

Seychelles

Securities Industry Act

Act 22 of 1995

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Securities Industry Act

Contents

Part I – Preliminary	1
1. Short title	1
2. Interpretation	1
3. Associated person	4
4. Interest in securities	6
Part II – Securities Authority and securities advisory body	7
5. Securities Authority	7
6. Offences	8
7. Savings for legal practitioner	8
8. Secrecy of information	9
9. Power of court to make certain orders	9
10. Securities advisory board	10
Part III – Securities exchange	10
11. Securities exchange	10
Part IV – Licensing of dealers, investment advisers and their representatives	11
12. Application of this Part	11
13. Licences: Dealer's licence, dealer's representative's licence, investment adviser's licence, investment adviser's representative's licence	11
14. Application for licence	12
15. Securities Authority may impose conditions with respect to a licence	12
16. Conditions of restrictions on grant or renewal of licence	13
17. Period of licence	13
18. Notification of change of particulars	13
19. Register of licence holders	13
20. Revocation of and suspension of licence	14
21. Appeals	15
22. Exempt dealer	15
Part V – Registers of interests in securities	16
23. Application of this Part	16
24. Register of securities	16
25. Notice of particulars to Authority	16
26. Defence to prosecution	17
27. Production of register	17
28. Particulars of financial journalists	17

29. Extract of register	17
Part VI – Conduct of securities business	17
30. Certain representation prohibited	17
31. Issues of contract notes	18
32. Certain persons to disclose certain interest in securities	19
33. Recommendation by adviser	21
34. Dealing as principal	21
35. Dealings by employees of holders of licences	22
36. Dealer to give priority to clients' orders	22
37. Margin requirements	22
Part VII – Accounts - Dealers and investment advisers	23
Division 1 – Dealer	23
38. Application of this Division	23
39. Accounts to be kept by dealers	23
40. Certain moneys received by dealers to be paid into a trust account	24
41. Purposes for which money may be withdrawn from trust account	24
42. Moneys in trust account not available for payment of debts, etc.	25
43. Claims and liens not affected	25
Division 2 – Investment adviser	25
44. Application of this Division	25
45. Accounts to be kept by investment adviser	25
46. Client's money	25
47. Operation of trust account	26
48. Rights to copies of books, entries of transactions and to inspect contract notes related thereto	27
49. Duty to furnish Authority with such returns and information as Authority requires	27
Division 3 – Audit	27
50. Application of this Division	27
51. Appointment of auditor	27
52. Duties of auditor	28
53. Penalty for destroying concealing or altering records or sending records or other property out of Seychelles	29
54. Safeguarding of records	29
55. Right of committee to impose obligations etc. on member companies not affected by this Part	29
Part VII – Fidelity fund	29
56. Interpretation of this Part	29

57. Establishment of fidelity fund	29
58. Moneys consisting fidelity fund	30
59. Fund to be kept in separate bank	30
60. Payment out of fidelity fund	30
61. Accounts of fund	30
62. Management of sub-committee	31
63. Fidelity fund to consist of an amount of R1 million	31
64. Provisions if fund is reduced below R1 million	31
65. Levy to meet liabilities	31
66. Power of securities exchange to make advances to fund	31
67. Investment of fund	32
68. Application of fund	32
69. Claims against fund	32
70. Notice calling for claims against fund	33
71. Power of the committee to settle claims	33
72. Form of order of court establishing claim	34
73. Power of committee to require production of securities etc.	34
74. Subrogation of securities exchange to rights, etc. of claimant upon payment from fund	34
75. Payment of claims only from fund	34
76. Provision where fund insufficient to meet claims or where claims exceed total amount payable	34
77. Power of committee to enter into contracts of insurance	35
78. Application of insurance moneys	35
Part IX – Trading in securities	35
79. False trading and market rigging transactions	35
80. Stock market manipulation	36
81. False or misleading statement etc.	37
82. Fraudulently inducing persons to deal in securities	37
83. Dissemination of information about illegal transactions	37
84. Employment of manipulative and deceptive devices	37
85. Prohibition of dealings in securities by insiders	38
86. Penalties	40
87. Convicted persons liable to pay compensation	40
Part X – Miscellaneous	40
88. Restriction on use of title "stockbroker" or "securities exchange"	40
89. Offences by directors or managers etc.	40

90. Falsification of records by directors, employees and agents	41
91. False reports to Authority or securities exchange	41
92. Immunity of Authority and its employees, etc.	41
93. Offences by body corporate	41
94. Power to appoint an inspector, committee of a securities exchange or the securities advisory body to investigate trading in securities	41
95. Power of Court to prohibit payment or transfer of moneys, securities or other property	42
96. Injunctions	43
97. Power of Court to punish for contempt of Court	44
98. General penalty	44
99. Proceedings by whom to be taken and power to compound offences	44
100. Regulations	45

Seychelles

Securities Industry Act

Act 22 of 1995

Commenced on 1 February 1996

[This is the version of this document at 30 June 2012 and includes any amendments published up to 30 June 2014.]

[Repealed by [Securities Act, 2007 \(Act 8 of 2007\)](#) on 29 October 2007]

Repealed by Act [8 of 2007](#) with effect from 29 October 2007, save for subsidiary legislation, which continues in force until revoked or repealed under the latter Act

Part I – Preliminary

1. Short title

This Act may be cited as the Securities Industry Act.

2. Interpretation

(1) In this Act—

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

"**auditor**" means an approved company auditor within the meaning of the Companies Act;

"**bank**" means a financial institution licensed to carry on banking business in Seychelles or, in the case of a bank carrying on banking business outside Seychelles, under the law of the jurisdiction where it is carrying on banking business;

"**book**" includes any register, document or other record of information and any account or accounting record, however compiled, recorded or stored whether in written or printed form or microfilm by electronic process or otherwise;

"**committee**", in relation to a securities exchange, means the persons for the time being in whom the management of the securities exchange is vested;

"**company**" has the same meaning as is assigned to that expression in the Companies Act;

"**Companies Act**" means the Companies Act 1972 or any other written law which replaces that Act and any reference to a provision of the Companies Act 1972 shall, where that Act has been repealed and replaced by another written law, be deemed to be a reference to the corresponding provision of the written law;

"**court**" means the Supreme Court;

"**dealer**" means a body corporate licensed to carry on a business of dealing in securities under this Act but does not include an exempt dealer;

"**dealer's representative**" means a person, by whatever name described, in the direct employment of, or acting for, or by arrangement with, a dealer, who performs for that dealer any of the functions of a dealer, other than work ordinarily performed by an accountant, clerk or cashier, whether the person's remuneration is by way of salary, wages, commission or otherwise, and includes any director or officer of a body corporate who performs for the body corporate any of those functions, whether or not remuneration of the director or officer is by way of salary, wages, commission or otherwise;

"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—

- (a) any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities; or
- (b) any agreement 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 price of securities;

"director" has the same meaning as is assigned to that expression in the Companies Act;

"executive officer", in relation to a body corporate, means any person by whatever name called and whether or not the person is a director of the body corporate who is concerned or takes part in the management of the body corporate;

"exempt dealer" means a person or a body corporate specified in [section 22](#);

"investment adviser" means a person who—

- (a) carries on a business of advising others concerning securities;
- (b) as part of a regular business issues or promulgates analyses or reports concerning securities; or
- (c) pursuant to a contract or arrangement with a client, undertakes on behalf of the client, whether on a discretionary authority granted by the client or otherwise, the management of a portfolio of securities for the purpose of investment but that expression does not include—
- (d) a financial institution licensed to carrying on banking business under the Financial Institutions Act;
- (e) a company or society registered under the Insurance Act;
- (f) a legal practitioner or accountant in practice whose carrying on of that business is solely incidental to the practice of the legal practitioner's or accountant's profession;
- (g) a dealer or the dealer's **employee or a dealer's** representative or an exempt dealer whose carrying on of that business is solely incidental to the conduct of the business of dealing in securities; or
- (h) a person who is the proprietor of a newspaper and holder of a licence issued under the Licences Act, where—
 - (i) insofar as the newspaper is distributed generally to the public it is distributed only to subscribers to, and purchasers 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 giving the advice or 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 a newspaper proprietor;

"investment adviser's representative" means a person, in the direct employment of or acting for or by arrangement with an investment adviser, who performs for such investment adviser any of the functions of an investment adviser, other than work ordinarily performed by an accountant, clerk or cashier, whether the person's remuneration is by way of salary, wages, commission or otherwise and includes any director or officer of a body corporate who performs for the body corporate any of those functions, whether or not the director's or officer's remuneration is by way of salary, wages, commission or otherwise;

"licence" means—

- (a) a dealer's licence;
- (b) an investment adviser's licence;
- (c) a dealer's **representative's** licence; or
- (d) an investment adviser's **representative's** licence, under Part III;

"listing rules", in relation to a body corporate that maintains or provides, or proposes to maintain or provide, a stock market of a securities exchange, means rules governing or relating to—

- (a) the admission to the official list of the body corporate, of bodies corporate, governments, unincorporate bodies or other persons for the purpose of the quotation on the stock market, or made available by bodies corporate, governments, unincorporate bodies or other persons or the removal from that official list and for other purposes; or
- (b) the activities or conduct of bodies corporate, governments, unincorporate bodies and other persons who are admitted to that list, whether those rules—
- (c) are made by the body corporate or are contained in any of the constituent documents of the body corporate; or
- (d) are made by another person and adopted by the body corporate;

"member company" means a company which carries on a business of dealing in securities and is recognised as a member company by a securities exchange;

"official list" means the list of all securities which has been admitted for quotation at the stock market of the securities exchange;

"prescribed" means prescribed by regulations under this Act;

"quotation", in relation to a stock market of securities of a securities exchange, includes the displaying or providing, on the stock market of the securities exchange, of information concerning —

- (a) in a case where offers to sell, purchase or exchange the securities at particular prices, or for particular consideration, are made or accepted on that securities exchange, those prices or that consideration;
- (b) in a case where offers or invitations are made on that securities exchange being offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange the securities at particular prices or for particular consideration, those prices or that consideration; or
- (c) in any case, the price at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange the securities, and "quoted" shall be construed accordingly;

"relevant authority"—

- (a) in relation to a member company, means the securities exchange by which the company is recognised; and
- (b) in relation to any other person, means the Securities Authority;

"representative" means a dealer's representative or an investment adviser's representative;

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

"securities" means—

- (a) debentures, stocks, treasury bills or bonds issued or proposed to be issued by a government;
- (b) debentures, stocks, shares, bonds or notes issued or proposed to be issued by a body corporate or unincorporate;
- (c) any right or option in respect of any such debentures, stocks, shares, bonds or notes; or
- (d) any interests as defined in the Companies Act, but does not include—
- (e) futures contracts that are governed by any written law regulating trading in futures contracts;
- (f) bills of exchange;
- (g) promissory notes; or
- (h) certificates of deposit issued by a financial institution;

"Securities Authority" means the Securities Authority referred to in [section 5](#);

"securities exchange" means the securities exchange approved under [section 11](#);

"securities advisory body" means the advisory body referred to in [section 10](#);

"share" means share in the share capital of a body corporate and includes stock except where a distinction between stock and shares is express or implied;

"stockbroker" means a person who is a member of a securities exchange and a director of a member company;

"stock market" means a market, or other place at which, or a facility of a securities exchange by means of which—

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

"trust account" means a trust account established under [section 40](#) or [section 47](#);

"unit trust scheme" means any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property.

3. Associated person

- (1) A reference in this Act to a person associated with another person shall be construed as a reference to—
 - (a) where the other person is a body corporate—
 - (i) a director or secretary of the body corporate;
 - (ii) a body corporate that is related to the other person; or
 - (iii) a director or secretary of such a related body corporate;

- (b) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate, a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied—
 - (i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the body corporate;
 - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the body corporate; or
 - (iii) under which either of those persons may acquire from the other of them shares in the body corporate or may be required to dispose of such shares in accordance with the direction of the other of them;
 - (c) a person in concert with whom the other person is acting, or proposes to act, in relation to the matter to which the reference relates;
 - (d) where the matter to which the reference relates is a matter, other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate—
 - (i) subject to subsection (2), a person who is a director of a body corporate that carries on a business of dealing in securities and of which the other person is also a director,
 - (ii) subject to subsection (2), a person who is a director of a body corporate of which the other person is a director, not being a body corporate that carries on a business of dealing in securities; or
 - (iii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
 - (e) a person with whom the other person is, by virtue of any regulation under this Act to be regarded as associated in respect of the matter to which the reference relates;
 - (f) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates;
 - (g) where the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as mentioned in paragraph (a), (b), (c), (d), (e) or (f), that last-mentioned person.
- (2) Where, in proceedings under this Act, it is alleged that a person referred to in subsection (1)(d) (i) and (ii) was associated with another person at a particular time, that person shall be deemed not to have been so associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first-mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.
- (3) A person shall not be taken to be associated with another person by virtue of subsection (1)(b), (c), (e) or (f) by reason only that one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to the person's professional capacity or to the person's business relationship with the other person.

4. Interest in securities

- (1) Where any property held in trust consists of or includes securities in which a person knows, or has reasonable grounds for believing that the person has an interest, the person shall be deemed to have interest in those securities.
- (2) A right does not constitute an interest in a security where—
 - (a) the right was issued or offered to the public for subscription or purchase;
 - (b) the public was invited to subscribe for or purchase the right, and the right was so subscribed for or purchased; or
 - (c) the right is held by the management company and was issued for the purpose of an offer to the public within the meaning of the Companies Act.
- (3) For the purposes of subsection (2)(a), "right" means any right to participate or interest, whether enforceable or not and whether actual, prospective or contingent—
 - (a) in any profits, assets or realisation of any financial or business undertaking or scheme whether in Seychelles or elsewhere;
 - (b) in any common enterprise whether in Seychelles or elsewhere in which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party; or
 - (c) in any investment contract,whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include—
 - (d) any share in or debenture of a corporation; or
 - (e) any interest in or arising out of a policy of life insurance.
- (4) A person shall be deemed to have an interest in a security where a body corporate has an interest in a security and—
 - (a) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person in relation to that security;
 - (b) that person has a controlling interest in the body corporate; or
 - (c) that person is, or the associates of that person or that person and his associates are, entitled to exercise or control the exercise of not less than 15% of the votes attached to the voting shares in the body corporate.
- (5) For the purposes of subsection (4)(c), a person is an associate of another person if the first-mentioned person is—
 - (a) a corporation which under section 111 of the Companies Act, is deemed to be related to that other person;
 - (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (4);
 - (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security;

- (d) a body corporate which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security; or
 - (e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.
- (6) A person shall be deemed to have an interest in a security in any one or more of the following circumstances—
 - (a) where the person has entered into a contract to purchase a security;
 - (b) where the person has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to the person or to the person's order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
 - (c) where the person has the right to acquire a security or an interest in a security, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
 - (d) whether the person is entitled, otherwise than by reason of the person having been appointed a proxy or representative to vote at a meeting of members of a body corporate or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which the person is the registered holder.
- (7) A person shall be deemed to have an interest in a security if that security is held jointly with another person.
- (8) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.
- (9) There shall be disregarded—
 - (a) an interest in a security if the interest is that of a person who holds the security as bare trustee;
 - (b) an interest in a security of a person whose ordinary business includes the lending of money if the person holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
 - (c) an interest of a person in a security being an interest held by the person by reason of holding a prescribed office; and
 - (d) a prescribed interest in a security being an interest of such person, or of persons included in such class of persons, as is prescribed.
- (10) An interest in a security shall not be disregarded by reason only of—
 - (a) its remoteness;
 - (b) the manner in which it arose; or
 - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.

Part II – Securities Authority and securities advisory body

5. Securities Authority

- (1) There shall be a Securities Authority which shall have the functions specified by this Act.

- (2) The Securities Authority shall be—
 - (a) a person designated by the Minister by notice published in the *Gazette*; or
 - (b) a body corporate constituted under subsection (3).
- (3) The Minister may, by Order published in the *Gazette*, constitute a Securities Authority which shall be a body corporate consisting of such number of persons as may be specified in the Order.
- (4) An Order under subsection (3) may provide for the name, registered address, meetings, finance, staff, administration and management and any other matter necessary for carrying out the functions of the Securities Authority.
- (5) Where under subsection (2)(a) the Minister designates an individual as the Securities Authority, the Minister shall, where the Securities Authority does not have the necessary staff, office accommodation and other matter necessary for carrying out the functions of the Authority, so provide the Authority.
- (6) The objects of the Securities Authority shall be—
 - (a) to control and supervise the operation of a securities exchange;
 - (b) to take all reasonable steps to safeguard the interests of persons who invest or propose to invest in securities;
 - (c) to take measures to suppress illegal, dishonourable and improper practices in relation to dealings in securities;
 - (d) to issue instructions to the securities exchange on any matter relating to the smooth operation of the securities exchange;
 - (e) to advise the Minister generally on matters relating to the securities exchange.
- (7) The Securities Authority shall have power to do all things necessary for or incidental to carrying its objects into effect.

6. Offences

- (1) A person who, without reasonable excuse, refuses or fails to comply with a requirement of the Securities Authority made pursuant to its power under [section 5\(7\)](#) shall be guilty of an offence and liable on conviction to a fine of R25,000 and to imprisonment for 3 years.
- (2) A person who in purported compliance with a requirement referred to in subsection (1) furnishes information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and liable on conviction to a fine of R25,000 and to imprisonment for 3 years.
- (3) A person who, without reasonable excuse, obstructs or hinders the Securities Authority or any other person authorised by the Securities Authority in the exercise of its powers under [section 5\(7\)](#) shall be guilty of an offence and liable on conviction to a fine of R25,000 and to imprisonment for 3 years.

7. Savings for legal practitioner

Nothing in [section 5\(7\)](#) shall empower the Securities Authority or another person authorised by the Securities Authority to compel the production by a legal practitioner of a document containing privileged communication made by or to the legal practitioner in that capacity or authorise the taking of possession of any such document which is in the legal practitioner's possession but if the legal practitioner refuses to produce the document the legal practitioner shall give the name and address, if known to the legal practitioner, of the person to whom or by or on behalf of whom the communication was made.

8. Secrecy of information

- (1) Information obtained by any person in connection with the exercise of the Securities Authority of its power under [section 5\(7\)](#) shall not, without the previous written consent of the person who had custody or control of the information, be published or disclosed, except to the Securities Authority or its officers and employees unless the publication or disclosure is required—
 - (a) with a view to the institution of, or otherwise for the purpose of, a criminal proceeding;
 - (b) for the purpose of proceeding in connection with the exercise of the powers of the Securities Authority under [section 5\(7\)](#).
- (2) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of R25,000 and to imprisonment for 3 years.

9. Power of court to make certain orders

- (1) Where—
 - (a) on the application of the Securities Authority, it appears to the Supreme Court that a person has committed an offence under this Act, or has contravened the conditions or restrictions of a licence or the rules or listing rules of a securities exchange or is about to do an act with respect to dealing in securities that, if done, would be such an offence or contravention; or
 - (b) on the application of a securities exchange, it appears to the Supreme Court that a person has contravened the rules or listing rules of the securities exchange,the Supreme Court 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—
 - (c) in the case of persistent or continuing breaches of this Act, or of the conditions or restrictions of a licence, or of the rules or listing rules of a securities exchange, 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 adviser's representative, or from representing that the person is so carrying on business or so acting;
 - (d) an order restraining a person from acquiring, disposing of or otherwise dealing with any securities that are specified in the order;
 - (e) an order appointing a receiver of the property of a dealer or of property that is held by a dealer for or on behalf of another person whether on trust or otherwise;
 - (f) an order declaring a contract relating to securities to be void or voidable;
 - (g) 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; and
 - (h) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.
- (2) The Supreme Court may, before making an order under subsection (1), direct that notice of the application be given to such person as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.
- (3) A person appointed by order of the Supreme Court under subsection (1) as a receiver of the property of a dealer—
 - (a) may require the dealer to deliver to the receiver any property of which the person has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;

- (b) may acquire and take possession of any property of which the person has been appointed receiver;
 - (c) may deal with any property that the person has acquired or of which the person has taken possession in any manner in which the dealer might lawfully have dealt with the property; and
 - (d) has such other powers in respect of the property as the Supreme Court specifies in the order.
- (4) In subsections (1) and (3), "property", in relation to a dealer, includes moneys, securities and documents of title to securities or other property entrusted to or received on behalf of any other person by the dealer or another person in the course of or in connection with a business of dealing in securities carried on by the dealer.
- (5) Any person who, without reasonable excuse, contravenes—
- (a) an order under subsection (1) that is applicable to the person; or
 - (b) a requirement of a receiver appointed by order of the Supreme Court under subsection (1),
- shall be guilty of an offence and liable on conviction to a fine of R25,000 and to imprisonment for a term of 3 years.
- (6) Subsection (5) does not affect the powers of the Supreme Court in relation to the punishment of contempt of court.
- (7) The Supreme Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

10. Securities advisory board

- (1) The Minister may from time to time establish such advisory body as the Minister thinks fit for the purpose of advising the Minister on matters relating to the Securities Authority.
- (2) The advisory body shall consist of such representatives of business, government and other public sector as the Minister may appoint and the terms and conditions of such appointment shall be fixed by the Minister.
- (3) The advisory body may, in the exercise of its functions, enquire into any matters relating to the securities industry and for this purpose may summon any person to give evidence on oath or produce document or material.
- (4) Sections 7 and 8 shall with such necessary modification as may be required, apply with respect to the advisory body as they apply with respect to the Securities Authority.

Part III – Securities exchange

11. Securities exchange

- (1) The Securities Authority may, where the Securities Authority is satisfied that a company incorporated under the Companies Act as a company limited by shares meets the prescribed requirements, approve the company as a securities exchange.
- (2) The Securities Authority shall cause an approval under subsection (1) to be published in the *Gazette*.
- (3) Notwithstanding anything to the contrary in the Companies Act, where a company has been approved as a securities exchange under subsection (1)—
 - (a) an amendment to the Memorandum or Articles of Association; or

- (b) a transfer of shares,
of the company or any listing rules, code of conduct or other rules or an amendment to the listing rules, code of conduct or other rules issued by the company after the approval shall not have effect until sanctioned by the Securities Authority and the Securities Authority shall not give the sanction unless the Securities Authority is satisfied that the company shall, after the amendment or transfer has been made or the issuance of the listing rules, code of conduct or other rules or the amendment thereto, continue to qualify to be approved under subsection (1).
- (4) Notwithstanding anything to the contrary in the Companies Act a resolution to wind-up a company which has been approved as a securities exchange shall not be valid unless approved by the Securities Authority.
- (5) The Securities Authority may revoke an approval granted under subsection (1) for failure by a company to comply with this Act or a condition on which the approval was granted.
- (6) A person shall not establish or maintain or assist in establishing or maintaining or represent the person as providing or maintaining a securities exchange that is neither a securities exchange nor an exempt securities exchange.
- (7) A person who contravenes subsection (6) shall be guilty of an offence and be liable on conviction to a fine of R100,000.
- (8) The Minister may, by regulations, specify the prescribed requirements for the purposes of subsection (1).

Part IV – Licensing of dealers, investment advisers and their representatives

12. Application of this Part

Where a person would but for this section be liable to pay a penalty for not being the holder of a licence, the person shall not be so liable where before the expiration of the licence the person applied for renewal of the licence until—

- (a) the licence is renewed; or
- (b) the application for renewal is refused.

13. Licences: Dealer's licence, dealer's representative's licence, investment adviser's licence, investment adviser's representative's licence

- (1) A person shall not—
 - (a) carry on business as a dealer in securities or represent that the person is carrying on business as such;
 - (b) act as a dealer's representative;
 - (c) act as an investment adviser or hold out that the person is an investment adviser for the purpose of this Act; or
 - (d) act as an investment adviser's representative,unless the person has a dealer's licence, dealer's representative's licence, investment adviser's licence or investment adviser's representative's licence, as the case may be.
- (2) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of R100,000 and to imprisonment for 5 years.

14. Application for licence

- (1) An application for a licence or a renewal of a licence under this Part shall be in such form and manner as may be determined by the Securities Authority and shall be accompanied by the prescribed fee.
- (2) The Securities Authority may require an applicant to furnish it with such further information or document as the Securities Authority considers reasonably necessary to determine an application under subsection (1).

15. Securities Authority may impose conditions with respect to a licence

- (1) The Securities Authority may, subject to this Act, grant or renew a licence under this Part and the restriction and condition under this section which apply in connection with the granting of a licence shall, unless the context otherwise requires, apply in respect of the renewal of a licence.
- (2) The Securities Authority shall not grant a dealer's licence other than to a body corporate which is a member of the securities exchange on which the body corporate is to carry on business of dealing in securities.
- (3) The Securities Authority shall not grant a dealer's representative's licence to a person unless the person is a director or an employee of the holder of a dealer's licence.
- (4) The Securities Authority shall not grant an investment adviser's representative's licence to a person unless the person is a director or an employee of the holder of an investment adviser's licence.
- (5) Without prejudice to subsections (2), (3) and (4) the Securities Authority shall not grant a licence under this Part if—
 - (a) in the case of an applicant who is an individual—
 - (i) the applicant has been adjudged a bankrupt whether in Seychelles or elsewhere;
 - (ii) the applicant has been convicted, whether in Seychelles or elsewhere, within a period of 10 years immediately preceding the date on which the application was made, of an offence involving fraud or dishonesty and has been punished by a term of imprisonment of 3 months or more;
 - (iii) the Securities Authority is not satisfied as to the educational qualification or experience of the applicant having regard to the nature of the duties of the holder of the licence applied for;
 - (iv) the Securities Authority has reasonable ground to believe that the applicant is not of good repute and character;
 - (v) the Securities Authority has reasonable ground for believing that the applicant will not perform the duties of a holder of the licence applied for efficiently, honestly and fairly; or
 - (b) in the case of an applicant that is a body corporate—
 - (i) the body corporate is in the course of being wound up;
 - (ii) the body corporate is a body corporate in respect of the property of which a receiver or a receiver and manager has been appointed under the Companies Act;
 - (iii) the body corporate is a body corporate in respect of which a judicial administrator has been appointed under the Companies Act;
 - (iv) the body corporate has, whether in Seychelles or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;

- (v) the Securities Authority is not satisfied as to the educational qualification or experience of the officers of the applicant who are to perform duties in connection with the licence applied for;
 - (vi) the Securities Authority has reason to believe that the applicant will not perform the duties of the holder of the licence applied for efficiently, honestly and fairly.
- (6) The Securities Authority shall not refuse to grant or renew a licence without first giving the applicant an opportunity of being heard.
- (7) Where the Securities Authority rejects an application for a licence or renewal of a licence the Securities Authority shall refund the prescribed fee.

16. Conditions of restrictions on grant or renewal of licence

- (1) The Securities Authority may grant or renew a licence subject to such conditions or restrictions as it thinks fit and may, at any time by written notice to the holder of a licence, vary any conditions or restrictions or impose further conditions or restrictions.
- (2) Without limiting the generality of subsection (1), the Securities Authority may in granting or renewing an investment adviser's licence impose a condition or restriction as to the class of business that the holder of the licence may carry on.

17. Period of licence

A licence shall be valid for such period as may be specified in the licence or as the Minister may, by regulations, prescribe.

18. Notification of change of particulars

Where—

- (a) the holder of a dealer's licence or investment adviser's licence ceases to carry on the business to which the licence relates;
- (b) the holder of a representative's licence ceases to be a representative of the dealer or investment adviser in relation to whom the representative's licence was issued; or
- (c) a change occurs in any matter particulars of which are required by [section 19](#) to be entered in the register of holders of licences in relation to the holder of a licence,

the holder of the licence shall, not later than 14 days after the occurrence of the event concerned, give to the Securities Authority, in the prescribed form, particulars in writing of the event concerned.

19. Register of licence holders

- (1) The Securities Authority shall keep in such form as it thinks fit a register of the holders of current licences, specifying—
 - (a) in relation to each holder of a dealer's or investment adviser's licence—
 - (i) the name of the holder of the licence;
 - (ii) the address of the principal place of business at which the holder of the licence 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) the name of the holder of the licence;

- (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).

20. Revocation of and suspension of licence

- (1) A licence shall be deemed to be revoked, in the case of—
 - (a) an individual, if the individual dies;
 - (b) a body corporate, if the corporation has been wound up.
- (2) The Securities Authority may revoke a licence—
 - (a) in the case of the holder of a licence who is an individual—
 - (i) if a levy or execution in respect of the holder has not been satisfied;
 - (ii) if the holder of a licence ceases to carry on business for which the holder was licensed;
 - (iii) if the holder of a licence has been adjudged a bankrupt in Seychelles or elsewhere;
 - (iv) if, in the case of a representative, the licence of the dealer or investment adviser, in relation to whom the licence was granted, is revoked;
 - (v) if the Securities Authority has reason to believe that the holder of a licence has not performed the duties imposed on the holder of a licence under this Act efficiently, honestly and fairly;
 - (vi) if the holder of a licence is convicted of an offence involving fraud or dishonesty punishable by imprisonment for a term of not less than 3 months; or
 - (vii) if the holder of a licence contravenes any condition or restriction applicable in respect of the licence or any other provision in this Act;
 - (v) in the case of a body corporate—

[Please note: numbering as in original.]

 - (i) if it is being or will be wound up;
 - (ii) if a levy of execution in respect of it has not been satisfied;
 - (iii) if a receiver or receiver and manager has been appointed whether by the court or creditors in respect of the body corporate's property;
 - (iv) if it has entered into any composition or arrangement with its creditors;
 - (v) if it ceases to carry on the business for which it was licensed;
 - (vi) if the Securities Authority has reason to believe that the holder of a licence, or any of its directors or employees, has not performed the duties imposed on the holder of a licence under this Act efficiently, honestly or fairly; or
 - (vii) if the holder of a licence contravenes any conditions or restrictions applicable in respect of the licence or any other provision in this Act.

- (3) In a case to which subsection (2) applies, the Securities Authority, if it considers it desirable to do so, may instead of revoking a licence, suspend the licence for a specific period and may at any time remove the suspension.
- (4) The Authority shall not revoke or suspend a licence under subsection (2) or (3) without first giving an opportunity of being heard to the person whose licence is being revoked or suspended.
- (5) A person whose licence is revoked or suspended under this section shall, for the purpose of this Part, be deemed not to be licensed from the date that the Authority revokes or suspends the licence, as the case may be.
- (6) A revocation or suspension of a licence of a person shall not operate so as to—
 - (a) avoid or affect any agreement, transaction or arrangement relating to the trading in securities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the licence; or
 - (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

21. Appeals

- (1) A person who is aggrieved by the refusal of the Securities Authority to grant or renew a licence may appeal to the Minister, and any person aggrieved by the revocation or suspension of a licence may appeal to the Supreme Court, within 30 days of the Authority's decision.
- (2) The Supreme Court or the Minister may confirm or otherwise the decision of the Securities Authority and may give such directions in the matter as seem proper or otherwise determine the matter.
- (3) In any appeal under this section, the decision of the Minister or the Supreme Court, as the case may be, shall be final and shall be given effect to by the Securities Authority.

22. Exempt dealer

The following specified persons or bodies corporate shall be exempt dealers—

- (a) a person who carries on a business of dealing in securities only through the holder of a dealer's licence for the person's own account;
- (b) any person acting in the capacity of manager or trustee under a unit trust scheme, a trust deed of which is approved by the Registrar or the Minister under the Companies Act;
- (c) a financial institution licensed to carry on business under the Financial Institutions Act if any dealing in securities by the financial institution is by way of—
 - (i) making or offering to make with any person an agreement for or with a view to the underwriting of securities;
 - (ii) making an invitation to persons to subscribe for securities or to purchase securities on the first sale thereof;
 - (iii) issuing any document which is or is deemed to be a prospectus within the meaning of the Companies Act;
 - (iv) acquiring or disposing of securities only through the holder of a dealer's licence; or
 - (v) such other way as the Securities Authority may from time to time decide;
- (d) an investment adviser whose dealing in securities is solely incidental to carrying on the business of managing a portfolio of securities on behalf of a client.

Part V – Registers of interests in securities

23. Application of this Part

- (1) This Part applies to a person who is—
 - (a) a dealer;
 - (b) a dealer's representative;
 - (c) an investment adviser;
 - (d) an investment adviser's representative;
 - (e) a financial journalist.
- (2) In this Part, "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 Part, a reference to securities is a reference to securities which are quoted on a stock market of a securities exchange in Seychelles.

24. Register of securities

- (1) A person to whom this Part applies shall maintain a register in the prescribed form of the securities in which the person has an interest.
- (2) Particulars of the securities in which a person to whom this Part applies has an interest and particulars of the person's interest in those securities shall be entered in the register referred to in subsection (1) within 7 days of the acquisition of the interest.
- (3) Where there is a change, not being a prescribed change, in the interest of a person to whom this Part applies in securities, the person shall, within 7 days of the occurrence 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.
- (4) For the purposes of this subsection where a person acquires or disposes of securities, there shall be deemed to be a change in the interest of that person.

25. Notice of particulars to Authority

- (1) A person to whom this Part applies shall give notice to the Securities Authority in the prescribed form containing such particulars as are prescribed including the place at which the person will keep the register of the person's interests in securities.
- (2) The notice shall be given—
 - (a) in the case of a person who is required by this Act to hold a licence, as part of the person's application for the licence; or
 - (b) in the case of any other person, if the person becomes a person to whom this Part applies within 14 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 Part applies before the expiration of the period referred to in subsection (2).
- (4) A person who ceases to be a person to whom this Part applies shall, within 14 days of so ceasing, give notice of the fact to the Securities Authority.

26. Defence to prosecution

- (1) It is a defence to a prosecution for failing to comply with [section 24](#) or [section 25](#) if the accused proves that failure to do so was due to the accused not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that—
 - (a) the accused was not so aware on the date of the summons; or
 - (b) the accused became so aware not less than 14 days before the date of the summons and complied with the relevant section within 14 days after becoming so aware.
- (2) Subject to subsection (1), a person shall be presumed to have been aware of a fact or occurrence at a particular time of which an employee or agent of the person, being an employee or agent having duties or acting in relation to the person's employer's or principal's interest in the securities concerned, was aware at that time.

27. Production of register

- (1) The Securities Authority or any person authorised by it in that behalf may require a person to whom this Part applies to produce for inspection the register required to be kept pursuant to [section 24](#) and the Securities Authority or any person so authorised may make extracts from the register.
- (2) A person who fails to produce a register for inspection or fails to allow any person authorised under subsection (1) to make a copy of or make extracts from the register shall be guilty of an offence.

28. Particulars of financial journalists

The Securities Authority or a person authorised by it in that behalf may by notice in writing require the proprietor or publisher of a newspaper or periodical to supply the Securities Authority or a person authorised by it 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 addresses 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.

29. Extract of register

The Securities Authority may supply a copy of the extract of a register obtained pursuant to [section 27](#) to any person who in the opinion of the Securities Authority, should, in the public interest, be informed of the dealing in securities disclosed in the register.

Part VI – Conduct of securities business

30. Certain representation prohibited

- (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 another person that the first mentioned person's abilities or qualifications have in any respect been approved by the Securities Authority.
- (2) The statement that a person is the holder of a licence under this Act is not a contravention of this section.

31. Issues of contract notes

- (1) A dealer shall, in respect of a transaction of sale or purchase of securities, forthwith give a contract note that complies with subsection (2) to—
 - (a) where the transaction took place in the ordinary course of business at a securities exchange and the dealer entered into the transaction otherwise than as principal, the person for whom the dealer entered into the transaction;
 - (b) where the transaction did not take place in the ordinary course of business at a securities exchange and the dealer entered into the transaction otherwise than as principal, the person for whom the dealer entered into the transaction and the person with whom the dealer entered into the transaction; and
 - (c) where the transaction did not take place in the ordinary course of business at a securities exchange and the dealer entered into the transaction as principal, the person with whom the dealer entered into the transaction.
- (2) A contract note given by a dealer under subsection (1) shall include—
 - (a) the name or style under which the dealer carries on business as a dealer and the address of the principal place at which the dealer 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 the dealer is so acting;
 - (c) the name and address of the person to whom the dealer gives the contract note;
 - (d) the day on which the transaction took place and, if the transaction did not take place in the ordinary course of business at a securities exchange, a statement to that effect;
 - (e) the number, or amount and description, of the securities that are the subject of the contract;
 - (f) the price per unit of the securities;
 - (g) the amount of the consideration;
 - (h) the rate and amount of commission (if any) charged;
 - (i) the amounts of all stamp duties or other duties and taxes payable in connection with the contract; and
 - (j) if an 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, the first-mentioned amount and the nature of the benefit.
- (3) A dealer shall not include in a contract note given under subsection (1), as the name of the person with or for whom the dealer has entered into the transaction, a name that the dealer knows, or could reasonably be expected to know, is not the name by which that person is ordinarily known.
- (4) A reference in this section to a dealer dealing, or entering into a transaction, as principal includes a reference to a person—
 - (a) dealing or entering into a transaction on behalf of a person associated with the dealer;
 - (b) dealing in securities on behalf of a body corporate in which the dealer has a controlling interest; or
 - (c) where the dealer carries on business as a dealer on behalf of a body corporate in which the dealer's interest and the interest of the dealer's directors together constitute a controlling interest.

- (5) For the purposes of this section—
 - (a) a dealer who is a member of a securities exchange shall not be taken to have entered into a transaction as principal by reason only that the transaction was entered into with another dealer who is a member of a securities exchange; and
 - (b) a transaction takes place in the ordinary course of business at a securities exchange if it takes place in prescribed circumstances or is a transaction that is a prescribed transaction for the purposes of this section.
- (6) Notwithstanding [section 3](#) a person is not associated with another person for the purposes of this section by reason only that the person is director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities.

32. Certain persons to disclose certain interest in securities

- (1) Where a person who is a dealer, investment adviser, dealer's representative or investment adviser's representative sends circulars or other similar written communications in which the person made a recommendation, whether expressly or by implication, with respect to securities or a class of securities, the person shall cause to be included in each circular or other communication, in type not less legible than that used in the remainder of the circular or other communication, a concise statement of the nature of any interest in, or any interest in the acquisition or disposal of, those securities or securities included in that class that the person or a person associated with the first-mentioned person has at the date on which the first-mentioned person last sends the circular or other communication.
- (2) It is a defence to a prosecution for an offence against subsection (1) in relation to a failure to include in a circular or other communication a statement of the nature of an interest in, or an interest in the acquisition or disposal of, securities or securities included in a class of securities, being an interest of the accused or of a person associated with the accused, if the accused established that, at the time at which the circular or other communication was sent, the accused was not aware and could not reasonably be expected to have been aware—
 - (a) that the accused had an interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class; or
 - (b) that the person associated with the accused had an interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class,as the case may be.
- (3) For the purposes of subsections (1) and (2)—
 - (a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will, or is likely to, accrue directly or indirectly to the person upon or arising out of the disposal of the securities;
 - (b) without limiting the generality of paragraph (a), a person who has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities; and
 - (c) notwithstanding [section 3](#) a person is not associated with another person in relation to the sending of a circular or other communication or the making of a recommendation by reason only that the first-mentioned person is a director of a body corporate of which the other person is a director, whether or not the body corporate carries on a business of dealing in securities,unless the first-mentioned person and the other person are acting jointly, or otherwise acting together or under or in accordance with an arrangement made between them, in relation to the sending of the circular or communication or the making of the recommendation.

- (4) Where—
- (a) a person has subscribed for or purchased securities for the purpose of offering all or any of them to the public for purchase; and
 - (b) the person offers any of those securities for purchase,
- the person shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the securities offered for purchase unless the person has informed each person to whom the recommendation is made that the first-mentioned person acquired the securities for that purpose.
- (5) Where—
- (a) securities have been offered for subscription or purchase; and
 - (b) a person has subscribed for or purchased or is or will or may be required to subscribe for or purchase, any of those securities under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased,
- the person shall not, during the period of 90 days after the close of the offer, make an offer to sell those securities, otherwise than in the ordinary course of trading at a securities exchange, or make a recommendation with respect to those securities unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities that the person has acquired, or is or will or may be required to acquire, under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.
- (6) A person who is a dealer, investment adviser, dealer's representative or investment adviser's representative shall not send to a person a circular or other communication or written offer or recommendation to which subsection (1), (4) or (5) applies unless the circular or other communication or the offer or recommendation—
- (a) if the first-mentioned person is an individual, is signed by that person;
 - (b) if the first-mentioned person is a body corporate, is signed by a director, executive officer or secretary of the body corporate.
- (7) When a person who is a dealer, investment adviser, dealer's representative or investment adviser's representative, sends to a person a circular or other communication or a written offer or recommendation to which subsection (1), (4) or (5) applies, the first-mentioned person shall preserve a copy of the circular or other communication or of the written offer or recommendation, duly signed by the person concerned, mentioned in subsection (6) for 7 years.
- (8) Reference in this section to an offer of securities shall be construed as including a reference to a statement, however expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire securities.
- (9) For the purposes of this section, a circular or other communication or a written offer or recommendation sent to a person shall, if it is signed by a director, executive officer or secretary of a body corporate, be deemed to have been sent by the body corporate.
- (10) The Securities Authority may, if it is in the public interest, exempt a security or any class of securities from the application of this section.
- (11) A person who contravenes this section shall be guilty of an offence and liable on conviction to a fine of R20,000 and to imprisonment for a term of 2 years.

33. Recommendation by adviser

- (1) An adviser who—
 - (a) makes a recommendation with respect to securities or a class of securities to a person who may reasonably be expected to rely on the recommendation; and
 - (b) does not have a reasonable basis for making the recommendation to the person, contravenes this subsection.
- (2) For the purposes of subsection (1), an adviser does not have a reasonable basis for making a recommendation to a person unless—
 - (a) the adviser has, for the purposes of ascertaining that the recommendation is appropriate having regard to the information possessed by the adviser concerning the investment objectives, financial situation and particular needs of the person, given such consideration to, and conducted such investigation of, the subject-matter of the recommendation as is reasonable in all the circumstances; and
 - (b) the recommendation is based on that consideration and investigation.
- (3) An adviser who contravenes subsection (1) is not guilty of an offence under subsection (1) or under [section 98](#).
- (4) Where—
 - (a) an adviser contravenes subsection (1) by making a recommendation to a person;
 - (b) the person, in reliance on the recommendation, does a particular act, or refrains from doing a particular act;
 - (c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act, or to refrain from doing that act, as the case may be, in reliance on the recommendation; and
 - (d) the person suffers loss or damage as a result of doing that act, or refraining from doing that act, as the case may be,the adviser is liable to pay damages to the person in respect of that loss or damage.
- (5) In this section—
 - (a) a reference to an adviser is a reference to a person who is a dealer, investment adviser, dealer's representative or investment adviser's representative; and
 - (b) a reference to the making of a recommendation is a reference to the making of a recommendation, whether expressly or by implication.

34. Dealing as principal

- (1) Subject to subsection (4), a dealer shall not, as principal, deal in any securities with a person who is not a dealer unless the dealer first informs the person with whom the dealer is dealing that the dealer is acting in the transaction as principal and not as agent.
- (2) A reference in this section to a dealer dealing or entering into a transaction, as principal includes a reference to a person—
 - (a) dealing or entering into a transaction on behalf of a person associated with the dealer;
 - (b) dealing in securities on behalf of a body corporate in which the dealer has a controlling interest; or

- (c) where the dealer carries on business as a dealer on behalf of a body corporate in which the dealer's interest and the interests of the dealer's directors together constitute a controlling interest.
- (3) A dealer who, as principal, enters into a transaction of sale or purchase of securities with a person who is not a dealer shall state in the contract note that the dealer is acting in the transaction as principal and not as agent.
- (4) Subsection (1) shall not apply in relation to a transaction entered into by a dealer who is a member of a securities exchange and specialises in transactions relating to odd lots of securities, being a transaction of sale or purchase of an odd lot of securities.
- (5) Where a dealer fails to comply with subsection (1) or (3) in respect of a contract for the sale of securities by the dealer, the purchaser of the securities may, if the purchaser has not disposed of them, rescind the contract by a notice of rescission in writing given to a dealer not later than 30 days after the receipt of the contract note and, where a dealer fails to comply with subsection (1) or (3) in respect of a contract for the purchase of securities by the dealer, the vendor of the securities may, in like manner, rescind the contract.
- (6) Nothing in subsection (5) affects any right that a person has apart from that subsection.
- (7) A person who contravenes this section shall be guilty of an offence and liable on conviction to a fine of R25,000 and to imprisonment for a term of 3 years.

35. Dealings by employees of holders of licences

A person who is a dealer or an investment adviser shall not give unsecured credit to an employee of that person or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if—

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

36. Dealer to give priority to clients' orders

- (1) A dealer shall not, except as permitted by subsection (3), enter into, as principal or on behalf of a person associated with the dealer, a transaction of purchase or sale of securities that are permitted to be traded on the stock market of a securities exchange if a client of the dealer, who is not associated with the dealer, has instructed the dealer to purchase or sell securities of the same class and the dealer has not complied with the instruction.
- (2) A dealer who contravenes this section shall be guilty of an offence and liable on conviction to a fine of R10,000 and to imprisonment for one year. (3) Subsection (1) does not apply in relation to the entering into of a transaction by a dealer as principal or on behalf of a person associated with the dealer if—
 - (a) the instructions from the client of the dealer required the purchase or sale of securities on behalf of the client to be effected only on specified conditions at which the securities were to be purchased or sold and the dealer has been unable to purchase or sell the securities by reason of those conditions; or
 - (b) the transaction is entered into in prescribed circumstances.

37. Margin requirements

For the purpose of preventing the excessive use of credit for the purchase or carrying of securities by dealers or member companies, the Minister may prescribe the amount of credit that may from time to

time be extended and maintained on all or specified securities or transactions or class of securities and transactions and for matters connected therewith, known as margin requirements.

Part VII – Accounts - Dealers and investment advisers

1 – Dealer

38. Application of this Division

This Division applies to and in relation to the business of a dealer whether that business is carried on in Seychelles or elsewhere.

39. Accounts to be kept by dealers

- (1) A dealer shall keep or cause to be kept in the English language such accounting and other records as will sufficiently explain the transactions and financial position of the dealer's business and enable true and fair profit and loss accounts and balance-sheets to be prepared from time to time and shall cause those records to be kept in such a manner as to enable them to be conveniently and properly audited.
- (2) A dealer shall be deemed not to have complied with subsection (1) in relation to records unless those records—
 - (a) are kept in sufficient detail to show particulars of—
 - (i) all moneys received or paid by the dealer, including moneys paid to, or disbursed from, a trust account;
 - (ii) all purchases and sales of securities made by the dealer, the charges and credits arising from them, and the names of the buyer and seller of each of those securities;
 - (iii) all income received from commissions, interest and other sources and all expenses, commissions and interest paid, by the dealer;
 - (iv) all the assets and liabilities (including contingent liabilities) of the dealer;
 - (v) all securities that are the property of the dealer, showing by whom the securities, or the documents of title to the securities, are held and, where they are held by some other person, whether or not they are held as security against loans or advances;
 - (vi) 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 securities or the documents of title to the securities are held and the extent to which they are either held for safe custody or deposited with a third party as security for loans or advances made to the dealer;
 - (vii) all purchases and sales of options made by the dealer and all fees (being option moneys) arising from them;
 - (viii) all arbitrage transactions entered into by the dealer; and
 - (ix) all underwriting transactions entered into by the dealer;
 - (b) are kept in sufficient detail to show separately particulars of every transaction by the dealer;
 - (c) specify the day on which or the period during which each transaction by the dealer took place; and
 - (d) contain copies of acknowledgments of the receipt of securities or of documents of title to securities received by the dealer from clients for sale or safe custody clearly showing the name or names in which the particular securities are registered.

- (3) Without affecting the operation of subsection (2), a dealer shall keep records in sufficient detail to show separately particulars of all transactions by the dealer with, or for the account of—
 - (a) clients of the dealer;
 - (b) the dealer; and
 - (c) employees of the dealer.
- (4) An entry in the accounting and other records of a dealer required to be kept in accordance with this section shall be deemed to have been made by, or with the authority of, the dealer.
- (5) Notwithstanding any other provision of this section, a dealer shall not be deemed to have failed to keep a record referred to in subsection (1) by reason only that the record is kept as a part of, or in conjunction with, the records relating to any business other than dealing in securities that is carried on by the dealer.
- (6) The Securities Authority may exempt a dealer who is not a member company from complying with all or any of the requirements of this section so long as the dealer complies with such other requirements relating to the keeping of books, accounts and records as may be prescribed.
- (7) A dealer who contravenes this section shall be guilty of an offence and liable on conviction to a fine of R10,000 and to imprisonment for one year.

40. Certain moneys received by dealers to be paid into a trust account

A dealer shall establish and keep in a bank in Seychelles one or more trust accounts, designated or evidenced as such, into which the dealer shall pay—

- (a) all amounts, less any brokerage and other proper charges, that are received from or on account of any person, other than a dealer, for the purchase of securities and that are not attributable to securities delivered to the dealer not later than the next bank business day following the day on which they were received by the dealer; and
 - (b) all amounts, less any brokerage and other proper charges, that are received from or on account of any person, other than a dealer, from the sale of securities and that are not paid to that person or as that person directs not later than the next bank business day following the day on which they were received by the dealer.
- (2) A dealer who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine of R50,000.

41. Purposes for which money may be withdrawn from trust account

- (1) A dealer who withdraws any moneys from a trust account except for the purpose of making a payment—
 - (a) to the person entitled thereto;
 - (b) defraying brokerage and other proper charges; or
 - (c) that is otherwise authorised by law,shall be guilty of an offence and liable on conviction to a fine of R50,000.
- (2) A dealer who with intent to defraud, withdraws money from a trust account shall be guilty of an offence and liable on conviction to a fine of R100,000 and to imprisonment for 7 years.
- (3) The holder of a dealer's representative's licence shall neither accept nor hold client's money or property unless the holder of the licence does so on behalf of a dealer and in the course of employment.

- (4) The holder of a dealer's representative's licence who contravenes subsection (3) is guilty of an offence and liable on conviction to a fine of R25,000 and imprisonment for 3 years.

42. Moneys in trust account not available for payment of debts, etc.

Notwithstanding anything in any other written law, except as otherwise provided in this Division, moneys held in a trust account shall not be available for payment of the debts of a dealer or be liable to be paid or taken in execution under an order or process of any court.

43. Claims and liens not affected

Nothing in this Division shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any moneys held in a trust account or against or upon any moneys received for the purchase of securities or from the sale of securities before such moneys are paid into a trust account.

2 – Investment adviser

44. Application of this Division

- (1) This Division applies to and in relation to an investment adviser who carries on the business of managing a portfolio of securities for a client for investment purposes whether on a discretionary authority granted by the client or otherwise.
- (2) Nothing in subsection (1) shall apply to a corporation which manages a portfolio of securities for or on behalf of any of its related corporations in terms of the Companies Act, provided that the second-mentioned corporation's securities are held on trust or on behalf of or beneficially belonging to any other person, or as a result of any investment contract entered by the second-mentioned corporation.
- (3) For the purposes of this section, "investment contract" has the same meaning as that assigned to it under the Companies Act.
- (4) The Authority may, if it thinks it is consistent with the public interest, exempt an investment adviser from having to comply wholly or partly with this Division.

45. Accounts to be kept by investment adviser

- (1) An investment adviser shall keep or cause to be kept in the English language such accounting and other records as will sufficiently explain the transactions and financial position of the investment adviser's business and enable true and fair profit and loss accounts and balance-sheets to be prepared from time to time and shall cause those records to be kept in such prescribed manner and form as to enable them to be conveniently and properly audited.
- (2) Without affecting the generality of subsection (1), every investment adviser shall maintain such books and records and file such reports in such form and manner as may be prescribed.

46. Client's money

- (1) An investment adviser shall not deal in securities for or on behalf of a client unless to the extent that the investment adviser receives client's money or property—
- (a) the investment adviser does so on the basis that it shall be applied solely for specified purposes agreed when or before the investment adviser receives the money or property;
- (b) pending such application, the money or property is paid or deposited by the next bank business day to a custodian with whom the trust account is maintained in accordance with this Division; and

- (c) a separate book entry shall be recorded and maintained for each client by the investment adviser in accordance with this Act, in relation to that client's money or property.
- (2) In this section, "client's money or property" means money received or retained by an investment adviser or property deposited with an investment adviser in the course of the investment adviser's business as such for which the investment adviser is liable to account to another person; or money received or property deposited and held on trust by a custodian for which it is liable to account or deliver to another person.

47. Operation of trust account

- (1) An investment adviser shall make arrangements for a custodian to maintain a trust account for the investment adviser's clients in Seychelles.
- (2) For the purpose of this Division, "custodian", in relation to a client of an investment adviser means—
 - (a) a bank appointed by the investment adviser with the prior written consent of that client; or
 - (b) a bank appointed by that client.
- (3) In this Division, "trust account" means a current or deposit account or property account which—
 - (a) is kept with a custodian; and
 - (b) contains in its title the words "Trust Account/ Clients".
- (4) An investment adviser shall pay client's money or property into the trust account, maintained by a custodian, not later than the next bank business day following the day on which the investment adviser has received the client's money or property.
- (5) Notwithstanding subsection (1), where money or property that is required by this section to be paid or deposited into a trust account is received by an investment adviser in a place outside Seychelles, the investment adviser may pay that money or deposit that property into a trust account maintained by the investment adviser.
- (6) An investment adviser who withdraws any money from a trust account except for the purpose of making a payment—
 - (a) to the person entitled thereto; or
 - (b) that is otherwise authorised by law,shall be guilty of an offence and liable on conviction to a fine of R50,000 and to imprisonment for 5 years.
- (7) An investment adviser who, with intent to defraud, withdraws money from a trust account shall be guilty of an offence and liable on conviction to a fine of R100,000 and to imprisonment for 7 years.
- (8) Notwithstanding anything in any other written law, except as otherwise provided in this Division, money or property held in a trust account shall not be available for payment of the debts of an investment adviser or liable to be paid or taken in execution under the order or process of a court.
- (9) The holder of an investment adviser's representative's licence shall neither accept nor hold client's money or property unless the holder of the licence does so on behalf of an investment adviser and in the course of employment under a contract of service with that investment adviser.
- (10) The holder of an investment adviser's representative's licence who contravenes subsection (9) shall be guilty of an offence and liable on conviction to a fine of R25,000 and imprisonment for 3 years.
- (11) Nothing in this Division shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any money or property held in a trust account or against or

upon any money or property received for the purchase or from the sale of securities before such money or property is paid into the trust account.

(12) In this section, "property" includes securities.

48. Rights to copies of books, entries of transactions and to inspect contract notes related thereto

- (1) An investment adviser shall supply, on demand, to the investment adviser's client or any person authorised by the client copies of all entries in the investment adviser's books relating to any transaction carried out on behalf of that client, and the investment adviser shall be entitled to levy a reasonable charge therefor.
- (2) The clients of an investment adviser shall also be entitled at any time free of charge either personally or by an agent to inspect any contract notes and vouchers relating to the said transaction.

49. Duty to furnish Authority with such returns and information as Authority requires

A dealer and an investment adviser shall furnish such returns and provide such information relating to the dealer or investment adviser's business as the Securities Authority may require.

3 – Audit

50. Application of this Division

- (1) This Division applies to and in relation to the business of—
 - (a) a dealer; and
 - (b) an investment adviser.
- (2) A reference to a relevant person in this Division shall be construed as a reference to each of the persons specified in subsection (1) unless inconsistent with the context or the subject matter.
- (3) A reference to a relevant authority in this Division shall be construed as a reference to a securities exchange and the Securities Authority where the relevant person is a dealer who is a member company; and in any other case to the Securities Authority.

51. Appointment of auditor

- (1) Notwithstanding the Companies Act, a relevant person—
 - (a) shall appoint an auditor to carry out for the year in respect of which the auditor is appointed, an audit of the accounts of the relevant person; and
 - (b) shall, within 3 months or such other extension thereof permitted by the Securities Authority under subsection (2), after the end of the financial year, lodge with the relevant authority the auditor's report containing information on such matters as are prescribed.
- (2) Where an application for the extension of the period of 3 months specified in subsection (1) is made by a relevant person to the Securities Authority and the Securities Authority is satisfied that there are special reasons for requiring the extension, the Securities Authority may extend that period by 3 months, subject to such condition as the Securities Authority thinks fit to impose.
- (3) A relevant person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine of R20,000.
- (4) Notwithstanding any other provision of this Act, a securities exchange may, and shall if directed by the Securities Authority or the Securities Authority may on its own motion at any time, appoint an

auditor to conduct a surprise audit on a relevant person and it may fix the remuneration to be paid by the relevant person to that auditor.

- (5) Notwithstanding any other provisions of this Act or the provisions of the Companies Act, the Securities Authority may at any time remove an auditor appointed by a relevant person if the Securities Authority is not satisfied with the way the auditor is performing the duties of an auditor.

52. Duties of auditor

- (1) Where in the performance of the duties as an auditor for a relevant person, an auditor becomes aware—
- (a) of any matter which in the auditor's opinion may adversely affect the financial position of a relevant person to a material extent;
 - (b) of any matter which in the auditor's opinion may constitute a breach of any provision of this Act or a criminal offence involving fraud or dishonesty;
 - (c) that irregularities that have a material effect upon the accounts have occurred, including irregularities that jeopardise the funds or property of the clients of a relevant person,
- the auditor shall immediately report the matter to the securities exchange where the relevant person is a member of that securities exchange and the Securities Authority and in any other case to the Securities Authority.
- (2) An auditor shall not in the absence of malice on the auditor's part be liable to any action for defamation at the suit of any person in respect of any statements made in the auditor's report pursuant to subsection (1).
- (3) The relevant authority may impose all or any of the following duties on an auditor in addition to those provided under this Part:
- (a) a duty to submit such additional information in relation to the audit as the relevant authority considers necessary;
 - (b) a duty to enlarge or extend the scope of the audit of the business and affairs of the relevant person;
 - (c) a duty to carry out any other examination or establish any procedure in any particular case; and
 - (d) a duty to submit a report on any of the matters referred to in paragraphs (b) and (c),
- and the relevant person shall remunerate the auditor in respect of the discharge by the auditor of all or any of these additional duties.
- (4) An auditor appointed by the relevant authority may for the purpose of carrying out an audit—
- (a) examine on oath a relevant person or any of a relevant person's employees and agents and any other auditor appointed under this Act as well as any other person who has been a party to a dealing in securities with the relevant person;
 - (b) request a relevant person, a relevant person's employees and agents, any other auditor appointed under this Act or any other person who has been a party to a dealing in securities with the relevant person, to produce books, accounts, documents, records and securities held by the relevant person, the relevant person's employee or agents, the other creditor or the other person relating to the business of the relevant person.
- (5) Any person who contravenes subsection (1) or subsection (4) shall be guilty of an offence and liable on conviction to a fine of R25,000 and to imprisonment for 3 years.
- (6) Any report made by an auditor in the exercise of the auditor's powers under this section shall be submitted in writing to the relevant authority.

53. **Penalty for destroying concealing or altering records or sending records or other property out of Seychelles**

A person who, with intent to defeat the purposes of this Part or with intent to prevent, delay or obstruct the carrying out of any examination and audit under this Part—

- (a) refuses or fails to answer any question put to the person by an auditor pursuant to [section 52\(4\)\(a\)](#);
- (b) destroys, conceals, fails to produce or alters any book, account, record or document relating to the business of a relevant person; or
- (c) sends or attempts to send or conspires with any other person to send out of Seychelles any such book, account, record or document or any property of any description belonging to or in the disposition of or under the control of a relevant person,

shall be guilty of an offence and liable on conviction to a fine of R25,000 and to imprisonment for 3 years.

54. **Safeguarding of records**

- (1) A relevant person shall take reasonable precautions for guarding against falsification of books, accounts, documents or records required to be kept by the relevant person and for facilitating discovery of any falsification.
- (2) A relevant person who contravenes or fails to comply with subsection (1) shall be guilty of an offence under this Act.

55. **Right of committee to impose obligations etc. on member companies not affected by this Part**

Nothing in this Part shall prevent the committee of a securities exchange from imposing on its member companies further obligations or requirements which the committee thinks fit with respect to—

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

Part VII – Fidelity fund

[Please note: numbering as in original.]

56. **Interpretation of this Part**

In this Part—

"**committee**", in relation to a fidelity fund of a securities exchange, means the committee of that securities exchange;

"**fidelity fund**" or "fund" means a fidelity fund established under [section 57](#);

"**securities exchange**", in relation to a fidelity fund, means the securities exchange which established the fidelity fund.

57. **Establishment of fidelity fund**

- (1) A securities exchange shall establish and keep a fidelity fund which shall be administered by the committee on behalf of the securities exchange.

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

58. Moneys consisting fidelity fund

The fidelity fund of a securities exchange shall consist of—

- (a) all moneys paid to the securities exchange by member companies in accordance with this Part;
- (b) the interest and profits from time to time accruing from the investment of the fund;
- (c) all moneys paid to the fund by the securities exchange;
- (d) all moneys recovered by or on behalf of the securities exchange in the exercise of any right of action conferred by this Part;
- (e) all moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the committee of the securities exchange under [section 77](#); and
- (f) all other moneys lawfully paid into the fund.

59. Fund to be kept in separate bank

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

60. Payment out of fidelity fund

Subject to this Part, there shall from time to time be paid out of the fidelity fund of a securities exchange as required and in such order as the committee considers proper—

- (a) the amount of all claims, including costs, allowed by the committee or established against the securities exchange under this Part;
- (b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the committee of the rights, powers and authorities vested in it by this Part in relation to the fund;
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the committee under [section 77](#);
- (d) the expenses incurred or involved in the administration of the fund including the salaries and wages of persons employed by the committee in relation thereto; and
- (e) all other moneys payable out of the fund in accordance with this Act.

61. Accounts of fund

- (1) A securities exchange shall establish and keep proper accounts of its fidelity fund and shall before 30th April in each year cause a balance-sheet in respect of such accounts to be made out as at the preceding 31st December.
- (2) The committee of the securities exchange shall appoint an auditor to audit the accounts of the fidelity fund.
- (3) The auditor appointed by the committee shall audit the accounts of the fidelity fund and shall audit each balance-sheet and cause it to be laid before the committee not later than 3 months after the balance-sheet was made out.

62. Management of sub-committee

- (1) The committee of a securities exchange may appoint a management sub-committee of not less than 3 and not more than 5 persons, at least one of whom is a member of the committee.
- (2) The committee of a securities exchange may by resolution delegate to a sub-committee appointed by it under this section all or any of its powers, authorities and discretions under this Part, other than those under this section, sections 65 and 68(3), (4) and (5).
- (3) Any power, authority or discretion delegated under subsection (2) may be exercised by members forming a majority of the sub-committee as if by this Part that power, authority or discretion had been conferred on a majority of the members of the sub-committee.
- (4) Any delegation under subsection (2) may at any time in like manner be rescinded or varied.
- (5) The committee of a securities exchange may at any time remove any member of a sub-committee appointed by it under this section and may fill any vacancy in the sub-committee howsoever arising.

63. Fidelity fund to consist of an amount of R1 million

- (1) The fidelity fund of a securities exchange shall consist of an amount of not less than one million rupees, or such other sum as may by order be determined by the Minister from time to time, to be paid to the credit of the fund on the establishment of a securities exchange under this Act.
- (2) The fidelity fund shall be increased by an annual payment into the fund of a sum that is equal to 10% or more of the net income of a securities exchange for any one financial year, but the Minister may, after consultation with the securities exchange, increase that percentage.

64. Provisions if fund is reduced below R1 million

If the fidelity fund is reduced below the sum of one million rupees or such other sum as the Minister may, by order, determine, the committee shall take steps to make up the deficiency—

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

65. Levy to meet liabilities

- (1) If at any time a fidelity fund is not sufficient to satisfy the liabilities that are then ascertained of the securities exchange in relation thereto, the committee may impose on every member company a levy of such amount as it thinks fit or, if ordered by the Minister, shall impose a levy of such sum which shall in the aggregate be equivalent to the amount so specified in the order.
- (2) The amount of such levy shall be paid within the time and in the manner specified by the committee either generally or in relation to any particular case.
- (3) A member company shall not be required to pay by way of levy under this section more than R100,000 or such other sum as the Minister may by order determine in the aggregate.

66. Power of securities exchange to make advances to fund

- (1) A securities exchange may from time to time from its general funds give or advance on such conditions as the committee thinks fit any sums of money to its fidelity fund.
- (2) Any moneys advanced under subsection (1) may from time to time be repaid from the fidelity fund to the general funds of the securities exchange.

67. Investment of fund

Any moneys in a fidelity fund that are not immediately required for its purposes may be invested by the committee in any manner in which trustees are for the time being authorised by a written law to invest trust funds or where there is no such written law, in the manner authorised by the Securities Authority.

68. Application of fund

- (1) Subject to this Part, a fidelity fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss from any defalcation committed by a member company or any of its directors or any of the company's employees as trustee or trustees or for or on behalf of the trustees of that money or property.
- (2) Except as otherwise provided in this section, the total amount that may be paid under this Part to all persons who suffer loss through defalcations by a member company or any of its directors or through defalcation by any of the company's employees shall not, in any event, exceed in respect of that member company the sum of R50,000, but for the purposes of this subsection any amount paid from a fidelity fund shall to the extent to which the fund is subsequently reimbursed therefor be disregarded.
- (3) If, after taking into account all ascertained or contingent liabilities of a fidelity fund, the committee considers that the assets of the fund so permit, the committee may decide to increase the total amount which may be applied from that fund pursuant to subsection (2) and shall inform the Securities Authority accordingly who shall then cause notice of such decision to be published in the *Gazette* and from the date of the publication until the notice is revoked or varied the amount specified in the notice shall be the total amount which may be applied as aforesaid.
- (4) Where the committee decides to revoke or vary the notice under subsection (3), the committee shall inform the Securities Authority accordingly, who shall then cause notice of such revocation or variation to be published in the *Gazette* and a notice which is so varied shall have effect accordingly.
- (5) If, in any particular case after taking into account all ascertained or contingent liabilities of a fidelity fund, the committee considers that the assets of the fund so permit, the committee may apply out of the fund such sum in excess of the total amount limited by or under this section as the committee in its discretion thinks fit in or towards the compensation of persons who have suffered pecuniary loss as provided in subsection (1).
- (6) Notwithstanding subsections (2), (3) and (5), the Minister may, by order, direct the committee to increase the total amount which shall be applied from a fidelity fund to a particular member company in payment to persons who suffer loss through defalcation by that particular member company or any of its directors or by any of that member company's employees.
- (7) For the purposes of this section, "director of a member company" includes a person who has been, but at the time of any defalcation in question has ceased to be, a director of a member company if, at the time of the defalcation, the person claiming compensation has reasonable grounds for believing that person to be a director of a member company.

69. Claims against fund

- (1) Subject to this Part, every person who suffers pecuniary loss as provided in [section 68\(1\)](#) shall be entitled to claim compensation from the fidelity fund and to take proceedings in the Court as provided in this Act against the securities exchange to establish such claim.
- (2) Subject to subsection (3), a person shall in no case have any claim against the fidelity fund in respect of a defalcation in respect of money or other property which prior to the commission of the defalcation had in the due course of the administration of a trust ceased to be under the sole control of the director or directors of the member company concerned.

- (3) Subject to this Part, the amount which any claimant shall be entitled to claim as compensation from a fidelity fund shall be the amount of the actual pecuniary loss suffered by the claimant (including the reasonable costs of and disbursements incidental to the making and proof of the claim) less the amount or value of all moneys or other benefits received or receivable by the claimant from any source other than the fund in reduction of the loss.
- (4) In addition to any compensation payable under this Part, interest shall be payable out of the fidelity fund concerned on the amount of the compensation, less any amount attributable to costs and disbursements, at the rate of 5% *per annum* calculated from the day upon which the defalcation was committed and continuing until the day upon which the claim is satisfied.

70. Notice calling for claims against fund

- (1) The committee of a securities exchange may cause to be published in a daily newspaper published and circulating generally in Seychelles a notice, in or to the effect of the form prescribed, specifying a date, not being earlier than 3 months after the said publication, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.
- (2) A claim for compensation from a fidelity fund in respect of a defalcation shall be made in writing to the committee—
 - (a) where a notice under subsection (1) has been published, on or before the date specified in the notice; or
 - (b) where no such notice has been published, within 6 months after the claimant became aware of the defalcation,and any claim which is not so made shall be barred unless the committee otherwise determines.
- (3) No action for damages shall lie against a securities exchange or against any member or employee of a securities exchange or of a committee or management sub-committee by reason of any notice published in good faith and without malice for the purposes of this section.

71. Power of the committee to settle claims

- (1) The committee may, subject to this Part, allow and settle any proper claim for compensation from a fidelity fund at any time after the commission of the defalcation in respect of which the claim arose.
- (2) Subject to subsection (3), a person shall not commence proceedings under this Part against a securities exchange without leave of the committee unless—
 - (a) the committee has disallowed the person's claim; and
 - (b) the claimant has exhausted all relevant rights of action and other legal remedies for recovery of the money or other property, in respect of which the defalcation was committed, available against the member company in relation to whom or to which the claim arose and all other persons liable in respect of the loss suffered by the claimant.
- (3) A person who has been refused leave by a committee may apply for leave to a judge of the Court who may make such order in the matter as the judge thinks fit.
- (4) The committee after disallowing (whether wholly or partly) any claim for compensation from a fidelity fund shall serve notice of such disallowance in the prescribed form on the claimant or the claimant's legal practitioner.
- (5) Notwithstanding anything in any other written law, no proceedings against a securities exchange in respect of a claim which has been disallowed by the committee shall be commenced after the expiration of 3 months after service of notice of disallowance under subsection (4).
- (6) In any proceedings brought to establish a claim, evidence of any admission or confession by, or other evidence which would be admissible against, the member company or other person by

whom it is alleged a defalcation was committed shall be admissible to prove the commission of the defalcation, notwithstanding that the member company or other person is not the defendant in or a party to those proceedings, and all defences which would have been available to that member company or person shall be available to the securities exchange.

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

72. Form of order of court establishing claim

- (1) Where in any proceedings brought to establish a claim the Court is satisfied that the defalcation on which the claim is founded was actually committed and that otherwise the claimant has a valid claim, the Court shall by order—
 - (a) declare the fact and the date of the defalcation and the amount of the claim; and
 - (b) direct that the committee concerned allows the claim as so declared and deal with the same in accordance with this Part.
- (2) The Chief Justice may make rules of Court for or with respect to practice and procedure generally upon proceedings under this Part.

73. Power of committee to require production of securities etc.

The committee 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 any claim made or necessary for the purpose either of exercising its rights against a member company or the directors thereof or any other person concerned or of enabling criminal proceedings to be taken against any person in respect of a defalcation, and in default of delivery of any such securities, documents or statements of evidence by such first-mentioned person, the committee may disallow any claim by the first-mentioned person under this Part.

74. Subrogation of securities exchange to rights, etc. of claimant upon payment from fund

On payment out of a fidelity fund of any moneys in respect of any claim under this Part, the securities exchange shall be subrogated to the extent of such payment to all the rights and remedies of the claimant in relation to the loss suffered by the claimant from the defalcation.

75. Payment of claims only from fund

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

76. Provision where fund insufficient to meet claims or where claims exceed total amount payable

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

- (2) Where the aggregate of all claims which have been allowed or in respect of which orders of the Court have been made in relation to defalcations by or in connection with a member company exceeds the total amount which may pursuant to [section 68\(2\)](#) be paid under this Part in respect of that member company then the said total amount shall be apportioned between the claimants in such manner as the committee thinks equitable, and upon payment out of the fund of the said total amount in accordance with such apportionment of all such claims and any orders relating thereto all other claims against the fund which may thereafter arise or be made in respect of defalcations by or in connection with the said member company shall be absolutely discharged.

77. Power of committee to enter into contracts of insurance

- (1) A securities exchange may in its discretion enter into any contract with any person or body of persons, corporate or unincorporate, carrying on fidelity insurance business in Seychelles whereby the securities exchange will be insured or indemnified to the extent and in the manner provided by such contract against liability in respect of claims under this Part.
- (2) Any such contract may be entered into in relation to member companies generally, or in relation to any particular member company or member companies named therein, or in relation to member companies generally with the exclusion of any particular member company or member companies named therein.
- (3) An action shall not lie against a securities exchange or against any member or employee of a securities exchange or the committee or against any member of a management sub- committee for injury alleged to have been suffered by any member company by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to it.

78. Application of insurance moneys

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

Part IX – Trading in securities

79. False trading and market rigging transactions

- (1) A person shall not create, or cause to be created, or do anything that is calculated to create, a false or misleading appearance of active trading in any securities on a securities exchange in Seychelles or a false or misleading appearance with respect to the market for, or the price of any such securities.
- (2) A person shall not, by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transactions or devices, maintain, inflate, depress, or cause fluctuations in, the market price of any securities.
- (3) Without affecting the generality of subsection (1), a person who—
 - (a) effects, takes part in, is concerned in or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;
 - (b) makes or causes to be made an offer to sell any securities at a specified price where the person has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with the first-mentioned person has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or

substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or

- (c) makes or causes to be made an offer to purchase any securities at a specified price where the person has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with the first-mentioned person has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price,

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

- (4) In a prosecution of a person for an act referred to in subsection (3), it is a defence if the accused establishes that the purpose for which the accused did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a securities exchange.
- (5) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.
- (6) In a prosecution for an offence in relation to subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the accused establishes that the purpose or purposes for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.
- (7) The reference in subsection (3)(a) to a transaction of sale or purchase of securities includes—
 - (a) a reference to the making of an offer to sell or purchase securities; and
 - (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase securities.

80. Stock market manipulation

- (1) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, two or more transactions in securities of a body corporate being transactions that have, or are likely to have, the effect of raising the price of securities of the body corporate on a securities exchange in Seychelles, with intent to induce other persons to purchase or subscribe for securities of the body corporate or of a related body corporate.
- (2) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, two or more transactions in securities of a body corporate, being transactions that have, or are likely to have, the effect of lowering the price of securities of the body corporate on a securities exchange in Seychelles, with intent to induce other persons to purchase or subscribe for securities of the body corporate or of a related body corporate.
- (3) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, two or more transactions in securities of a body corporate, being transactions that have, or are likely to have, the effect of maintaining or stabilising the price of securities of the body corporate on a securities exchange in Seychelles, with intent to induce other persons to purchase or subscribe for securities of the body corporate or of a related body corporate.
- (4) A reference in this section to a transaction, in relation to securities of a body corporate, includes—
 - (a) a reference to the making of an offer to sell or purchase such securities of the body corporate; and

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

81. False or misleading statement etc.

A person shall not make a statement, or disseminate information, that is false or misleading in a material particular and is likely to induce the sale or purchase of securities by other persons or is likely to have the effect of raising, lowering, maintaining or stabilising the market price of securities if, when the first-mentioned person makes the statement or disseminates the information—

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

82. Fraudulently inducing persons to deal in securities

- (1) A person shall not—
 - (a) by making or publishing any statement, promise or forecast that the person knows to be misleading, false or deceptive;
 - (b) by any dishonest concealment of material facts;
 - (c) by the reckless making or publishing, dishonestly or otherwise, of any statement, promise or forecast that is misleading, false or deceptive; or
 - (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that the person knows to be false or misleading in a material particular,induce or attempt to induce any other person to deal in securities.
- (2) It is a defence to a prosecution for an offence under subsection (1) constituted by recording or storing information as mentioned in paragraph (d) thereof if it is established that, at the time when the accused so recorded or stored the information, the accused had no reasonable grounds for expecting that the information would be available to any other person.

83. Dissemination of information about illegal transactions

A person shall not circulate or disseminate, or authorise or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a body corporate will or is likely to rise or fall or be maintained by reason of any transaction entered into or other act or thing done in relation to securities of that body corporate, or of a body corporate that is related to that body corporate, in contravention of [sections 79 to 82](#) if—

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

84. Employment of manipulative and deceptive devices

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

- (a) employ any device, scheme or artifice to defraud;
- (b) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

- (c) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading.

85. Prohibition of dealings in securities by insiders

- (1) A person who is, or at any time in the preceding 6 months has been, connected with a body corporate shall not deal in any securities of that body corporate if by reason of being, or having been, so connected with that body corporate the person is in possession of information that is not generally available but, if it were, would be likely materially to affect the price of those securities.
- (2) A person who is, or at any time in the preceding 6 months has been, connected with a body corporate shall not deal in any securities of that body corporate if by reason of being, or having been, so connected with the first-mentioned body corporate the person is in possession of information that—
 - (a) is not generally available but, if it were, would be likely materially to affect the price of those securities; and
 - (b) relates to any transaction (actual or expected) involving both those bodies corporate or involving one of them and securities of the other.
- (3) Where a person is in possession of any information as is mentioned in subsection (1) or (2) that if generally available would be likely materially to affect the price of securities but is not precluded by either of those subsections from dealing in those securities, the person shall not deal in those securities if—
 - (a) the person has obtained the information, directly or indirectly, from another person and is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is precluded by subsection (1) or (2) from dealing in those securities; and
 - (b) when the information was so obtained, the first-mentioned person was associated with that other person or had with that other person an arrangement for the communication of information of a kind to which those securities apply with a view to dealing in securities by the first-mentioned person and that other person or either of them.
- (4) A person shall not, at any time the person is precluded by subsection (1), (2) or (3) from dealing in any securities, cause or procure any other person to deal in those securities.
- (5) A person shall not, at any time when the person is precluded by subsection (1), (2) or (3) from dealing in any securities by reason of being in possession of any information, communicate that information to any other person if—
 - (a) trading in those securities is permitted at a securities exchange whether within or outside Seychelles;
 - (b) the first-mentioned person knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing or causing or procuring another person to deal in those securities.
- (6) Without prejudice to subsection (3) but subject to subsections (7) and (8), a body corporate shall not deal in any securities at a time when any officer of that body corporate is precluded by subsection (1), (2) or (3) from dealing in those securities.
- (7) A body corporate is not precluded by subsection (6) from entering into a transaction at any time by reason only of information in the possession of an officer of that body corporate if—
 - (a) the decision to enter into the transaction was taken on its behalf by a person other than the officer;

- (b) it had in operation at that time arrangements to ensure that the information was not communicated to that person and that no advice with respect to the transaction was given to the person by another person in possession of the information; and
 - (c) the information was not so communicated and such advice was not so given.
- (8) A body corporate is not precluded by subsection (6) from dealing in securities of another body corporate at any time by reason only of information in the possession of an officer of that first-mentioned body corporate, being information that was obtained by the officer in the course of the performance of the officer's duties as an officer of that first-mentioned body corporate and that relates to proposed dealings by that first-mentioned body corporate in securities of that other body corporate.
- (9) For the purposes of this section, a person is connected with a body corporate if, being an individual —
 - (a) the person is an officer of that body corporate or of a related body corporate;
 - (b) the person is a substantial shareholder within the meaning of the Companies Act in that body corporate or in a related body corporate; or
 - (c) the person occupies a position that may reasonably be expected to give the person access to information of a kind to which subsections (1) and (2) apply by virtue of—
 - (i) any professional or business relationship existing between the person (or the person's employer or a body corporate of which the person is an officer) and that person or a related body corporate; or
 - (ii) the person being an officer or a substantial shareholder within the meaning of the Companies Act in that body corporate or in a related body corporate.
- (10) This section does not preclude the holder of a dealer's licence from dealing in securities, or rights or interests in securities, of a body corporate, being securities or rights or interests that are permitted by a securities exchange to be traded on the stock market of that securities exchange, if—
 - (a) the holder of the licence enters into the transaction concerned as agent for another person pursuant to a specific instruction by that other person to effect that transaction;
 - (b) the holder of the licence has not given any advice to the other person in relation to dealing in securities, or rights or interests in securities, of that body corporate that are included in the same class as the first-mentioned securities; and
 - (c) the other person is not associated with the holder of the licence.
- (11) Where a prosecution is instituted against a person for an offence by reason that the person was in possession of certain information and entered into a transaction in contravention of this section, it is a defence if the person satisfies the Court that the other party to the transaction knew, or ought reasonably to have known, of the information before entering into the transaction.
- (12) For the purposes of subsection (8), "officer", in relation to a body corporate, includes—
 - (a) a director, secretary, executive officer or employee of the body corporate;
 - (b) a receiver, or receiver and manager, of property of the body corporate;
 - (c) a judicial administrator of the body corporate;
 - (d) a liquidator of the body corporate; and
 - (e) a trustee or other person administering a compromise or arrangement made between the body corporate and another person.

86. Penalties

A person who contravenes a provision of this Part shall be guilty of an offence and liable on conviction—

- (a) in the case of a person not being a body corporate, to a fine of R100,000 and to imprisonment for a term of 7 years; or
- (b) in the case of a person being a body corporate, to a fine of R300,000.

87. Convicted persons liable to pay compensation

- (1) A person who is convicted of an offence under this Part shall be liable to pay compensation to any person who, in a transaction for the purchase or sale of securities entered into with the first-mentioned person or with a person acting for or on his behalf, suffers loss by reason of the difference between the price at which the securities were dealt in in that transaction and the price at which they would have been likely to have been dealt in such a transaction at the time when the first-mentioned transaction took place if the contravention had not occurred.
- (2) The amount of compensation for which a person is liable under subsection (1) is the amount of the loss sustained by the person claiming the compensation.
- (3) An action under this section for the recovery of a loss shall not be commenced after the expiration of two years after the date of completion of the transaction in which the loss occurred.
- (4) Nothing in subsection (1) affects any liability that a person may incur under any other written law.

Part X – Miscellaneous**88. Restriction on use of title "stockbroker" or "securities exchange"**

- (1) A person who is not a stockbroker within the meaning of this Act shall not take or use or, by inference, adopt the name or title of stockbroker or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that the person is a stockbroker.
- (2) A body corporate that is not a securities exchange shall not take or, use or by inference, adopt the name or title of securities exchange or take or use or have attached to or exhibited at any place a name, title or description implying or tending to create the belief that the body corporate is a securities exchange.

89. Offences by directors or managers etc.

- (1) A person, being a director or manager of a securities exchange, or of a dealer or of an investment adviser, who—
 - (a) fails to take all reasonable steps to secure compliance with the provisions of this Act; or
 - (b) fails to take all reasonable steps to secure the accuracy and correctness of any statement submitted under this Act,shall be guilty of an offence and liable on conviction to a fine of R25,000 and to imprisonment for a term of 3 years.
- (2) In any proceedings against a person under subsection (1), it shall be a defence to prove that the person had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate, and that that other person was competent, and in a position, to discharge that duty.

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

90. Falsification of records by directors, employees and agents

Any director, manager, auditor, employee or agent of a securities exchange or of a dealer or of an investment adviser, who—

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

shall be guilty of an offence and liable on conviction to a fine of R25,000 and to imprisonment for a term of 3 years.

91. False reports to Authority or securities exchange

Any person who, with intent to deceive, makes or furnishes, or knowingly and intentionally authorises or permits the making or furnishing of, any false or misleading statement or report to the Securities Authority, a securities exchange or any officer thereof relating to—

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

shall be guilty of an offence and liable on conviction to a fine of R25,000 and to imprisonment for a term of 3 years.

92. Immunity of Authority and its employees, etc.

A suit or other legal proceedings shall not lie against the Securities Authority or any officer or employee of the Securities Authority or any person (including a securities exchange) acting under the direction of the Securities Authority for any act done in good faith in the performance, or intended performance, of any duty, or in the exercise of any power under this Act or for any neglect or default in the performance or exercise in good faith of such duty or power.

93. Offences by body corporate

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

94. Power to appoint an inspector, committee of a securities exchange or the securities advisory body to investigate trading in securities

- (1) Notwithstanding anything in this Act, the Minister may, where it appears to the Minister to be in the public interest to do so, appoint any person as an inspector to investigate any matter

concerning trading or dealing in securities and an inspector, so appointed, shall have all the powers conferred upon an inspector under the provisions of the Companies Act and those provisions shall apply subject to such investigation, with such modification and adaptation as may be necessary.

- (2) If the Minister considers that it is not necessary to appoint an inspector under subsection (1), the Minister may appoint the securities advisory body or a committee of a securities exchange to investigate any matter concerning trading or dealing in securities and in any such investigation the securities advisory body or the committee of a securities exchange, as the case may be, may summon any person to give evidence on oath or affirmation or produce any documents or materials necessary for the purpose of the investigation.
- (3) Any inspector appointed under subsection (1) or the committee or securities advisory body appointed under subsection (2) shall report the results of its investigation to the Minister and the Minister may, if the Minister thinks it in the public interest to do so, cause the report to be printed and published.

95. Power of Court to prohibit payment or transfer of moneys, securities or other property

- (1) Where—
 - (a) an investigation is being carried out under this Act in relation to any act or omission by a person, being an act or omission that constitutes or may constitute an offence under this Act;
 - (b) a prosecution has been instituted against a person for an offence under this Act; or
 - (c) a civil proceeding has been instituted against a person under this Act, and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of any person to whom the person referred to in paragraph (a) or (b) or this paragraph, as the case may be (referred to in this section as the relevant person), is liable or may become liable to pay any moneys, whether in respect of a debt, or by way of damages or compensation or otherwise, or to account for any securities or other property, the Court may, on application by the Securities Authority, make any one or more of the following orders—
 - (d) an order prohibiting either absolutely or subject to conditions a person who is indebted to the relevant person or to any person associated with the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;
 - (e) an order prohibiting, either absolutely or subject to conditions, a person holding money, or securities or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person from paying all or any part of the moneys, or transferring, or otherwise parting with possession the securities or other property, to, or to another person at the direction or request of, the person on whose behalf the money, or the securities or other property, is or are held;
 - (f) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Seychelles of moneys of the relevant person or of any person associated with the relevant person;
 - (g) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of securities or other property of the relevant person or of any person who is associated with the relevant person from a place in Seychelles to a place outside Seychelles (including the transfer of securities from a register in Seychelles to a register outside Seychelles);
 - (h) an order appointing—
 - (i) where the relevant person is an individual, a receiver, having such powers as the Court orders, of the property or part of the property of that person; or

- (ii) where the relevant person is a body corporate, a receiver or receiver and manager, having such powers as the Court orders, of the property or part of the property of that person;
 - (i) where the relevant person is an individual, an order requiring that person to deliver up to the Court the person's passport and such other documents as the Court thinks fit;
 - (j) where the relevant person is an individual, an order prohibiting that person from leaving Seychelles without the consent of the Court.
- (2) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- (3) Where the Securities Authority makes an application to the Court for the making of an order under subsection (1), the Court shall not require the Securities Authority or any other person, as a condition of granting an interim order under subsection (2) to give any undertakings as to damages.
- (4) Where the Court has made an order under this section, the Court may, on application by the Securities Authority or by any person affected by the order, make a further order rescinding or varying the first-mentioned order.
- (5) An order made under this section may be expressed to operate for a period specified in the order or until the order is rescinded by a further order under subsection (1) or (4).
- (6) A person who contravenes an order by the Court under this section that is applicable to the person shall be guilty of an offence and liable on conviction to a fine of R20,000 and to imprisonment for a term of 2 years.

96. Injunctions

- (1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constitutes or would constitute a contravention of this Act, the Court may, on the application of—
 - (a) the Securities Authority; or
 - (b) any person whose interests have been, are or would be affected by the conduct,grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.
- (2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of—
 - (a) the Securities Authority; or
 - (b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,grant an injunction requiring the first-mentioned person to do that act or thing.
- (3) Where an application is made to the Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.
- (4) The Court may rescind or vary an injunction under subsections (1) to (3).

- (5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised—
- (a) if the Court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (6) Where an application is made to the Court for a grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised—
- (a) if the Court is satisfied that the person has refused or failed to do that act or thing whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will refuse or fail to do that act or thing whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (7) Where the Securities Authority makes an application to the Court for the grant of an injunction under this section, the Court shall not require the Securities Authority or any other person, as a condition of granting an interim injunction, to give any undertaking as to damages.
- (8) Where the Court has power under this section to grant an injunction restraining a person from engaging in conduct of a particular kind, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

97. Power of Court to punish for contempt of Court

Nothing in a provision of this Act that provides—

- (a) that a person shall not contravene an order of the Court; or
- (b) that a person who contravenes an order of the Court is guilty of an offence, affects the powers of the Court in relation to the punishment of contempt of the Court.

98. General penalty

A person who contravenes a provision of this Act shall be guilty of an offence and, where no penalty is expressly provided, shall be liable on conviction to a fine of R20,000.

99. Proceedings by whom to be taken and power to compound offences

- (1) Proceedings for an offence—
- (a) against any provision of Part IX may be taken only with the consent of the Attorney-General; and
 - (b) against any other provisions of this Act may be taken by the Securities Authority or, with the consent of the Attorney-General, by any other person.

- (2) The Securities Authority may, without instituting proceedings against any person for an offence under this Act which is punishable only by a fine, demand and receive the amount of such fine or such reduced amount as the Securities Authority thinks fit from such person, whereupon—
 - (a) if such person pays such amount to the Securities Authority within 14 days after the demand, no proceedings shall be taken against the person in relation to the offence;
 - (b) if such person does not pay the amount so demanded, the Securities Authority may cause proceedings to be instituted in relation to the offence.
- (3) The powers conferred upon the Securities Authority under subsection (2) shall only be exercised where a person admits the offence and agrees in writing to the offence being dealt with under that subsection.

100. Regulations

- (1) The Securities Authority may make regulations for or with respect to—
 - (a) prescribing forms for the purposes of this Act;
 - (b) prescribing fees to be paid in respect of any matter or thing required for the purposes of this Act;
 - (c) the preparation by dealers of profit and loss accounts and balance-sheets and the form and contents thereof;
 - (d) the specification of manipulative and deceptive devices and contrivances in connection with the purchase or sale of securities that are prohibited;
 - (e) purchasing or selling of securities for their own accounts, directly or indirectly by dealers, dealers' representatives, investment advisers and their representatives and financial journalists;
 - (f) providing for the disclosure by a dealer, investment adviser or exempt dealer of any material interest that such person might have in a proposed transaction relating to trading in securities;
 - (g) prohibiting or restricting forward contracts in shares of bodies corporate that are admitted to the official list of a securities exchange;
 - (h) the activities of and the standards to be maintained by dealers and investment advisers including the manner and method of soliciting business by them;
 - (i) the regulation or prohibition of trading on the floor of a securities exchange by stockbrokers or their representatives directly or indirectly for their own accounts or for discretionary accounts and the prevention of such excessive trading on a securities exchange but off the floor of a securities exchange by stockbrokers or their representatives directly or indirectly for their own accounts as the Securities Authority may consider is detrimental to the maintenance of a fair and orderly market, and regulations under this paragraph may provide for the exemption of such transactions as the Securities Authority may decide to be necessary in the public interest or for the protection of investors;
 - (j) the borrowing in the ordinary course of business and stockbrokers as the Securities Authority may consider necessary or appropriate in the public interest or for the protection of the investors;
 - (k) the publication of advertisements offering the services of dealers or offering securities for purchase or sale and the form and contents of such advertisements; and
 - (l) all matters or things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.

- (2) Except as otherwise expressly provided in this Act, regulations under subsection (1),—
 - (a) may be of general or specifically limited application; and
 - (b) may impose a fine not exceeding R50,000 or imprisonment for a term not exceeding 3 years or both for any contravention thereof.