

WESTERN AUSTRALIA

**FINANCE BROKERS CONTROL
ACT 1975**

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WESTERN AUSTRALIA

FINANCE BROKERS CONTROL ACT 1975

AN ACT to make provision with respect to the Licensing, Regulation, and Supervision of Finance Brokers, and for related purposes.

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Finance Brokers Control Act 1975*¹.

Commencement

2. The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation¹.

Arrangement

[Section 3 omitted under section 7 (4) (d) Reprints Act 1984.]

Interpretation

4. In this Act unless the context otherwise requires—

“annual certificate” means a certificate granted under this Act to a licensee to carry on business as a finance broker;

“appointed day” means the day fixed by the Minister pursuant to section 26 (2)²;

“approved” means approved by the Board;

“auditor” means a person appointed under this Act to audit the trust accounts of a finance broker;

“Board” means the Finance Brokers Supervisory Board;

“business” means the business of a finance broker;

“Chairman” means the Chairman of the Board;

“District Court” means The District Court of Western Australia established under the District Court of Western Australia Act 1969;

“finance broker” means a person who, as an agent, in the course of business negotiates or arranges loans of money for or on behalf of other persons but does not include the exceptions specified in section 5 (1);

“finance brokers code of conduct” means the code approved under section 81;

“inspector” means an inspector of the Board appointed under this Act;

“licence” means the licence of a finance broker under this Act;

“licensed” means licensed as a finance broker under this Act;

“licensee” means a person licensed under this Act;

“member” means a member of the Board;

“proceedings” means proceedings before the Board;

“Registrar” means the Registrar of the Board;

“renewal” means renewal of an annual certificate;

“section” means a section of this Act;

“subsection” means a subsection of the section wherein the term is used;

“supervisor” means a person appointed by the Board as supervisor of the business of a finance broker;

“Treasurer” means the Treasurer of the State; and

“Treasury” means the State Treasury.

Exceptions to “finance broker”

5. (1) Exceptions to the meaning of “finance broker” in and for the purposes of this Act are as follows—

- (a) banks and insurance companies authorized under any law of the Commonwealth or State to carry on banking or insurance business;
- (b) a pastoral company in respect of which the Minister is satisfied that, by reason of an order in force under section 11 of the Banking Act 1959 of the Parliament of the Commonwealth, or that Act as amended from time to time, the clients of the company are adequately safeguarded in respect of the proper application of trust funds received by the company from them or on their behalf;
- (c) building and friendly societies authorized to act under any law of the State;
- (d) stockbrokers who are members of an approved stock exchange within the meaning of the Securities Industry (Western Australia) Act 1970³ when dealing in securities within the meaning of that Act;
- (e) a body corporate authorized by the law of any State, or of a Territory, of the Commonwealth to take in its own name, a grant of probate or of letters of administration of the estate of a deceased person;
- (f) certificated legal practitioners, within the meaning of the Legal Practitioners Act 1893, when acting incidentally to the practice of their profession as such;
- (g) a person who, in association with a *bona fide* business of supplying goods or services carried on by him, acts as an agent to negotiate or arrange loans for persons who deal with him in the ordinary course of that business and who authorize in writing the application of the loans in payment for the goods or services; and
- (h) persons and classes of persons in respect of whom exceptions under subsection (2) are in force.

(2) The Minister may, by notice published in the *Government Gazette*, except any person or class of persons from the meaning of “finance broker” in and for the purposes of this Act, on such terms and conditions as the Minister thinks fit, if the Minister is satisfied that apart from this Act, adequate safeguards exist against loss to others by any defalcation of that person or class, but if subsequently the Minister is satisfied that such safeguards no longer exist he may, by like notice, cancel the exception, and in any case a breach of any condition by a person the subject of an exception cancels it in respect of him.

[Section 5 amended by No. 10 of 1982 s. 28.]

PART II—FINANCE BROKERS SUPERVISORY BOARD

*Division 1—General***The Board**

6. (1) For the purposes of this Act there shall be a board to be known as the “Finance Brokers Supervisory Board”.

(2) The Board—

- (a) shall be a body corporate with perpetual succession and a common seal;
- (b) shall be the licensing and supervisory authority for the purposes of this Act; and
- (c) shall have the powers, duties, and functions, conferred, imposed, or prescribed by or under this Act.

(3) Where in any judicial proceedings, whether under this Act or not, a document is produced bearing a seal purporting to be the common seal of the Board the Court or tribunal before which those proceedings are brought shall in the absence of proof to the contrary presume that—

- (a) the seal is the common seal of the Board; and
- (b) the common seal was duly affixed.

Composition of Board

7. (1) Subject to this section, the Board shall consist of 5 members appointed by the Governor of whom—

- (a) one shall be appointed to be a member and Chairman of the Board;
- (b) one shall be a person who is experienced in commercial practice;
- (c) one shall be a person who is admitted and entitled to practice as a barrister, solicitor, attorney, and proctor of the Supreme Court, or in any one or more of those capacities; and
- (d) two shall be persons who are licensed finance brokers and elected for appointment by licensed finance brokers.

(2) Notwithstanding subsection (1) (d), the Board as first constituted shall not include any member of the kind referred to in that paragraph, but shall include 2 persons who are finance brokers nominated for appointment by the Minister.

(3) The Minister shall appoint a returning officer for each election of an elective member.

(4) The election of an elective member shall be held and conducted in such manner and at such times as may be prescribed.

(5) The expenses incurred in connection with the election of an elective member shall be paid out of the moneys appropriated by Parliament for the purposes of this Act.

(6) The Governor may appoint as deputy of a member a person who has the like prescribed qualifications, if any, as those of the member and, where the case requires, who has been nominated or elected in the manner in which the member was nominated or elected.

(7) A person so appointed is, in the event of the absence from a meeting of the Board of the member of whom he is the deputy, entitled to attend that meeting and, when so attending, has all the powers, functions, and duties of a member.

(8) For the purpose of establishing, so far as possible, rotational annual retirement of members the respective terms of office of the members of the Board as first constituted shall be such terms not exceeding 4 years as the Governor determines.

Term of office

8. (1) Subject to this Act, each member shall hold office for a period of 4 years from the date of his appointment and where he is an elective member is eligible for re-election and re-appointment and, where he is not an elective member, is eligible for re-appointment.

(2) The Minister may grant leave of absence to a member on such terms and conditions as the Minister determines.

(3) The Governor may terminate the appointment of a member for inability, inefficiency, or misbehaviour.

(4) If a member of the Board—

- (a) is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (b) becomes permanently incapable of performing his duties as a member;
- (c) resigns his office by writing under his hand addressed to the Minister;
- (d) absents himself, except on leave duly granted by the Minister from 3 consecutive meetings of the Board; or
- (e) ceases to hold any qualification required for his becoming or being a member,

the office of that member becomes vacant.

(5) Where the office of a member has become vacant otherwise than by effluxion of time, the Governor may appoint to the vacant office for the unexpired part of the term of the office which so became vacant a person who has the like prescribed qualifications, if any, as those of the member whose office has become vacant, and where the case requires, who has been nominated or elected in the manner in which the member was nominated or elected.

Meetings of the Board

9. (1) The Board shall hold meetings at such times and places as are necessary to enable it to discharge its functions and duties under this Act and the Minister may at any time require the Chairman to convene a meeting of the Board.

(2) The Chairman shall preside at all meetings of the Board at which he is present and his deputy shall preside at all meetings at which he, but not the Chairman, is present, but where neither the Chairman nor his deputy is present at a meeting of the Board, the members present shall appoint one of their number present to act as Chairman at the meeting.

(3) At a meeting of the Board, 3 members constitute a quorum.

(4) Any question arising at a meeting of the Board shall be decided by a majority of the votes of the members present and voting.

(5) At a meeting of the Board at which the Chairman or his deputy presides, the Chairman or his deputy shall have a deliberative vote, and in the event of an equality of votes being cast on any question, that question shall remain unresolved until a subsequent meeting.

(6) The Board shall cause accurate minutes to be kept of its proceedings at its meetings.

(7) To the extent that it is not prescribed the Board shall determine its own procedure.

Validity of acts of Board

10. No act, proceeding, or determination of the Board shall be invalid on the ground only of any vacancy in the office of any member of the Board or of any defect in the appointment of any member of the Board or in the appointment of any deputy of a member of the Board.

Remuneration of members

11. The members of the Board shall be paid such fees and allowances as may from time to time be fixed by the Governor.

The Registrar and other officers

12. (1) There shall be a Registrar of the Board and there may be such Deputy Registrar, Assistant Registrars, inspectors and other officers of the Board as are necessary for its proper functioning.

(2) The officers of the Board shall be appointed and shall hold office subject to and in accordance with the Public Service Act 1904¹.

(3) The officers of the Board may hold office as such in conjunction with any other office in the Public Service of the State.

(4) Anything by this Act appointed or authorized or required to be done or signed by the Registrar may be done or signed by any Deputy or Assistant Registrar and shall be as valid and effectual as if done or signed by the Registrar.

(5) All courts, judges, and persons acting judicially shall take judicial notice of the official signature of every person who is for the time being and every person who has at any time been Registrar, Deputy Registrar, Assistant Registrar, or inspector of the Board and of the fact that such person holds or has held such office.

Division 2—Powers of Investigation and Inquiry

Investigation and inquiry by Registrar and inspectors

13. The Registrar may, of his own motion, and shall at the direction of the Board, and an inspector shall, at the direction of the Board or Registrar, make any investigation or inquiry that the Registrar or the Board considers necessary or expedient for the purpose of—

- (a) determining any application or any other matter before the Board;
- (b) determining whether or not finance brokers are acting in conformity with the special conditions, if any, of their licenses and annual certificates and are complying with the requirements of this Act; and
- (c) detecting offences against this Act.

Police investigations

14 (1) The Commissioner of Police shall, at the request of the Board or the Registrar, cause his officers to make an investigation or inquiry and report relating to any matter that is the subject of investigation or inquiry pursuant to section 13.

(2) The report shall be forwarded to the Registrar.

Power of Registrar and inspector to investigate, inquire and obtain information

15. (1) For the purposes of carrying out any investigation or inquiry in the course of carrying out his duties under this Act, the Registrar or an inspector may—

- (a) require any person—
 - (i) to give him such information as he requires;
 - (ii) to answer any question put to him,in relation to any matter the subject of such investigation or inquiry;
- (b) require any person to produce any document relating to any such investigation or inquiry;

- (c) enter at all reasonable times and search any premises and inspect any documents that he finds thereon;
- (d) make a copy or abstract of any document produced to, or inspected by, him in pursuance of this section, or of any entry made therein and in the absence of proof to the contrary any such copy certified as correct by the Registrar or an inspector shall be received in all courts as evidence of, and of equal validity as, the original.

(2) A requirement made under subsection (1) (a)—

- (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be;
- (b) shall specify the time at or within which the information is to be given or the question is to be answered, as the case may be;
- (c) may, by its terms, require that the information or answer required—
 - (i) be given orally or in writing;
 - (ii) be given at or sent or delivered to any place specified in the requirement;
 - (iii) in the case of written information or answers, be sent or delivered by any means specified in the requirement;
 - (iv) be given on oath or affirmation or by statutory declaration for which purpose the Registrar or an inspector may administer an oath or affirmation and have the authority of a commissioner for declarations.

(3) A requirement made under subsection (1) (b)—

- (a) shall be made by notice in writing served on the person required to produce a document;
- (b) shall specify the time at or within which the document is to be produced;
- (c) may, by its terms, require that the document be produced—
 - (i) at any place specified in the requirement;
 - (ii) by any means specified in the requirement.

(4) Where, under subsection (1) (a) the Registrar or an inspector orally requires a person to give any information or answer any question, the Registrar or the inspector shall inform that person that he is required under this Act to give the information or answer the question, as the case may be.

(5) Where under subsection (1) (a) or (b) a person is required by notice in writing to give any information, answer any question, or produce any document, the notice shall state that he is required under this Act to give the information, answer the question, or produce the document, as the case may be.

(6) Before entering any premises pursuant to this section the Registrar or an inspector—

- (a) shall obtain a warrant to do so from a magistrate or Justice of the Peace which warrant the magistrate or Justice of the Peace is authorized to issue upon being satisfied that the entry is sought in good faith for the purpose of carrying out any investigation or inquiry under this Act; and
- (b) shall display to the person, if any, affording him entry—
 - (i) in the case of the Registrar, a document signed by the Minister and certifying that he is the Registrar; and
 - (ii) in the case of an inspector, a document signed by the registrar and certifying that he is an inspector.

Incriminating information, questions, or documents

16. Without prejudice to the provisions of section 11 of the Evidence Act 1906, where under section 15 a person is required to—

- (a) give any information;
- (b) answer any question;
- (c) produce any document,

he shall not refuse to comply with that requirement on the ground that the information, answer, or document may tend to incriminate him or render him liable to any penalty, but the information or answer given, or document produced, by him shall not be admissible in evidence in any proceedings against him other than proceedings in respect of an offence against section 17 (1) (b).

Failure to comply with requirement

17. (1) Where under section 15 a person is required by the Registrar or an inspector to give any information, answer any question, or produce any document and that person, without reasonable excuse (proof of which shall lie on him)—

- (a) fails to give that information or answer that question at or within the time specified in the requirement; or
- (b) gives any information or answer that is false in any particular; or
- (c) fails to produce that document at or within the time specified in the requirement,

the person commits an offence.

Penalty: \$300.

(2) It is a defence in any proceeding for an offence under subsection (1) (a) or (c) for the defendant to show—

- (a) that, in the case of an alleged offence arising out of a requirement made orally under section 15, the Registrar or the inspector did not, when making the requirement, inform him that he was required under this Act to give the information or answer the question, as the case may be;
- (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 15, the notice did not state that he was required under this Act to give the information, answer the question, or produce the document, as the case may be;
- (c) that the time specified in the requirement did not afford him sufficient notice to enable him to comply with the requirement; or
- (d) that, in any case, the Registrar or the inspector did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement, would materially assist in the investigation or inquiry being carried out.

Obstruction of Registrar or inspector

18. A person shall not prevent or attempt to prevent the Registrar or an inspector from entering premises or otherwise obstruct or impede the Registrar or an inspector in the exercise of his powers under section 15.

Division 3—Proceedings before the Board

Proceedings before the Board

19. (1) The Board shall give to any person who is a party to proceedings instituted before the Board reasonable notice of the time and place at which it intends to hear those proceedings, and shall afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Board unless—

- (a) in the case of an application for the grant of a licence, or of an annual certificate, there is no objection and the licence or certificate is granted without any special conditions being imposed; or
- (b) in the case of an application for an inquiry into the conduct of a finance broker there is no allegation against him which would, if substantiated, enable the Board to exercise its powers of discipline under this Act.

(2) If a person to whom notice has been given pursuant to subsection (1) does not attend at the time and place fixed by the notice, the Board may hear the proceedings in his absence.

(3) The Board may appoint a person with such qualifications as it thinks fit to appear in proceedings before the Board to assist the Board.

(4) An inspector may appear in any proceedings before the Board.

(5) An inspector or any party to proceedings before the Board shall be entitled to appear personally or by counsel.

(6) Any party to proceedings before the Board, may, by leave of the Board, be represented before the Board by a person other than a certificated legal practitioner within the meaning of the Legal Practitioners Act 1893.

(7) A person, other than such a legal practitioner, shall not demand or receive any fee or reward for representing a party to proceedings before the Board.

Penalty: \$500.

(8) Where the Board is satisfied that for the purpose of protecting the business or interest of any person it is desirable that the proceedings or any part thereof be heard in camera, the Board may make an order to that effect and may include in the order conditions relating to that purpose, and, if such an order is made, the proceedings shall be conducted in accordance with it.

(9) A person appointed by the Board to assist the Board in proceedings before the Board or a person authorized by or under this Act to appear in proceedings before the Board for the purpose of representing another person has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court and, where the person so appointed is a barrister or solicitor, he is subject to the same liabilities as he would be in appearing before that Court.

Powers of the Board

20. (1) In the exercise of its powers and functions under this Act, the Board may—

- (a) by summons signed on behalf of the Board by the Registrar, require the attendance before the Board of any person;
- (b) by summons signed on behalf of the Board by the Registrar, require the production of any books, papers, or documents;
- (c) inspect any books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;
- (d) require any person to make oath or affirmation that he will truly answer all questions put to him by the Board relating to any matter being inquired into by the Board (which oath or affirmation may be administered by a member of the Board or any officer of the Board); or
- (e) require any person appearing before the Board, including the person whose conduct is subject to an inquiry, (whether he has been summoned to appear or not) to answer any relevant questions put to him by the Board, or by any other person appearing before the Board.

(2) Subject to subsection (3), if any person—

- (a) who has been served with a summons to attend before the Board fails without reasonable excuse (proof of which shall lie upon him) to attend in obedience to the summons;
- (b) who has been served with a summons to produce any books, papers, or documents, fails without reasonable excuse (proof of which shall lie upon him) to comply with the summons;
- (c) misbehaves himself before the Board, wilfully insults the Board, or interrupts the proceedings of the Board; or
- (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Board,

he is guilty of an offence and liable to a penalty not exceeding \$500.

(3) A person shall not be obliged to answer a question put to him under this section if the answer to that question would tend to incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

(4) In the course of any proceedings, the Board may—

- (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact therefrom that it considers proper; or
- (b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court that may be relevant to the proceedings.

(5) In any proceedings the Board shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal forms and it shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

Orders for fines or costs

21. (1) The Board may, upon the determination of any proceedings, make such orders for costs as the Board considers just and reasonable.

(2) Where the Board makes an order for the payment of a fine or costs against a licensee, and the fine or costs is not, or are not, paid within the time fixed by the Board, the Board may suspend his licence until the fine or costs is or are paid, or for such period as the Board thinks fit.

(3) The power conferred on the Board by subsection (2) is in addition to and not in derogation of the powers conferred on the Board by section 83.

Reasons for decision of Board to be given

22. The Board may, and, on request by any party to the proceedings, shall, give to the parties reasons for its decision.

Appeal

23. (1) Any person aggrieved by a decision or order of the Board in proceedings to which the person was a party shall, subject to this section, be entitled to appeal to the District Court against the decision or order of the Board.

(2) The appeal shall be instituted within one month of the making of the decision or order appealed against, but the District Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal shall be so instituted.

(3) The District Court may, on the hearing of the appeal, do one or more of the following, according to the nature of the case—

- (a) affirm, vary, or quash the decision or order appealed against, or substitute, and make in addition, any decision or order that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Board for further hearing or consideration or for re-hearing;
- (c) make any further or other order as to costs or any other matter that the case requires.

PART III—LICENSING

Application

24. (1) An application for a licence shall be made in writing and in a manner and form determined by the Board in respect of such an application and shall contain such information as is required by the Board in respect of such an application.

(2) Notice of the application shall be advertised in accordance with the regulations.

(3) The information contained in the application shall be verified by statutory declaration of the applicant or where the applicant is a firm or a body corporate by the person who is to be in *bona fide* control of the business operated under the licence.

(4) In respect of any particular application the applicant shall furnish the Board with such further information as the Board determines, verified if the Board so requires by statutory declaration.

(5) An applicant is a party to proceedings before the Board on his application.

Objections

25. (1) An objection to the grant of a licence may be made by any person on the grounds that the applicant does not have all or any of the qualifications required under this Act for the grant of a licence.

(2) Any objection made shall be in writing and in a form and manner determined by the Board and shall contain information in support of the grounds on which the objection is made.

(3) The information contained in the objection shall be verified by statutory declaration of the person making the objection.

(4) A person who makes an objection to the grant of a licence is, while he maintains the objection, a party to the proceedings on the application for the grant.

Finance brokers to be licensed

26. (1) On and after the appointed day a person shall not carry on business, or by any means hold himself or itself out, as a finance broker unless he or it is licensed as such under this Act and holds a current annual certificate in respect of the licence.

Penalty: \$500.

(2) In subsection (1) "appointed day" means such day as is fixed by the Minister by notice published in the *Government Gazette* to be the appointed day² for the purposes of that subsection.

Grant of licence to a natural person

27. (1) Subject to this Act, a person, not being a body corporate who applies to the Board for a licence and pays to the Board the prescribed fee for the licence shall be granted and may hold a licence if the Board is satisfied that—

- (a) he is resident in the State;
- (b) he is of or over the age of 18 years;
- (c) he is a person of good character and repute and a fit and proper person to hold a licence;
- (d) he has sufficient material and financial resources available to him to enable him to comply with the requirements of this Act; and
- (e) he understands fully the duties and obligations imposed by this Act on finance brokers.

(2) In subsection (1) (c) "fit and proper" includes having such qualification by way of experience or otherwise as is prescribed, or, if no qualification is prescribed, includes having such qualification by way of experience or otherwise as is approved.

Grant of licence to a firm

28. Subject to this Act, 2 or more persons constituting a firm who apply to the Board for a licence and pays to the Board the prescribed fee for the licence shall be granted and may hold a licence if the Board is satisfied that—

- (a) all of the natural persons, if any, by whom the firm is constituted and all of the directors of, and all of the persons concerned in the management or control of, any body corporate

by which the firm is constituted are persons of good character and repute and are persons fit to be concerned as directors of, or in the management and control of, a finance broker's business;

- (b) the persons by whom or by which the firm is constituted have sufficient material and financial resources available to them to enable them to comply with the requirements of this Act; and
- (c) where the firm is constituted by not more than 3 persons at least one of them is licensed or where the firm is constituted by more than 3 persons at least 2 of them are licensed, and in either case the person in *bona fide* control of the business operated under the licence is licensed.

Grant of licence to body corporate

29. (1) Subject to this Act, a body corporate which applies to the Board for a licence and pays to the Board the prescribed fee for the licence shall be granted and may hold a licence if the Board is satisfied that—

- (a) all of the directors of the body corporate, and all of the persons concerned in the management or conduct of the body corporate, are persons of good character and repute and are persons fit to be concerned as directors of, or in the management and control of, a finance broker's business;
- (b) that it has sufficient material and financial resources available to it to comply with the requirements of this Act; and
- (c) where there are not more than 3 directors of the body corporate at least one of them is licensed or where there are more than 3 directors of the body corporate at least 2 of them are licensed, and in either case the person in *bona fide* control of the business operated under the licence is licensed, or, where a declaration has been made pursuant to subsection (2) and is in force in respect of the body corporate, the officer in *bona fide* control of the finance broker's part of the business of the body corporate is licensed.

(2) Where the Board is satisfied that finance broker's business is a minor part of the business of any body corporate it may recommend to the Minister that a declaration be made to that effect and the Minister may by notice published in the *Government Gazette* make a declaration accordingly and the Minister may upon the recommendation of the Board by notice so published revoke any such declaration.

Effect of licence

30. (1) Subject to this Act, a licence is continuous.

(2) A licence does not confer on a licensee the right to carry on business as a finance broker unless he holds an annual certificate in respect of the licence.

(3) A person may at any time surrender a licence, and any annual certificate in respect thereof, held by him and shall do so if he ceases to have the qualifications for holding the licence.

Annual certificate

31. (1) Subject to this Act, the Board shall on the grant of a licence grant the licensee a certificate which confers on the licensee the right to carry on business as a finance broker for the period of 12 months commencing on the date on which it is granted.

(2) Subject to this Act, any annual certificate may, on payment of the prescribed fee, be renewed for subsequent periods of 12 months each.

Applications for renewals

32. (1) An application for a renewal shall be made at least one month prior to the date on which it is intended the renewal shall take effect unless the applicant satisfies the Board that there is reasonable cause for the application being made out of time.

(2) An application for renewal shall be made in writing and in a manner and form determined by the Board in respect of such an application and shall contain such information as is required by the Board in respect of such an application.

(3) The information contained in the application shall be verified by statutory declaration of the applicant or where the applicant is a firm or body corporate by the person who is to be in *bona fide* control of the business operated under the licence.

(4) In respect of any particular application the applicant shall furnish the Board with such further information as the Board determines, verified if the Board so requires by statutory declaration.

(5) An applicant is a party to proceedings before the Board on his application.

Objection by Registrar to renewal

33. (1) An Objection to the grant of a renewal may be made by the Registrar on the grounds that the applicant has not complied with the provisions of this Act and the finance brokers code of conduct.

(2) The Registrar, while he maintains his objection, is a party to the proceedings on the application for renewal.

Conditions on licences, and annual certificates

34. (1) A licensee shall comply with the provisions of this Act and the finance brokers code of conduct.

(2) The Board may grant a licence or grant or renew an annual certificate subject to such special conditions as it thinks fit and, without limiting the generality of the foregoing any of those conditions may relate to the holding of a policy of indemnity insurance in a specified amount.

(3) A licensee shall comply with any special condition to which under subsection (2) his licence or annual certificate is subject.

(4) Where the Board refuses to renew an annual certificate the effect of the refusal shall not be deferred by reason of any proposed or pending appeal to the District Court under this Act unless the District Court otherwise orders, which it may do subject to such conditions as it may impose to protect clients and potential clients of the finance broker and the public generally.

Bond in respect of annual certificate

35. (1) The Board shall not grant or renew an annual certificate unless the applicant lodges or has lodged with the Board a bond or guarantee to Her Majesty and her successors in an approved form and in an amount approved in respect of the applicant, entered into by an insurance company carrying on business under, and in accordance with the Insurance Act 1932⁵ of the Parliament of the Commonwealth, or by a bank carrying on business under, and in accordance with the Banking Act 1959 of the Parliament of the Commonwealth, or any other Act in amendment or substitution of those Acts respectively, or by other approved surety or sureties, or by other approved guarantor or guarantors.

(2) A bond or guarantee lodged pursuant to this section shall be conditioned on the licensee duly and according to law paying, applying, and accounting for moneys coming to his hands and punctually complying with all duties and obligations imposed on him by law in relation to those moneys; and the bond or guarantee shall provide that it enures during the term of the annual certificate for which it is originally given and may also provide that it enures during the term of any annual certificate to the same person granted in renewal of the annual certificate.

(3) Where a bond or guarantee enures in respect of the renewal or further renewal of an annual certificate, the insurance company, surety, or sureties, or the bank, guarantor, or guarantors may by notice in writing given to the Board determine its, his, or their liability under the bond or guarantee in respect of any act or default that may be done or made after the current annual certificate expires and the Board shall not renew the licence until another approved bond or guarantee has been lodged by the applicant.

(4) Where, at any time during the currency of an annual certificate, the bond or guarantee lodged in respect of it ceases to be of full force and effect, the licensee is deemed not to be the holder of an annual certificate until another approved bond or guarantee is lodged by him.

(5) The District Court may, on the application of the Board and on being satisfied that any condition of the bond or guarantee has been broken, assign the moneys recoverable on the bond or guarantee to the Board or to any other person and the Board or any other person to whom such an assignment has been made or the executors or administrators of the estate of that other person is, upon the assignment, entitled to sue upon the bond or guarantee in its or their own name or names, as if the bond or guarantee had, in the first instance, been given to it, him, or them and is entitled to receive, as trustees for all persons interested, the full amount recoverable in respect of the breach of a condition of the bond or guarantee.

(6) In this section "District Court" includes the Registrar and a Deputy Registrar of that Court, acting pursuant to the Rules of Court.

Notice to Registrar

36. A licensee shall, within 14 days after commencing or ceasing to carry on business as a finance broker give to the Registrar notice in writing of that fact.

Registered office

37. (1) A licensee shall, on and after the day on which he commences to carry on business as a finance broker, and for so long as he carries on that business, have a registered office in the State.

Penalty: \$100.

(2) Any summons, notice, order, or other document to be served on a licensee, may be served by leaving it at his registered office or by sending it be registered post addressed to the licensee at that office.

(3) An office may be registered by giving written notice of the situation to the Registrar and a registration may be transferred from one office to the other by written notice given to the Registrar.

Branch office

38. (1) A licensee shall register any branch office of his business by giving written notice of the situation of the office to the Registrar on or before the day on which he commences to carry on business at that branch office.

Penalty: \$100.

(2) A licensee shall nominate, and have at all times in his service at a registered branch office, as manager of that office, another licensee.

Penalty: \$100.

(3) The manager shall not be a licensee nominated as manager by any other licensee or in respect of any other office, and shall not carry on business as a finance broker on his own account.

Endorsements on annual certificates

39. (1) Each place of business of a licensee and the name of the other licensee who is manager of that place and any changes thereto shall be endorsed on the annual certificate of the first-mentioned licensee.

(2) The place of business of a branch office shall be endorsed on the annual certificate of the licensee who is manager of that office.

Licence and annual certificate not transferable

40. (1) A person shall not hold more than one licence or more than one annual certificate and shall not carry on more than one business as a finance broker thereunder.

(2) A licence or an annual certificate is not transferable.

(3) A licensee shall not in any way permit, or hold himself out as being willing to permit, another person to use the licence or an annual certificate of the licensee.

Penalty: \$500.

Use of business name

41. (1) The use of a business name by a licensee is not subject to the approval of the Board but—

- (a) a licensee may carry on business as a finance broker under only one business name which shall be endorsed on his annual certificate;
- (b) all licensees carrying on the business of a finance broker under a business name shall have their surnames and initials at the head of all correspondence from them in that business.

(2) A licensee who alters the name, style, title, or designation under which he carries on business as a finance broker shall within 14 days after the day on which he first uses that altered name, style, title, or designation in connection with that business give notice in writing to the Registrar of the altered name, style, title, or designation.

Penalty: \$100.

Notice to be exhibited

42. A licensee shall exhibit, and keep exhibited, in a prominent place at his registered office, and at every branch office of his business, so as to be easily read from outside that office—

- (a) a notice of his name, and of the fact that he is a licensed finance broker, together with the name, style, title, or designation under which he carries on business as a finance broker, if that business is not carried on in this own name; and

- (b) in the case of a branch office, a notice of the name of the manager and the address of the registered office of the licensee.

PART IV—CONTROLS

Division 1—General

Disability of unlicensed person

43. (1) A finance broker is not entitled to receive any commission, reward, or other valuable consideration in respect of his services in that capacity unless—

- (a) he is licensed in that capacity and he holds a current annual certificate in respect of his licence when he renders the services;
- (b) his appointment to act in that capacity is in writing signed before the receipt of the commission, reward, or other valuable consideration (whether before or after the services are rendered) by the person to be charged therewith or some person lawfully authorized to sign the appointment on his behalf.

(2) A person shall not demand or receive any commission, reward, or other valuable consideration in contravention of subsection (1).

Penalty: \$500.

(3) Any commission, reward, or other valuable consideration received in contravention of subsection (1) may be recovered as a civil debt recoverable summarily in any court of competent jurisdiction.

Remuneration of finance brokers

44. (1) The Board shall from time to time, by notice published in the *Government Gazette*, fix the maximum amounts of remuneration, by way of commission or otherwise, for services rendered by licensees and may do so by reference to the type of loan negotiated or arranged, and the value thereof, and the type of security, if any, offered or where no security is offered by reference to that fact.

(2) The respective maximum amounts fixed under subsection (1) shall have effect on and after the date on which the notice fixing them is published in the *Government Gazette* or on and after such subsequent date as is specified in that notice.

(3) In the absence of an agreement to the contrary between a licensee and the person by whom or on whose behalf he was appointed to negotiate or arrange a loan, the licensee's remuneration is payable only on the loan being obtained unless a failure to obtain the loan is due to the fault of the person by whom or on whose behalf the licensee was so appointed.

(4) A licensee may require a person by whom or on whose behalf he was appointed to negotiate or arrange a loan to pay to him the estimated cost of obtaining a valuation of any security offered and any amount so paid shall be held in the trust by the licensee to pay the costs of the valuation so obtained and to repay the balance of any such amount to the person who paid the money to him.

(5) A licensee is not entitled to receive for negotiating or arranging a loan any commission, reward, or other valuable consideration that exceeds in value the amount fixed under subsection (1) in respect thereof.

(6) A licensee shall not demand, receive or hold any commission, reward, or other valuable consideration in contravention of this section.

Penalty: \$500.

(7) Any commission, reward, or other valuable consideration received or held in contravention of this section may be recovered as a civil debt recoverable summarily in any court of competent jurisdiction.

Advertisements by licensees

45. (1) An advertisement in respect of the business of a licensee shall not be published without his authority.

(2) A duly authorized advertisement in respect of the business of a licensee shall contain such details as are sufficient to identify the licensee.

(3) A duly authorized advertisement in respect of the business of a licensee shall not mention an interest rate in respect of loans which may be negotiated or arranged unless it is mentioned in respect of specific amounts and it includes the percentage rate of interest in relation thereto calculated in accordance with the formula provided in the Schedule.

(4) A borrower who enters into a contract with a lender as a consequence of an advertisement which contravened subsection (3) is not thereby entitled to avoid the contract.

Copy of loan documents

46. Where a person signs any contract, or any document purporting to be a contract, relating to any loan that has been negotiated or arranged wholly or in part by a licensee, the licensee shall forthwith supply the person who signed the contract or document with a true copy thereof and obtain from such person an acknowledgement in writing of the receipt of such copy.

Division 2—Trust Accounts

Interpretation

47. In this Division, unless the context otherwise requires—

“banker” means the manager, or other officer, for the time being in charge of the office of a bank in which any account of a finance broker is kept;

“business day” means a day other than Saturday, Sunday, or a public holiday;

“trust accounts” means accounts relating to moneys received or held by a finance broker for or on behalf of any other person in respect of loans negotiated or arranged by the finance broker;

“year” means a period of 12 months ending on 31 December, subject however to the provisions of section 51.

Trust accounts

48. (1) Every finance broker shall maintain at least one trust account, designated or evidenced as such, with a bank in the State and shall, as soon as practicable, pay to the credit of that account all moneys received by him for or on behalf of any other person in respect of loans negotiated or arranged by the finance broker or in respect of interest on such loans collected by him.

(2) Moneys so paid into any such trust account shall not be available for the payment of the debt of any other creditor of the finance broker, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such creditors.

(3) Loan moneys received by a finance broker in the course of negotiating or arranging a loan and moneys received by a finance broker in respect of interest on loans, shall not be withdrawn from his trust account except for the purpose of completing the loan or paying in accordance with subsection (4) the moneys in respect of interest on loans, or as otherwise authorized by this Act, or as otherwise authorized by the prior written consent of all parties to the loan.

(4) A finance broker shall pay moneys withdrawn from a trust account to the person or persons lawfully entitled or authorized to receive them.

(5) A finance broker shall—

- (a) keep full and accurate accounts of all money received or held by him on account of any other person and of all payments made by him of that money;
- (b) before the end of the next business day after the day on which the money is received or paid enter in the accounts particulars of the amount so received or paid and the person from whom it was so received or to whom it was so paid;
- (c) keep the accounts in such manner that they can be conveniently and properly audited; and
- (d) correctly balance the accounts at the end of each month.

Receipts and accounting to principal

49. (1) When a finance broker receives money for or on behalf of any other person he shall forthwith give to the person paying the money a receipt for it complying with this section and specifying briefly the subject matter or purpose in respect of which the money was received, and shall retain legible carbon duplicates of the receipt.

(2) Receipts issued under subsection (1) shall be taken from bound books containing not less than 100 receipts and arranged so that a carbon duplicate of each receipt issued shall be retained in the book.

(3) The finance broker shall produce the retained duplicates in the appropriate books to the auditor at every audit, and at such other times as the auditor may reasonably require.

(4) The receipts and the duplicates thereof shall be so numbered and or lettered or both that every receipt can be identified and so that the receipt and duplicate have the same number or letter.

(5) Subsections (1) to (4) do not apply in the case of a finance broker if the finance broker's auditor certifies to the Board that he is satisfied with the system employed by the finance broker and that the receipt books are so kept and entered up as to enable the accounts to be properly and conveniently audited, and the Board approves of the system employed by the finance broker of recording the receipt of moneys.

(6) On receipt of any moneys by a finance broker in respect of a loan, or in respect of interest on a loan, he shall render to the person on whose behalf the money is received an account in writing of all such moneys and of the application thereof.

Duty of finance broker to have trust accounts audited

50. (1) Every person who carries on business as a finance broker during the whole or any part of that year shall cause his trust accounts for that year, or part of a year, as the case may be, to be audited by an auditor duly qualified or approved under this division.

(2) The auditor shall conduct the audit in accordance with accepted auditing practice, including selective testing when the auditor considers it appropriate and in accordance with such other requirements as are determined by the Board.

(3) The auditor shall within 3 months after the end of each year—

- (a) deliver to the Board a report of the result of the audit, verified by statutory declaration of the auditor, in an approved form; and
- (b) deliver a copy of the report so verified to the finance broker.

(4) The finance broker shall retain the copy of the report and produce it on demand pursuant to section 60 (3).

(5) The Board may, in circumstances it considers appropriate, extend the time limit for lodging reports.

(6) The auditor shall deliver an interim report to the Board if at any time he discovers any irregularity in the trust accounts of the finance broker or discovers any other matter in respect of those accounts which the auditor considers should be reported to the Board and he shall verify the interim report by statutory declaration and deliver a copy of the report so verified to the finance broker.

(7) The Board may require the auditor to furnish further information or carry out a further audit at any time, and the auditor shall comply with that requirement, and the cost of so doing shall be paid by the finance broker if the Board so directs but otherwise shall be paid by the Board.

(8) Apart from the annual audit and any interim audit provided for in this section, there shall be a quarterly audit in respect of the trust accounts of a finance broker for the first 3 months during which he carries on business as such after the appointed day, and such quarterly audit shall be conducted in accordance with such provisions of this division in respect of the annual audit as are capable of being applied to the quarterly audit, and the auditor shall within 2 months after the end of the first 3 months deliver to the Board a report of the result of such quarterly audit.

(9) The Board may, if it thinks fit, waive in respect of a finance broker's trust accounts the requirement of a quarterly audit mentioned in subsection (8).

Variation of date of audit

51. (1) Notwithstanding anything in this Division a finance broker may apply in writing to the Board to fix some date other than 31 December, as the date up to which his trust accounts are to be audited, and the Board may, in its discretion, permit the finance broker to substitute such other date for 31 December.

(2) The Board may, upon giving not less than one years' notice to the finance broker affected, revoke any permission granted under this section.

(3) When permission is granted under this section the Board shall fix the period in respect of which the first audit shall be made, and the permission may be given upon such conditions, with respect to the time within which the first or any subsequent audit shall be made or otherwise, as the Board may think fit.

(4) So long as the permission remains in force, and subject to any conditions which may be imposed, section 50 shall, in relation to the finance broker concerned, be read as if such other date was substituted for 31 December.

(5) When any date has been substituted for 31 December under this section, the date so substituted shall not be further changed except by permission of the Board granted in accordance with this section.

Qualification and approval of auditors

52. (1) Subject to subsection (2), no person is qualified to act as an auditor under this Division unless he is a registered company auditor within the meaning of the *Companies (Western Australia) Code*.

(2) In districts in respect of which the Board is satisfied that no registered company auditor within the meaning of the *Companies (Western Australia) Code* is available, such other persons with such other qualifications as are approved by the Board may act as auditors under this Division.

(3) No person shall audit the accounts of a finance broker if he is an employee or partner of that finance broker, or if he is an employee or partner of any other finance broker actually carrying on business as such, or he is himself carrying on business as such.

(4) An auditor shall disclose to the Board any close relationship by blood or marriage he has with a finance broker whose trust accounts he has been appointed to audit or any business dealings he has with or through such finance broker at any time during his appointment as auditor, and the Board may, if it thinks fit, disqualify that auditor from acting in that particular case.

[Section 52 amended by No. 10 of 1982 s. 28.]

Appointment of auditor

53. (1) Subject to the provisions of this Division the auditor by whom the audit of, and reports on, a finance broker's trust accounts are to be made shall be appointed and employed for that purpose by that finance broker.

(2) A finance broker shall appoint his auditor at the time of applying for his licence.

(3) Subject to this Act, an auditor's appointment under this section is continuous unless the Board approves a subsequent change in the appointment.

Power to give directions for audit of business carried on at more than one place

54. In the event of a finance broker carrying on business at more than one place the Board may from time to time give such directions as it thinks fit for separate audits of the trust accounts in respect of the business carried on at each place, or for the acceptance by the auditor of the certificates of some person or persons approved by the Board with respect to the examination of the trust accounts kept at any branch office of the business.

Alteration of rights under this Division

55. The Board may, if in its opinion just cause exists for doing so—

- (a) cancel or suspend the right of any person to act as auditor under this Division;
- (b) vary or revoke any other approval, direction, permission, or authority granted or given by it under this Division.

Determinations of Board to be subject to review by District Court

56. (1) In the exercise of the discretions conferred by this Division the Board may inform its mind as it thinks fit.

(2) A person aggrieved by any decision or determination of the Board under this Division may apply to the Board in writing to refer that decision or determination to the District Court for review.

(3) Upon the application, the Board shall submit the facts to the District Court for its opinion or direction thereon, and shall abide by the decision of the District Court, which shall be final.

(4) When the Board submits the facts to the District Court pursuant to subsection (3), the Board shall serve a copy of its submission on the aggrieved person and the person shall have the right to make a submission to the District Court.

(5) The submission of the aggrieved person shall be made within one month of the service on him of a copy of the Board's submission and in such manner as the District Court directs, but the District Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the submission of the aggrieved person shall be made within that time.

Duties of finance brokers with respect to audit

57. (1) For the purposes of an audit or report under this Division every finance broker shall, as and when the auditor requires, produce to the auditor his books and all papers, accounts, documents, and securities in his possession, custody, or power in any way relating to any moneys received by the finance broker for or on behalf of any other person and shall furnish the auditor with all such information and particulars as he reasonably requires.

(2) The auditor may examine such books, papers, accounts, documents, and securities at any time, either during or after, the end of the period in respect of which the audit is made.

Duty of banker with respect to audit

58. Every banker of a finance broker shall, on request of any auditor engaged in the audit of that finance broker's trust accounts under this Division, produce to that auditor all such books, papers, accounts, documents and securities as may be reasonably necessary for the purposes of the audit.

Contents of auditor's report

59. Every auditor of a finance broker's trust accounts shall include in his report furnished pursuant to section 50 a statement as to the following matters—

- (a) whether the trust accounts of such finance broker have in the opinion of the auditor been kept regularly and properly written up;
- (b) whether the trust accounts of such finance broker have been ready for examination at the periods appointed by the auditor;
- (c) whether such finance broker has complied with the auditor's requirements;
- (d) whether in the opinion of the auditor such finance broker's trust accounts are in order or otherwise; and
- (e) any matter or thing in relation to such trust accounts which should in the opinion of the auditor be communicated to the Board.

Statement of moneys, etc., held by finance broker for or on behalf of other persons

60. (1) Every finance broker shall prepare and certify under his hand and produce to the auditor who audits his trust accounts a statement setting forth in detail particulars of—

- (a) moneys held, on the last day of the period to which the audit relates, by the finance broker for or on behalf of any other person; and
- (b) negotiable or bearer securities or deposit receipts in the name of the finance broker which represent moneys drawn from the finance broker's trust accounts and which are held by the finance broker on that day.

(2) The auditor shall examine the statement and endorse on it a certificate as to whether or not it is correct, and deliver it to the finance broker.

(3) The statement so delivered shall be retained by the finance broker and be produced on demand to the auditor making the next succeeding audit of the finance broker's trust accounts together with a copy of the report of the last preceding audit of those accounts verified by statutory declaration of the then auditor.

(4) Where a finance broker's accounts are being audited for the first time or, where for any other reason, no statement containing the particulars set out in subsection (1) and relating to the previous period of audit is available for the purpose of audit, the finance broker shall in lieu thereof make out and produce to the auditor before the making of his report, a statement containing the like particulars as to moneys and negotiable securities held on the first day of the period to which the audit relates.

(5) Every statement made under this section shall be verified by the statutory declaration of the finance broker, or, in the case of a firm, by the statutory declaration of one of the partners, or, in the case of a body corporate, by the person in *bona fide* control of the finance broker's business.

Auditor's report where finance broker has not complied with Act, etc.

61. If an auditor in the course of auditing a finance broker's trust accounts discovers that the accounts are not kept in such a manner as to enable them to be properly audited, or discovers any matter which appears to him to involve dishonesty or a breach of the law on the part of the finance broker, or discovers loss or deficiency of trust moneys, or failure to pay or account for any such moneys, or to comply with the provisions of this Division, he shall fully set out the facts so discovered by him in the report to be delivered to the Board.

Non-disclosure by auditors

62. (1) Except where this Division provides otherwise an auditor shall not divulge to any person, or in any proceeding, any information which he has obtained in the course of conducting any audit under this Division.

(2) An auditor is not guilty of a breach of subsection (1) by disclosing information—

- (a) by means of, or in a report made pursuant to this Division; or
- (b) in or for the purpose of any legal proceedings arising out of any such report or instituted in connection with the trust accounts of the finance broker to whom the information relates.

Right of persons beneficially interested to obtain information

63. (1) On request by any person interested in any moneys or securities held or which ought to be held or which have been received by a finance broker, the Board may disclose to such person or his solicitor such portion of any report of an auditor, or of any statutory declaration, statement, or other document delivered to the Board under this Division as affects or may affect such person.

(2) A report of an auditor under this Division or a statutory declaration, statement, or other document delivered to the Board under this Division shall be available in the hands of the Board for inspection by any other auditor appointed to audit the accounts of the same finance broker for the next succeeding year.

Penalty for breach

64. (1) A person who contravenes or does not observe any of the foregoing provisions of this Division commits an offence.

Penalty: \$300.

(2) If an offence against those provisions is committed by a body corporate, the body corporate itself and every director, manager, secretary or other officer of the body corporate who commits, authorizes or permits the act or omission constituting the offence, commits the offence.

Remuneration of auditor

65. Subject to the other provisions of this Division, the reasonable fees and expenses of an auditor for an audit under this Division shall be payable by the finance broker.

Finance brokers having no accounts to audit

66. A finance broker who, in the course of his business, has in any year neither received nor held any money for or on behalf of any other person shall be deemed to have complied with this Division if within the period of 3 months after the end of that year he makes a statutory declaration to that effect and delivers it to the Board.

Accounts of firm or body corporate or finance broker with branch office

67. (1) Where trust accounts are kept by a firm of finance brokers an audit of those accounts under this Division and the certificates and report of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to each finance broker who is a member of such firm.

(2) Where trust accounts are kept by a body corporate an audit of those accounts under this Division and the certificates and report of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to a finance broker who is a director of that body corporate and in relation to the finance broker who is in *bona fide* control of the finance broker's business of the body corporate.

(3) Where trust accounts are kept by a finance broker who or which has a branch office an audit of those accounts under this Division and the certificates and report of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to a finance broker who is the manager of the branch office.

Power of Board to order audit of trust account

68. Without prejudice to the operation of the foregoing provisions of this Division, where the Board is of the opinion that it is in the public interest to do so, it may, at any time, cause the trust accounts of a finance broker to be audited by an auditor nominated in writing by the Board for that purpose.

Finance broker to produce books, etc. to auditor

69. Every finance broker shall, at all reasonable times at each place of business at which he carries on business as a finance broker, keep open for inspection—

- (a) by the auditor nominated by the Board; or
- (b) by any other person authorized in writing in that behalf by that auditor,

all of his trust accounts that relate to the business carried on by him at that place of business and all other books, accounts and records relating to that business that are required by the auditor for the purpose of carrying out an effective audit of the trust accounts of the licensee.

Cost of audit

70. The cost of an audit carried out pursuant to section 68 shall be as agreed between the Board and the auditor and paid as the Board in writing directs, either by the Board or by the finance broker whose trust accounts have been the subject of the audit.

Application of s. 62

71. The provisions of section 62 apply to an auditor nominated by the Board under section 68 or any person authorized by him under section 69 with such modifications as circumstances require.

Power of restraining dealing with trust accounts or other accounts

72. (1) Where the Board, on an application made by it to the District Court, shows by evidence on affidavit to the satisfaction of the District Court that—

- (a) there are reasonable grounds for believing that there is a deficiency in the trust account of any finance broker; or

- (b) there has been undue or unreasonable refusal, neglect or delay on the part of any finance broker in paying moneys,
 - (i) which are, or may be, or have been payable out of the trust account of the finance broker; or
 - (ii) which were required to be paid into the trust account by the finance broker under the provisions of this Division, to a person who is entitled thereto or is authorized to receive the moneys,

the District Court may, if it thinks fit, make an order that the manager or other officer for the time being in charge of the bank in which the trust account or any other account in the name of the finance broker is kept, be restrained, until the order is made absolute or discharged, from paying out, transferring or otherwise dealing with any moneys standing to the credit of the trust account or any other account kept at the bank in the name of the finance broker.

(2) An order made under the provisions of this section may contain such terms and conditions as the District Court in the circumstances thinks fit and the order may relate to all or any one or more of the trust or other accounts, as the District Court determines.

(3) The order shall be made in the first instance *ex parte*, without any notice to the finance broker and is an order to show cause only.

(4) Unless the finance broker referred to in the order shows to the District Court within the time specified in the order sufficient cause to the contrary, the order, after proof of service as required by section 79, shall be made absolute.

(5) In this section and in such provisions of other following sections of this Division as relate to this section or an order made under it—

- (a) “trust account” includes a bank account, whether a general or a separate account, into which account, moneys received or held by a finance broker for or on behalf of any other person are or were required to be paid under this Division; and
- (b) “finance broker” includes a person who has carried on business as a finance broker at any time within a period of 12 months prior to the date of the making of the application under subsection (1).

Appointment of supervisor

73. (1) Where the District Court, on the application of the Board, notice whereof shall be given to the finance broker, is satisfied that there are reasonable grounds for believing that a finance broker is, for any reason incapable of properly conducting his business, or is not conducting it in accordance with this Act, the District Court may—

- (a) suspend the finance broker from carrying on his business for such period as may be specified in the order;

- (b) restrain the finance broker and his bankers and their respective servants and agents from dealing in all or any of the bank accounts of the finance broker, subject to such terms and conditions as the District Court thinks fit;
 - (c) authorize the Board to appoint a supervisor of the business of the finance broker;
 - (d) authorize the Board to suspend the finance broker from carrying on his business until further notice; and
 - (e) make such other and further orders as the District Court thinks fit.
- (2) Where the District Court is satisfied, on the application of the Board, that a sole finance broker has died, the District Court may—
- (a) restrain the personal representative, and the former servants, agents, and bankers, of the deceased finance broker, and the servants and agents of those former bankers from dealing in all or any of the bank accounts of the deceased finance broker, subject to such terms and conditions as the District Court thinks fit; and
 - (b) authorize the Board to appoint a supervisor of the business of the finance broker.
- (3) Where the District Court authorizes the Board to appoint a supervisor pursuant to the power conferred by subsection (1) or (2) the District Court—
- (a) may order that the supervisor be empowered to withdraw moneys from any bank account of the finance broker or deceased finance broker; and
 - (b) may order that the Board—
 - (i) take possession of the moneys constituting the trust account of the finance broker or deceased finance broker or, where the case requires, the balance of such moneys;
 - (ii) deposit such moneys, or such balance, in a separate account at the Treasury in the name of the Board; and
 - (iii) deal with those moneys according to law.
- (4) If an order is made under subsection (3) (b)—
- (a) the Board may, on the certificate of the supervisor, pay to him or as he directs in the certificate, out of the moneys deposited in the separate account under the order, such amount or amounts as are specified in the certificate, without enquiring as to, or being liable in respect of, the correctness of the certificate or the application of any money paid on the certificate; and
 - (b) the District Court may, on the application of the Board, or any person interested give such directions as the District Court thinks fit for the payment by the Board of any part of the moneys deposited in the separate account under the order.

Effect of orders under s. 73

74. (1) Where an order made under section 73 authorizes the Board to appoint a supervisor, the Board during the currency of the order—

- (a) may, on such terms and conditions as to remuneration and indemnity as the Board thinks fit appoint a person, licensed or unlicensed, as supervisor of the business of the finance broker or deceased finance broker referred to in the order;
- (b) may authorize the supervisor to obtain an advance from the Treasurer, which the Treasurer is hereby authorized to make on such terms and conditions as the Treasurer thinks fit, for the purpose of carrying on the business of the finance broker or deceased finance broker; and
- (c) may determine what, if any, proportion of remuneration or other proper charges recovered on account of the finance broker or deceased finance broker, shall be paid to the finance broker or the personal representative of the deceased finance broker and what proportion shall be paid to the Board towards the expenses and remuneration of the supervisor and for re-imburement of advances made under paragraph (b).

(2) An appointment of a supervisor shall be in writing and be signed by the Chairman or by 2 members of the Board.

Duties of supervisor

75. (1) The supervisor shall carry on the business for the purpose of concluding or disposing of matters commenced but not concluded on behalf of clients of the business and, where necessary, for the purpose of disposing of, or dealing with, documents relevant to those matters, and, in the case of the business of a deceased finance broker, shall carry on the business until it can otherwise be dealt with according to law.

(2) The supervisor may, on production of his instrument of appointment—

(a) require—

- (i) the finance broker to whom the appointment relates, or any of his clerks, servants, or agents, or in the case of a deceased finance broker, his personal representative or any of the former clerks, servants, or agents of the deceased finance broker to produce to the supervisor any books, files, papers, or documents relating to the practice that, in the opinion of the supervisor, may be reasonably necessary for the purposes of carrying on the business;
and
- (ii) the manager or principal officer of a bank in which the finance broker or deceased finance broker to whom the appointment relates has or had deposited money, notwithstanding any rule or law to the contrary, to disclose

every account of that finance broker or deceased finance broker that, in the opinion of the supervisor, may be relevant to the carrying on of the business and to permit the making of a copy or extract of any such account;

- (b) enter upon any premises of the finance broker to whom the appointment relates, or, in the case of a deceased finance broker, his former premises, and take possession of all books, files, papers, documents, and other things relating to the business, and that, in the opinion of the supervisor, may be relevant to or necessary for the carrying on of the business.

Offence

76. A person who, being required to do anything by a supervisor pursuant to the powers conferred on the supervisor by this Act, without lawful excuse of which the proof lies on him, refuses or fails to do the thing required or who hinders or obstructs the supervisor in the exercise of his powers or hinders or obstructs the supervisor, or any person employed by him, in the performance of his duties commits an offence.

Penalty: \$400.

Power of finance broker to apply for discharge or variation of order

77. A finance broker, or the personal representative of a deceased finance broker, whose account is the subject of an order made under the provisions of section 72 or 73 may apply to the District Court to discharge or vary the order and to award such costs upon the application as it thinks fit and the District Court is hereby empowered to discharge or vary the order and to make such further order as it thinks fit.

Power of District Court to make further orders and give directions

78. (1) The District Court may, on the application of the Board, the Treasurer, or the finance broker, or the personal representative of a deceased finance broker, referred to in an order made under the provisions of section 72, 73, or 77 make further orders—

- (a) discharging or varying any order so made; and
- (b) directing that any moneys in any account affected by an order so made shall be paid to the Treasurer by the bank on such terms and conditions as the District Court thinks fit.

(2) The Treasurer, on receiving moneys paid pursuant to an order made under subsection (1) (b)—

- (a) shall cause the moneys to be paid into a separate account to be kept at the Treasury;
- (b) may prepare a scheme for distributing the moneys as compensation to each person who claims compensation at any time within 6 months after the Treasurer receives the money, and

proves to the satisfaction of the Treasurer that the person has, in respect of any loan or interest thereon, sustained loss through any act or omission of the finance broker, or deceased finance broker or his personal representative, in respect of whose accounts the order was made;

- (c) may, if the moneys are not sufficient to pay all proved claims, apportion the moneys among claimants in proportion to their proved claims and show in the scheme for distribution how the moneys are so apportioned.

(3) Where the Treasurer prepares a scheme for distribution he shall apply to the District Court for approval of the scheme and for directions in respect thereof.

(4) The District Court may give such directions in respect of the separate account at the Treasury, the moneys therein, the persons to whom and in what amounts the whole or any portion of the moneys standing to the credit of the account shall be paid by the Treasurer, and as to the payment of the balance of the moneys then remaining in the account, if any, as it thinks fit.

Service of orders and penalty for non-compliance therewith

79. (1) The Board shall, as soon as practicable after any order is, on the application of the Board, made under the provisions of section 72, 73, or 78 serve or cause to be served a copy of the order—

- (a) on the manager or other officer for the time being in charge of the office of the bank in which any account referred to in the order is kept;
- (b) on the finance broker or the personal representative of a deceased finance broker in whose name the account is kept; and
- (c) where it is an order under section 78 (1) (b), on the Treasurer.

(2) A finance broker, or the personal representative of a deceased finance broker, shall, as soon as practicable after any order is, on his application, made under the provisions of section 77 or 78, serve or cause to be served a copy of the order—

- (a) on the manager or other officer for the time being in charge of the office of the bank in which any account referred to in the order is kept;
- (b) on the Board; and
- (c) where it is an order under section 78 (1) (b), on the Treasurer.

(3) The Treasurer shall, as soon as practicable after any order is, on his application, made under the provisions of section 78, serve or cause to be served a copy of the order—

- (a) on the manager or other officer for the time being in charge of the office of the bank in which any account referred to in the order is kept;

- (b) on the finance broker, or the personal representative of a deceased finance broker, in whose name the account is kept; and
- (c) on the Board.

(4) Every person on whom an order is served shall comply with the order and shall permit others affected thereby to do so.

(5) A person, in addition to any other penalty or liability he may incur in failing to comply with the order or failing to permit others affected thereby to do so, who omits to do that which he is required under the order to do, or does that which he is prohibited under the order from doing, commits an offence against this Act.

Penalty: \$400.

(6) This section is sufficient authority and indemnity for complying with an order so made and served.

Duty of bank manager to disclose existence of banking accounts of finance broker

80. Where the manager or other officer for the time being in charge of the office of a bank is served with a copy of an order made under the provisions of section 72 or 73, he shall—

- (a) disclose in writing to the Board each and every account kept at the bank in the name of the finance broker, or in the name of the deceased finance broker or his personal representative, referred to in the order, including any account which he reasonably suspects is held or kept at the bank for the benefit of the finance broker or the estate of the deceased finance broker; and
- (b) permit the Board or any person authorized in writing by it to inspect and make and take away with him a copy of or an extract from the account or of or from any book, account, document or writing relating to the account.

Division 3—Discipline

Finance brokers code

81. The Board may approve a code of conduct for finance brokers.

Inquiries into conduct of finance brokers

82. (1) The Board may on the application of the Registrar, an inspector, or any other person, or of its own motion hold an inquiry into the conduct of any finance broker for the purpose of determining whether or not the finance broker is acting in conformity with the special conditions, if any, of his licence and annual certificate and with the finance brokers code of conduct and is complying with the requirements of this Act.

(2) An application under subsection (1) shall be made in writing and in a manner and form determined by the Board in respect of such an application and shall contain such information as is required by the Board in respect of such an application.

(3) The information contained in the application shall be verified by statutory declaration of the applicant.

(4) In respect of any particular application the applicant shall furnish the Board with such further information as the Board determines, verified if the Board so requires by statutory declaration.

(5) An applicant, if any, and the finance broker are parties to an inquiry held under subsection (1).

Powers on inquiry

83. (1) If after conducting an inquiry under section 82 (1) the Board is satisfied that proper cause exists for disciplinary action, the Board may do any one or more of the following things—

- (a) reprimand or caution the finance broker;
 - (b) impose a fine not exceeding \$1 000 on him; and
 - (c) suspend or cancel his licence and any annual certificate in respect thereof and, in addition, disqualify him either temporarily or permanently, or until the fulfilment of any condition which may be imposed by the Board, or until the further order of the Board, from holding a licence or annual certificate, or both.
- (2) There shall be proper cause for disciplinary action if—
- (a) the finance broker improperly obtained a licence or annual certificate;
 - (b) the finance broker, or any person acting with the authority or upon the instructions of the finance broker, has, in the course of any dealings with a borrower or a lender or a prospective borrower or lender, been guilty of conduct that constitutes a breach of any law other than this Act and that prejudices or may prejudice any rights or interests of the borrower or lender or prospective borrower or lender;
 - (c) the finance broker is acting or has acted in breach of—
 - (i) a special condition of his licence or annual certificate;
 - (ii) the requirements of this Act; or
 - (iii) the finance brokers code of conduct; or
 - (d) any other cause exists that, in the opinion of the Board, renders the finance broker unfit to hold a licence.

(3) Where the Board suspends or cancels a licence or an annual certificate, or both, the suspension or cancellation shall take effect immediately, and shall not be deferred by reason of any proposed or pending appeal to the District Court under this Act unless the District

Court otherwise orders, which it may do if it thinks fit subject to such conditions as it may impose to protect clients and potential clients of the finance broker and the public generally.

PART V—MISCELLANEOUS

Registers

84. (1) The Registrar shall keep the following registers—

- (a) a register of licensees; and
- (b) a register of holders of annual certificates.

(2) The Registrar shall record in the registers any prescribed particulars.

(3) The Registrar shall cause to be removed from the registers the name of every licensee or holder of an annual certificate who dies or ceases for any reason to be licensed or to hold an annual certificate.

(4) The Registrar shall, upon receipt of the prescribed fee from a person desiring to inspect the registers, make them available for the inspection of that person.

Lists and certificates

85. (1) A list of the names and descriptions of all persons holding licences and an annual certificate on a date specified therein together with such of the particulars appearing in the registers as the Registrar thinks fit, shall be published in the *Government Gazette* annually.

(2) The registrar may cause supplementary lists to be published.

(3) A certificate under the hand of the Registrar that any person is or is not, or was or was not, licensed or the holder of an annual certificate on the date of, or a date referred to, in the certificate, or as to any other matter contained in a register, shall, in the absence of proof to the contrary, be taken as proof of the matter so certified.

(4) The Registrar shall, upon receipt of a request in writing by any person, and payment of the prescribed fee, issue a certificate as to any of the contents of the register.

Annual report

86. (1) The Chairman shall, on behalf of the Board, as soon as practicable after 1 July in each year, submit to the Minister a report on the activities under this Act of the Board for the year ending on 30 June last preceding.

(2) The Minister shall cause the report to be laid on the Table of each House of Parliament within 14 days of its receipt, or if at that time Parliament is not in session, then within 14 days of the commencement of the next session of Parliament.

Immunity of Board and officers

87. No liability shall attach to a member or the deputy of a member, or the Registrar, an inspector, or any other officer, of the Board for any act or omission by him, or by the Board, in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge or purported discharge of his or its duties under this Act.

Secrecy

88. (1) This section applies to any person who is, or has been, a member or the deputy of a member, or the Registrar, an inspector, or any other officer, whether permanent or temporary, of the Board.

(2) A person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act, make a record of, or divulge or communicate to any person, any information concerning the affairs of any other person acquired by him by reason of his office or employment under or for the purposes of this Act.

Penalty: \$500.

Liability of directors of body corporate

89. Where a finance broker is a body corporate all its directors are jointly and severally liable to the clients of the body corporate for its acts and defaults in respect of the proper application of trust funds received by the body corporate from or on behalf of its clients.

Other rights or remedies

90. Except as is expressly provided in this Act, nothing in this Act shall have the effect of limiting, restricting, or otherwise affecting any right or remedy a person would have had if this Act had not been enacted.

No waiver of rights

91. A person is not competent to waive any rights conferred on him by this Act.

General penalty

92. (1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act.

(2) A person who commits an offence against this Act for which no other penalty is expressly provided in this Act is liable to a penalty of \$200.

Proceedings

93. (1) Proceedings for an offence against this Act may be taken by the Registrar or an inspector.

(2) Notwithstanding the provisions of any other Act, proceedings for an offence against this Act may be brought within the period of 3 years after the commission of the alleged offence or, with the consent of the Minister, at any later time.

(3) Without limiting the application of section 72 of the Justices Act 1902 in relation to a complaint for an offence against this Act, in any proceedings for an offence against this Act an allegation in the complaint that a person named therein was or was not licensed or the holder of an annual certificate at the time specified therein shall, in the absence of proof to the contrary, be taken as proved.

Forms

94. In addition to the forms for purposes expressly mentioned elsewhere in this Act, the Board may determine the forms to be used for other purposes under this Act and the information to be contained therein and may require that such information be verified by statutory declaration.

Regulations

95. (1) The Governor may make such regulations as are contemplated by this Act or as he considers necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) prescribe the procedure of the Board;
- (b) provide for the enforcement of judgments and orders of the Board;
- (c) provide for the advertising of notices of applications for licences;
- (d) prescribe, and provide for the recovery of, any fee for the purposes of this Act;
- (e) prescribe the particulars to be recorded in the registers required to be kept under this Act;
- (f) prescribe a scale of costs for proceedings before the Board; and
- (g) prescribe penalties not exceeding \$100 for any breach of the regulations.

PART VI—TRANSITIONAL**Interpretation**

[Section 96 omitted under section 7 (4) (g) Reprints Act 1984.]

Notice to be given by finance brokers

[Section 97 omitted under section 7 (4) (g) Reprints Act 1984.]

Application of Act during transitional period

[Section 98 omitted under section 7 (4) (g) Reprints Act 1984.]

SCHEDULE

Section 45

FORMULA FOR CALCULATING PERCENTAGE RATE OF INTEREST

(1) The rate at which the interest accrues upon the principal is that nominal annual percentage rate (correct to within one-half of one per cent) which, when applied to the unpaid balances of the principal calculated according to the actuarial method, will yield a sum equal to the total amount of the interest.

(2) (a) In lieu of applying the actuarial method above, where repayment of the principal and interest is to be made by equal regular periodic payments, the first of which is to fall due at the end of the first period, then the nominal annual percentage rate referred to in paragraph (1) may be calculated in accordance with the following formulae:—

(i) to calculate the flat rate of interest per cent:

$$F = \frac{100c \times i}{n \times P}$$

(ii) to convert the flat rate of interest per cent into the nominal annual percentage rate:

$$R = \frac{2nF(300c + nF)}{2n^2F + 300c(n + 1)}$$

where (in each case)

“F”=the flat rate of interest per cent

“c”=the number of payments per annum

“i”=the total amount of the interest

“n”=the number of payments

“P”=the amount financed

“R”=the nominal annual percentage rate.

(b) For the purpose of applying the above formulae, all payments shall be deemed to be equal if the variance between any one payment only and all other payments does not exceed 5%.

(3) The disclosure of a percentage rate which is greater than the percentage rate required to be disclosed by either of the above methods shall be a sufficient disclosure.

NOTES

1. This reprint is a compilation as at 2 April 1986 of the Finance Brokers Control Act 1975 and includes all amendments effected by the other Acts referred to in the following table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
Finance Brokers Control Act 1975	88 of 1975	20 November 1975	1 November 1976 see <i>Gazette</i> 29 October 1976 p. 4103.	
Companies (Consequential Amendments) Act 1982 section 28	10 of 1982	14 May 1982	1 July 1982.	

² The appointed day is 1 August 1977; see *Gazette* 17 June 1977, p. 1834.

³ Now see the Securities Industry (Western Australia) Code.

⁴ Now see the Public Service Act 1978.

⁵ Now see the Insurance Act 1973 (Act of the Commonwealth).