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FIJI

ACT NO. 13 OF 1996

131



I assent.

[L.S.]

K. K. T. MARA
President

[28 August 1996]

AN ACT

TO ESTABLISH THE CAPITAL MARKETS DEVELOPMENT AUTHORITY AND
TO PROVIDE FOR MATTERS CONNECTED THEREWITH AND INCIDENTAL
THERE TO

ENACTED by the Parliament of Fiji—

PART I—PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Capital Markets Development Authority Act, 1996.

(2) This Act shall come into force on such date as the Minister may, by notification in the *Fiji Republic Gazette* appoint.

Interpretation

2. In this Act, unless the context otherwise requires—

“appointed day” means the day on which this Act comes into force;

"Authority" means the Capital Market Development Authority established under Section 3;

"broker" means a person who carries on the business of buying and selling of securities as an agent for investors in return for a commission;

"broker/dealer" means a firm which acts in the purchase and sale of securities either for his own account or as an agent for investors;

"capital market instruments" means any financial instrument whether in the form of debt or equity developed or traded on a securities exchange or directly between two or more parties which was originally issued for the purpose of raising funds for investments;

"central depository" means a company approved by the Authority in consultation with the Minister:

(a) to establish and operate a system for the central handling of securities, listed on any stock exchange—

(i) whereby all such securities are deposited with and held in custody by, or registered in the name of, the company or its nominee company for the depositors and dealings in respect of these securities are effected by means of entries in securities accounts without the physical delivery of scrips; and

(ii) which permits or facilitates the settlement of securities transactions or dealings in securities without the physical delivery of scrips; and

(b) to provide other facilities and services incidental thereto;

"Chairman" means the Chairman of the Authority appointed under Section 4;

"clearing house" means a clearing house, by whatever name or designation, established or arranged to be established by an exchange for the registration of dealing in securities and the settlement of trading in securities;

"committee" means any committee appointed by the Authority under Section 16;

"company" means a company incorporated pursuant to the Companies Act;

"corporation" means any body corporate formed or incorporated or existing within Fiji or outside Fiji and includes any foreign company but does not include—

- (a) any corporation sole;
- (b) any society registered under any written law relating to co-operative societies;
or
- (c) any trade union registered under any written law as a trade union;

“Court” means the High Court;

“dealer” means a person who carries on the business of buying, selling, dealing, trading, underwriting or retailing of securities whether or not he carries on any other business;

“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 avowed purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities;

“financial instruments” include securities, mortgage contracts, property contracts, insurance contracts, pension contracts, leasehold contracts, certificates of interests and any variations or derivatives thereof;

“Fund” means the fund established under Section 24;

“Gazette” means the *Fiji Republic Gazette* published by the order of the Government of Fiji and includes supplements thereto and any extraordinary *Gazette* as published;

“investment adviser” means a person who—

- (a) carries on business of advising others concerning securities;
- (b) issue or promulgates analyses or reports concerning securities;
- (c) pursuant to a contract or arrangement with a client, undertakes on behalf of the client the management of a portfolio of securities for the purpose of investment;

“Judge” means a Judge of the High Court;

“licence” means—

- (a) a broker's or a dealer's licence;
- (b) an investment adviser's licence;
- (c) a representative's licence;
- (d) a unit trust or mutual fund;
- (e) any other licence granted under this Act.

“licensed institution” means any institution licensed or deemed to be licensed under this Act or Business Licence Act.

“long-term debt instrument” means instruments with periods to run of over 365 days;

“Minister” means the Minister for the time being charged with the responsibility for finance;

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

“officer” means any officer or servant appointed under Section 19 and includes an Investigating Officer of the Authority appointed under Section 55;

“Registrar” means the registrar of Companies, the Deputy Registrar or any Assistant Registrar or other official performing under the Companies Act the duty of registration of Companies;

“registered person” means a person who holds a licence under this Act;

“representative” is one who represents a licensee under the Act as in Section 14(f);

“securities” means debentures, stocks and shares in a public company or corporation, or bonds, bills, tradeable promissory notes or drafts of any government or of any body, corporate or incorporate, and includes any right or option in respect thereof and any interest in unit trust scheme;

“securities exchange” means a stock exchange or and approved securities organisation;

“stock exchange” means a market, exchange or other place at which securities are offered for sale, purchase or exchange, including any clearing, settlement or transfer services therewith;

**PART II—ESTABLISHMENT OF CAPITAL MARKETS DEVELOPMENT
AUTHORITY, MEMBERSHIP AND MEETINGS OF AUTHORITY**

Establishment of the Authority

3. There is hereby established a body corporate by the name “Capital Markets Development Authority” with perpetual succession and a common seal, and which may sue and be sued in its corporate name and, subject to and for the purposes of this Act, may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest vested in the Authority upon such terms as it deems fit.

Membership of the Authority

4. The Authority shall consist of the following members:

- (a) a Chairman who shall not be a public officer or a member of Parliament to be appointed by the Minister;
- (b) 6 other members appointed by the Minister, who in his opinion, have experience and expertise in legal, financial, business or administration matters;
- (c) 2 public officers appointed by the Minister;
- (d) the Governor of the Reserve Bank of Fiji or a person delegated by him in writing for the purposes of this Act;
- (e) the Chief Executive Officer of the Authority.

Tenure of office

5. Subject to such conditions as may be specified in his instrument of appointment, a member of the Authority shall hold office for a term not exceeding 3 years and is eligible for reappointment.

Resignation and revocation

6.—(1) The appointment of any member may at any time be revoked by the Minister.

(2) A member may at any time resign his office by a written notice addressed to the Minister.

Vacation of office

7.—(1) The office of a member of the Authority shall be vacated—

- (a) if the member becomes or has anywhere been declared bankrupt and has not been discharged;
- (b) if the member has anywhere been convicted of an offence involving dishonestly;
- (c) if the member has, in the case of a person having professional qualifications, been disqualified or suspended from practising his profession by the order of any competent authority made in respect of him personally by reason of his misconduct;
- (d) if the Minister, after consultation with the Chief Executive Officer of the Authority, is satisfied that the member is incapable of carrying out, or is guilty of serious misconduct in the performance of, the duties of his office;
- (e) if the member absents himself from 3 consecutive meetings of the Authority without leave of the Chairman.

(2) In the event an office of a member is vacated the Minister shall appoint another person as soon as practicable and in any event within 30 days to fill the vacancy and the person appointed shall hold office until the date when the appointment of the person in whose place he was appointed would have expired.

Remuneration or allowance

8. Members of the Authority or any other person invited to attend any meeting or deliberation of the Authority under Section 10 may be paid such remuneration or allowance as the Minister may determine.

Meetings

9.—(1) The Authority shall meet as often as may be necessary for the performance of its functions.

(2) The quorum of the Authority shall be 6 members.

(3) In the absence of the Chairman, such member as the other members present may select, shall preside.

(4) Subject to the provisions of this Act, the Authority shall determine its own procedure.

Authority may invite others to meetings

10. The Authority may invite any person to attend any meeting or deliberation of the Authority for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at the said meeting or deliberation.

Common seal

11.—(1) The Authority shall have a common seal and such seal may from time to time be broken, changed, altered and made anew as the Authority may think fit.

(2) The common seal shall be kept in the custody of the Chairman or such other person as may be authorised by the Authority, and shall be authenticated by either the Chairman or such authorised person or by any officer authorised by the Chairman in writing; and all deeds, documents and other instruments purporting to be sealed with the said seal, authenticated as aforesaid, shall, until the contrary is proven, be deemed to have been validly executed:

Provided that any document or instrument which, if executed by a person not being a body corporate, would not be required to be under seal may in like manner be executed by the Authority, and any such document or instrument may be executed on behalf of the Authority by any officer or servant of the Authority generally or specifically authorised by the Authority in that behalf.

(4) The common seal of the Authority shall impart judicial notice for all official purposes.

Disclosure of interest

12.—(1) A member of the Authority or any committee having any interest in any matter under discussion by the Authority or committee shall disclose to the Authority or committee, as the case may be, the fact of his interest and nature thereof.

(2) For the purpose of subsection (1) a member of the Authority or committee shall be deemed to have an interest in the matter under discussion if he has interest in any company carrying on similar activities as the applicant company.

(3) A disclosure under subsection (1) shall be recorded in the minutes of the Authority or committee, as the case may be, and, after the disclosure, the member—

(a) shall not take part nor be present in any deliberation or decision of the Authority or committee, as the case may be; and

(b) shall be disregarded for the purpose of constituting a quorum of the Authority or committee, as the case may be.

(4) For the purpose of determining the interest to be disclosed under subsection (1), it shall include interest in family companies, associated companies and entities.

(5) Any member of the Authority or committee who fails to disclose his interest as provided under subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 7 years or to both.

(6) No act or proceedings of the Authority or committee shall be invalidated on the ground that any member of the Authority or committee has contravened the provisions of this Section.

(7) In this Section, "applicant company" means a company whose proposals or applications under Part VI and Part VIII are under discussion by the Authority or committee.

Minutes

13.—(1) The Authority or committee shall cause minutes of all their meetings to be maintained and kept in a proper form.

(2) Any minutes made of meetings of the Authority or committee, if duly signed, shall, in any legal proceedings, be admissible as *prima facie* evidence of the facts stated therein and every meeting of the Authority or committee in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members thereof to have been duly qualified to act.

PART III—FUNCTIONS AND POWERS OF AUTHORITY

Functions of the Authority

14. The Authority shall have the following functions:

- (a) to advise the Minister on all matters relating to the development and operation of the capital markets and the securities industry;
- (b) to formulate and implement policies and programmes in consultation with the Government with respect to the development of capital markets;
- (c) to employ such officers and servants as may be necessary for the purpose of carrying out the work of the Authority;
- (d) to frame rules on all matters within the jurisdiction of the Authority under this Act;
- (e) to establish conditions for, and in consultation with the Minister, approve an entity to operate as a securities exchange or a central depository and ensure the proper conduct of such business;

- (f) to grant a licence to any person to operate as:
 - (i) a broker, dealer, or investment adviser, or a representative of any of the foregoing and ensure the proper conduct of any such business;
 - (ii) a unit trust, a mutual fund, or a representative of a unit trust or a mutual fund, after consultation with the Minister, and ensure the proper conduct of any such business;
- (g) to inquire, either on its own motion or at the request of any other person, into the affairs of any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are traded on an approved securities exchange;
- (h) to give directions to any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are traded on an approved securities exchange;
- (i) to conduct inspection of the activities, books and records of any person which the Authority has approved, and persons to which the Authority has granted a licence;
- (j) to publish findings of malfeasance by any person which the Authority has approved or to which it has granted a licence or any public company the securities of which are traded on an approved securities exchange;
- (k) to suspend or cancel the listing of any securities or the trading of any securities, for the protection of investors;
- (l) to act as an appellate body for appeals from securities exchange actions by aggrieved parties;
- (m) to require information to be provided in the prescribed form;
- (n) to regulate and oversee the issue and subsequent trading both in primary and secondary markets of capital market instruments;
- (o) to regulate the take-overs and mergers of public companies;
- (p) to regulate all matters relating to mutual fund schemes;
- (q) to regulate and monitor the activities of any exchange, clearing house and central depository;
- (r) to take all reasonable measures to safeguard the interest of persons dealing in securities;

- (s) to promote and encourage proper conduct amongst members of the exchanges and all registered persons;
- (t) to grant compensation to any investor who suffers pecuniary loss resulting from the failure of a licensed broker or dealer to meet his contractual obligations;
- (u) to have recourse against any person, the actions or inactions of which, have resulted in a payment from the Investor Compensation Fund;
- (v) to suppress illegal, dishonourable and improper practices in dealings in securities and the provision of investment advice or other services relating to securities;
- (w) to consider and suggest reforms of the law relating to securities including changes to the constitution, rules and regulations of any exchange and its clearing house;
- (x) to perform any functions covered by or under any other Act.

Powers of the Authority

15. The Authority shall have all such powers as may be necessary to carry out its functions and to regulate its own procedure under this Act.

Authority may establish committees

16.—(1) The Authority may establish such committee as it considers necessary or expedient to assist it in the performance of its functions under this Act.

(2) The Authority may appoint any person to be a member of any committee established under subsection (1), and shall appoint a Chairman of the Committee.

(3) A committee established under this Section may regulate its own procedure and, in the exercise of its powers under this subsection, such committee shall be subject to and act in accordance with any direction given to the committee by the Authority.

(4) Meetings of a committee established under this Section shall be held at such times and places as the Chairman of the committee may, subject to subsection (3), determine.

(5) A committee may invite any person for the purpose of advising it on any matter under discussion to attend any meeting of the committee, but the person so invited shall not be entitled to vote at any such meeting.

(6) The members of a committee or any person invited to attend any meeting of a committee may be paid such allowances and other expenses as the Authority may determine.

Authority to furnish information

17. The Authority shall furnish to the Minister such information with respect to the policy it is pursuing or proposes to pursue in the performance of any of its functions under this Act as the Minister may from time to time require.

Appointment of Chief Executive Officer of the Authority

18.—(1) There shall be a Chief Executive Officer of the Authority who shall be appointed by the Authority after consultation with the Minister.

(2) The Chief Executive Officer shall, subject to the general direction and control of the Authority, be charged with the direction of the affairs and transactions of the Authority, the exercise, discharge and performance of its objectives, functions and duties, and the administration and control of the servants of the Authority.

Appointment of officers and servants of the Authority

19. The Authority may from time to time employ persons who shall be paid such remuneration and allowances and shall hold their employment on such other terms and conditions as the Authority shall determine.

Regulations with respect to discipline

20.—(1) The Authority may from time to time, make regulations with respect to the discipline of its officers and servants.

(2) The regulations made under this Section may include provisions for—

(a) the interdiction with reduction in salary or in other remuneration; and

(b) the suspension without salary or other remuneration, of an officer or servant of the Authority while disciplinary proceedings against him are pending.

(3) The regulations made under this Section shall, in prescribing the procedure for disciplinary proceedings, provide for an opportunity for representations to be made by the person against whom the disciplinary proceedings are taken before a decision is arrived at by the Authority on the disciplinary charge laid against such person.

Delegation of powers of the Authority

21.—(1) The Authority may from time to time, by writing under the hand of the Chairman, delegate to any person any of the Authority's powers under this Act or any other enactment.

(2) Any delegation under this Section may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(3) Any such delegation may be made subject to such restrictions and conditions as

the Authority thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(4) Any person purporting to exercise any power of the Authority by virtue of a delegation under this Section shall, when required to do so, produce evidence of his authority to exercise the power.

Limitation of liability of the Authority

22.—(1) No proceedings, civil or criminal, shall lie against the Authority for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that it did not act in good faith or without reasonable care.

(2) Subject to subsection (3) of this Section, no proceedings, civil or criminal, shall lie against any member of the Authority for anything he may do or say or fail to do or say in the course of the operation of the Authority, unless it is shown that he did not act in good faith.

(3) No proceedings, civil or criminal, shall lie against any member of the Authority for anything he may do or say or fail to do or say in the exercise or intended exercise of any function under this Act in relation to any inquiry by the Authority into a particular transaction, activity, or practice, unless it is shown that he did not act in good faith or without reasonable care.

Cases stated to the High Court

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

(2) The High Court may order the removal into the Court of Appeal of any case stated for the opinion of the High Court under this Section.

(3) The High Court or the Court of Appeal, as the case may be, shall hear and determine the question, and shall remit the case with its opinion to the Authority.

PART IV—FINANCE

The Fund

24.—(1) There is hereby established, for the purposes of this Act, a Fund to be administered and controlled by the Authority.

(2) The Fund shall consist of—

(a) such sums as may be provided from time to time for the purposes of this Act by Parliament;

- (b) sums borrowed by the Authority for the purpose of meeting any of its obligations or discharging any of its duties;
- (c) levies payable under Section 25;
- (d) fees or other charges imposed by the Authority; and
- (e) all other sums or property which may in any manner become payable to or vested in the Authority in respect of any matter incidental to its functions and powers.

Levier

25.—(1) In the case of every purchase and sale of securities recorded on the stock exchange or notified to it under its rules, the purchaser and the seller shall each of them be liable to pay to the Authority a levy at such rate as may be specified by order of the Minister to be published in the Gazette as a percentage of the consideration for such purchase and sale; and different rates may be specified in respect of different classes of securities.

(2) The securities exchange shall collect and account to the Authority for the levy referred to in subsection (1).

(3) The amount of any levy payable under this Section shall be recoverable as a civil debt due to the Authority.

(4) The Minister may make rules providing for—

- (a) the payment of the levies under this Section; and
- (b) the keeping, examination and audit of the accounts of the exchanges relating to the collection of such levies.

Conservation of the Fund

26. It shall be the duty of the Authority to conserve the Fund by so performing its functions and exercising its powers under this Act as to secure that the total revenues of the Authority are sufficient to meet all sums properly chargeable to its revenue account including depreciation and interest on capital.

Expenditure to be charged on the Fund

27. The Fund shall be expended for the purpose of:—

- (a) paying any expenditure lawfully incurred by the Authority including legal fees and costs and other fees and costs, and the remuneration of officers and servants

appointed and employed by the Authority, including superannuation allowances or gratuities;

- (b) paying any other expenses, costs or expenditure properly incurred or accepted by the Authority in the performance of its functions or the exercise of its powers under this Act;
- (c) purchasing or hiring equipment, machinery and any other materials, acquiring land and erecting buildings, and carrying out any other works and undertakings in the performance of its functions or the exercise of its powers under this Act;
- (d) repaying any moneys borrowed under this Act and the interest due thereon; and
- (e) generally paying any expenses for carrying into effect the provisions of this Act.

Authority's financial year

28. The financial year of the Authority shall begin on the first day of January and end on the thirty-first day of December of each year.

Annual report

29. The Authority shall, as soon as practicable after the end of each financial year but not more than four months, prepare a report on its activities during that financial year and send a copy of the report to the Minister who shall cause a copy thereof to be laid before Parliament.

Investor Compensation Fund

30.—(1) There shall be established a Fund to be known as the Investor Compensation Fund for the purposes of granting compensation to investors who suffer pecuniary loss resulting from the failure of a licensed broker or dealer to meet his contractual obligations.

(2) The Investor Compensation Fund shall consist of—

- (a) such moneys as are required to be paid into the Investor Compensation Fund by licensed persons;
- (b) such sums of money as are paid under Section 64 as ill-gotten gains where those harmed are not specifically identifiable;
- (c) such sums of money as accrue from interest and profits from Monies placed in the Investor Compensation Fund;
- (d) such sums of money recovered by or on behalf of the Authority from entities

whose failure to meet their obligations to investors result in payments from the Investor Compensation Fund; and

(e) such sums of money as are received for purposes of the Investor Compensation Fund from any other source approved by the Minister.

(3) Moneys which have accumulated in the Investor Compensation Fund may be invested by the Authority in such manner as may be determined by the Authority.

Accounts

31.—(1) The Authority shall cause proper accounts of the funds to be kept and shall, as soon as practicable after the end of each financial year but not more than 3 months, cause to be prepared for that financial year a statement of accounts of the Authority which shall include a balance sheet and an account of income and expenditure.

(2) The Authority shall cause the statement of accounts to be audited by auditors appointed by the Minister.

(3) The Authority shall, as soon as possible, send a copy of the statement of accounts certified by the auditors and a copy of the auditor's report to the Minister who shall cause them to be laid before Parliament.

Power to borrow

32. The Authority may from time to time, with the approval of the Minister, borrow, at such rate of interest and for such period and upon such terms as to the time and method of repayment and otherwise as the Minister may approve, any sums required by the Authority for meeting any of its obligations or performing any of its functions except for overdraft facilities required for working capital purposes.

Investment

33. The moneys of the Authority shall, in so far as they are not required to be expended by the Authority under this Act, be invested in such manner as the Authority deems fit.

PART V—PROVISIONS RELATING TO SECURITIES EXCHANGES AND
CENTRAL DEPOSITORY

Approval of securities exchange and central depository required

34.—(1) Subject to this Act, no person shall carry on a business as a securities exchange or central depository or hold himself out as providing or maintaining a stock market unless he has been approved as a securities exchange or central depository by the Authority.

(2) Notwithstanding the requirement of subsection (1), any person who immediately before the commencement of this Act was carrying on business as a stock exchange shall be entitled to carry on such business without approval under this Act for a period of six

months from such commencement provided that prior to the expiration of that period an application is made and approval granted under this Act.

(3) During the period referred to in subsection (2), the stock exchange shall be subject to all provisions of this Act except the requirement of subsection (1).

Applications for securities exchange and central depository approval

35.—(1) An application for securities exchange and central depository approval shall be made to the Authority in the form and manner prescribed by the Authority and shall be accompanied by the prescribed fee.

(2) The Authority may, by notice in writing, approve a person as a securities exchange or central depository if it is satisfied—

- (a) that the applicant is a limited company incorporated under the Companies Act, or such other association as may be approved by the Authority; or
- (b) that the applicant meets the conditions set out in rules issued by the Authority.

Changes in securities exchange and central depository rules

36.—(1) The rules of an approved securities exchange and central depository in so far as they have been approved by the Authority, shall not be amended, varied or rescinded without the prior written approval of the Authority.

(2) Where the board of directors of an approved securities exchange or central depository wishes to amend its rules, it shall forward the amendments to the Authority for approval.

(3) The Authority shall, after hearing from the securities exchange and central depository, and within thirty days of receipt of a notice under subsection (2) give written notice to the securities exchange or central depository stating whether such amendments to the rules are allowed or disallowed and in the event of the rules being disallowed, the Authority shall give reasons for such disallowance.

(4) Notwithstanding paragraph (2), a proposed rule change may take effect upon filing with the Authority if designated by the securities exchange or central depository as—

- (a) a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule;
- (b) a proposal establishing or changing a fee or other charge; or
- (c) a proposal dealing solely with the administration of the securities exchange or central depository or other matters which the Authority may specify

(5) In addition to the provisions of subsection (4), the Authority may add other terms which it determines to be appropriate in fulfilling its objectives under this Act.

(6) Where an approved securities exchange or central depository proposes to alter any particulars already furnished or undergoes or intends to undergo a change from its state specified in the application for approval it shall inform the Authority and obtain its prior consent before such alteration or change is effected.

Disciplinary actions by the securities exchange

37.—(1) Where a securities exchange reprimands, fines, suspends or expels, or otherwise takes disciplinary action against a member or a listed company, it shall within seven days give notice to the Authority in writing, giving particulars including the name of the person, the reason for and nature of the action taken.

(2) The Authority may review any disciplinary action taken by a securities exchange under subsection (1) and, on its own motion, or in response to the appeal of an aggrieved person, may affirm or set aside a securities exchange decision after giving the member or the company and the securities exchange an opportunity to be heard.

(3) Nothing in this Section shall preclude the Authority, in any case where a securities exchange fails to act against a member or a listed company, from itself, suspending, expelling or otherwise disciplining the subject person, but before doing so the Authority shall give such person and the securities exchange an opportunity to be heard.

PART VI—SECURITIES INDUSTRY LICENCES

Licences required

38.—(1) No person shall carry on a business as a broker, dealer, investment adviser, unit trust, mutual fund or a representative of any of the foregoing, or hold himself out as carrying on such a business unless he is a holder of a valid licence issued under this Act.

(2) Notwithstanding subsection (1), any person who immediately before the commencement of this Act was carrying on a business that requires a licence under this Act shall be able to carry on such business without a licence under this Act for a period of six months from such commencement and if prior to the expiration of that period an application is made for a licence under this Act, until the licence is granted or finally refused or the application is withdrawn.

(3) During the period of six months referred to in subsection (2), any such person shall be subject to all provisions of this Act except the requirement under subsection (1).

Application for licence

39.—(1) An application for a licence or for the renewal of a licence shall be made to the Authority in the prescribed form and shall be accompanied by the prescribed fee and

in the case of an application for the renewal of a licence, may be made within three months but not later than one month prior to the expiry of the licence.

(2) The Authority may require an applicant to supply such further information as it considers necessary in relation to the application.

(3) A licence shall only be granted if the applicant meets and continues to meet such minimum financial and other requirements as may be prescribed by the Authority.

(4) The Authority may grant a licence subject to such conditions or restrictions as it thinks fit and the Authority may, at any time by written notice to a licence holder, vary any such condition or restriction or impose further conditions or restrictions.

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

(6) Subject to subsection (7), a licence granted under this subsection shall expire one year after the date of issue thereof.

(7) A licence that has been renewed in accordance with the provisions of this Section shall continue in force for a period of one year next succeeding the date upon which but for its renewal, it would have expired.

Renewal of licence

40.—(1) In granting a renewal of a licence, the Authority shall satisfy itself that the licensed person is in compliance with the provisions of this Act and the rules and regulations made thereunder.

(2) In considering an application for a licence renewal, the Authority may extend an existing licence for a period of three months in order to permit an applicant to take such action as the Authority deems necessary to come into compliance with the Act and rules and regulations made thereunder.

(3) In granting an extension to any person under subsection (2), the Authority may impose any conditions or restrictions it deems appropriate on the activities of such person.

(4) Where the Authority is satisfied that a licensed person has—

(a) acted in contravention of any provision of this Act, or any rules or regulations made thereunder; or

(b) has since the grant of a licence, ceased to qualify for such a licence; or

(c) is guilty of malpractice or irregularity in the management of his affairs, the Authority may-

(i) direct the person to take whatever action the Authority deems necessary—

(a) to correct the conditions resulting from any contravention of any provisions of this Act or any rules or regulations made thereunder; and

(b) to come into compliance with the provisions of this Act or any rules or regulations made thereunder; or

(ii) cancel, suspend or impose, restrictions or limitations on the licence granted to the person.

Revocation of licence

41.—(1) The Authority may revoke a licence if it is satisfied that the licensed person—

(a) has contravened or failed to comply with any provisions of this Act or any rules or regulations made thereunder; or

(b) has ceased to be in good financial standing; or

(c) has since the grant of the licence, ceased to qualify for such a licence; or

(d) is guilty of malpractice or irregularity in the management of his business; or

(e) is adjudged bankrupt.

(2) In a case to which subsection (1) applies, the Authority, may instead of revoking a licence suspend the licence for a specific period or impose conditions or restrictions on the licence.

(3) The Authority shall not revoke or suspend or impose conditions or restrictions on a licence under subsection (1) or (2) without first giving such person an opportunity to be heard.

Register of licence holders

42. The Authority shall keep in such form as it deems appropriate a register of the holders of current licences specifying, in relation to each holder of a licence—

(a) his name;

(b) the address of the principal place at which he carries on the licensed business; and

- (c) the name or style under which the business is carried on if different from the name of the holder of the licence.

Obligation to report changes

43. Where—

- (a) the holder of a licence ceases to carry on the business to which the licence relates, or
- (b) a change occurs in any particulars which are required by Section 42 to be entered in a register of licence holders with respect to the holder of a licence,

the holder of the licence shall within fourteen days of the occurrence of the event concerned, give to the Authority, particulars of such event in the prescribed form.

Licensing of brokers and dealers

44.—(1) In granting licences as a broker or dealer to body corporate, the Authority shall satisfy itself—

- (a) that the applicant company is a member of a securities exchange approved under the Act;
- (b) that the applicant is a company incorporated under the Companies Act;
- (c) that the directors of the applicant company—
 - (i) have never been declared bankrupt or if a director has been declared bankrupt then the date of adjudication of bankruptcy should not be less than seven years from the date of the company's application;
 - (ii) have never been directors of a company that has been denied a licence as a broker or dealer;
 - (iii) have never been a company or a director of a company whose licence as a broker or dealer had been revoked by the appropriate authority;
- (d) that at least one director and at least one employee who will be the chief employee of the applicant company, have satisfied such minimum entry requirements and have passed such examinations as may be prescribed; and
- (e) that the applicant company has lodged security in such sum as may be determined by the Authority or an equivalent bank guarantee with the securities exchange of which it is a member.

(2) In granting a licence as a broker or dealer to an individual, the Authority shall satisfy itself that the applicant—

- (a) is of sound financial standing;
- (b) is a member of a securities exchange approved under this Act;
- (c) has satisfied such minimum entry requirements and passed such examinations as may be expressed; and
- (d) has lodged security in such sum as may be determined by the Authority, or an equivalent bank guarantee with the securities exchange of which he is a member.

Exempt dealers

45. The following specified persons shall be exempt dealers—

- (a) a person who carries on a business of dealing in securities only through the holder of a dealers licence for his own account;
- (b) any person acting in the capacity of a manager or trustee under a unit trust account;
- (c) an investment adviser whose dealing in securities is solely incidental to his carrying on the business of managing a portfolio of securities on behalf of a client.

PART VII—SECURITIES TRANSACTIONS AND REGISTERS

Transactions in securities

46.—(1) No licensed person, broker or dealer shall trade in listed securities outside the securities exchange of which he is a member except as provided for by the Authority in rules or as authorised by the Authority on a case by case basis.

(2) No licensed person, broker or dealer shall trade in listed securities in contravention of such rules as the Authority shall prescribe with respect to the clearance, settlement, payment, transfer or delivery of securities.

(3) No licensed person, broker or dealer shall effect any transaction in a margin account in a manner contrary to requirements adopted by the Authority.

(4) No licensed person, broker or dealer shall lend or arrange for the lending of any securities carried for the account of any customer without the customer's written consent, or borrow, or arrange to borrow, using the securities, carried for the account of any customer, as collateral, without the customer's written consent.

(5) No licensed person, broker or dealer shall effect any transaction in, or induce or attempt the purchase or sale of, any listed security by means of any manipulative deception, or other fraudulent device or contrivance.

(6) No person holding shares in a public company listed on an approved securities exchange, shall sell such shares except in compliance with the trading procedures adopted by such securities exchange.

(7) No person shall, directly or indirectly, in connection with the purchase or sale of any security—

(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;

(c) make any untrue statement of a material fact; or

(d) omit to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made, not misleading.

(8) No licensed person, broker or dealer executing transaction for his own, related family account, or for the account of his firm, whether in secondary market or on an underwriting, shall effect the said transaction until all customer orders, either at market or at same price, has been filled.

Register of interests in securities

47.—(1) This Section applies to—

(a) any person who is licensed under this Act; and

(b) a financial journalist.

(2) For the purpose of this Section, “financial journalist” means a person who contributes advice concerning securities or prepares analysis or reports concerning securities for publication in a newspaper or periodical.

(3) For the purposes of this Section, a reference to securities is a reference to securities which are quoted on a securities exchange.

(4) A person to whom subsection (1) applies shall maintain a register of the securities in which he has an interest and such interest or any changes in such interest shall be entered in the register within seven days of the acquisition or change in the interest.

(5) The Authority or any person authorised by it in that behalf may require any person to whom subsection (1) applies to produce for inspection the register required under subsection (4) and the Authority or any person so authorised may make extracts from the register.

PART VIII—ISSUES OF SECURITIES AND
TAKE-OVERS AND MERGERS

Issues of securities.

48.—(1) The Authority, in relation to issues of securities, shall examine and may allow to become effective the proposals specified in and in accordance with subsection (2).

(2) Proposals shall be submitted to the Authority by—

(a) all public limited companies incorporated in Fiji, for any—

- (i) new issues or offers for sale of securities to the public, whether such issues or offers for sale are by way of public issues or by private placements;
- (ii) rights issues of securities;
- (iii) bonus issues of securities otherwise than by way of the capitalisation of unappropriated profits;
- (iv) schemes of arrangements, schemes of reconstruction, take-over schemes, share option schemes and acquisitions of assets by way of issues of securities; and
- (v) listing of and quotation of securities on a stock exchange;

(b) all public limited companies incorporated in Fiji which intend to issue or offer for sale securities in markets outside Fiji or to list such securities on a stock exchange outside Fiji;

(c) all public limited companies incorporated outside Fiji which intend to issue or offer for sale securities to the public in Fiji or to list such securities on a stock exchange in Fiji prior to the registration of the relevant prospectuses with the Registrar; and

(d) all public limited companies incorporated outside Fiji which are already listed on a stock exchange in Fiji, for the listing of and quotation for any additional securities.

(3) The Authority shall examine any proposals submitted under subsection (2) and, after having regard to —

- (a) the viability of the company;
- (b) the quality and capability of the management of the company;
- (c) the suitability for listing of the company on a stock exchange where applicable; and
- (d) the interest of the public,

it may authorise the proposals upon such terms and conditions as it deems fit.

(4) Any person may make an announcement of a proposal for a scheme of arrangement, a scheme of reconstruction or a take-over scheme before submitting such proposal to the Authority for its approval under this Section.

(5) For the purpose of subsection (4), “announcement” means any publication by press notice or in any other form of a firm intention to make an offer.

Form and content of prospectus

49. Every prospectus and registered prospectus shall—

- (a) be in writing and be dated; and
- (b) specify any documents required by Section 51 of this Act to be endorsed on or attached to the prospectus or registered prospectus for the purposes of that Section; and
- (c) contain all information, statements, certificates, and other matters that it is required to contain by regulations made under this Act.

Statements by experts

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

- (a) the expert has given and has not, before delivery of a copy of the prospectus for registration in accordance with Section 51 of this Act, withdrawn his written consent to the distribution of the prospectus with the statement included in the form and context in which it is included; and
- (b) a statement that the expert has given and has not withdrawn his consent as aforesaid appears in the prospectus or registered prospectus; and

- (c) a statement of the expert's qualifications appears in the prospectus or registered prospectus; and
- (d) a statement which appears in the prospectus or registered prospectus states whether or not the expert is or is intended to be a director, officer, or employee of, or professional adviser to, the issuer of the prospectus; and
- (e) if the statement by the expert was made more than 4 months before the date of delivery of the prospectus for registration in accordance with Section 51 of this Act, a supplementary statement on the same matter made by the same or another expert less than 4 months before that date appears in the prospectus and registered prospectus.

(2) Where under subsection (1)(e) of this Section, a supplementary statement by an expert is required to appear in a prospectus or registered prospectus—

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

Requirements relating to prospectuses delivered to registrar for registration

51. Every prospectus delivered to the Registrar for registration under this Act shall—

- (a) have endorsed thereon or attached thereto—
 - (i) any consent to the issue thereof required by Section 50 of this Act from any person as an expert; and
 - (ii) all documents, information, certificates, and other matters required to be endorsed thereon or attached thereto for the purposes of this Section by regulations made under this Act; and
- (b) be signed by—
 - (i) the issuer of the prospectus (if an individual) and every person who is a director of the issuer at the time the prospectus is delivered to the Registrar, or by its or his agent authorised in writing; and
 - (ii) every promoter of the securities to which the prospectus relates, or by its or his agent authorised in writing.

Registration of prospectus

52.—(1) Subject to subsections (2) and (3) of this Section, the Registrar shall forthwith register every prospectus delivered to him in accordance with Section 51 of, and any regulations made under, this Act.

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

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

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

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

(4) Notwithstanding subsections (2) and (3) of this Section,—

- (a) the Registrar shall not refuse to register a prospectus pursuant to either of those subsections if—
 - (i) the text, diagrams, illustrations, photographs, and other information, the size and style of the print, and the layout used in the prospectus are (except for the colours used and any signatures) the same as those used or specified in a prospectus, including any attachment relating thereto, previously approved by him as suitable for registration; and
 - (ii) he considers that the colours used in the prospectus are such that every word therein is clearly legible;

(b) the Registrar may register a prospectus that does not comply with Section 51 of this Act if he is satisfied that it complies with all provisions of this Act other than Section 51 and, except for the matters referred to in that Section, it is a satisfactory copy of a registered prospectus.

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

Amendment of registered prospectus

53.—(1) A registered prospectus may be amended by a memorandum of amendments to the registered prospectus delivered to the Registrar and registered under this Section.

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

(3) Subject to subsections (4) and (5) of this Section, the Registrar shall forthwith register every memorandum of amendments to a registered prospectus delivered to him in accordance with this Section.

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

(a) pursuant to Section 52(2) of this Act, he could have refused to register the registered prospectus as amended if it had been delivered for registration at the time of the delivery to him of the memorandum; or

(b) the prescribed amount payable on registration is not paid.

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

(a) he is of the opinion that the registered prospectus as amended contains a statement that is false or misleading on a material particular or omits any material particular; or

(b) the date of the registered prospectus is altered.

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

Suspension and cancellation of registration of registered prospectus

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

- (a) if it considers that suspension of the registration of the registered prospectus is desirable in the public interest, the Authority may suspend the registration thereof for a period not exceeding 14 days;
 - (b) after giving the issuer named in the registered prospectus not less than 7 days written notice of the meeting at which the matter will be considered by the Authority, the Authority may at that meeting cancel the registration thereof.
- (2) Where the Authority suspends the registration of a registered prospectus pursuant to this Section,—
- (a) it shall forthwith notify the issuer named therein of the suspension and the reasons therefor; and
 - (b) no member of the Authority, or officer or employee thereof, or persons appointed under Sections 19 and 21 or officers appointed under Section 55 of this Act shall, except following cancellation of the registered prospectus under this Section or in the course of any criminal proceedings, divulge or communicate to any other person the fact of the suspension or any matter relating thereto.
- (3) Subject to subsection (4) of this Section, where the registration of a registered prospectus is suspended—
- (a) no allotment shall be made of any securities subscribed for whether before or after the suspension of the registration of the registered prospectus;
 - (b) all subscriptions received for securities, not being subscriptions for securities which have been allotted before the registration of the registered prospectus is suspended, shall be held in trust of the subscribers.
- (4) Where the period of suspension of registration of a registered prospectus has expired and the registration of that registered prospectus has not been cancelled under this Section, subsection (3) of this Section shall cease to have any application.
- (5) Where the Authority cancels the registration of a registered prospectus pursuant to this Section—
- (a) it shall forthwith notify the issuer named therein of the cancellation and the reasons therefor; and
 - (b) it may notify any other person of the cancellation and the reasons therefor.

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

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

(7) Subject to subsection (8) of this Section, if any subscriptions which are required to be repaid to the subscribers entitled thereto are not so repaid within one month after the date of the cancellation of the registration of the registered prospectus, the issuer named therein and all the directors thereof shall be jointly and severally liable to repay the subscriptions with interest at the rate of 10 per cent per annum from the date the subscriptions were received by or on behalf of the issuer.

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

(9) Where, at any time, the Authority is of the opinion that an advertisement—

- (i) is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities to which it relates; or
- (ii) is inconsistent with any registered prospectus referred to in it; or
- (iii) does not comply with this Act and regulations made under this Act—

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

(10) An order may be made on such terms and conditions as the Authority thinks fit.

(11) Where the Authority makes an order under subsection (9)—

- (i) it shall forthwith notify the issuer of the securities that the order has been made and the reasons for making it; and

- (ii) it may notify any other person that the order has been made and the reasons for making it.

(12) Every person who contravenes an order made under subsection (9) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

(13) It is a defence to a charge under sub-subsection (12) of this Section if the defendant proves that the advertisement was distributed-

- (i) without the defendant's knowledge; or
- (ii) without the defendant's knowledge of the order.

PART IX —ENFORCEMENT INVESTIGATION AND OFFENCES

Appointment of investigating officers of the Authority

55.—(1) The Authority may appoint such number of investigating officers to be known as Investigating Officers of the Authority as it considers necessary for the purposes of carrying out investigation of any offence or inspection under this Act.

(2) An Investigating Officer of the Authority appointed under subsection (1) shall have all the powers given to any person for the purposes of carrying out investigation of any offence or inspection under this Act.

Powers of the investigating officers of the Authority

56.—(1) An Investigating Officer of the Authority carrying out an investigation or inspection may enter any place or building and may—

- (a) inspect and make copies of or take extracts from any book, minute book, register or document; and
- (b) where he has reason to believe that an offence has been committed against this Act, apply before the High Court for a warrant to search for, seize, take possession of and detain any object, article, material, thing, accounts, book or other document, including any travel or other personal document, which may be used as evidence.

(2) An Investigating Officer of the Authority may by notice in writing require any person to produce to him such books, registers or documents as are in the custody or under the control of that person.

(3) A person who—

(a) fails to produce any such books, registers or documents as required by an Investigating Officer of the Authority; or

(b) obstructs or hinders an Investigating Officer of the Authority while exercising any of the powers under this Section, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years or to both.

(4) An Investigating Officer of the Authority may grant permission to any person to inspect any accounts, book or other document seized and taken possession of by the Investigating Officer of the Authority under subsection (1) if such person is entitled to inspect such accounts, book or document under this Act.

(5) Subsection (1) shall not be construed as limiting or affecting any similar powers conferred on any person under any other law.

Forcible entry

57.—(1) For the purpose of exercising his powers under Section 56(1) an Investigating Officer of the Authority may enter any place or building by force, if necessary.

(2) Notwithstanding subsection (1), no Investigating Officer of the Authority shall enter any premises by the use of force without a search warrant issued by a Judge.

Power to call for examination

58.—(1) For the purpose of Sections 56 and 57 an Investigating Officer of the Authority may by notice in writing require any person acquainted with the facts and circumstances of the case to appear before him to be examined orally and shall reduce into writing any statement made by the person so examined.

(2) A statement made by any person under this Section shall be taken down in writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him and after he had been given an opportunity to make any correction he may wish:

Provided that, where the person examined refuses to sign or affix his thumb print on the statement, the Investigating Officer of the Authority shall endorse thereon under his hand the fact of such refusal and the reason therefore, if any, stated by the person examined.

(3) Any statement made and recorded under this Section shall be admissible as evidence in any proceeding in any Court.

(4) Any person who—

(a) fails to appear before an Investigating Officer of the Authority as required under subsection (1);

(b) knowingly furnishes to an Investigating Officer of the Authority information or statement that is false or misleading in any material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 1/2 years or to both.

PART X—PROHIBITED DEALING

Insider Trading

59.—(1) A person who is, or at any time connected with a body corporate shall not deal in any securities of any body corporate if by reason of his so being, or having been, connected with the first mentioned body corporate he 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) relate to any transaction (actual or expected) involving both bodies corporate or involving one of them and securities of the other.

(2) Where a person is in possession of any such information as is mentioned in subsection (1) 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, he shall not deal in those securities if—

(a) he 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 himself precluded by subsection (1) from dealing in those securities; and

(b) when the information was so obtained, he was associated with that other person or had with him an arrangement for the communication of information of a kind to which those subsections apply with a view to dealing in securities by himself and that other person or either of them.

(3) A person shall not, at any time when he is precluded by subsections (1), or (2) from dealing in any securities, cause or procure any other person to deal in those securities.

(4) A person shall not, at any time when he is precluded by subsections (1), or (2)) from dealing in any securities by reason of his being in possession of any information, communicate that information to any other person if—

(a) trading in those securities is permitted on any securities exchange; and

(b) he knows, or has reason to believe, that the other person will make use of the information for the purpose of dealing or causing or procuring another person to deal in those securities.

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

(6) A body corporate is not precluded by subsection (5) 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 him by a person in possession of the information; and

(c) the information was not so communicated and such advice was not so given.

(7) A body corporate is not precluded by subsection (5) 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 his 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.

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

(a) he is an officer of that body corporate or of a related body corporate;

(b) he is a substantial shareholder in that body corporate or in a related body corporate; or

(c) he occupies a position that may reasonably be expected to give him access to information of a kind to which subsection (1) apply by virtue of—

(i) any professional or business relationship existing between himself (or his employer or a body corporate of which he is an officer) and that body corporate or a related body corporate; or

- (ii) his being an officer of a substantial shareholder in that body corporate or in a related body corporate.

(9) This Section does not preclude the holder of a broker's or 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.

(10) For the purpose of subsection (7), "officer", in relation to a body corporate, includes—

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

(11) A person who contravenes this Section shall be guilty of an offence and shall be liable on conviction to—

- (a) the consideration for securities; or
- (b) three times the amount of gain made or the loss avoided by the insider in buying or selling the securities whichever is greater; and in addition—
- (c) (i) in the case of a person being a body corporate, to a fine not exceeding \$20,000;

- (ii) in the case of any other person, including a director and officer of a body corporate, to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 5 years or both.

(12) An action under this Section for the recovery of a loss shall not be commenced after the expiration of 7 years after the date of completion of the transaction in which the loss occurred.

(13) Nothing in subsection (11) affects any liability that a person may incur under any other Section of this Act or any other law.

Fraudulent inducement to invest

60.—(1) Every person who, by any fraudulent means, induces or attempts to induce another person to enter into or offer to enter into—

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

shall commit an offence and shall, on conviction, be liable to pay a fine which shall not exceed \$10,000.00 and to imprisonment for a term which shall not exceed 7 years or both.

(2) For the purpose of subsection (1), “fraudulent means” shall include—

- (a) any statement, promise or forecast which the person knows to be misleading, false or deceptive;
- (b) any dishonest concealment of material facts; or
- (c) any negligent making of any statement, promise or forecast which is misleading, false or deceptive.

Fictitious transactions

61. Every person who knowingly or recklessly—

- (a) gives a fictitious price to securities by means of false rumours;
- (b) cause to be a listed company by means of a false statement;
- (c) makes any fictitious dealings in securities; or

- (d) advertises or holds out that securities which are not quoted on the Stock Exchange are so quoted;

shall commit an offence and shall, on conviction be liable to pay a fine which shall not exceed \$10,000.00 and or imprisonment for a term not exceeding 7 years or both.

Misleading documents

62. Every person who—

- (a) distributes or causes to be distributed any documents which, to his knowledge, are circulars containing—
- (i) an invitation to persons to do any of the acts of inducement or attempted inducement by a misleading, false or deceptive statement;
 - (ii) information calculated to lead directly or indirectly to the doing of any of the acts specified in paragraph (i) by the recipient of the information;
- (b) has in his possession for the purpose of distribution any circulars which, to his knowledge, are such circulars as are specified in paragraph (a);

shall commit an offence and, on conviction, be liable to pay a fine which shall not exceed \$10,000 and or imprisonment for a term not exceeding 7 years or both.

False Statements

63. Every person who—

- (a) contravenes any provision of this Act or any requirement imposed under the provision of this Act or any rule or regulation made thereunder;
- (b) furnishes for the purpose of this Act any information or any returns the contents of which is, to his knowledge, untrue or incorrect or misleading because of material omissions; or
- (c) wilfully obstructs any member of the Authority or an officer or servant of the Authority in the performance of his duties under the provisions of this Act;

shall commit an offence and, on conviction, be liable to pay a fine which shall not exceed \$10,000 and or imprisonment for a term not exceeding 7 years or both.

Penalties and Compensation

64.—(1) Any person who is guilty of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 7 years or both.

(2) In addition to the penalties provided for elsewhere in this Act, any person guilty of an offence under this Act 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 on his behalf, suffers loss, by reason of the difference between the price at which securities were transacted and the price at which they would likely have occurred if the offence had not been committed.

(3) The amount of compensation for which a person is liable under subsection (2) is—

- (a) the amount of the loss sustained by the person claiming the compensation; or
- (b) in the event the harm has been done on the market as a whole, the liability shall be the amount of illegal gains received or the loss averted as a result of the illegal action as determined by the court:

Provided the court should limit compensation to those who traded substantially contemporaneously with the person or corporation that acted illegally giving rise to the loss.

(4) To the extent that a person found guilty of an offence under subsection (1) profited by that offence but those harmed cannot reasonably and practicably be determined, the payment under subsection (2) shall be made to the Investor Compensation Fund established under this Act.

Right of appeal

65.—(1) Any person aggrieved by any direction given by the Authority to such person or by a decision of the Authority—

- (a) refusing to grant a licence;
- (b) imposing limitations or restrictions on a licence;
- (c) cancelling or suspending a licence;
- (d) refusing to admit a security to the official list of a securities exchange;
- (e) suspending trading of a security on a securities exchange; or
- (f) requiring the removal of a security from the official list of a securities exchange,

may appeal to the Court against such directions, refusal, limitations or restrictions, cancellations, suspension or removal,

PART XI —GENERAL

Conduct of prosecution

66.—(1) No prosecution for any offence under this Act shall be instituted except with the consent in writing of the Director of Public Prosecution.

(2) Any officer of the Authority authorised in writing by the Chairman may conduct any prosecution of any offence under this Act.

Public servants

67. All members of the Authority or any of its committee or any officer, servant or agent of the Authority while discharging their duties as such members, officers, servants or agents shall be deemed to be public servants within the meaning of the Penal Code Cap. 17.

Power to employ

68. The Authority may employ and pay agents and technical advisers, including advocates and solicitors, bankers, stockbrokers, surveyors, valuers and other persons, to transact any business or to do any act required to be transacted or done in the performance of its functions, the exercise of its powers or for the better carrying into effect of the purposes of this Act.

Power to review

69.—(1) The Authority may review its own decision under this Act upon an application made by any person who is aggrieved by such decision.

(2) An application to the Authority to review its own decision shall be made within thirty days after the aggrieved person is notified of such decision.

Obligation to secrecy

70.—(1) Except for any of the purposes of this Act or for the purpose of any civil or criminal proceedings under any written law or where otherwise authorised by the Authority, no member of the Authority or any of its committees or any officer, servant or agent of the Authority or any person attending any meeting of the Authority or any of its committees shall disclose any information which has been obtained by him in the course of his duties and which is not published in pursuance of this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$7,000 or to imprisonment for a term not exceeding 5 years or both.

Power to make regulations

71.—(1) The Authority may, with the approval of the Minister, make such regulations as may be expedient or necessary for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for—

- (a) prescribing forms for the purposes of this Act;
- (b) prescribing fees to be paid in respect of any matter required for the purposes of this Act;
- (c) prescribing the requirement of lodging and registration with the Authority or Registrar or stock exchange of copies of any document related to a take-over and merger transaction;
- (d) all matters relating to issue of securities by public limited companies;
- (e) all matters which by this Act are required or permitted to be prescribed.

(3) Regulations under this Section—

- (a) may provide that any act or omission in contravention of any provisions thereof shall be an offence; and
- (b) may provide for the imposition of penalties, which shall not exceed five thousand dollars, for such offence.

Inquiry

72.—(1) The Minister may whenever he shall deem it advisable so to do, appoint a person or a committee to inquire or investigate into any matter under this Act:

Provided that before the Minister makes an appointment under subsection (1), he shall first seek the views of the Authority on the matter to be inquired into or investigated as the case may be.

(2) For the purpose of an inquiry under subsection (1) of this Section, the provisions of the Commission of Inquiry Act, Cap. 47 shall apply mutatis mutandis.

Provisions of other Act, etc.

73. Where any provision of the Business Licencing Act; Companies Act; Unit Trust Act, or any other law is inconsistent with a provision of this Act the provision of this Act or regulations made under it shall prevail.

Passed by the House of Representatives this Twenty-Third day of July, in the year of our Lord, One Thousand, Nine Hundred and Ninety-Six.

Passed by the Senate this Ninth day of August, in the year of our Lord One Thousand, Nine Hundred and Ninety-Six.