of an offence by virtue of this subsection, unless that or another provision of this Act provides that the person—

- (d) is guilty of an offence; or
- (e) is not guilty of an offence.

(5) A person who is guilty of an offence against this Act, whether by virtue of Subsection (4) or otherwise, is punishable, on conviction, by a penalty not exceeding the penalty applicable to the offence.

(6) Where a provision of this Act (other than this section) provides that the penalty applicable to a contravention of a particular provision of this Act is a specified penalty, pecuniary or otherwise, the penalty applicable to an offence constituted by a contravention of the particular provision is the specified penalty.

(7) Except as provided in Subsection (6) or in a provision of this Act (other than this section), the penalty applicable to the offence is a fine not exceeding K10,000.00, and the default penalty is K1,000.00.

Division 3.

Takeovers Provisions.

146. SECURITIES COMMISSION MAY RECOMMEND TAKEOVERS CODE.

(1) The Securities Commission may, in accordance with this Act, formulate and recommend a takeovers code.

(2) In formulating a takeovers code the Securities Commission shall consider the following objectives as the objectives for the code, namely:—

- (a) encouraging the efficient allocation of resources;
- (b) encouraging competition for the control of companies;
- (c) assisting in ensuring that the holders of securities in a takeover are treated fairly;
- (d) promoting the international competitiveness of Papua New Guinea's capital markets;
- (e) recognising that the holders of securities must ultimately decide for themselves the merits of a takeover offer;
- (f) maintaining a proper relation between the costs of compliance with the code and the benefits resulting from it.

(3) Subject to Subsection (4), in formulating a takeovers code it is for the Securities Commission to determine the weight that should be given to any particular objective referred to in Subsection (2).

(4) The Minister may, by notice in writing, give to the Securities Commission an indication as to the weight that should be given to any particular objective or objectives referred to in Subsection (1).

147. MATTERS TO BE CONSIDERED BY SECURITIES COMMISSION IN FORMULATING TAKEOVERS CODE.

Without limiting the matters that the Securities Commission may consider, the Securities Commission shall, in formulating a takeovers code, consider whether the code should provide—

- (a) that advance notice and publicity should be given of takeovers; and
- (b) that in a takeover, a company and its securities holders should be fully informed; and
- (c) that in a takeover, offers should be made to all securities holders, that the consideration offered should be the same for all securities holders and that all securities holders should have the same opportunity for acceptance; and
- (d) that incremental acquisitions and partial bids should be permitted; and
- (e) that there should be rules to determine the price or prices payable for the acquisition of securities in a takeover; and
- (f) for the compulsory acquisition of securities in a company at the option of offerors or securities holders, or both; and
- (g) for the regulation of defensive tactics.

148. SPECIFIC PROVISIONS APPLY TO TAKEOVERS CODE.

Without limiting the power to formulate a takeovers code, but subject to Section 149, the Securities Commission may—

- (a) define the transactions or classes of transactions in relation to which the code applies and for that purpose define terms and expressions used in the code in such manner as it thinks fit; and
- (b) prescribe the requirements in relation to offers and the making of offers to acquire securities in a company in a takeover including requirements as to the form and content of those offers, variations of those offers, the time during which those offers are to be made, and the manner of acceptance; and
- (c) prescribe the information, statements, certificates, and documents or other matters that are required to be supplied to a company and the securities holders of the company in a takeover; and
- (d) prescribe requirements for the registration by the Registrar of documents in connection with a takeover; and
- (e) prescribe the duties and obligations of a company and the directors of the company and others persons in a takeover.

149. TAKEOVERS CODE NOT TO APPLY IN CERTAIN CASES.

Nothing in the takeovers code shall require any person to comply with the code—

- (a) by reason only of the fact that, on the coming into force of the code, a particular proportion of securities have been acquired in a company, whether by that person or any other person, before the code comes into force; or

- (b) by reason of the acquisition of securities in a company, whether by that person or any other person, on or after the coming into force of the code, where the acquisition arises from the performance of a contractual obligation incurred, or, the exercise of a right acquired, before the date on which an approved takeovers code comes into force under Section 151(4).

150. SECURITIES COMMISSION MAY ALLOW OPPORTUNITY FOR SUBMISSIONS.

The Securities Commission may provide to such persons and organisations who wish to do so, a reasonable opportunity to make submissions to it as to the nature and scope of the code and the matters with which it should deal.

151. APPROVAL OF TAKEOVERS CODE.

(1) After formulating a proposed takeovers code, the Securities Commission shall recommend the proposed takeovers code to the Minister.

(2) The Minister may, in his absolute discretion—

- (a) decide to approve the code; or
- (b) decide not to approve the code; or
- (c) decide to defer, for such period and for such reasons as the Minister thinks fit, making a decision whether or not to approve the code.

(3) Where the Minister approves a takeovers code or any amendment to a takeovers code, as the case may be, recommended by the Securities Commission, he shall give notice of such approval in the National Gazette.

(4) On the approval of a takeovers code or any amendment to a takeovers code, the code or the amendment, as the case may be, shall have the force of law and shall come into force on a date specified in the code or the amendment, not being a date earlier than 28 days after the date of the approval of the code or the amendment by the Minister.

152. MINISTER MAY REQUEST FORMULATION OF FURTHER TAKEOVERS CODE.

(1) The Minister may, by notice in writing, request the Securities Commission to formulate and recommend a further takeovers code to replace—

- (a) a proposed takeovers code that has been declined under Section 151(2)(b) of this Act; or
- (b) a takeovers code that has been approved under this Act.

(2) On receipt of a request under Subsection (1), the Securities Commission shall, in accordance with this Act, formulate and recommend a further takeovers code.

153. REVOCATION OF TAKEOVERS CODE.

(1) The Minister may, by notice in the National Gazette, revoke the approval of a takeovers code.

(2) On the revocation of the approval of a takeovers code, the code shall cease to have the force of law with effect from the date specified in the notice.

(3) Any notice by the Minister in the National Gazette may contain transitional and savings provisions relating to the revocation of the approval of the code.

154. SECURITIES COMMISSION'S POWERS IN RESPECT OF COMPLIANCE WITH TAKEOVERS CODE.

The Securities Commission may at anytime, where it considers that a person may not have or may not be acting or intends not to act in compliance with the takeovers code, make a restraining order (relating to the non-compliance with the takeovers code) that is expressed to expire with the close of such day as shall be specified in the order, not being a day that is later than 21 days after the date on which the restraining order is made.

155. RESTRAINING ORDERS.

For the purposes of Section 154, a restraining order is an order for one or more of the following:—

- (a) restraining a person from acquiring securities in the company concerned or any interest in or rights relating to such securities;
- (b) restraining a person from disposing of securities in the company concerned or any interest in or rights relating to such securities;
- (c) restraining a person from exercising the right to vote attaching to securities in the company concerned or any other right relating to such securities;
- (d) restraining a person from taking any action that is or that may reasonably be expected to constitute a contravention of the takeovers code;
- (e) directing the company concerned not to make any payments in respect of any securities;
- (f) directing the company concerned not to register the transfer or transmission of any securities;
- (g) directing the company concerned not to issue or allot securities to any person;
- (h) for the purpose of securing compliance with any such order, an order directing a person to do or refrain from doing a specified act.

156. COURT MAY MAKE ORDERS.

The Court may, on the application of a person referred to in Section 157, if it is satisfied on reasonable grounds that a person has not acted or is not acting or intends not to act in compliance with the takeovers code, make any one or more of the orders specified in Section 158.

157. PERSONS WHO MAY APPLY.

(1) Where the Securities Commission makes an order under Section 154, the following persons may, subject to Subsection (2), make an application to the Court under Section 156:—

- (a) the Securities Commission;
- (b) where the company's securities are, or were at any material time, quoted on a stock exchange, that stock exchange;
- (c) the company concerned;
- (d) a member or securities holder of the company concerned;
- (e) a person who was a member or securities holder of the company concerned at the time that the conduct to which the application relates occurred;
- (f) a person who, at any time within the period of six months before the making of the application, has made an offer or offers to acquire securities in the company in accordance with the takeovers code;
- (g) with the leave of the Court, any other person.

(2) A person referred to in Paragraph (b) or (f) is not entitled to make an application to the Court unless—

- (a) the Securities Commission has consented to the making of the application; or
- (b) that person has requested the Securities Commission in writing to make an application to the Court itself and the Securities Commission has not made such an application before the expiration of ten days after receiving the request.

(3) The Court may direct on what persons a notice of an application under this section shall be served.

158. ORDERS.

(1) The Court may, on an application under Section 156, make, in relation to the company concerned and any securities in the company, any one or more of the following orders:—

- (a) an order prohibiting the exercise for such period as the Court thinks fit of any right to vote attaching to any such securities;

- (b) an order directing the company not to make payment, or to defer making payment for such period as the Court thinks fit, of any sum or sums due from the company in respect of any such securities;
- (c) an order directing the company not to register the transfer or transmission of all or any of such securities;
- (d) an order prohibiting the company from issuing or allotting any securities in addition to, or in substitution for, or in replacement of, any existing securities;
- (e) an order restraining the disposal of all or any such securities or any interest in or rights relating to them;
- (f) an order directing the disposal of all or any of such securities or any interest in or rights relating to them;
- (g) an order directing the forfeiture of all or any of such securities;
- (h) an order vesting any such securities in a person as trustee for sale on such terms and conditions as the Court thinks fit;
- (i) an order declaring that the exercise of voting or other rights attaching to any such securities is void and of no effect;
- (j) an order declaring any agreement for the acquisition of any such securities or an interest in or rights relating to them is voidable at the option of the person from whom the securities or the interest or rights were acquired;
- (k) an order declaring any agreement for the acquisition of any such securities or an interest in or rights relating to them is void and of no effect;
- (l) an order restraining any person from engaging in conduct in contravention of the takeovers code;
- (m) an order restraining a person from, or doing any act for the purpose of, acquiring any such securities, or any interest in or rights relating, whether directly or indirectly, to any such securities;
- (n) an order requiring a person to comply with any provision of the takeovers code even though the time for doing so may have expired;
- (o) an order requiring a person specified in the order or the company concerned, as the case may be, to supply information or information of the kind specified in the order to a person or class of persons specified in the order;
- (p) an order directing any person who has failed to comply with the takeovers code to pay compensation to any person who has suffered loss or damage as a result of the failure to comply;

- (q) where a contract is entered into in contravention of the takeovers code, or, as the case may be, a contract contains a provision which, if given effect to, would contravene the takeovers code, an order—
 - (i) varying the contract, in such manner as the Court thinks fit; or
 - (ii) cancelling the contract; or
 - (iii) requiring any person who is a party to the contract to make restitution or pay compensation to any other person who is a party to the contract;
- (r) for the purposes of securing compliance with any of such orders, an order directing a person to do or refrain from doing a specified act.

(2) Any order under Subsection (1) may be made on such terms and conditions as the Court thinks fit.

159. INTERIM ORDERS.

Where an application is made to the Court under Section 156, the Court may make, as an interim order, any order that it is empowered to make under Section 158.

160. COURT MAY HAVE REGARD TO ORDERS AND RECOMMENDATIONS BY SECURITIES COMMISSION.

(1) The Court may, in determining any application under Section 156, have regard to any order made by the Securities Commission under Section 154 relating to the matter concerned.

(2) The Court may, in determining whether to make any order under Section 158 and the type of any such order, have regard to any recommendation made by the Securities Commission.

161. ORDERS DIRECTING DISPOSAL OF SECURITIES.

Without limiting Section 158, any order made under Subsection (1)(f) of that section directing the disposal of securities or any interest in or rights relating to securities may require—

- (a) that the securities are, or any interest in them is, disposed of within a time specified by the Court; or
- (b) that neither the securities are, nor any interest in them is, disposed of to any specified person or class of persons; or
- (c) that the securities are, or any interest in them is, disposed of in a manner and on terms specified by the Court; or
- (d) that the proceeds of any disposition are—
 - (i) applied towards the costs of the application; or

- (ii) paid in such amounts and to such persons as the Court specifies;
or
- (iii) applied or paid partly towards the costs of the application and partly in such amounts and to such person as the Court specifies.

162. REVOCATION, VARIATION AND SUSPENSION OF ORDERS.

Any order under Section 158 or 159 may be revoked or varied or suspended on such terms and conditions as the Court thinks fit.

163. COURT MAY EXCUSE CONTRAVENTION.

(1) The Court may, where it is satisfied that a person has, by any act or omission, failed to comply with any provision of the takeovers code, but that the failure ought to be excused, by order, declare that the act or omission was not a failure to comply with the code and any such order has effect according to its tenor.

(2) In considering whether the failure should be excused, the Court may have regard to—

- (a) the inadvertence or mistake on the part of the person concerned; and
- (b) whether that person was aware of relevant factors or circumstances; and
- (c) circumstances beyond that person's control; and
- (d) such other matters as the Court thinks fit.

164. COURT MAY REQUIRE PERSON TO GIVE EVIDENCE OR PRODUCE DOCUMENTS RELATING TO INTERESTS IN SECURITIES.

(1) The Court may, in any application under Section 156, for the purpose of ascertaining whether any person—

- (a) has or had any direct or indirect interest in or right to any securities in the company concerned; or
- (b) has or had any direct or indirect right to exercise any voting rights attaching to any such securities,

order any person to—

- (c) attend before the Court and be examined on oath or affirmation; or
- (d) produce documents in that person's possession or under that person's control.

(2) An order under Subsection (1) may be made on the application of any person who is a party to the application under Section 156.

165. PECUNIARY PENALTIES.

(1) Where the Court is satisfied on the application of the Securities Commission that a person—

- (a) has contravened any of the provisions of this Division or the takeovers code; or
- (b) has attempted to contravene such a provision; or
- (c) has aided, abetted, counselled, or procured any other person to contravene such a provision; or
- (d) has induced, or attempted to induce, any other person whether by threats or promises or otherwise, to contravene such a provision; or
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision; or
- (f) has conspired with any other person to contravene such a provision,

the Court may order the person to pay to the Securities Commission such pecuniary penalty as the Court determines to be appropriate, not exceeding K500,000.00 in the case of a person not being a body corporate, or K5,000,000.00 in the case of a body corporate, in respect of each act or omission.

(2) In determining an appropriate penalty under this section, the Court shall have regard to all relevant matters, including—

- (a) the nature and extent of the act or omission; and
- (b) the nature and extent of any loss or damage suffered by any person as a result of the act or omission; and
- (c) the circumstances in which the act or omission took place; and
- (d) whether or not the person has previously been found by the Court in proceedings under this Division to have engaged in any similar conduct.

(3) The standard of proof in proceedings under this section shall be the standard of proof applying in civil proceedings.

(4) In any proceedings under this section, the Securities Commission, upon the order of the Court, may obtain discovery and administer interrogatories.

(5) Proceedings under this section may be commenced within three years after the matter giving rise to the contravention arose, or such further period as the Court allows.

166. OFFENCES.

(1) No person shall act in contravention of any order made by the Securities Commission under Section 154.

- (2) Any individual who contravenes this section commits an offence.

Penalty: A fine not exceeding K200,000.00, or imprisonment for a term not exceeding five years, or both.

(3) Where a body corporate contravenes this section—

(a) the body corporate commits an offence; and

Penalty: A fine not exceeding K200,000.00.

(b) every director of the body corporate commits an offence.

Penalty: A fine not exceeding K200,000.00, or imprisonment for a term not exceeding five years, or both.

(4) No person shall be convicted of an offence against this section where the contravention was in respect of matters which, in the opinion of the court dealing with the case were immaterial, or was otherwise such as, in the opinion of the court dealing with the case, the contravention took place without his knowledge and consent.

(5) No director of a body corporate shall be convicted of an offence against this section in relation to a contravention by the body corporate where, in the opinion of the court dealing with the case, the contravention took place without his knowledge and consent.

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