

SECURITIES INDUSTRY.

No. 118 of 1970.

AN ACT to make provision for the regulation and control of Stock Exchanges, Stock Brokers and other persons dealing in Securities and for incidental and other purposes.

[Assented to 10th December, 1970.]

B^E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Securities Industry Act, 1970.* Short title.

2. This Act or any provision thereof shall come into operation on a date or dates to be fixed by proclamation. Commence-
ment.

Arrange-
ment.

3. This Act is arranged as follows—

PART I.—PRELIMINARY, ss. 1-6.

PART II.—STOCK EXCHANGES, ss. 7-9.

PART III.—LICENCES, ss. 10-30.

Division 1—General, ss. 10-23.

Division 2—Records, ss. 24-30.

PART IV.—ADMINISTRATION, ss. 31-33.

PART V.—CONDUCT OF SECURITIES BUSINESS, ss.
34-37.

PART VI.—ACCOUNTS AND AUDIT, ss. 38-54.

PART VII.—RESTRAINT ON DEALING WITH CERTAIN
BANK ACCOUNTS, ss. 55-58.

PART VIII.—FIDELITY FUNDS, ss. 59-77.

PART IX.—TRADING IN SECURITIES, ss. 78-80.

PART X.—MISCELLANEOUS, ss. 81-84.

Application
of this Act
to dealers,
etc.

4. (1) The Governor may, from time to time, by Order in Council declare that, subject to any terms and conditions he may see fit to impose by and specify in the Order, all or any of the provisions of this Act—

(a) do not apply to or in relation to any person specified in the Order or to or in relation to any person who is a member of a class of persons specified in the Order—

(i) who is or may be a dealer or investment adviser by reason only of his doing anything which is merely incidental to another business;

(ii) who does not deal in securities for or on behalf of any other person;

(iii) who is a dealer or investment adviser by reason only of the entering into by him of any transaction, or class of transactions, specified in the Order; or

(iv) who is an investment adviser who has no interest, either directly or indirectly, in any securities in respect

of which he gives advice and receives no commission or other consideration for giving that advice;

- (b) do not apply to or in relation to the representative of any person referred to in paragraph (a) of this subsection; or
- (c) do apply to and in relation to any person referred to in paragraph (a) or (b) of this subsection to such extent as is specified in the Order,

and this Act shall apply accordingly.

(2) The Governor may, from time to time, by Order in Council vary or revoke any Order made under subsection (1) of this section and this Act shall apply accordingly.

5. The Governor may, from time to time, by Order in Council declare an Act or enactment of another State, or of a Territory, of the Commonwealth to be a corresponding law for the purposes of this Act, and may, in a like manner, vary or revoke any such declaration.

Power to
declare other
Acts as
correspond-
ing law.

6. In this Act, unless the contrary intention appears—

Interpreta-
tion.

“agent”, in relation to a dealer, includes a person who is or at any time has been a banker of the dealer;

“auditor” means a registered company auditor within the meaning of the Companies Act, 1961;

“business”, in relation to a dealer, means the business of dealing in securities;

“committee”, in relation to a stock exchange, means the persons in whom the management of the stock exchange is for the time being vested;

“corresponding law” means any Act or enactment of any other State, or of a Territory, of the Commonwealth that the Governor, by Order in Council, declares to be a corresponding law for the purposes of this Act;

“Court” means the Supreme Court and includes a Judge, the Master and a Deputy Master of that Court, acting pursuant to the Rules of Court;

“dealer” means a person who carries on the business of dealing in securities, whether or not he carries on any other business, but does not include an exempt dealer;

“dealer’s representative” means a person in the direct employment of, or acting for, or by arrangement with, a dealer, not being a stock broker or exempt dealer, who performs for the dealer any of the functions of a dealer (other than work ordinarily performed by accountants, clerks or cashiers), whether his remuneration is by way of salary, wages, commission or otherwise; and, where the dealer is a corporation, the expression includes a director, member or officer of the corporation, however remunerated, who is not the holder of a dealer’s licence and who performs for the corporation any of the functions of a dealer;

“dealing in securities” means (whether as principal or agent) making, or offering to make, with any person, or inducing, or attempting to induce, any person to enter into or to offer to enter into any agreement (other than an exempt agreement)—

(a) for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or

(b) the purpose, or pretended purpose, of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities;

“exempt agreement” means—

- (a) any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities, or the purpose, or pretended purpose, of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities—

which is made by or with—

- (i) an exempt dealer;
 - (ii) any government, local government authority, or any body corporate or unincorporate and relates to subscriptions for or the disposal or acquisition or redemption of securities of or in that government local government authority or body corporate or unincorporate;
 - (iii) the underwriter of an issue of securities and relates only to the underwriting of the issue; or
- (b) an agreement or an agreement of a class that is under the regulations an exempt agreement or an agreement of an exempt class;

“exempt dealer” means—

- (a) a person who carries on the business of dealing in securities through a stock broker or the holder of a dealer’s licence and not otherwise;
- (b) a corporation that is declared by the Governor, pursuant to paragraph (b) of subsection (7) of section 38 of the Companies Act, 1961, to be an authorized dealer in the short term money market; or

- (c) any public statutory corporation constituted under a law of the Commonwealth or of a State of the Commonwealth;

“investment adviser” means a person who carries on the business of advising others concerning securities or who, as a part of a regular business, issues or promulgates analyses or reports concerning securities; but the expression does not include—

- (a) a bank as defined in section 5 of the Banking Act, 1959, of the Parliament of the Commonwealth, or any Act in amendment or substitution of that Act;
- (b) a corporation authorised 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;
- (c) a corporation registered under a law of the Commonwealth relating to life insurance;
- (d) a solicitor or public accountant in public practice as such whose carrying on of that business is solely incidental to the practice of his profession;
- (e) a dealer or exempt dealer whose carrying on of that business is solely incidental to the conduct of his business of dealing in securities; or
- (f) a person who is the publisher of a newspaper registered under a law of the Commonwealth for transmission by post as a newspaper, where—
 - (i) in so far as the newspaper is distributed generally to the public, it is so distributed only to subscribers for, and pur-

chasers of, the newspaper, for value;

- (ii) the advice is given, or the analyses or reports are issued or promulgated, only through that newspaper;
- (iii) that person receives no commission or other consideration for issuing or promulgating the analyses or reports; and
- (iv) the advice is given, and the analyses and reports are issued or promulgated, solely as incidental to the conduct of that person's business as such a publisher;

"investment representative" means a person in the direct employment of, or acting for or by arrangement with, an investment adviser, who performs for the investment adviser any of the functions of an investment adviser (other than work ordinarily performed by accountants, clerks or cashiers), whether his remuneration is by way of salary, wages, commission or otherwise; and, where the investment adviser is a corporation, the expression includes a director, member or officer of the corporation, however remunerated, who is not the holder of an investment adviser's licence and who performs for the corporation any of the functions of an investment adviser;

"licence" means—

- (a) a dealer's licence;
- (b) an investment adviser's licence; or
- (c) a representative's licence,

under Division 1 of Part III;

"member firm" means a firm that carries on the business of dealing in securities and is recognised as a member firm by a stock exchange;

“Part” means a part of this Act;

“Registrar” means the Registrar of Companies under the Companies Act, 1961, and includes a Deputy or Assistant Registrar of Companies;

“relevant authority” means in relation to—

- (a) a sole trader, the stock exchange of which the sole trader is a member;
- (b) a member firm, the stock exchange by which the firm is recognised; and
- (c) any other person, the Registrar;

“representative” means a dealer’s representative or an investment representative;

“rules”, in relation to a stock exchange, means the rules governing the conduct of the stock exchange or the members thereof, by whatever name called and wherever contained; and the expression includes rules contained in the memorandum of association and the articles of association of the stock exchange;

“section” means a section of this Act;

“securities” means debentures, funds, stocks, shares or bonds of any government or of any local government authority or of any body corporate or unincorporate and includes any right or option in respect of them or any of them and any interest as defined in section 76 of the Companies Act, 1961;

“sole trader” means a stock broker who carries on a business of dealing in securities on his own account and not in partnership;

“stock broker” means—

- (a) a member of a stock exchange; or
- (b) a partner of a member firm;

“stock exchange” means—

- (a) the body known as the Stock Exchange of Perth; and

- (b) any body corporate that has been approved by the Minister under subsection (2) of section 8;

“stock market” means a market, exchange or other place at which securities are regularly offered for sale, purchase or exchange; and

“trust account” means a trust account maintained pursuant to section 41;

PART II.—STOCK EXCHANGES.

7. A person shall not establish or maintain, or assist in establishing or maintaining, or hold himself out as providing or maintaining, a stock market that is not the stock market of a stock exchange.

Limitation on establishment of stock markets.

Penalty—For a first offence, one thousand dollars and, for any subsequent offence, on conviction on indictment, five thousand dollars.

8. (1) A body corporate may apply to the Minister, in the prescribed manner, to be approved as a stock exchange.

Power of Minister to approve as stock exchanges.

(2) The Minister may, by instrument under his hand, approve a body corporate as a stock exchange, if he is satisfied that—

- (a) at least ten members of the body will carry on the business of dealing in securities, independently of, and in competition with, each other;
- (b) the rules of the body make sufficient and satisfactory provision—
 - (i) for the exclusion from its membership of persons who are not of good character and reputed business integrity;
 - (ii) for the expulsion, suspension and disciplining by other means of its members, for conduct that is inconsistent with just and equitable prin-

ciples in the transaction of business or for contravention of, or failure to comply with, the rules of the proposed stock exchange or the provisions of this Act;

- (iii) with respect to the conditions under which securities may be listed for trading in the market of the proposed stock exchange;
 - (iv) with respect to the conditions governing dealing in securities by its members;
 - (v) with respect to the class or classes of securities that may be dealt in by its members; and
 - (vi) generally, for the carrying on of the business of the proposed stock exchange with due regard to the interests of the public; and
- (c) it is in the public interest that he approve the body corporate as a stock exchange.

Change of
rules.

9. (1) Where any amendment is made to the rules of a stock exchange, the committee shall cause notice of the fact, setting out the particulars, and the date, of the amendment, to be given to the Minister, within twenty-one days after the day on which the amendment was made.

(2) An amendment of which notice is not given within the period provided by subsection (1) of this section ceases, at the conclusion of that period, to have effect.

(3) The Minister may, within twenty-one days after the receipt of a notice duly given pursuant to subsection (1) of this section, by notice to the committee or governing body of the stock exchange, disallow the whole or any part of the amendment to which the former notice relates and the amendment or the part so disallowed thereupon ceases to have effect.

(4) A notice may be given under this section by personal service or by prepaid post.

PART III.—LICENCES.

Division 1—General.

10. (1) A person shall not carry on, or hold himself out as carrying on, the business of dealing in securities, unless he is the holder of a current dealer's licence, under this Division.

Dealer's
licence.

(2) The provisions of subsection (1) of this section do not apply to a stock broker or to an exempt dealer.

11. A person shall not act as a dealer's representative, unless he is the holder of a current dealer's representative's licence, under this Division.

Dealer's
representa-
tive's licence.

12. (1) A person shall not act as, or hold himself out as being, an investment adviser, unless he is the holder of a current investment adviser's licence, under this Division.

Investment
adviser's
licence.

(2) The provisions of subsection (1) of this section do not apply to a stock broker, to the servant of a stock broker or to the holder of a dealer's licence.

13. A person shall not act as an investment representative, unless he is the holder of a current investment representative's licence, under this Division.

Investment
representa-
tive's licence.

14. (1) A person applying for a licence, or the renewal of a licence, under this Division shall apply to the Registrar in the prescribed manner and shall tender the prescribed fee with his application.

Applications
for, or for
renewal of,
licences.

(2) An application for the renewal of a licence shall be made within the period of one month prior to the expiry of the licence.

(3) The Registrar may, before granting an application for a licence or the renewal of a licence, require the applicant to provide him with such further information as to the application as he thinks fit.

(4) The Registrar shall not, without first giving the applicant an opportunity of being heard, refuse to grant or renew a licence.

Registrar
to grant
or renew
licences in
certain cir-
cumstances.

15. (1) Subject to the succeeding provisions of this Part, the Registrar shall grant or renew a dealer's licence or an investment adviser's licence, if, after consideration of, in the case of—

(a) a natural person, the character and financial standing of the applicant; or

(b) a body corporate, the character of the directors and secretary of the applicant,

he is of the opinion that the applicant is a fit and proper person to hold a licence and that it is in the public interest that the licence should be granted or renewed.

(2) The Registrar shall grant or renew a dealer's representative's licence or an investment representative's licence if, after consideration of the character of the applicant, he is of the opinion that the applicant is a fit and proper person to hold the licence sought or sought to be renewed.

Penalty for
false or
misleading
statement.

16. A person who in connection with an application for a licence or for the renewal of a licence wilfully makes a statement false or misleading in a material particular knowing it to be false or misleading or wilfully omits to state any matter or thing without which the application is misleading in a material respect commits an offence against this Act.

Penalty: One thousand dollars or imprisonment for one year, or both.

17. (1) The Registrar may grant or renew a licence subject to such conditions and limitations as he thinks fit and, without limiting the generality of the foregoing, any of those conditions and limitations may relate to—

Power to impose conditions on licences.

- (a) the holding of a policy of indemnity insurance in a specified amount; or
- (b) terms on which services specified therein are rendered.

(2) The holder of a licence shall comply with a condition or limitation to which, under subsection (1) of this section, the granting or renewal of the licence is subject.

18. (1) The Registrar shall not grant or renew a dealer's licence unless the applicant lodges or has lodged with him a bond to Her Majesty and her successors, in the prescribed form and in the amount of ten thousand dollars, entered into by an insurance company carrying on business under, and in accordance with, the Insurance Act 1932, of the Parliament of the Commonwealth, or any Act in amendment or substitution of that Act, or by some other surety or sureties approved by the Registrar.

Bond in respect of a dealer's licence.

(2) A bond lodged pursuant to this section shall be conditioned upon the holder of the dealer's licence 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 shall provide that it enures during the term of the licence for which it is originally given and may also provide that it enures during the term of any licence to the same person issued in renewal of the dealer's licence.

(3) Where a bond enures in respect of the renewal or further renewal of a licence, the insurance company, surety or sureties may by notice in writing given to the Registrar determine its, his or their liability under the bond in respect of any act

or default that may be done or made after the current licence expires and the Registrar shall not renew the licence until another approved bond has been lodged by the applicant.

(4) Where, at any time during the currency of a dealer's licence, the bond lodged in respect of it ceases to be of full force and effect, the dealer is deemed to be unlicensed until another approved bond is lodged by him.

(5) The Court may, on the application of the Registrar and on being satisfied that any condition of the bond has been broken, assign the bond to the Registrar or to any other person and the Registrar or other person to whom the bond has been assigned or the executors or administrators of the estate of that other person is, upon the assignment, entitled to sue upon the bond in his or their own name or names, as if the bond had, in the first instance, been given to 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.

(6) An Order in Council made under section 4 may provide that this section does not apply to or in relation to a person who is a stockbroker, or the holder of a dealer's licence, under any corresponding law.

Change of
address.

19. (1) The holder of a dealer's licence or investment adviser's licence shall, upon any change in the address of the principal place of business at which he carries on the business in respect of which the licence is held, forthwith notify the Registrar of the new address in the prescribed form and, upon ceasing to carry on that business shall forthwith so notify the Registrar in the prescribed form.

(2) The holder of a representative's licence who ceases to be a representative of the dealer or investment adviser in relation to whom the representative's licence was issued shall forthwith so notify the Registrar in the prescribed form.

20. (1) Unless sooner renewed, a licence expires Currency of
licence. twelve months after the date of its issue.

(2) A licence that has been renewed pursuant to this Division continues in force for a period of twelve months from the date on which it would, but for its renewal, have expired.

21. (1) The Registrar shall keep in such form as he thinks fit a register of the holders of current licences, specifying— Register of
licence
holders.

(a) in relation to each holder of a dealer's or investment adviser's licence—

- (i) his name;
- (ii) the address of the principal place of business at which he carries on the business in respect of which the licence is held; and
- (iii) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and

(b) in relation to each holder of a representative's licence—

- (i) his name;
- (ii) the name of the dealer or investment adviser in relation to whom the licence was issued; and
- (iii) where the business of that dealer or investment adviser is carried on under a name or style other than the name of the dealer or investment adviser, the name or style under which that business is carried on.

(2) Any person may, upon payment of the prescribed fee, inspect and take extracts from the register kept under subsection (1) of this section.

(3) Except as provided in subsection (2) of this section, the power of inspection conferred by paragraph (a) of subsection (2) of section 12 of the Companies Act, 1961, shall not apply in respect of a document filed or lodged with the Registrar under this Act.

**Cancellation
of licences.**

22. (1) The holder of a licence under this Division may, on the complaint of the Registrar or of any other person, be required to show cause, before a court of summary jurisdiction constituted by a stipendiary magistrate, why the licence should not be cancelled and why he or it should not be disqualified, either permanently or temporarily, from holding a licence, on the ground, in the case of—

- (a) a natural person, that he is not a fit and proper person to hold a licence; and
- (b) a body corporate, that it is not a fit and proper person to hold a licence or that any director is not a fit and proper person to be a director, or that the secretary is not a fit and proper person to be the secretary, of a body corporate holding a licence under this Division.

(2) The court of summary jurisdiction may determine a complaint made under subsection (1) of this section and may, if satisfied that the relevant ground provided by that subsection has been established, order that the licence to which the complaint relates be cancelled and that the holder of the licence be disqualified, either permanently or for such period as it directs, from holding a licence under this Division.

Appeals.

23. (1) A person who is aggrieved by a decision of the Registrar, under this Division, may appeal, by way of complaint, to a court of summary jurisdiction constituted by a stipendiary magistrate, within thirty days after the decision is notified; and the court may determine the matter and dismiss or allow the appeal, as it thinks fit.

(2) A person who is aggrieved by a determination of a court of summary jurisdiction made under section 22 or under this section may proceed by way of order to review, as provided by the Justices Act, 1902.

(3) The Registrar shall give effect to every decision made by virtue of subsection (1) or (2) of this section.

Division 2.—Records.

24. (1) This Division applies to a person who is—

Application
of this
Division.

- (a) a dealer (other than a stock broker);
- (b) a dealer's representative;
- (c) an investment adviser;
- (d) an investment representative;
- (e) a person in the direct employment of or acting for or on arrangement with a stock broker and who performs for such stock broker any of the functions of a dealer or investment adviser (other than work ordinarily performed by accountants, clerks or cashiers) whether his remuneration is by way of salary, wages or commission or otherwise; or
- (f) a financial journalist—

but does not apply to a person who is resident in another State, or in a Territory, of the Commonwealth and who is required to comply with the provisions of a law of that State or Territory which corresponds to this Division.

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

(3) In this Division a reference to securities is a reference to securities of a corporation which is a public company under the law of any State, or

Territory, of the Commonwealth and to securities which are quoted or dealt in on a stock exchange in Australia.

Register of
securities.

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

(2) The register required to be kept under this Division shall be kept—

- (a) in the case of a person who is the holder of a licence under this Act at such place in the State as he nominates in his application for a licence; and
- (b) in any other case at the place in the State for the time being nominated by the person in a notice in writing lodged with the Registrar.

(3) Particulars of the securities in which a person to whom this Division applies has an interest and particulars of his interest in those securities shall be entered in the register within seven days of the acquisition of the interest or of the date on which this Act comes into operation, whichever is the later.

(4) For the purposes of this section—

- (a) where a person has an interest under a trust and the property subject to the trust consists of or includes securities and a person knows or has reasonable grounds for believing that he has an interest under the trust and that the property subject to the trust consists of or includes those securities that person is deemed to have an interest in those securities;
- (b) where a body corporate has an interest in securities and—
 - (i) the body corporate is or its directors are accustomed or under an obligation whether formal or informal to

act in accordance with the directions, instructions or wishes of a person in relation to those securities; or

- (ii) a person has, the associates of a person have, or a person and his associate have, a controlling interest in the body corporate—

that person is deemed to have an interest in those securities; and

- (c) where a body corporate that has not more than twenty members has an interest in securities a person who is a member of the body corporate and an associate of such a person is deemed to have an interest in those securities.

(5) Where there is a change (not being a prescribed change) in the interest or interests of a person to whom this Division applies in securities he shall, within seven days after the date of the change, enter in the register full particulars of the change including the date of the change and the circumstances by reason of which that change has occurred.

(6) For the purposes of subsection (5) of this section where a person acquires or disposes of securities there is deemed to be a change in the interest or interests of that person.

26. (1) A person to whom this Division applies shall give notice to the Registrar in the prescribed form containing such particulars as are prescribed including the place at which he will keep the register of his interests in securities.

Notice of
particulars
to Registrar.

(2) The notice shall be given—

- (a) in the case of a person who is required by this Act to hold a licence—as part of this application for the licence; or

(b) in the case of any other person—

- (i) if the person is a person to whom this Division applies at the date on which

this Act comes into operation—
within one month after that date;
or

- (ii) if the person becomes a person to whom this Division applies after that date—within fourteen days after becoming such a person.

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

(4) A person who ceases to be a person to whom this Division applies shall give notice to the Registrar of his so ceasing in the prescribed form within fourteen days of his so ceasing.

Penalty: Two hundred and fifty dollars.

Defence to
prosecution.

27. (1) It is a defence to a prosecution for failing to comply with section 25 or 26 if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that—

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

(2) For the purposes of subsection (1) of this section, a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular time of which a servant or agent of the person, being a servant or agent having duties or acting in relation to his master's or principal's interest or interests in the securities concerned, was aware at that time.

28. (1) The Registrar or any person authorized by him in that behalf may require any person to whom this Division applies to produce for inspection the register required to be kept pursuant to section 25 and the Registrar or any person so authorized may make copies of or make extracts from the register.

Production
of Register.

(2) Any person who fails to produce a register for inspection or fails to allow any person to make a copy of or make extracts from the register commits an offence against this Act.

29. (1) The Registrar or any person authorized by him in that behalf may by notice in writing require the proprietor or publisher of a newspaper or periodical to supply him with the name and address of the financial journalist who has contributed any advice or prepared any analysis or report that has been published in a newspaper or periodical owned or published by that proprietor or publisher or with the names and address of all the financial journalists who have contributed any such advice or prepared any such analysis or report within a period specified in the notice.

Particulars
of financial
journalist.

(2) A proprietor or publisher of a newspaper or periodical who wilfully fails to comply with a notice under subsection (1) of this section commits an offence against this Act.

30. The Registrar may supply a copy of a register or of any extract of a register to any person who in the opinion of the Registrar should in the public interest be informed of the dealing in securities disclosed in the register.

Extract of
register.

PART IV.—ADMINISTRATION.

31. (1) For the purpose of ascertaining whether the holder of a licence has complied with the provisions of this Act applicable to him in that capacity, and any conditions or restrictions subject to which

Inspection
of books
and records
of licensee
and others.

the licence was granted or renewed, the Registrar may inspect and make copies of or take extracts from—

- (a) any document, record or matter required by or under this Act or the conditions of the licence to be kept by the holder of that licence; and
- (b) any banker's books, or the books of a dealer, in so far as they relate to the business of the holder of that licence.

(2) In subsection (1) of this section "banker's books" includes any cheques, bills of exchange, promissory notes, orders for payment of money made or given by the holder of a licence, and securities held by a banker by way of pledge or otherwise in relation to the holder of a licence.

(3) The Registrar may require the holder of a dealer's licence to disclose to him in relation to any purchase or sale of securities the name of the person from or to or through whom the securities were bought or sold and the nature of the instructions given to the dealer in respect of that purchase or sale.

(4) The holder of a licence under this Act, any banker, and the servants and agents of those persons shall, on being required by the Registrar so to do, produce any document, record or matter referred to in subsection (1) of this section or disclose the information required under subsection (3) of this section.

(5) No person shall obstruct or hinder the Registrar in the exercise of any of his powers under subsection (1), (3), or (6) of this section or obstruct any person in the exercise of any of those powers that he is duly authorized to exercise.

(6) Where the Registrar has reason to suspect that the holder of a licence under this Act has contravened any of the provisions of this Act or has been guilty of any fraud or offence against this or

any other Act or law with respect to trading or dealing in securities, the Registrar may make such investigation as he thinks expedient for the due administration of this Act.

(7) Notwithstanding anything in this section, the Minister may, where it appears to him in the public interest so to do, appoint any person as an inspector to investigate any matter concerning trading or dealing in securities.

(8) The provisions of section 171, sections 173 to 179, both inclusive, and section 367 of the Companies Act, 1961, shall with such adaptations and modifications as are necessary apply to and in relation to an appointment under subsection (7) of this section and, without affecting the generality of the foregoing, those provisions shall be applied as if—

- (a) the particulars of the matters into which the investigation is to be made were affairs of a company; and
- (b) “officer” in relation to the matters into which the investigation is to be made meant any person whom the inspector has reasonable grounds for suspecting or believing to be capable of giving information in relation to the matters under investigation.

(9) Except where otherwise expressly provided by or under this or any other Act, any power, authority, duty or function conferred or imposed by or under this or any other Act on the Registrar may be exercised or performed by any person authorized by the Registrar to exercise or perform that power, authority, duty or function.

32. (1) Where, on the application of the relevant authority, it appears to the Court that a person has contravened this Act or any conditions of a licence he holds or is about to do an act with respect to dealing or trading in securities that, if done, would be such a contravention, the Court

Court may
make certain
orders.

may, without prejudice to any orders it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders—

- (a) in the case of persistent or continuing breaches of the Act or of the conditions of a licence he holds, an order restraining a person from carrying on a business of dealing in securities, acting as an investment adviser, or as a dealer's representative or investment representative, or from holding himself out as so carrying on business or acting;
- (b) an order restraining a person from acquiring, disposing of or otherwise dealing with any securities specified in the order;
- (c) an order appointing a receiver of the property of a dealer;
- (d) an order declaring a contract relating to securities to be void or voidable;
- (e) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; or
- (f) any ancillary order deemed to be desirable in consequence of the making of an order under paragraph (a), (b), (c), (d), or (e) of this subsection.

(2) The Court shall, before making an order under subsection (1) of this section, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(3) The Court may, before making an order under subsection (1) of this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(4) A person shall not contravene or fail to comply with an order under subsection (1) of this section.

Penalty: One thousand dollars or imprisonment for one year or both.

(5) Subsection (4) of this section does not affect the powers of the Court in relation to the punishment of contempts of the Court.

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

33. (1) If, on an application made to a judge of the Court in chambers by the relevant authority, there is shown to be reasonable cause to believe that any person has committed an offence in connection with trading or dealing in securities and that evidence of the commission of the offence is to be found in any books or papers of or under the control of a dealer or investment adviser (including banker's books as defined in subsection (2) of section 31 whether or not those books relate to the business of the dealer or investment adviser) an order may be made—

Production
and inspection
of books
where
offence
suspected.

- (a) authorizing the relevant authority to inspect those books or papers or any of them and make copies thereof or take extracts therefrom for the purpose of investigating and obtaining evidence of the offence; or
- (b) requiring the dealer or investment adviser or such other person as is named in the order to produce those books or papers or any of them to a person named in the order at a place so named.

(2) An order under this section shall not require books or papers to be produced at a place other than the place of business of the person named in the order unless the Court is satisfied that the books or papers are not required in the conduct of the business or that there are special reasons requiring the books or papers to be produced at some other place.

PART V.—CONDUCT OF SECURITIES BUSINESS.

Certain
representa-
tions pro-
hibited.

34. (1) A person who is the holder of a licence shall not represent or imply or knowingly permit to be represented or implied in any manner to any person that his abilities or qualifications have in any respect been approved by the Registrar.

(2) The statement that a person is the holder of a licence under this Act is not a contravention of this section.

Issue of
contract
notes.

35. (1) A dealer shall, in respect of a transaction of sale or purchase of securities (not being a transaction entered into in the ordinary course of business at a stock market between stockbrokers who are members of the stock exchange maintaining that stock market) forthwith issue a contract note that complies with subsection (2) of this section, to the purchaser or vendor with or for whom he contracts whether as principal or agent.

(2) A contract note issued by a dealer under subsection (1) of this section, shall include—

- (a) the name or style under which the dealer carries on his business as a dealer and the address of the principal place at which he so carries on business;
- (b) where the dealer is dealing as principal with a person who is not the holder of a dealer's licence, a statement that he is so acting;
- (c) the name of the person with whom the dealer has entered into the contract;
- (d) the day on which the transaction took place and where it did not take place in the ordinary course of business on a stock market a statement to that effect;
- (e) the number or amount and description of the securities which are the subject of the contract;
- (f) the price per unit of the securities;

- (g) the amount of the consideration;
- (h) if any commission is charged, the amount thereof and, in the case of a dealer who is not a stockbroker, the rate of commission;
- (i) the amounts of all stamp or other duties and taxes payable; and
- (j) if any amount is to be added to or deducted from the settlement amount in respect of the right to a benefit purchased or sold together with the securities, that amount and the nature of the benefit.

36. Where, in a letter, circular or other communication issued by him, a dealer or investment adviser recommends any securities, he shall cause to be included in the letter, circular or other communication, in type not less legible than that used in the body thereof, a concise statement of the nature and extent of his interest, if any, in the securities.

Disclosure
of certain
interests.

37. (1) A dealer shall not, as principal, deal in any securities with a person who is not the holder of a dealer's licence unless he first informs the person with whom he is dealing that he is acting in the transaction as principal and not as agent.

Dealings as
principal.

(2) For the purposes of subsection (1) of this section dealings as principal include dealings on behalf of a corporation in which the dealer has and, where the dealer carries on the business of dealing in partnership, the dealer and his partners together have, a controlling interest.

(3) Where a dealer has failed to comply with subsection (1) of this section in respect of a contract for the sale of securities by him, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission, in writing, given to the dealer within seven days after the receipt of the contract note and, where a dealer has failed to comply with that subsection in respect

of a contract for the purchase of securities by him, the vendor of the securities may, in the like manner, rescind the contract.

PART VI.—ACCOUNTS AND AUDIT.

Application
of Part.

38. (1) This Part applies to—

- (a) a dealer who is a stock broker under this Act, whether he carries on business in the State or elsewhere; and
- (b) a dealer who is not a stock broker under this Act, in relation to the part of his business which he carries on in the State.

(2) In this Part, unless a contrary intention appears, a reference to books, accounts, records, securities, trust accounts or business of, or relating to, a dealer who carries on business in partnership shall be read and construed as a reference to the books, accounts, records, securities, trust accounts or business of, or relating to, the partnership.

Accounts to
be kept by
dealers.

39. (1) A dealer shall cause such accounting and other records to be kept as will sufficiently explain the transactions, and reflect the financial position, of the business and enable true profit and loss accounts and balance sheets to be, from time to time, prepared; and shall cause the records to be kept in such a manner as will enable them to be conveniently and properly audited.

(2) Without affecting the generality of subsection (1) of this section, a dealer shall keep records in sufficient detail to show particulars of—

- (a) all moneys received and paid by the dealer, including moneys paid to, and disbursed from, a trust account;
- (b) all purchases and sales of securities made by the dealer and the charges and credits arising from them;

- (c) all income received from commissions, interest and other sources, and all expenses, commissions and interest paid, by the dealer;
- (d) all the assets and liabilities (including contingent liabilities) of the dealer;
- (e) all securities that are the property of the dealer, showing by whom the security documents are held and, where they are held by some other person, whether or not they are held as security against loans or advances;
- (f) all securities that are not the property of the dealer and for which the dealer or any nominee controlled by the dealer is accountable, showing by whom, and for whom, the security documents are held and the extent to which they are—
 - (i) held for safe custody; or
 - (ii) deposited with a third party as security for loans or advances made to the dealer; and
- (g) all purchases and sales of options made by the dealer, all fees (option moneys) arising from them and all related, covering transactions.

(3) Without affecting the operation of subsection (2) of this section, every dealer who is a sole trader or that is a member firm shall keep records in sufficient detail to show particulars of all transactions by the dealer with, or for the account of,—

- (a) clients of the dealer, excluding, where the dealer is a member firm, partners of the firm;
- (b) the dealer, himself, or, where the dealer is a member firm, partners of the firm;
- (c) sole traders or member firms, other than the dealer, within the State;
- (d) dealers outside the State; and
- (e) employees of the dealer.

(4) A dealer to whom or to which this Part applies and that carries on business outside the State shall cause a true copy of every profit and loss account and balance sheet prepared pursuant to any corresponding law to be sent to, and kept in, the State.

(5) A dealer shall take all such precautions for guarding against falsification, and all such steps for facilitating discovery of falsification, of any account or record required to be kept under this section, as may be reasonably necessary.

(6) Subject to the Division of the Evidence Act, 1906 that relates to reproduction of documents, a dealer shall retain, for a period of not less than seven years, the records that are required to be kept under this section, and for a period of not less than five years, every contract note received by him, and a copy of every contract note issued by him.

Disposition
of security
documents.

40. (1) Where security documents that are not the property of the dealer and for which the dealer, or any nominee controlled by the dealer, is accountable are held for safe custody, they shall be registered in the name of the person to whom the dealer or nominee is accountable or in the name of the dealer's nominee or shall be deposited in special safe custody with the dealer's bankers.

(2) A dealer shall not, without the authority in writing of the person to whom he is accountable in respect thereof, deposit any security documents of which the dealer is not the owner as security for loans or advances made to the dealer; and the authority shall specify the period for which it is current and shall, in any event, be renewed annually.

Trust
accounts.

41. (1) Every dealer shall maintain at least one trust account, designated or evidenced as such, with a bank in the State and shall pay to the credit of that account—

(a) moneys received from, for or on behalf of any client by whom instructions for the

purchase of securities have not then been given; and

- (b) moneys arising from the sale of securities on behalf of a client who has instructed that the moneys be held by the dealer, pending further instructions for settlement or reinvestment.

(2) A dealer shall pay moneys to the credit of a trust account, pursuant to subsection (1) of this section within three bank trading days after—

- (a) the moneys have been received in the circumstances mentioned in paragraph (a) of that subsection;
- (b) the receipt of documents that are to be delivered consequent upon a sale in the circumstances mentioned in paragraph (b) of that subsection.

(3) A dealer shall not withdraw moneys paid to the credit of a trust account pursuant to subsection (1) of this section, until buying or settlement instructions are received from the client to whom the dealer is accountable.

(4) Where a dealer holds moneys for a client against buying instructions and effect is not given to those instructions within a period of fourteen days after the receipt of the moneys, the dealer shall pay the moneys to the credit of a trust account and not withdraw them until effect has been given to the instructions.

(5) A dealer who contravenes, or fails to comply with, a provision of this section is liable to a penalty of five hundred dollars; and a dealer who does so with intent to defraud is liable, on conviction on indictment, to a penalty of one thousand dollars or to imprisonment for two years, or to both.

(6) Notwithstanding the preceding provisions of this section, where moneys required by this section to be paid to the credit of a trust account are received by a dealer in another State, or in a Territory, of the

Commonwealth, the moneys may be paid to the credit of a trust account kept by the dealer in a bank in that other State or in that Territory.

(7) Where a dealer is obliged to keep a trust account under any corresponding law, the provisions of this section are satisfied if he keeps a trust account in this State, in conformity with that law.

No execution
against trust
accounts.

42. (1) Moneys held in a trust account pursuant to this Part are not available for the payment of the debts of a dealer and are not liable to be paid or taken in execution under an order or process of any court.

(2) Nothing in this Part affects any lawful claim or lien that a person has against or over moneys received for the purchase, or from the sale, of securities before those moneys are paid to the credit of a trust account.

Appointment
of auditor
and lodging
of auditor's
report.

43. (1) Every dealer shall appoint an auditor to audit his accounts and shall, within fourteen days after an auditor relinquishes his appointment, appoint another auditor in his stead.

(2) Every dealer shall within three months after each financial year or within such extended time as may be allowed under this section, lodge with the relevant authority an auditor's report, containing such information as may be prescribed, for the period of that financial year.

(3) A relevant authority may, in any particular case, by reason of exceptional circumstances, extend the time within which an auditor's report is to be lodged under this section by any period not exceeding four weeks.

(4) Where a dealer fails to comply with the provisions of subsection (1) or (2) of this section, the relevant authority shall, upon becoming aware of it, report the failure to the Minister.

(5) in subsection (2) of this section—

“financial year” means—

- (a) where the dealer is not a corporation, the year ending on the thirtieth day of June; and
- (b) where the dealer is a corporation, the financial year of the corporation within the meaning of the Companies Act, 1961.

44. Where an auditor, in the performance of his duties as auditor for a dealer, becomes aware of any circumstance that may, in his opinion, adversely affect, or that has adversely affected, the financial position of the dealer, to a material extent, or that constitutes an offence against any provision of this Part, he shall, within seven days after becoming aware of that circumstance, send a written report of it to the relevant authority and a copy of the report to the dealer.

Auditor to report to relevant authority in certain cases.

45. (1) Where, after consideration of a report furnished pursuant to section 44, a relevant authority is not satisfied that—

Auditor's report to be sent to Minister in certain cases.

- (a) the financial position of the dealer to whom the report relates is such as will enable him to meet his commitments as a dealer; or
- (b) the dealer to whom the report relates has not complied with the requirements of this Part,

the relevant authority shall, and, in any event, may if it thinks fit, send the report to the Minister with such further report as it thinks fit to make.

(2) An action shall not lie against an auditor or a relevant authority by reason of any statement made in a report, if the statement is made without malice and for reasonable and probable cause.

Minister
may appoint
independent
auditor.

46. Where the Minister receives—

- (a) a report from a relevant authority pursuant to subsection (4) of section 43; or
- (b) an auditor's report sent to him by a relevant authority pursuant to section 45,

he may, if he is satisfied that it is in the interest of the dealer to whom the report relates, the clients of the dealer or the public, generally, to do so, by instrument under his hand, appoint an independent auditor to examine, audit and report on the books, accounts and records of, and the securities held by, the dealer either generally or in relation to any particular matter.

Appointment
of auditor
on applica-
tion of
client.

47. (1) Where the Minister receives, whether directly from the complainant or from a relevant authority, the complaint in writing of a person who alleges that a dealer has failed to account to the complainant for moneys or securities received or held by the dealer or for or on behalf of the dealer, the Minister may, by instrument under his hand, appoint an independent auditor to examine, audit and report on the books, accounts and records of, and the securities held by, the dealer, either generally or in relation to the matters of the complaint.

(2) Every complaint to which this section relates shall set out—

- (a) particulars of the circumstances under which the dealer received the moneys or securities for which it is alleged that he has failed to account;
- (b) particulars of the moneys or securities and of the transactions of the complainant and the dealer relating to them; and
- (c) such other particulars as may be prescribed.

(3) Every statement in a complaint to which this section relates shall be verified by statutory declaration made by the complainant or by some other person who is able to make a declaration of the facts

from his own knowledge and a declaration made pursuant to this subsection, if made in good faith and without malice, is absolutely privileged.

(4) Where the Minister receives a complaint under this section directly from the complainant and not from the relevant authority, he shall cause the relevant authority to be notified of the particulars of the complaint.

(5) The Minister shall not appoint an independent auditor pursuant to subsection (1) of this section, unless he is satisfied that—

- (a) the complainant has good reason for making the complaint; and
- (b) it is in the interest of the dealer, the complainant or the public, generally, that he should make the appointment.

48. (1) An independent auditor may, for the purposes of his examination and audit—

Powers of
independent
auditors.

- (a) examine, on oath, or affirmation, the dealer with respect to whom his appointment is made and, where the dealer carries on business in partnership, a member of the partnership and any of the dealer's servants or agents or an auditor appointed by the dealer;
- (b) employ such persons as he considers necessary for the purpose for which he was appointed; and
- (c) by instrument under his hand, authorise a person employed by him to do any act or thing that he might himself do as auditor, other than examine a person on oath or exercise the powers conferred by this paragraph.

(2) Every person who, being a person such as is mentioned in paragraph (a) of subsection (1) of this section and being required by an independent auditor to take an oath or make an affirmation,

refuses or fails to take the oath or make the affirmation commits an offence against this Act.

Penalty—Five hundred dollars or imprisonment for six months.

Books,
accounts and
records to
be produced.

49. (1) Every person who, having in his possession or power any books, accounts, records or securities which, or in respect of which, an independent auditor is appointed to examine, audit, and report, shall, on demand by the independent auditor or by a person authorised by him in that regard, produce them for examination and audit.

(2) A dealer, partner of a dealer, servant or agent of a dealer and an auditor appointed by a dealer, shall answer all questions relevant to the audit and examination of the dealer's books, accounts, records and securities that are put to him by an independent auditor appointed to conduct the examination and audit or by a person authorised in that regard by the independent auditor.

Penalty—Five hundred dollars or imprisonment for six months.

Offence of
doing away
with records.

50. (1) Every person who, with intent to defeat the purposes of this Part or with intent to prevent, delay or obstruct the conduct of an examination or audit under this Part,—

- (a) destroys, conceals or alters any book, account, record or document relating to the business of a dealer; or
- (b) sends, or attempts to send, or conspires with any other person to send, out of the State any book, account, record or document relating to the business of a dealer or any property of any description belonging to, or in the disposition of, or under the control of a dealer,

commits an offence against this Act.

Penalty—On conviction on indictment, one thousand dollars or imprisonment for two years.

(2) Where, in a proceeding for a complaint under subsection (1) of this section, it is shown that the defendant—

- (a) destroyed, concealed or altered any book, account, record or document; or
- (b) sent, attempted to send, or conspired to send, out of the State any book, account, record or document or any property,

mentioned in that subsection, the onus of proving that in so doing he did not act with intent to defeat the purposes of this Part or with intent to prevent, delay or obstruct the conduct of an examination or audit under this Part lies on the defendant.

51. An independent auditor shall, on the conclusion of the examination and audit that he was appointed to conduct, make his report to the Minister and furnish the relevant authority concerned with a copy of the report.

Independent auditor to report to Minister.

52. Except for the purpose of giving effect to the provisions of this Act or for the purpose of any civil or criminal proceeding, an independent auditor and a person employed by him shall not communicate any matter that may come to his knowledge in the course of his duties to any person, other than the Minister, the relevant authority in relation to the dealer concerned, any other person specified by the Minister or relevant authority and, in the case of a person employed by an independent auditor, the independent auditor by whom he is employed.

Limitation on divulging information.

53. (1) Where the Minister is of the opinion that the whole, or any part, of the costs and expenses of an independent auditor conducting an examination and audit under this Part ought to be borne by the dealer or the relevant authority concerned, he may,

Power of Minister to impose costs of audit.

by order in writing, direct that the dealer or the relevant authority pay a specified amount, being the whole, or part, of those costs and expenses, within the time and in the manner specified by the order.

(2) Where a dealer or relevant authority fails to comply with an order made under subsection (1) of this section, the Minister may take proceedings to recover the amount in question in any court of competent jurisdiction.

Saving of powers of exchanges to impose further obligations on members.

54. Nothing in this Part affects the power of a stock exchange to impose such further obligations or requirements on its members as it thinks fit with respect to—

- (a) the audit of accounts;
- (b) the information to be furnished in reports of auditors; or
- (c) the keeping of accounts, books and records.

PART VII.—RESTRAINT OF DEALING WITH CERTAIN BANK ACCOUNTS.

Power of Court to restrain dealings with dealer's bank accounts.

55. (1) Where a relevant authority, by evidence on affidavit and by ex parte application, shows to the satisfaction of the Court that—

- (a) there are reasonable grounds for believing that there is a deficiency in any trust account of a dealer;
- (b) there has been undue delay, or unreasonable refusal, on the part of a dealer in duly paying, applying or accounting for trust moneys to or on behalf of a person for whose use or benefit they are received; or
- (c) a dealer has not paid moneys to the credit of a trust account as provided by section 41,

the Court may make an order, directed to the dealer and to his bankers and their respective servants and agents, restraining dealings in all or any of the bank

accounts of the dealer, subject to such terms and conditions as the Court may see fit to impose and until the order is made absolute or discharged.

(2) An order made under subsection (1) of this section is an order to show cause and, unless the dealer to whom the order relates shows to the Court, within the time specified in the order or within such further time as the Court may allow, sufficient cause to the contrary, the order may, after proof of service as required by section 56, be made absolute.

56. (1) A relevant authority shall, as soon as may be practicable after an order is made under the provisions of section 55 or 58, serve a copy of the order or cause it to be served on—

Service of
and com-
pliance with,
orders.

- (a) 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; and
- (b) on the dealer in whose name the account is kept,

and every person on whom a copy of the order is served shall comply with the order.

(2) A person who fails to comply with the order is liable to a penalty of five hundred dollars.

57. 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 section 55, he shall—

Duty of
bank man-
ager to
make full
disclosure.

- (a) disclose to the relevant authority every account kept at the bank in the name of the dealer to whom the order relates, including any account that he reasonably suspects is held or kept at the bank for the benefit of the dealer; and

- (b) permit the relevant authority or any person authorised in writing by him or it to inspect, and make and take away any copy or extract of, any account of the dealer to whom the order relates or of or from any book, account, document or writing relating to such an account.

Power of
Court to
make further
orders and
give direc-
tions.

58. (1) The Court may, on the application of the relevant authority or of the dealer to whom an order made under section 55 relates make further orders—

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

(2) The relevant authority, on receiving moneys paid pursuant to an order made under paragraph (b) of subsection (1) of this section—

- (a) shall cause the moneys to be paid into a separate trust account;
- (b) may prepare a scheme for distributing the moneys as compensation to persons who claim compensation, during a period of six months after the relevant authority receives the moneys, and who satisfy the relevant authority that they have sustained pecuniary loss through an act or omission on the part of the dealer;
- (c) may, where the moneys received are insufficient to pay all proved claims, notwithstanding any rule of law to the contrary, apportion the moneys among the claimants in proportion to their proved claims and show in the scheme how the moneys are so apportioned;
- (d) may, where all or some of the claims have been paid—
 - (i) from a fidelity fund; or

- (ii) from moneys recovered under a bond pursuant to section 18,

apply to the Court for leave to pay to the fidelity fund or to the person or persons making payment under the bond (as the case may be) such amount as has been paid in or towards satisfaction of the claims.

(3) Where a relevant authority prepares a scheme for distribution pursuant to subsection (2) of this section, he or it shall apply to the Court for approval of the scheme and for directions in respect of it.

(4) The Court may give such directions as to the moneys held in a separate trust account pursuant to subsection (2) of this section, as to the persons to whom and in what amounts the whole or any portion of those moneys are to be paid by the relevant authority and as to the payment of the balance of the moneys, if any, remaining in the account, as it thinks fit.

PART VIII.—FIDELITY FUNDS.

59. (1) After the coming into operation of this Part, a stock exchange shall not maintain or provide a stock market, unless it has established, and continues to maintain, a fidelity fund in conformity with this Part.

Fidelity funds to be established and maintained.

(2) The assets of a fidelity fund established pursuant to this section are vested in the stock exchange and shall be held in trust for the purposes mentioned in this Part.

60. (1) A fidelity fund shall be administered on behalf of the stock exchange by three trustees who shall be members of the stock exchange and appointed by the committee, to hold office during its pleasure.

Administration of fidelity funds.

(2) The office of a trustee of the fidelity fund becomes vacant if—

- (a) the committee revokes his appointment as trustee; or

(b) the trustee—

- (i) dies;
- (ii) resigns his office by writing to the committee, under his hand; or
- (iii) ceases to be a member of the stock exchange;

and the committee shall, thereupon, appoint some other member of the stock exchange to hold office in his stead.

Moneys con-
stituting
fidelity
funds.

61. The fidelity fund of a stock exchange shall consist of—

- (a) an amount of not less than one hundred thousand dollars to be paid to the credit of the fund on its establishment under this Act;
- (b) moneys resulting from the investment of the fund;
- (c) such moneys as the committee shall, in each financial year, pay to the credit of the fund, being—
 - (i) an amount equal to .03 per centum of the turnover of the stock exchange (excluding turnover relating to fixed interest securities), during the preceding financial year, or an amount of fifty thousand dollars, whichever is the greater, reduced in either case by the amount of the moneys mentioned in paragraph (b) of this section; or
 - (ii) such amount, less than either of those mentioned in subparagraph (i) of this paragraph, as the Minister may, having regard to the turnover of the stock exchange, the amount by which the fidelity fund is in credit or both, approve;

- (d) moneys recovered by or on behalf of the stock exchange in the exercise of a right of action conferred by this Part or paid to the fund by virtue of an order of the Court made under Part VII.;
- (e) moneys paid by an insurer of the fund pursuant to a contract of insurance or indemnity entered into by the trustees under this Part; and
- (f) all other moneys lawfully paid to the credit of the fund.

62. (1) The trustees may invest any moneys standing to the credit of a fidelity fund that are not immediately required for its purposes, in the manner that trust moneys may be invested pursuant to section 16 of the Trustees Act, 1962.

Investment
of fidelity
funds.

(2) Pending their investment as authorised by subsection (1) of this section, all moneys standing to the credit of a fidelity fund shall be paid or transferred to a bank in the State to the credit of a separate account.

63. Subject to the succeeding provisions of this Part the trustees shall from time to time pay out of a fidelity fund as may be required and in such order as the trustees think fit—

Payments
out of
fidelity
funds.

- (a) the amount of all claims, including costs, allowed by the trustees or by the Court under this Part;
- (b) all legal and other expenses incurred in investigating or resisting claims made under this Part or incurred in relation to the fund or in the exercise by the trustees of the rights, powers and authorities conferred upon them by this Part;
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the trustees pursuant to this Part;

- (d) the expenses incurred or involved in the administration of the fund, including the salaries and wages of persons employed by the trustees for the purposes of the fund; and
- (e) any other moneys payable out of the fund in accordance with the provisions of this Part.

Accounts of
fidelity
funds.

64. (1) The accounts of a fidelity fund shall be kept by the committee of the stock exchange who shall cause a balance sheet in respect of those accounts to be prepared and audited before each thirtieth day of September reflecting the position of the fund as at the thirtieth day of June immediately preceding that date.

(2) The committee shall appoint an auditor to audit the accounts of the fund.

(3) A copy of the balance sheet prepared and audited pursuant to subsection (1) of this section shall be delivered to the Minister not later than each thirtieth day of September.

Application
of fidelity
funds.

65. (1) A fidelity fund shall be held and applied for the purpose of compensating persons, not being members of a stock exchange or a stock exchange under any corresponding law, either wholly or in part, as the trustees may determine, for pecuniary loss suffered in respect of transactions in securities, by reason of the defalcation by a sole trader, or a partner of a member firm, of the stock exchange or the defalcation by a clerk or servant of such a sole trader or member firm.

(2) Subject to the succeeding provisions of this section and without limiting the discretion conferred on the trustees by subsection (1) of this section,

the aggregate amount of compensation that may be paid to persons who suffer pecuniary loss as mentioned in that subsection in respect of the defalcation shall not exceed the sum of one hundred thousand dollars but, in assessing that sum, the amount by which the fidelity fund is subsequently reimbursed in respect of the defalcation shall not be taken into account.

(3) Where, after taking into account all ascertained or contingent liabilities of a fidelity fund, the trustees consider that the assets of the fund permit it, they may, with the consent of the committee, from time to time, by notice published in the *Government Gazette*, increase the aggregate amount that may be applied from that fund pursuant to subsection (2) of this section and, until the notice is revoked or varied, the amount specified in the notice shall be the aggregate amount that may be applied under that subsection.

(4) The trustees may, with the consent of the committee, revoke or vary a notice published pursuant to subsection (3) of this section and the notice, if so varied, has effect accordingly.

(5) Where, in any particular case, after taking into account all ascertained or contingent liabilities of a fidelity fund, the trustees consider that the assets of the fund permit it, they may apply, out of the fund, such amount in excess of the aggregate amount limited by, or under, this section as the trustees think fit, in or towards the compensation of persons who have suffered pecuniary loss as mentioned in subsection (1) of this section.

(6) For the purposes of this section, a reference to a sole trader or a partner of a member firm includes a person who has been, but at the time of the defalcation in question has ceased to be, a sole trader or a partner of a member firm if, at the time of the defalcation, the person claiming compensation had reasonable grounds for believing that person to be a sole trader or, as the case may be, a partner of a member firm.

Claim
against
fidelity
funds.

66. (1) Subject to this Part, every person who suffers pecuniary loss in the manner mentioned in subsection (1) of section 65 is entitled to claim compensation from the appropriate fidelity fund and to bring proceedings in the Court against the stock exchange, as provided by this Part, to establish such a claim.

(2) A person has no claim as of right against a fidelity fund in respect of—

- (a) defalcation that occurred before the commencement of this Part; or
- (b) defalcation in respect of money, securities or other property that, prior to the occurrence of the defalcation, had, in the due course of the administration of a trust, ceased to be under the sole control of the sole trader or, in the case of a member firm, of the partner or partners concerned;

but the trustees may, nevertheless entertain any such claim.

(3) Subject to this Part, the amount that a claimant is entitled to claim as compensation from a fidelity fund is the amount of the pecuniary loss actually suffered by him in the manner mentioned in subsection (1) of section 65 (including, at the discretion of the trustees, the reasonable costs of, and the disbursements incidental to, the making and proof of his claim), less the amount or value of any moneys or other benefits received or receivable by him, from any source other than the fund, in reduction of the loss.

(4) In addition to any compensation payable under this Part, the trustees may pay out of the fidelity fund interest on the amount of the compensation, less any amount attributable to costs and disbursements, at the rate of five per centum per annum, calculated from the day on which the defalcation occurred until the day on which the claim is satisfied.

67. (1) Where all persons making claims pursuant to section 66 have been fully compensated, in accordance with the provisions of this Part, for pecuniary loss suffered by them as a result of the defalcation by a partner of a member firm, any other partner of that firm who has made payment to a person in compensation for pecuniary loss suffered by him by reason of the defalcation is subrogated, to the extent of that payment, to all the rights and remedies of that person against the fidelity fund, if the trustees, having regard to all the circumstances of the case, determine that the partner was in no way privy to the default and that he acted honestly and, in the circumstances, reasonably.

Rights of
innocent
partners
against
fidelity
funds.

(2) A partner of a member firm who is aggrieved by the determination of the trustees under subsection (1) of this section, may, within twenty-eight days after the determination is communicated to him, appeal to the Court in the manner provided by Rules of Court.

(3) Every appeal shall be in the nature of a rehearing and the Court may order that the appellant be, to the extent of the payments made by him, subrogated to all the rights and remedies, in relation to the fidelity fund, of the person to whom he made payment of compensation, or may dismiss the appeal.

68. (1) The trustees of a fidelity fund may cause a notice in the prescribed form to be published, in a daily newspaper circulating generally in the State, specifying in the notice a date, not earlier than three months after the publication of the notice, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, are to be made.

Notice of
claims
against
fidelity
funds.

(2) A claim for compensation from a fidelity fund in respect of a default shall be made in writing to the stock exchange—

- (a) where a notice has been published pursuant to subsection (1) of this section, on or before the date specified in the notice; or

- (b) where a notice has not been published, within six months after the claimant first became aware of the default;

and any claim that is not made within the time limited by this section is, unless the trustees otherwise determine, barred.

(3) An action does not lie against a stock exchange the committee or any member or employee of the committee or against the trustees by reason of a notice published in good faith for the purposes of this section.

Power of
trustees to
settle claims.

69. (1) The trustees may allow and settle any proper claim for compensation from the fidelity fund at any time after the occurrence of the defalcation in respect of which the claim arose.

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

- (a) the trustees have disallowed his claim; and
- (b) the claimant has exhausted all rights of action and other legal remedies for the recovery of the moneys or property in respect of which the defalcation occurred that are available against the sole trader, or the partners of the member firm, in relation to whom or to which the claim arose and against all other persons who may be liable in respect of the pecuniary loss suffered by the claimant.

(3) A person who has been refused leave, by the trustees, to commence proceedings may apply for leave to the Court which may make such order on the application as it thinks fit.

(4) Where the trustees disallow a claim for compensation from a fidelity fund, whether wholly or in part, they shall serve notice of the disallowance, in the prescribed form, on the claimant or on his solicitor.

(5) Proceedings against a stock exchange, in respect of a claim that has been disallowed by the trustees, shall not be commenced after the expiration of three months from the date of service of notice of disallowance under subsection (4) of this section.

(6) In any proceedings brought to establish a claim, evidence of any admission or confession by, or other evidence that would be admissible against a defaulting person is admissible to prove the occurrence of the defalcation, notwithstanding that the defaulting person is not the defendant in, or a party to, those proceedings and all defences that would have been available to the defaulting person are available to the stock exchange.

(7) The trustees or, where proceedings are brought to establish a claim, the Court, if satisfied that the defalcation on which the claim is founded actually occurred, may allow the claim and act accordingly, notwithstanding that the defaulting person has not been prosecuted for, or convicted of, the defalcation or that the evidence on which the trustees or, as the case may be, the Court acts would not be sufficient to establish the guilt of the defaulting person upon a trial in respect of the defalcation.

70. (1) Where, any proceedings brought to establish a claim, the Court is satisfied that the defalcation on which the claim is founded in fact occurred and that the claimant has a valid claim in other respects, the Court shall—

Order of
court in
establishing
claim.

- (a) declare the fact and date of the defalcation and the amount of the claim; and
- (b) direct that the trustees allow the claim as so declared and deal with it in accordance with the provisions of this Part.

(2) In any proceedings under this Part the question of costs are in the discretion of the Court.

(3) The practice and procedure for proceedings under this Part shall be in accordance with the Rules of Court.

Trustees
may require
production
of securities,
etc.

71. The trustees may, at any time and from time to time, require any person to produce and deliver any securities, documents or statements of evidence necessary to support a claim made or necessary for the purpose either of exercising their rights against a sole trader or the partners of a member firm or any other person concerned or of enabling criminal proceedings to be taken in respect of the defalcation; and, failing the production and delivery of any such securities, documents or statements of evidence by the person of whom that is required, the trustees may disallow any claim made by him under this Part.

Subrogation
of stock
exchange to
rights of
paid claim-
ant.

72. On the payment out of a fidelity fund or any moneys in respect of a claim under this Part, the stock exchange is subrogated to the extent of the payment to all the rights and remedies of the claimant with respect to the pecuniary loss suffered by him by reason of the defalcation.

Payment of
claims from
fidelity
fund, only.

73. Moneys or other property of a stock exchange, other than the fidelity fund are not available for the payment of any claim under this Part; whether allowed by the trustees or by the Court.

Provision
where fidel-
ity fund
insufficient
to meet
claims or
claims ex-
ceed amount
payable.

74. (1) Where the amount by which a fidelity fund is in credit is insufficient to meet the whole amount of all claims against it that have been allowed or that the Court has ordered to be dealt with, then, the amount by which the fund is in credit shall, subject to the provisions of subsection (2) of this section, be apportioned between the claimants in such manner as the trustees think equitable; and

any such claim to the extent that it remains unpaid, shall be charged against future receipts of the fund and be paid out of the fund when it is sufficiently in credit.

(2) Where the aggregate of all claims that have been allowed or that the Court has ordered to be dealt with exceeds the aggregate amount that may, under the provisions of section 65, be paid to persons in respect of any defalcation, then, that aggregate amount shall be apportioned between the claimants in such manner as the trustees think equitable; and upon payment out of the fund of that aggregate amount in accordance with the apportionment, all those claims and any orders relating to them and all other claims that may thereafter arise or be made in respect of the defaulting sole trader or partner shall be absolutely discharged.

75. (1) The trustees of a fidelity fund under this Part shall, unless the Minister otherwise determines, from time to time, whenever the fund is in credit by any amount less than five hundred thousand dollars, enter into a contract, on behalf of the stock exchange, with a person or persons, corporate or unincorporate, carrying on the business of fidelity insurance, whereby the stock exchange is insured or indemnified, in an amount equal to the difference between the amount of five hundred thousand dollars and the amount then standing to the credit of the fidelity fund, against liability in respect of claims under this Part.

Trustees to
enter into
contracts of
insurance.

(2) Notwithstanding that the stock exchange is relieved of the obligation of complying with subsection (1) of this section, the trustees may continue to enter into contracts of insurance such as are mentioned in that subsection and may enter into contracts of insurance in relation to stock brokers of the stock exchange, generally, or in relation to any particular stock broker or stock brokers named in the contract, or in relation to stock brokers of

the stock exchange, generally, with the exclusion of any particular stock broker or stock brokers named in the contract.

(3) An action does not lie against a stock exchange or against any member or servant of a stock exchange or the committee or the trustees of the fidelity fund by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply to a particular stock broker.

No claim
against
insurance
moneys.

76. A claimant against a fidelity fund has no right of action against any person or body of persons with whom a contract of insurance or indemnity is made under section 75 in respect of that contract or have any right or claim with respect to any moneys paid by the insurer in accordance with that contract.

Interpreta-
tion.

77. In this Part, unless a contrary intention appears—

“defalcation” means the stealing or fraudulent conversion, by a sole trader or by a partner of a member firm or by any one or more of his clerks or servants, of money or other property at any time entrusted to him, them or any of them, for or on behalf of another person, in the course of the sole trader’s or partner’s business;

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

“the stock exchange”, in relation to a fidelity fund, means the stock exchange that established the fund;

“the trustees”, in relation to a fidelity fund, means the trustees appointed by the committee to control the fund.

PART IX.—TRADING IN SECURITIES.

78. (1) Subject to subsection (3) of this section, a person shall not purport to sell, offer to sell, or hold himself out as capable of selling, securities to or in which he has, at the time of doing any of those things, no right, title or interest.

Prohibition
of short
selling.

Penalty—On conviction on indictment, for a first offence, one thousand dollars or imprisonment for one year and, for any subsequent offence, two thousand dollars or imprisonment for two years, or both.

(2) It is no defence to a complaint of an offence against subsection (1) of this section that the defendant furnished or delivered, or was capable of furnishing or delivering, the securities that he purported to sell, offered to sell or held himself out as capable of selling, in contravention of that subsection.

(3) Subsection (1) of this section does not apply—

(a) to a person acting in good faith, in the reasonable and honest belief that he has, or to a stock broker or licensed dealer acting in good faith, for or on behalf of some other person, in the reasonable and honest belief that the other person has, a right, title or interest to or in securities that he purports to sell, offers for sale or holds himself out as capable of selling; or

(b) to a person who enters into an arbitrage transaction, in accordance with the rules of a stock exchange.

(4) A complaint for an offence against subsection (1) of this section may be made by, or on behalf of, the Minister and not otherwise.

79. (1) A person shall not, by means of the purported purchases or sales of securities involving no change in the beneficial ownership of the

Effecting
changes in
market
prices by
actions.

securities, or by any fictitious transaction or other device, inflate, depress, or cause fluctuations in, the market price of any securities.

Penalty—On conviction on indictment, two thousand dollars or imprisonment for two years, or both.

(2) For the purposes of subsection (1) of this section, a purchase or sale of securities involves no change in the beneficial ownership of the securities if a person, or a person associated with him in relation to the securities, who held an interest in the securities, before the purchase or sale, holds an interest in them after the purchase or sale.

(3) For the purposes of subsection (2) of this section, a person is associated with another person in relation to securities if the former person is—

- (a) a corporation that is, by virtue of subsection (5) of section 6 of the Companies Act, 1961, deemed to be related to the other person;
- (b) a person in accordance with whose directions, instructions or wishes the other person is accustomed or likely to act, in relation to the securities;
- (c) a person who is accustomed or likely to act in accordance with the directions, instructions or wishes of the other person, in relation to the securities;
- (d) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, the other person is accustomed or likely to act, in relation to the securities; or
- (e) a body corporate that is, or the directors of which are, accustomed or likely to act in accordance with the directions, instructions or wishes of the other person, in relation to the securities.

80. A person shall not make any statement, or disseminate any information, with respect to any securities, that, at the time it is made or disseminated, he knows is, or has reasonable grounds for believing to be, false or misleading in any material particular.

Prohibition of false or misleading statements affecting securities.

Penalty: On conviction on indictment, one thousand dollars or imprisonment for one year, or both.

PART X.—MISCELLANEOUS.

81. A person who is not a stock broker within the meaning of this Act shall not take or use, or by inference adopt, the name, style or title of stock broker or take or use, or have attached to or exhibited, at any place, any name, style, title or description implying, or leading to the belief, that he is a stock broker.

Restrictions on use of title "stock broker".

82. (1) A person who contravenes, or fails to comply with, any provision of this Act commits an offence against this Act and, where no other penalty is expressly provided for the offence, is liable to a penalty of five hundred dollars.

General penalty.

(2) Where a person, being a corporation, is guilty of an offence against this Act, a director, manager, secretary or other officer of the corporation who knowingly was party to the offence is also guilty of that offence.

83. (1) If, in this State, a person does an act or omits to do an act and that person would, if he had done that act or had omitted to do that act in another State, or in a Territory, of the Commonwealth, have been guilty of an offence against the law of that State, or Territory, that corresponds to a provision of this Act, that person commits an offence against that provision of this Act.

Reciprocity in relation to offences.

(2) Where an act or omission constitutes an offence both under this Act and a law of another State, or a Territory, of the Commonwealth that corresponds to a provision of this Act and the offender has been punished under that law, he is not liable to be punished in respect of the offence against this Act.

Regulations.

84. (1) The Governor may make regulations for, or with respect to—

- (a) regulating advertisements relating to securities;
- (b) prescribing forms for the purposes of this Act;
- (c) prescribing fees to be paid in respect of any matter or thing required for the purposes of this Act;
- (d) the preparation by dealers of balance-sheets and profit and loss accounts and the form and content thereof; and
- (e) all other matters or things for which regulations are contemplated or required by this Act or that may, in the opinion of the Governor, be necessary or expedient for the better administration of this Act.

(2) Except as otherwise provided by this Act, the regulations may be made so as to—

- (a) apply generally or to an extent limited in the regulations; and
 - (b) impose a fine not exceeding two hundred dollars for the breach of them or of any of them.
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