

## CHAPTER 84

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## CHAPTER 84

### THE CAPITAL MARKETS AUTHORITY ACT.

*Commencement:* 24 May, 1996 and  
26 July, 1996.

**An Act to establish a Capital Markets Authority for the purpose of promoting and facilitating the development of an orderly, fair and efficient capital markets industry in Uganda; to make provision with respect to stock exchanges, stockbrokers and other persons dealing in securities; for certain offences relating to trading in securities; and for purposes connected with the foregoing.**

#### PART I—PRELIMINARY.

##### 1. Interpretation.

In this Act, unless the context otherwise requires—

- (a) “agent”, in relation to a broker or dealer, includes a person who is, or has at any time been, a banker of the broker or the dealer;
- (b) “approved stock exchange” means a stock exchange approved under section 24;
- (c) “arbitrage” means profiting from differences in price of the same security traded on two or more markets;
- (d) “auditor” means a company auditor qualified as such under the Companies Act;
- (e) “authority” means the Capital Markets Authority established by section 4;
- (f) “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;
- (g) “broker” means a person who is— (i) a director of a member company; or (ii) a partner of a member firm;
- (h) “broker or dealer’s representative” means a person, in the direct employment of, or acting for, or by arrangement with, a broker or dealer, who performs for that broker or dealer any of the functions of a broker or dealer other than work ordinarily performed by accountants, clerks or cashiers, whether his or her

remuneration is by way of salary, wages, commission or otherwise, and where the broker or dealer is a body corporate, includes any director or officer of the body corporate who performs for the body corporate any of those functions; (i) “chief executive” means the chief executive of the authority appointed under section 4; (j) “company” means a company formed and registered under the Companies Act; (k) “compensation fund” means the Investor Compensation Fund established by section 81; (l) “council”, in relation to a stock exchange, means the persons for the time being in whom the management of the stock exchange is vested; (m) “court” means the court having jurisdiction under this Act; (n) “dealer” means a person who carries on a business of dealing in securities on his or her own account, whether he or she carries on any other business or not, but does not include an exempt dealer;

(o) “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—

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

(ii) any agreement the purpose or intended 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;

(p) “director” has the same meaning as assigned to it in the Companies Act; (q) “executive officer”, in relation to a body corporate, means any person by whatever name called who is concerned or takes part in the management of the body corporate whether or not he or she is a director of the body corporate; (r) “exempt dealer” means a person specified under section 47; (s) “General Fund” means the General Fund established under section 8; (t) “investment adviser” means a person who—

(i) carries on a business of advising others concerning securities;

(ii) as part of a regular business, issues or publishes analyses or reports concerning securities; or

- (iii) under 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 it does not include—
  - (A) a bank as defined in section 1 of the Financial Institutions Act;
  - (B) an insurer within the meaning of section 4 of the Insurance Act;
  - (C) an advocate or accountant in practice whose carrying on of that business is solely incidental to the practice of his or her profession;
  - (D) a broker or dealer or his or her employee, or a broker or dealer's representative or an exempt broker or dealer whose carrying on of that business is solely incidental to the conduct of his or her business of dealing in securities; or
  - (E) a person who is the proprietor of a newspaper 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 published only through that newspaper;
    - (III) that person receives no commission or other consideration for giving advice or for issuing or publishing the analyses or reports; and
    - (IV) the advice is given and the analyses and reports are issued or published solely as incidental to the conduct of that person's business as a newspaper proprietor; and
  - (F) such other persons as the Minister may, by statutory instrument, prescribe;
- (u) "investment representative" means a person in the direct employment of, or acting for or by arrangement with, an investment adviser, who performs for the investment adviser any of the functions of an investment adviser, other than work ordinarily performed by accountants, clerks or cashiers, whether his or her remuneration is by way of salary, wages, commission

or otherwise and includes any director or officer of a body corporate who performs for that body corporate any of those functions; (v)

“licence” means—

- (i) a broker or dealer’s licence;
- (ii) an investment adviser’s licence; or
- (iii) a representative’s licence, issued under section 36; (w)

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

- (i) the admission to the official list of the body corporate, of bodies corporate, governments, unincorporated bodies or other persons for the purpose of the quotation on the stock market, or securities made available by bodies corporate, governments, unincorporated bodies or other persons or the removal from that official list and for other purposes; or
- (ii) the activities or conduct of bodies corporate, government, unincorporated bodies and other persons who are admitted to that list,

whether those rules—

- (iii) are made by the body corporate or are contained in any of the constituent documents of the body corporate; or
- (iv) are made by another person and adopted by the body corporate; (x) “member company” means a company which carries on a

business of dealing in securities and is recognised as a dealing member by a stock exchange; (y) “member firm” means a partnership which carries on a business

of dealing in securities and is recognised as a dealing member by a stock exchange; (z) “Minister” means the Minister to

whom the functions of a

Minister under this Act have been assigned by the President;

- (aa) “prescribed” means prescribed by regulations under section 101;
- (bb) “prescribed interest” means any right to participate, or any interest whether enforceable or not and whether actual,

prospective or contingent—

- (i) in any profits, assets or realisation of any financial or business undertaking or scheme whether in Uganda or elsewhere;
- (ii) in any enterprise, whether in Uganda or elsewhere, in relation to 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 (iii) 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 it does not include—

- (A) any share in or debenture of a body corporate;
- (B) any interest in or arising out of a policy of life insurance;
- (C) an interest in a partnership agreement, unless the agreement or proposed agreement—
  - (I) relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement;
  - (II) is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement; or
  - (III) is or would be an agreement, within a class of agreements, prescribed by the regulations for the purposes of this paragraph;

(iv) a right of interest, or a right of interest included in a class or kind of rights or interests, declared by regulations to be an exempt right or interest or a class or kind of exempt rights or interests; (cc) “regulations” means regulations made under section 101; (dd) “relevant authority”—

(i) in relation to a member company or member firm, means the stock exchange by which the company is recognised; and (ii) in relation to any other person, means the authority; (ee) “relevant bodies” means the bodies specified in the Schedule to

this Act; (ff) “relevant securities” has the meaning assigned to it by section

18(11); (gg) “rules”, in relation to a stock exchange, means the rules

governing the conduct of the stock exchange or its members by whatever name called and includes rules contained in the regulations of the stock exchange; (hh) “securities” means—

(i) debentures, stock, or bonds issued or proposed to be issued

by a government; (ii) debentures, stocks, shares, bonds or notes issued or

proposed to be issued by a body corporate; (iii) any right, warrant, option, or futures in respect of any

debenture, stocks, shares, bonds, notes or in respect of commodities; or (iv) any instruments commonly

known as securities, but does

not include—

(A) bills of exchange;

(B) promissory notes; or

(C) certificates of deposit issued by a bank or financial institution licensed under the Bank of Uganda Act;

(ii) “share” means the interest of members of a body corporate who

are entitled to share in the capital or income of that body

corporate; (jj) “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 connected

with it; (kk) “stock market” means a market, exchange or other

place, at

which, or a facility by means of which, securities are regularly

offered for sale, purchased or exchanged; (ll) “substantial

shareholder” means a shareholder entitled to exercise

or control the exercise of 15 percent or more of the voting power

at general meetings of the company or one who is in a position to

control the composition of a majority of the board of directors of

a company; (mm) “trust account” means a trust account opened

and maintained

under section 67; (nn) “underwriting” means the purchase or

commitment to purchase

or distribute by a broker or dealer or other person of any issue or

offer of securities for immediate or prompt public distribution by

or through them; (oo) “unit”, in relation to a unit trust, means a

right or interest,

whether described as a unit, subunit or otherwise, which may be

acquired under the trust; and

- (pp) “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.

## **2. Meaning of “associated person”.**

- (1) A reference in this Act to a person associated with another person shall be construed as follows—
- (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 the related body corporate;
  - (b) where the matter to which the reference relates is the extent of 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, 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 each other shares in the body corporate or may be required to dispose of those shares in accordance with the directions of the other person;
  - (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 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 law 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; or
- (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 referred to in paragraph (a), (b), (c), (d), (e) or (f).

(2) Where, in proceedings under this Act, it is alleged that a person referred to in subsection (1)(d) (i) or (ii) was associated with another person at a particular time, that person shall be taken not to have been 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 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 functions that relate to his or her professional capacity or to his or her business relationship with the other person.

### **3. Definition of “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 he or she has an interest, he or she shall be taken to have an interest in those activities.

(2) A person shall be taken to have an interest in a security where a body corporate has an interest in that 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 or her associates are, entitled to exercise or control the exercise of not less than 15 percent of the votes attached to the voting shares in the body corporate.

(3) A person shall be taken to have an interest in a security in any one or more of the following circumstances—

- (a) where he or she has entered into a contract to purchase a security;
- (b) where he or she has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or herself to his or her order, whether the right is exercisable immediately or in the future and whether on the fulfilment of a condition or not;
- (c) where he or she has the right to acquire a security or an interest in a security, under an option, whether the right is exercisable immediately or in the future and whether on the fulfilment of a condition or not; or
- (d) where he or she is entitled, otherwise than by reason of his or her 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 he or she is the registered holder.

(4) A person shall be taken to have an interest in a security if that security is held jointly with another person.

(5) 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.

(6) There shall be disregarded for the purpose of determining whether a person has an interest in a security—

- (a) an interest in a security if the interest is that of a person who holds the security as a bare trustee;
- (b) an interest in a security of a person whose ordinary business includes the lending of money if he or she holds the interest only

by way of security for the purpose 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 him or her by reason of his or her holding a prescribed office; and
- (d) a prescribed interest in a security being an interest of such person, or of the person included in such class of persons, as may be prescribed.

(7) An interest in a security shall not be disregarded under this section 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—CAPITAL MARKETS AUTHORITY.

### **4. Establishment of the authority.**

(1) There is established an authority to be known as the Capital Markets Authority.

(2) The authority shall be a body corporate with perpetual succession and a common seal and shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of both movable and immovable property;
- (c) borrowing and lending money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.

(3) The authority shall consist of—

- (a) a chairperson appointed by the Minister in consultation with relevant bodies;
- (b) six other members from the private sector appointed by the Minister;
- (c) the Permanent Secretary/Secretary to the Treasury of the Ministry responsible for finance and economic planning or a person

- (d) deputed by him or her in writing for the purposes of this Act; the Governor of the Bank of Uganda or a person deputed by him or her in writing for the purposes of this Act;
- (e) the registrar of companies or a person deputed by him or her in writing for the purposes of this Act;
- (f) the Solicitor General or a person deputed by him or her in writing for the purposes of this Act;
- (g) the chief executive of the authority.

(4) The chairperson and the other members appointed under subsection (3)(b) shall be persons who in the opinion of the Minister have experience or expertise or both in legal, financial, business or administrative matters.

(5) Subject to subsection (4), the chairperson and the six members to be appointed under subsection (3)(b) shall be appointed from among persons nominated by the relevant bodies, each relevant body nominating two such persons.

(6) The chairperson and every member appointed under subsection (3)(b) shall hold office for three years and shall be eligible for reappointment.

(7) If the chairperson by reason of extended illness or absence is temporarily unable to perform the duties of his or her office, the Minister shall appoint another member of the authority to act in his or her place during his or her absence.

(8) The chairperson may at any time resign by letter addressed to the Minister, and the resignation shall take effect upon being accepted by the Minister.

(9) Any member appointed under subsection (3)(b) shall cease to hold office if—

- (a) he or she delivers to the Minister a written resignation of his or her appointment;
- (b) on the advice of the authority, the Minister removes him or her from office on the grounds that he or she is incapacitated by mental or physical illness or is otherwise unable or unfit to discharge the functions of a member or is unable to continue as a member;
- (c) he or she has been absent from three consecutive meetings of the

- authority without leave or good cause;
- (d) he or she is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
  - (e) he or she is sentenced by a court to imprisonment for a term of six months or more without the option of a fine;
  - (f) he or she is convicted of an offence involving dishonesty, fraud or moral turpitude; or
  - (g) in the case of a person possessed of a professional qualification, he or she is disqualified or suspended, otherwise than at his or her own request, from practising his or her profession in Uganda or in any other country by an order of any competent authority made in respect of him or her personally.

(10) Where a member appointed under subsection (3)(b) vacates office, the Minister may appoint another person to hold office for the unexpired period of the term of office of the member in whose place he or she is appointed.

(11) If any member of the authority appointed under subsection (3)(b) is temporarily unable to perform his or her duties, the Minister may appoint another person to act in his or her place during the period of his or her absence.

(12) The members of the authority shall be paid such remuneration and allowances out of the General Fund of the authority as may be determined by the Minister.

(13) The common seal of the authority shall be kept in the custody of the authority and shall not be affixed to any instrument or document except as authorised by the authority.

## **5. Functions of the authority.**

- (1) The functions of the authority are—
  - (a) the development of all aspects of the capital markets with particular emphasis on the removal of impediments to, and the creation of incentives for, longer term investments in productive enterprise;
  - (b) the creation, maintenance and regulation, through implementation of a system in which the market participants are self-regulatory to the maximum practicable extent, of a market in which



securities can be issued and traded in an orderly, fair and efficient manner;

- (c) the protection of investor interests; and
- (d) the operation of a compensation fund as provided for in section 81.

(2) For the purpose of carrying out its objectives, the authority may exercise, perform and discharge all and any of the following powers, duties and functions—

- (a) advise the Minister on all matters relating to the development and operation of capital markets;
- (b) maintain surveillance over securities to ensure orderly, fair and equitable dealings in securities;
- (c) register, license, authorise or regulate, in accordance with this Act or any regulations made under it, stock exchanges, investment advisers, registrars, securities broker or dealers, and their agents and control and supervise their activities with a view to maintaining proper standards of conduct and professionalism in the securities business;
- (d) formulate principles for the guidance of the securities industry;
- (e) monitor the solvency of licence holders and take measures to protect the interest of customers where the solvency of any licence holder is in doubt;
- (f) protect the integrity of the securities market against any abuses arising from the practice of insider trading;
- (g) adopt measures to minimise and supervise any conflict of interest that may arise for brokers or dealers;
- (h) create the necessary environment for the orderly growth and development of the capital market; (i) perform the functions conferred on it by section 42 of the Companies Act; (j) undertake such other activities as are necessary or expedient for giving full effect to the provisions of this Act; and (k) do anything which is likely to facilitate the discharge of its functions, or is incidental or conducive to their discharge, under this Act.

## **6. Meetings of the authority.**

(1) The chairperson of the authority or in his or her absence the chief executive shall convene meetings of the authority at least once each month

to carry on the business of the authority and whenever he or she receives a written request signed by at least two members of the authority.

(2) The chairperson shall preside at every meeting of the authority, and in his or her absence the members present shall elect one of their number to preside as chairperson at that meeting.

(3) The quorum for any meeting of the authority shall be six, and the authority may, subject to the requirement for a quorum, regulate the procedure in regard to its meetings and the transaction of business at the meetings.

(4) All questions for decision at any meeting of the authority shall be decided by the vote of the majority of the members present; and in the case of an equality of votes, the chairperson or other person presiding shall have a casting vote.

(5) Any member who has a direct or indirect interest in any decision that is to be taken on any specific matter by the authority shall disclose the nature of that interest at the meeting of the authority where the decision is being taken, and the disclosure shall be recorded in the minutes of the meeting.

(6) If either the member or the majority of the members of the authority believe that the member's interest in the matter is such as to influence his or her judgment, he or she shall not participate in the deliberation or the decision of the authority on the matter.

(7) Where a majority of the members in attendance at a meeting where the matter is considered determines that the experience or expertise of the interested member is necessary for the deliberation on the matter, they may permit him or her to participate as they consider appropriate.

(8) All documents, other than those required by law to be under seal, made by, and all decisions of, the authority may be signified under the hand of the chairperson, or, in the case of a decision taken at a meeting at which the chairperson is not present, under the hand of the person presiding at the meeting.

## **7. Appointment of the chief executive and other staff.**

(1) The Minister shall appoint a chief executive of the authority on the recommendation of the authority, and the authority shall determine the conditions and terms of employment of the chief executive, including remuneration.

(2) The chief executive 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 objects, functions and duties and the administration and control of the employees of the authority.

- (3) The chief executive may be removed from office on grounds of—
- (a) incompetence;
  - (b) misbehaviour or misconduct;
  - (c) incapacity to perform the functions of his or her office arising out of infirmity of body or mind; or
  - (d) any other reasonable cause.

(4) The authority may appoint such other officers and employees as it considers necessary for the efficient discharge of its responsibilities and functions.

(5) The officers and other employees appointed under subsection (4) shall be remunerated in such manner and at such rates, and shall be subject to such conditions of service, as may be determined by the authority.

(6) Every officer or employee appointed under subsection (4) shall, subject to this Act, exercise such powers and functions and perform such duties as are assigned to him or her from time to time by the chief executive.

## **8. General Fund, financial year and accounts.**

- (1) The authority shall have a General Fund.
- (2) There shall be paid into the General Fund—
- (a) money from the Consolidated Fund;
  - (b) all sums of money paid as fees under this Act;
  - (c) all sums of money received by the authority for its operations from any other source.

(3) There shall be paid out of the General Fund all sums of money required to defray the expenditure incurred by the authority in the discharge of its objects and functions.

(4) The financial year of the authority shall be in respect of any accounting period the period of twelve months ending on the 30th of June.

(5) The authority shall keep proper books of account of all its income and expenditure and proper records in relation to them.

(6) Subject to any directions given by the Minister responsible for finance, the authority shall cause to be prepared in respect of each financial year, a statement of account which shall include a report on the performance of the authority during the financial year comprising—

- (a) a balance sheet, a statement of income and expenditure and a statement of surplus and deficit; and
- (b) any other information in respect of the financial affairs of the authority as the Minister responsible for finance may require.

(7) The authority shall submit to the Minister at the end of each quarter a statement of its accounts in respect of that quarter.

(8) The accounts of the authority shall, in respect of each financial year, be audited by the Auditor General or by an auditor appointed by him or her.

(9) The authority shall ensure that within four months after the expiry of each financial year a statement of account described in subsection (6) is submitted to the Auditor General for auditing.

(10) The Auditor General and any auditor appointed by him or her shall have access to all books of account, vouchers and other financial records of the authority and be entitled to have any information and explanation required by him or her in relation to them as he or she may think fit.

(11) The Auditor General shall, within two months after receipt of the statement of account under subsection (9), audit the accounts and deliver to the authority a copy of the audited accounts, together with his or her report on them, stating any matter which in his or her opinion should be brought to

the attention of the Minister.

(12) The Auditor General shall also deliver to the Minister a copy of the audited accounts of the authority, together with his or her report on them.

(13) The Minister shall cause a statement of the annual accounts of the authority to be presented to Parliament within four months after the expiration of the financial year to which it relates or within two months after receipt of a copy of the Auditor General's report on the accounts delivered under subsection (12).

**9. Power to require production of books by a stock exchange and by certain persons.**

(1) The authority may by notice in writing, at any time, where it considers that there is sufficient cause to do so, direct any of the persons referred to in subsection (2) to produce to a person authorised by the authority such books as may be specified in the notice.

(2) The persons to whom direction can be given under subsection are— (1)

- (a) a stock exchange;
- (b) a member of the council of a stock exchange;
- (c) a person who is or has been, either alone or together with another person, a broker or dealer or an investment adviser or is or has been a broker or dealer's representative or an investment representative;
- (d) a nominee controlled by a person referred to in paragraph (c) or jointly controlled by two or more persons at least one of whom is a person referred to in that paragraph;
- (e) a person who is or has been an officer or an employee of, or an agent, lawyer, auditor or other person acting in any capacity for or on behalf of, a stock exchange or a person referred to in paragraph (b), (c) or (d);
- (f) any other person who is or has been a party to any dealing in securities; or
- (g) any other person.

(3) For the purpose of subsection (1), the books in respect of which a direction to produce may be given shall be books relating to— (a) the business or affairs of a stock exchange;

- (b) any dealing in securities;
- (c) any advice concerning securities or the issuing of a report or analysis concerning securities;
- (d) the character or financial position of, or any business carried on by, a person referred to in subsection (1)(c) or (d); or
- (e) an audit of or any report of an auditor concerning a dealing in securities or any accounts or records of a broker or dealer or of an investment.

(4) No direction to produce shall be made to any person under subsection (2)(g) unless the authority believes that the person has in his or her control books relating to a matter specified under subsection (3).

(5) No books shall be directed to be produced by any person under subsection (2)(g) at a time or place that may unduly interfere with the proper conduct of the normal daily business of that person.

(6) The authority may in writing authorise any person to exercise the power to direct the production of books conferred on it under this section.

(7) A reference in subsection (2) to a dealing in securities or to a business carried on by a person includes a reference to a dealing in securities by a person as a trustee.

(8) An authorisation from the authority to any person under subsection (6) may be of general application or may be limited to making requirements of a particular stock exchange or other person.

(9) Where the authority, or a person authorised by the authority, under subsection (6) directs the production of any books under this section and a person has a lien on the books, the production of the books does not prejudice the lien.

(10) A person authorised by the authority under subsection (6) shall, where required to do so, produce evidence of his or her authorisation.

(11) No action shall lie against any person for complying with a direction given under this section to produce books.

(12) A power conferred by or under this section to give a direction to a person extends, if the person is a body corporate, to giving the direction to

any person who is or has been an officer of the body corporate whether that body corporate is in the course of being wound up or has been dissolved.

#### **10. Action on production of books or when books are not produced.**

- (1) Where the required books are produced under section 9, the person to whom they are produced—
  - (a) may take possession of them, make copies of them or take extracts from them;
  - (b) may require the other person or any person who was party to the compilation of the books to make a statement providing an explanation of any of the books;
  - (c) may retain, for a period not exceeding thirty days, possession of the books for as long as the authority considers necessary to enable the books to be inspected and copies of or extracts from the books to be made or taken by or on behalf of the authority, after the books have been certified by their owner and by or on behalf of the authority; and
  - (d) shall permit the person who produced them, upon giving a reasonable notice and specification of the books, to have access to them after they have been photocopied and certified as required in paragraph (c) of this subsection.
  
- (2) Where the books are not produced, the authority or the person authorised to direct their production may require the person who should have produced the books—
  - (a) to state, to the best of his or her knowledge and belief, where the books may be found;
  - (b) to identify the person who, to the best of his or her knowledge and belief, last had custody of the books and where he or she may be found; or
  - (c) to state the reasons why the books cannot be produced.

#### **11. Order by a magistrate to search premises.**

(1) Whenever it appears to a magistrate not below the rank of magistrate grade I, upon written information on oath, and after any inquiry he or she may think necessary, that there are reasonable grounds for suspecting that there are on the premises any books the production of which has been directed and which have not been produced in compliance with the direction, the magistrate may issue a warrant authorising the authority or any

person named in the warrant—

- (a) to search the premises and to break open and search any cupboard, drawer, container or other receptacle, whether a fixture or not, in the premises; and
- (b) to take possession of, or secure against interference, any books that appear to be books the production of which was so directed.

(2) The powers conferred under subsection (1) are in addition to, and not in derogation of, any other powers conferred by any other law relating to the search of premises.

(3) In this section, “premises” includes any structure, building, place, aircraft, vehicle or vessel.

## **12. Incriminating statements.**

(1) A person is not excused from failing to provide a statement explaining any matter relating to the compilation of any books or any matter requested of him or her under section 9 on the ground that the statement might tend to incriminate him or her.

(2) Notwithstanding subsection (1), where the person claims before making a statement required of him or her that the statement might tend to incriminate him or her, the statement provided in answer to the request shall not be admissible in evidence against him or her in any criminal proceedings other than proceedings under section 9 or 10.

(3) Subject to subsection (2), a statement made by a person in compliance with a requirement under section 9 may be used in evidence in any criminal or civil proceedings against the person.

## **13. Offences and penalties under sections 9, 10 and 11.**

A person who—

- (a) without reasonable excuse, refuses or fails to comply with a direction given under section 9 or 10;
- (b) furnishes information or makes a statement that is false or misleading in a material particular for the purposes of section 9 or 10; or
- (c) without reasonable excuse, obstructs or hinders the authority or any person in the exercise of a power under section 9, 10 or 11,



commits an offence and is liable on conviction to a fine not exceeding four million shillings or to imprisonment not exceeding two years or to both.

#### **14. Copies or extracts of books admissible in evidence.**

(1) Subject to this section and section 16, a copy of or extract from a book relating to a matter specified in section 9(1) or (3) is admissible in evidence as if it were the original book.

(2) A copy of or extract from a book is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the book or of the relevant part of the book.

(3) For the purpose of subsection (2), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given orally or by an affidavit or statutory declaration.

#### **15. Savings for lawyers.**

Nothing in section 9, 10 or 11 shall compel an advocate to produce a document that contains privileged communication made by or to him or her in his or her professional capacity or authorise the taking of possession of any such document which is in his or her possession; but if the advocate refuses to produce the document, he or she shall nevertheless be obliged to give the name and address, if he or she knows them, of the person to whom or by or on whose behalf the communication was made.

#### **16. Secrecy of information from books.**

(1) No information obtained from any book produced under section 9, 10 or 11 shall, without the previous consent in writing of the person who had custody or control of the book, be published or disclosed, except to the authority and its officers and employees, unless the publication or disclosure is required—

- (a) with a view to the institution of, or for the purpose of, criminal proceedings; or
- (b) for the purpose of proceedings under section 9, 10 or 11.

(2) A person who publishes any information in contravention of this

section commits an offence and is liable on conviction to a fine not exceeding four million shillings or to imprisonment not exceeding two years or to both.

#### **17. Disclosure to the authority.**

(1) The authority may, where it considers it necessary for the protection of investors, require a broker or dealer or an exempt broker or dealer to disclose to it, in relation to any acquisition or disposal of securities, the name of the person from or through whom or on whose behalf the securities were acquired or disposed of and the nature of the instructions given to the broker or dealer in respect of the acquisition or disposal.

(2) The authority may require a person who has acquired, held or disposed of securities to disclose to it—

- (a) whether he or she acquired, held or disposed of securities as trustee for or on behalf of another person or as a nominee;
- (b) the name of that person; and
- (c) the nature of any instruction given to him or her as trustee or nominee in respect of the acquisition, holding or disposal.

(3) The authority may require a stock exchange to disclose to it, in relation to an acquisition or disposal of securities on the stock market of that stock exchange, the names of the members of that stock exchange who acted in the acquisition or disposal.

#### **18. Suspected breach of specified provisions.**

- (1) Where the authority considers—
  - (a) that it may be necessary to prohibit trading in securities of, or made available by, a body corporate pursuant to section 29; or
  - (b) that a person may have contravened the provisions of Part IX in relation to securities of, or made available by, a body corporate; or
  - (c) that a person may have contravened the provisions of the Companies Act in relation to securities in a body corporate,

it may require a director, secretary or executive officer of the body corporate referred to in paragraph (a), (b) or (c) to disclose to the authority any information of which he or she is aware, being information that might have affected any dealing that has taken place or that might affect any future dealing in securities of, or made available by, the body corporate.

(2) For the purposes of subsection (1)(a), (b) or (c), the authority may require a person whom the authority believes on reasonable grounds to be capable of giving information concerning any matters referred to in subsection (3) to disclose to the authority any information he or she has in relation to any of those matters.

- (3) The matters referred to in subsection (2) are—
- (a) any dealing in relevant securities;
  - (b) any advice given by a broker or dealer, an investment adviser, a broker or dealer's representative or an investment representative concerning securities;
  - (c) the issuing or publication of a report or analysis by a broker or dealer, an investment adviser, a broker or dealer's representative or an investment representative concerning relevant securities;
  - (d) the financial position of any business carried on by a person who is or has been, either alone or together with other persons, a broker or dealer or an investment adviser and has dealt in, or given advice concerning, relevant securities;
  - (e) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by two or more persons at least one of whom is a person referred to in that paragraph; or
  - (f) an audit of, or any report of an auditor concerning, any accounts or records of a broker or dealer or of an investment adviser, being accounts or records relating to dealings in relevant securities.

(4) A person is not excused from disclosing information to the authority upon being required to do so under subsection (1) or (2) on the ground that the disclosure of the information might tend to incriminate him or her.

(5) Where a person claims before making an oral statement disclosing information that he or she is required to disclose under subsection (1) or (2) that the statement might tend to incriminate him or her, evidence of that statement is not admissible in evidence against him or her in criminal proceedings except proceedings under this section.

(6) A person who or stock exchange which, without reasonable excuse, refuses or fails to comply with a requirement of the authority under section 17(1), (2) or (3) or subsection (1) or (2) of this section commits an offence and is liable on conviction to a fine not exceeding four million

shillings or to imprisonment not exceeding two years or to both.

(7) A person who, for the purpose of section 17(1), (2) or (3) or subsection (1) or (2) of this section, discloses information, or makes a statement that is false or misleading in a material particular commits an offence and is liable on conviction to a fine not exceeding six million shillings or to imprisonment not exceeding three years or to both.

(8) It is a defence to a prosecution for an offence under subsection (7) for the defendant to prove that he or she believed on reasonable grounds that the information or statement was true and was not misleading.

(9) In this section, a reference to disclosing information includes, in relation to information that is contained in a document, the furnishing of the document.

(10) A person shall not be subject to any liability by reason that he or she complied with a requirement made or purporting to have been made under this section.

(11) In subsection (3), “relevant securities” means securities of, or made available by, the body corporate referred to in subsection (1).

## **19. Investigation of certain matters.**

Where the authority has reason to suspect that a person has committed an offence under this Act or the Companies Act or has been guilty of fraud or dishonesty in relation to a dealing in securities, it may make such investigation as it thinks proper under this Act.

## **20. Inspection by the authority.**

(1) The authority may inspect the books, accounts, documents and transactions of a stock exchange, a broker or dealer or an investment adviser.

(2) The authority may appoint any person to exercise the power of the authority under subsection (1).

(3) For the purpose of an inspection under this section, the stock exchange or any of the persons referred to in subsection (1) shall afford the authority access to, and shall produce, its or his or her books, accounts and

documents and shall give such information and facilities as may be required to conduct the inspection.

(4) Any person appointed by the authority may copy or take possession of the books, accounts and other documents of a stock exchange, a broker or dealer or investment adviser.

(5) Any person who, or stock exchange which, fails, without reasonable excuse, to produce any book, account or document or furnish any information or facilities in accordance with subsection (3) commits an offence and is liable on conviction to a fine not exceeding four million shillings or to imprisonment not exceeding two years or to both.

## **21. Power of the court to make certain orders.**

(1) Where—

- (a) on the application of the authority, it appears to the court that a person has committed an offence under this Act, or has contravened the conditions or restriction of a licence or the rules or listing rules of a stock 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 stock exchange, it appears to the court that a person has contravened the rules or listing rules of the stock exchange,

the court may, without prejudice to any other order within its powers, 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 stock exchange, an order restraining the person from carrying on a business of dealing in securities, acting as an investment adviser or as a broker or dealer's representative or investment representative, or from holding himself or herself out as carrying on that business or so acting;
- (d) an order restricting 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 broker or dealer or of property that is held by a broker or 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 order ancillary to any of the orders specified in this subsection which the court considers desirable.

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

(3) A person appointed by order of the court under subsection (1) as receiver of the property of a broker or dealer may—

- (a) require the broker or dealer to deliver to the receiver any property of which the latter has been appointed receiver or to give to the receiver all information concerning that property which may reasonably be required;
- (b) acquire and take possession of any property of which he or she has been appointed receiver;
- (c) deal with any property that he or she had acquired or of which he or she has taken possession in any manner in which the broker or dealer might lawfully have dealt with the property; and
- (d) exercise such other power specified in the order in respect of the property.

(4) Any person who, without reasonable excuse, contravenes—

- (a) an order under subsection (1) applicable to him or her; or
- (b) a requirement of a receiver appointed by order of the court under subsection (1),

commits an offence and is liable on conviction to a fine not exceeding four million shillings or imprisonment not exceeding two years or both.

(5) Subsection (4) does not affect the powers of the court to punish for contempt of court.

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

(7) In subsections (1) and (3), “property”, in relation to a broker or dealer, includes monies, securities and documents of title to securities or

other property entrusted to or received on behalf of any other person by the broker or dealer or another person in the course of or in connection with a business of dealing in securities carried on by the broker or dealer.

## **22. Statement of principles.**

(1) The authority may issue a statement of principles with respect to the conduct and financial standing expected of persons licensed under Part IV.

(2) The conduct expected may include compliance with a code or standard issued with the approval of the authority by a person or body other than the authority.

(3) Failure to comply with a statement of principles under this section is a ground for the taking of disciplinary action or the exercise of powers of intervention, but does not give rise to any right of action by investors or other persons affected or affect the validity of any transaction.

(4) The exercise of disciplinary action under subsection (3) includes the exercise of any power under section 39 or 44, and those sections shall be construed accordingly.

(5) Where a statement of principles relates to compliance with a code or standard issued by a person or body other than the authority, the statement of principles may provide—

- (a) that failure to comply with the code or standard shall be a ground for taking disciplinary action or exercising any power under section 39 or 44, only in such cases and to such extent as may be specified; and
- (b) that no such action shall be taken, or any such power exercised, except at the request of the person or authority by whom the code or standard in question was issued.

(6) The authority shall exercise its power in a manner which appears to it appropriate to secure compliance with a statement of principles under this section.

PART III—STOCK EXCHANGES.

**23. Establishment, etc. of stock market.**

No person shall establish or assist in establishing or maintain or hold himself or herself out as providing or maintaining a stock market unless it is stock market of an approved stock exchange.

**24. Power of the authority to approve a stock exchange.**

(1) Application for approval as a stock exchange may be made to the authority in the prescribed form and manner and shall be accompanied by the prescribed fees.

(2) No approval shall be granted to any person to operate as a stock exchange other than a body corporate.

(3) The authority may approve a body corporate as a stock exchange if it is satisfied—

- (a) that at least three members of the body corporate will carry on the business of dealing in securities independently of, and in competition with, each other;
- (b) that the rules of the body corporate make satisfactory provision—
  - (i) for the exclusion from membership of persons who are not of good character and high business integrity;
  - (ii) for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of the rules of the stock exchange or the provisions of this Act;
  - (iii) for the making of a report to the authority by the body corporate whenever it rejects any application for membership, where it suspends or expels a member or where it suspends trading in particular securities of, or made available by, a body corporate on the stock market of the stock exchange;
  - (iv) with respect to the conditions under which securities may be listed for trading in the stock market proposed to be conducted by the body corporate;
  - (v) with respect to the obligations of the issuers of the listed securities;
  - (vi) with respect to the conditions governing dealing in



- securities by members;
- (vii) with respect to the class of securities that may be dealt in by members;
- (viii) with respect to fair representation of persons in the selection of its council members and administration of its affairs, including the representation of listed companies, investors and the professions relevant to securities trading; and

(ix) generally for the carrying on of the business of the stock exchange with due regard to the interests of the public; and (c) that the interests of the public will be served by the granting of the approval.

(4) Nothing in this section precludes the authority from appointing any person who is knowledgeable about the securities industry and who is not associated with a stockbroker or broker or dealer to be on the council of a stock exchange to represent the public interest; and a person so appointed—

- (a) shall have the same rights, powers, duties and obligations, liberties and privileges as any other member of the council of the stock exchange;
- (b) shall hold office for a period specified by the authority, which may at any time revoke the appointment; and
- (c) shall be paid by the authority.

(5) A person shall be appointed to a council of a stock exchange under subsection (4) only if there is disagreement in the council.

(6) The authority shall publish in the Gazette and in one daily newspaper with national circulation notice of approval for the establishment of a stock exchange and every cancellation or suspension of any approval.

(7) Where the authority is of the opinion that an approval granted to a stock exchange under subsection (3) should be withdrawn in the public interest, it may serve on the council of the stock exchange a written notice; and after giving an opportunity to the council to be heard on the matter, it may cancel the approval made under subsection (3), except that the cancellation shall not take effect until after the expiration of three months from the date on which the cancellation is published in the Gazette and in one daily newspaper.

(8) With effect from the date on which a notice of cancellation of

approval under subsection (6) is published in the Gazette, the council shall ensure that trading on the stock exchange ceases.

(9) During the three months between the publication and the effective date of the cancellation, the council shall take steps to wind up the business of the stock exchange.

## **25. Authority to approve amendments to rules.**

(1) Where an amendment is made, whether by way of rescission, alteration or addition to the rules of a stock exchange or the listing rules of a stock exchange, the council of the stock exchange shall forward a written notice of it to the authority for approval.

(2) The authority may give notice in writing to the stock exchange concerned that it approves the amendment or that it disapproves the whole or any specified part of the amendment and, until the notice is given, the amendment shall not have any effect.

(3) Nothing in this section precludes the authority, after consultation with the council of a stock exchange, from amending the rules or the listing rules of an approved stock exchange by written notice specifying the amendments and the dates when those amendments shall have force and effect; but the authority may dispense with consultation if it considers it necessary to do so for the protection of investors.

(4) Any notice under this section may be served personally or by post.

## **26. Stock exchange to assist the authority; disciplinary powers of the authority.**

(1) A stock exchange shall provide such assistance to the authority as the authority reasonably requires for the performance of its functions and duties, including the furnishing of such returns and providing such information relating to the business of the stock exchange or in respect of such dealing in securities or any other specified information as the authority may require for the proper administration of this Act.

(2) Where a stock exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of a stock exchange, it

shall, within seven days, give to the authority in writing, particulars of the name of the member, the reason for and nature of the action taken, the amount of the fine, if any, and the period of the suspension, if any.

(3) The authority may review any disciplinary action taken by a stock exchange under subsection (2) and may affirm or set aside a decision of a stock exchange after giving the member and the stock exchange an opportunity to be heard.

(4) Nothing in this section precludes the authority in a case where a stock exchange fails to act against a member of the stock exchange, from suspending, expelling or otherwise disciplining a member of the exchange; but before doing so, the authority shall give the member and the stock exchange an opportunity to be heard.

(5) Any person aggrieved by the decision of a stock exchange or the authority under this section may, within thirty days after he or she is notified of the decision, appeal to the court whose decision on the matter is final.

**27. Powers of the court to order observance or enforcement of rules of a stock exchange.**

(1) Where a person under an obligation to comply with, observe, enforce or give effect to the rules or listing rules of a stock exchange fails to perform the duty, the court may, on the application of the authority, a stock exchange or person aggrieved by the failure, and after giving to the person against whom the order is sought an opportunity of being heard, make an order giving directions to that person to perform the duty.

(2) For the purpose of subsection (1)—

- (a) a body corporate that has been admitted to any official list of a stock exchange and has not been removed from that official list; or
- (b) a person associated with a body corporate that has been admitted to any official list of a stock exchange and has not been removed from that official list,

is under an obligation to comply with, observe and give effect to the listing rules of that stock exchange to the extent to which those rules apply in relation to it or him or her.

**28. Power of the authority to issue directions to a stock exchange.**

(1) The authority may, where it appears to it to be in the public interest, issue directions to a stock exchange—

- (a) with respect to trading on or through the exchange facilities of that stock exchange or with respect to any security listed on that stock exchange;
- (b) with respect to the manner in which a stock exchange carries on its business, including the manner of reporting off-market purchases; or
- (c) with respect to any other matters which the authority considers necessary for the effective administration of this Act,

and the stock exchange shall comply with any such direction.

(2) A stock exchange which, without reasonable excuse, fails to comply with a direction given under subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million shillings and to a further fine of fifty thousand shillings for each day on which the noncompliance continues after conviction.

(3) A stock exchange aggrieved by any direction of the authority under subsection (1) may appeal to the court within thirty days of the date of the direction.

(4) In any appeal under subsection (3), the decision of the court is final.

(5) Where the authority is satisfied that an executive officer of a stock exchange—

- (a) has wilfully contravened this Act or any regulations made under it or the rules of a stock exchange; or
- (b) has without reasonable justification or excuse, failed to enforce compliance with this Act or the regulations by a member of the stock exchange or a person associated with that member,

the authority may, if it thinks necessary in the public interest or for the protection of investors, and after giving the executive officer an opportunity of being heard, direct by notice in writing that the stock exchange remove from office or employment the executive officer; and the stock exchange shall comply with the direction or the authority may instead censure the executive officer.

**29. Power of the authority to prohibit trading in particular securities.**

(1) Without prejudice to the general effect of section 28, where the authority is of the opinion that it is necessary to prohibit trading in particular securities of, or made available by, a body corporate on the stock market of a stock exchange in order to protect persons buying or selling the securities or to protect the interests of the public, the authority may give notice in writing to the stock exchange stating that it has formed that opinion and setting out its reasons.

(2) If, after the receipt of the notice, the stock exchange does not take action to prevent trading in the securities to which the notice relates on the stock market of the stock exchange and the authority is still of the opinion that it is necessary to prohibit trading in those securities on that stock market, the authority may, by notice in writing to the stock exchange, prohibit trading in those securities on that stock market during a period, not exceeding fourteen days, as may be specified in the notice.

(3) Where the authority gives a notice to a stock exchange under subsection (2), the authority shall—

- (a) at the same time send a copy of the notice to the body corporate together with a statement setting out the reasons for giving the notice; and
- (b) as soon as practicable, furnish to the Minister a written report setting out the reasons for giving the notice and send a copy of the report to the stock exchange.

(4) Where the authority gives a notice to a stock exchange under subsection (2), the body corporate may request the authority in writing to refer the matter to the Minister.

(5) Where a request is made under subsection (4), the authority shall immediately refer the matter to the Minister, who may direct the authority to revoke the notice or confirm the prohibition imposed by the authority; and the decision of the Minister is final.

(6) A stock exchange which permits trading in securities on its stock market in contravention of a notice under subsection (2) commits an offence and is liable on conviction to a fine not exceeding one million shillings and to a further fine not exceeding one hundred thousand shillings for each day during which the contravention continues.

PART IV—LICENCES.

**30. Broker or dealer's licence.**

(1) No person shall carry on a business of dealing in securities or hold himself or herself out as carrying on such a business unless he or she is the holder of a broker or dealer's licence issued under this Part.

(2) Subsection (1) does not apply to an exempt dealer.

**31. Broker or dealer's representative's licence.**

No person shall act as a broker or dealer's representative unless he or she is the holder of a licence issued under this Part.

**32. Investment adviser's licence.**

No person shall act as an investment adviser or hold himself or herself out to be an investment adviser unless he or she is the holder of an investment adviser's licence issued under this Part.

**33. Investment representative's licence.**

No person shall act as an investment representative unless he or she is the holder of an investment representative's licence under this Part.

**34. Application for a licence or renewal of a licence.**

(1) An application for a licence or for the renewal of a licence shall be made to the authority in the prescribed form and manner and shall be accompanied by the prescribed fee, to be paid in the manner specified by the authority and, in the case of an application for renewal of a licence, shall be made not later than thirty days before the expiration of the licence.

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

(3) The authority shall not refuse to grant or renew a licence unless it has given the applicant or the holder of the licence an opportunity of being heard.

**35. Grant of a broker or dealer's licence or an investment adviser's licence.**

(1) A broker or dealer's licence or an investment adviser's licence may be granted to a body corporate or any other person.

(2) A broker or dealer's licence or an investment adviser's licence shall only be granted if the applicant meets such minimum financial requirements as may be determined by the authority, either generally or specifically, or in the case of a broker or dealer's licence, as are provided in rules of a stock exchange approved by the authority.

(3) Subject to section 34(3) and the regulations, the authority shall refuse an application for the grant or renewal of a broker or dealer's licence or an investment adviser's licence if—

- (a) in the case of an individual—
  - (i) the applicant has been adjudged a bankrupt anywhere;
  - (ii) the applicant has been convicted, in Uganda or outside Uganda, within ten years immediately before the date on which the application is made, of an offence involving fraud or dishonesty punishable on conviction with imprisonment for six months or more;
  - (iii) the authority is not satisfied as to the educational qualifications or experience of the applicant as prescribed in regulations made under this Act having regard to the nature of the duties of a holder of a broker or dealer's licence or an investment adviser's licence, as the case may be;
  - (iv) the authority has reason to believe that the applicant is not of good reputation or character; or
  - (v) the authority has reason to believe that the applicant will not perform the duties of a holder of a broker or dealer's licence, as the case may be, efficiently, honestly and fairly;
- (b) in the case of an applicant that is a body corporate or a partnership—
  - (i) the body corporate is in the course of being wound up under the Companies Act; (ii) the body corporate is one in respect of which a receiver, or a receiver and manager, has been appointed under the Companies Act;

- (iii) the body corporate or partnership has, whether in or outside Uganda, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
- (iv) the authority is not satisfied as to the educational qualifications or experience of the officers of the body corporate, or partners in the partnership which is the applicant, who are to perform duties in connection with the holding of the broker or dealer's licence or investment adviser's licence, as the case may be; or
- (v) the authority has reason to believe that the applicant will not perform the duties of a holder of a broker or dealer's licence or an investment adviser's licence efficiently, honestly and fairly.

### **36. Grant of a representative's licence.**

Subject to section 34(3) and the regulations, the authority shall grant or renew a broker or dealer's representative's licence or investment representative's licence if after consideration of the application it considers that the applicant will perform the duties of the holder of a broker or dealer's representative or an investment representative's licence efficiently, honestly and fairly.

### **37. False statements.**

A person who, in connection with an application for a licence or for the renewal of a licence, wilfully and knowingly makes a statement which is false or misleading in a material particular or wilfully omits to state any matter or thing without which the application is misleading in a material respect commits an offence and is liable on conviction to a fine not exceeding four million shillings or to imprisonment not exceeding two years or to both.

### **38. Power of the authority to inquire into securities transactions in relation to the holder of a licence.**

(1) In deciding whether a broker or dealer or his or her representative or an investment adviser or his or her representative shall hold a licence under this Act, the authority may inquire into any transactions involving the purchase or sale of securities entered into by that person, whether directly or indirectly, during any period of twelve months preceding the application for



a licence or renewal of a licence, in this section referred to as the relevant period, to ascertain if that person has in the transaction or series of transactions used dishonest, unfair or unethical methods or trading practices, whether those methods or trading practices constitute an offence under this Act or not.

(2) For the purposes of subsection (1), the authority may, in such form and within such time as it may specify by notice in writing, require a broker or dealer or his or her representative or an investment adviser or his or her representative to submit detailed information of all or any transactions involving the purchase or sale of securities, whether those transactions were completed during the relevant period before or after the commencement of this Act.

(3) Any person who, without reasonable excuse, fails or refuses to submit information to the authority within the time specified in the notice referred to in subsection (2) or who gives false or misleading information shall, in addition to any other penalty that may be imposed under this Act, be liable in the case of an application for renewal of a licence, to have his or her licence revoked under section 44 and in the case of first application for a licence, to have his or her application refused.

### **39. Power of the authority to impose conditions or restrictions.**

(1) The authority may grant or renew 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 condition or restriction in relation to the licence.

(2) Without limiting the general effect of subsection (1), the authority may, in granting or renewing an investment adviser's licence, impose a condition or restriction as to the class of business that the investment adviser may carry on, including a condition or restriction that—

- (a) he or she shall only carry on the class of business of advising others concerning securities;
- (b) he or she shall only carry on the class of business of issuing or promulgating analyses in reports concerning securities;
- (c) he or she shall only carry on a class of business involving the management of a portfolio of securities on behalf of clients for investment purposes; or
- (d) he or she shall carry on any of the classes of business in

paragraph (a), (b) and (c) of this subsection in combination with each other.

(3) The authority may also, by written notice to a licence holder suspend, cancel, restrict or impose terms and conditions on the right of the licence holder—

- (a) to call at any residence; or
- (b) to telephone any residence in Uganda for the purpose of dealing in any securities.

(4) A person who contravenes any condition of or restriction in his or her licence commits an offence.

(5) In this section, “residence” includes any building or part of a building where the occupant resides either permanently or temporarily.

#### **40. Deposit to be lodged in respect of a broker or dealer’s licence.**

(1) The authority shall not grant or renew a broker or dealer’s licence unless the applicant has lodged with the authority at the time of the application for the licence, a deposit prescribed by the authority.

(2) A deposit required under subsection (1) shall be in cash or in such other form as the authority may in any particular case direct.

(3) All amounts paid under this section shall be deposited in a commercial bank prescribed by the authority.

(4) A deposit lodged under subsection (1) shall be applied by the authority subject to and in accordance with regulations made under this Act.

#### **41. Period of a licence.**

(1) Subject to subsection (2), a licence shall expire at the end of one year from the date of issue.

(2) A licence renewed in accordance with this Part shall continue in force for one year from the date of the renewal.

#### **42. Notification of change of particulars.**

Where—

- (a) the holder of a broker or 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 broker or 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 43 to be entered in the register of licence holders in relation to the holder of a licence,

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

#### **43. Register of licence holders.**

(1) The 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 broker or dealer's or investment adviser's licence—
  - (i) his or her name;
  - (ii) the address of the principal place of business at which he or she carries on the business to which the licence relates; and (iii) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and
- (b) in relation to each holder of a representative's licence—
  - (i) his or her name;
  - (ii) the name of the broker or dealer or investment adviser in relation to whom the licence was issued; and (iii) where the business of that broker or dealer or investment adviser is carried on under a name or style other than the name of the broker or dealer or investment adviser, the name or style under which that business is carried on.

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

#### 44. Revocation or suspension of a licence.

- (1) A licence shall be taken to be revoked, in the case of—
  - (a) an individual, if the individual dies;
  - (b) a body corporate, if it is wound up.
  
- (2) The authority may revoke a licence—
  - (a) in the case of a licensed person who is an individual—
    - (i) if a levy of execution in respect of him or her has not been satisfied; (ii) if he or she ceases to carry on the business for which he or she was licensed; (iii) if he or she has been adjudged bankrupt in any jurisdiction; (iv) if, in the case of a representative, the licence of the broker or dealer or investment adviser in relation to whom the licence was granted is revoked; (v) if the authority has reason to believe that the licensed person has not performed his or her duties efficiently, honestly or fairly; (vi) if he or she is convicted of an offence involving fraud or dishonesty; or (vii) if the licensed person contravenes any condition or restriction applicable in respect of the licence in any other provision of this Act;
  - (b) in the case of a body corporate or a partnership—
    - (i) if it is being or will be wound up or dissolved;
    - (ii) if a levy of execution in respect of it has not been satisfied;
    - (iii) if a receiver or a 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 authority has reason to believe that the licensed person or any of its directors or employees has not performed his or her duties efficiently, honestly or fairly; or (vii) if the licensed person contravenes any conditions or restrictions applicable in respect of the licence or any provision of this Act.

(3) In a case to which subsection (2) applies, the authority may, instead of revoking a licence, suspend the licence for a specific period and may at any time revoke the suspension.

(4) The authority shall not revoke or suspend a licence under subsection (2) or (3) without first giving that person an opportunity of being heard.

(5) A person whose licence is revoked under this section shall, for the purposes of this Part, be taken not to be licensed from the date that the authority revokes or suspends the licence.

(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 that 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.

#### **45. Operation pending renewal, etc. of a licence.**

Where a person who holds a licence issued under this Act has, before the expiration of the licence, applied for a renewal of the licence and it has not been issued, the licence shall, until the licence is renewed or the application for the renewal of the licence is refused or withdrawn, be taken to continue in force.

#### **46. Appeals.**

(1) Any person aggrieved by the refusal of the authority to grant or renew a licence may appeal to the Minister.

(2) A person aggrieved by the revocation of a licence by the authority may appeal to the High Court, within thirty days from the decision of the authority.

(3) The High Court may confirm the revocation or give such directions in the matter it may consider proper or otherwise determine the matter.

(4) In any appeal under this section, the decision of the Minister or the High Court, as the case may be, is final and shall be given effect to by the authority.

#### **47. Exempt dealers.**

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

- (a) any person acting in the capacity of manager or trustee under a unit trust scheme;
- (b) any bank as defined in the Financial Institutions Act;
- (c) any merchant bank approved by the Bank of Uganda if the main business carried on by the merchant bank is a business other than the dealing in securities and if the dealing 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 their first sale; (iii) issuing any document which is or is taken to be a prospectus within the meaning of the Companies Act;
- (iv) acquiring or disposing of securities only through the holder of a broker or dealer's licence;
- (d) an investment adviser whose dealing in securities is solely incidental to his or her carrying on the business of managing a portfolio of securities on behalf of a client; and
- (e) any other person the Minister may exempt by regulations.

#### **PART V—REGISTER OF INTERESTS IN SECURITIES.**

#### **48. Application of Part V.**

- (1) This Part applies to a person who is—
  - (a) a broker or dealer;
  - (b) a broker or dealer's representative;
  - (c) an investment adviser;
  - (d) an investment representative; or
  - (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 of a body that is a public company within the meaning of the Companies Act or securities which are quoted on a stock exchange.

#### **49. Register of securities.**

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

(2) Particulars of the securities in which a person to whom this Part applies has an interest and particulars of his or her interest in them shall be entered in the register within seven days after the acquisition of the interest.

#### **50. Notice of particulars to the authority.**

(1) A person to whom this Part applies shall notify the authority in the prescribed form of such particulars as are prescribed, including the place at which he or she keeps the register of his or her 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 his or her 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 fourteen days after becoming such a person.

(3) The notice shall be 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) Where a person ceases to be a person to whom this Part applies, he or she shall, within fourteen days after ceasing to be such a person, give notice of the fact to the authority.

(5) A person who fails or neglects to give notice as required by this section commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings and to a further fine not exceeding twenty thousand shillings for each day on which the offence continues.

## **51. Defence to prosecution.**

(1) It is a defence to a prosecution for failing to comply with section 49 or 50 if the defendant proves that his or her failure was due to his or her not being aware of a fact or an occurrence the existence of which constitutes the offence and that—

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

(2) For the purposes of subsection (1), a person shall, in the absence of proof to the contrary, be conclusively presumed to have been aware of a fact or occurrence at the time when an employee or agent of his or hers, who has duties or acts in relation to his or her employer's or principal's interest in the securities concerned, became aware.

## **52. Production of a register.**

(1) The authority or any person authorised by it may require any person to whom this Part applies to produce for inspection the register required to be kept under section 49, and the authority or any person so authorised may make extracts from the register.

(2) Any person who fails to produce a register for inspection or fails to allow any person authorised under subsection (1) to make a copy or make extracts from the register commits an offence.

## **53. Particulars of financial journalists.**

(1) The authority or any person authorised by it may, by notice in writing, require the proprietor or publisher of a newspaper or periodical to supply it or him or her 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 given any such advice or prepared any such analysis or report within a period specified in the notice.

(2) A proprietor or publisher of a newspaper or periodical who, without reasonable excuse, fails to comply with a notice under subsection (1)



commits an offence.

**54. Extracts of a register.**

The authority may supply a copy of the extract of a register obtained under section 52 to any person who, in the opinion of the authority, should, in the public interest, be informed of the dealing in securities disclosed in the register.

PART VI—CONDUCT OF THE SECURITIES BUSINESS.

**55. Certain representations by a licence holder prohibited.**

(1) No person who is the holder of a licence shall represent or imply or knowingly permit to be represented or implied in any manner to any person that his or her abilities or qualifications have in any respect been approved by the authority.

(2) The statement that a person is the holder of a licence under this Act is not a contravention of subsection (1).

**56. Issue of contract notes.**

(1) A broker or dealer shall, in respect of a transaction of sale or purchase of securities, give a contract note that complies with subsection (2) to the following—

- (a) the person for whom the broker or dealer entered into the transaction where the transaction took place in the ordinary course of business at a stock exchange and the broker or dealer entered into the transaction otherwise than as principal;
- (b) the person for whom the broker or dealer entered into the transaction and the person with whom the broker or dealer entered into the transaction where the transaction does not take place in the ordinary course of business at a stock exchange and the broker or dealer entered into the transaction otherwise than as principal; and
- (c) the person with whom the broker or dealer entered into the transaction where the transaction did not take place in the ordinary course of business at a stock exchange and the broker or dealer entered into the transaction as principal.

(2) A contract note given by a broker or dealer under subsection (1) shall include—

- (a) the name or style under which the broker or dealer carries on his or her business as a broker or dealer and the address of the principal place at which he or she carries on business;
- (b) where the broker or dealer is dealing as principal with a person who is not the holder of a broker or dealer's licence, a statement that he or she is so acting;
- (c) the name and address of the person to whom the broker or 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 stock 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 of each of the securities;
- (g) the amount of the consideration;
- (h) the rate and amount of commission charged, if any;
- (i) the amount 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 amount and the nature of the benefit.

(3) A broker or dealer shall not include in a contract note given under subsection (1), as the name of the person with or for whom he or she has entered into the transaction, a name that he or she 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 broker or 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 him or her;
  - (b) dealing in securities on behalf of a body corporate in which he or she has a controlling interest; or
  - (c) where he or she carries on business as a broker or dealer on behalf of a body corporate in which his or her interest and the interest of his or her directors together constitute a controlling interest.

- (5) For the purpose of this section—
- (a) a broker or dealer who is a member of a stock exchange shall not be taken to have entered into a transaction as principal by reason only that the transaction was entered into with another broker or dealer who is a member of a stock exchange; and
  - (b) a transaction takes place in the ordinary course of business at a stock exchange if it takes place in prescribed circumstances or is a prescribed transaction for the purposes of this section.

(6) Notwithstanding section 2, a person is not associated with another person for the purposes of this section by reason only that he or she is a 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.

**57. Certain persons to disclose interests in securities.**

(1) Where a broker or dealer, investment adviser, broker or dealer's representative or investment representative sends circulars or other similar written communications in which he or she makes a recommendation, whether expressly or by implication, with respect to securities or a class of securities, he or she 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 he or she or a person associated with him or her has at the date on which the circular or other communication is sent.

(2) It is a defence to a prosecution for an offence under subsection (1) in relation to a failure to include in a circular or other communication a statement of the nature of an interest as provided in subsection (1) for the defendant to establish that, at the time at which the circular or other communication was sent, he or she was not aware and could not reasonably be expected to have been aware—

- (a) that he or she 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 him or her had an interest in, or an interest in the acquisition or disposal of, those securities or

securities included in that class.

- (3) For the purpose 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 that person upon or arising out of the disposal of the securities;
  - (b) without limiting the general effect of paragraph (a), a person who has entered into an underwriting agreement in respect of securities shall be taken to have an interest in the acquisition or disposal of those securities; and
  - (c) notwithstanding section 2, a person is not associated with another person by reason only that he or she is a 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, unless the person and the other person are acting jointly or together 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) he or she offers any of those securities for purchase, he or she 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 he or she has informed each person to whom the recommendation is made that he or she 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 will or may be required to subscribe for or purchase, any of those securities under an underwriting or subunderwriting 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 ninety days after the close of the offer, make an offer to sell those securities, otherwise than in the ordinary course of trading on a stock 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 he or she has acquired, or will or may be required to acquire, under an underwriting or subunderwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.

(6) A broker or dealer, investment adviser, dealer's representative or investment representative shall not send to any 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 is signed by—

- (a) that person if he or she is an individual;
- (b) a director, executive officer or secretary of the body corporate if the person is a body corporate; or
- (c) by a partner if the person is a partnership.

(7) When a broker or dealer, investment adviser, dealer's representative or investment representative sends to another person a circular or other communication or a written offer or recommendation to which subsection (1), (4) or (5) applies, he or she shall preserve a copy of the circular or other communication or of the written offer or recommendation, duly signed as specified in subsection (6), for seven years from the date of signing.

(8) A reference in this section to an offer of securities shall be construed to include 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 purpose 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 taken to have been sent by the body corporate and if it is signed by a partner in a partnership, be taken to have been sent by the partnership.

(10) The 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 commits an offence and is liable on conviction to a fine not exceeding four million shillings or to imprisonment not exceeding two years or to both.

**58. Recommendations by an adviser.**

- (1) An adviser contravenes this subsection 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.
  
- (2) For the purpose 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 him or her 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) commits an offence.
  
- (4) Where—
  - (a) an adviser contravenes subsection (1) by making a recommendation to a person;
  - (b) the person relying on the recommendation does any particular act, or refrains from doing any particular act;
  - (c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to have done that act, or to refrain from doing that act, relying on the recommendation; and
  - (d) the person suffers loss or damage as a result of doing that act or refraining from doing that act,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 broker or dealer, investment adviser, dealer, dealer's

representative or investment representative; and (b) a reference to the making of a recommendation is to the making of the recommendation, whether express or implied.

#### **59. Dealings of a broker or dealer as principal.**

(1) Subject to subsection (4), a broker or dealer shall not, as principal, deal in any securities with a person who is not a broker or dealer unless he or she first informs the person with whom he or she is dealing that he or she is acting in the transaction as principal and not as agent.

(2) A reference in this section to a broker or 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 him or her;
- (b) dealing in securities on behalf of a body corporate in which he or she has a controlling interest; or
- (c) where he or she carries on business as a broker or dealer on behalf of a body corporate in which his or her interest and the interests of his or her directors together constitute a controlling interest.

(3) A broker or dealer who, as principal, enters into a transaction of sale or purchase of securities with a person who is not a broker or dealer shall state in the contract note that he or she is acting in the transaction as principal and not as agent.

(4) Subsection (1) does not apply in relation to a transaction entered into by a broker or dealer who is a member of a stock 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 broker or dealer fails to comply with subsection (1) or (3) in respect of a contract for the sale of securities by him or her, the purchaser of the securities may, if he or she has not disposed of them, rescind the contract by a notice of rescission in writing given to the broker or dealer not later than thirty days after the receipt of the contract note; and where a broker or dealer fails to comply with subsection (1) or (3) in respect of a contract for the purchase of securities by him or her, 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 any provision of this section commits an offence and is liable on conviction to a fine not exceeding two million shillings or imprisonment not exceeding one year or both.

**60. Dealings by employees of holders of licences.**

(1) A broker or dealer or an investment adviser shall not give unsecured credit to his or her employee or to a person whom he or she knows is associated with his or her employee where—

- (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 to purchase or subscribe for securities.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment not exceeding one year or to both.

**61. Broker or dealer to give priority to clients' orders.**

(1) A broker or dealer shall not, except as permitted by subsection (3), enter into, as principal or on behalf of a person associated with him or her, a transaction of purchase or sale of securities that are permitted to be traded on the stock market of a stock exchange if a client of the broker or dealer, who is not associated with the broker or dealer, has instructed the broker or dealer to purchase or sell, respectively, securities of the same class and the broker or dealer has not complied with the instruction.

(2) A broker or dealer who contravenes this section commits an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment not exceeding one year or to both.

(3) Subsection (1) does not apply in relation to the entering into a transaction by a broker or dealer as principal or on behalf of a person associated with him or her where—

- (a) the instructions from the client of the broker or 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 broker or 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.

**62. Use by broker or dealer of a client's money.**

(1) Where a person, in this section referred to as "the client", deposits money with, or lends money to, a broker or dealer, the broker or dealer shall—

- (a) deposit the money in an account in a bank, not later than the next day on which the bank is open for business after the receipt of the monies, and the account shall not contain any money other than money deposited with or lent to the broker or dealer;
- (b) furnish to the client a document, in the prescribed form, setting out the terms and conditions on which the deposit or loan is made and accepted, including the purpose for which and the manner in which the money is to be used by the broker or dealer;
- (c) retain the money in the bank account until the client gives him or her a written statement acknowledging that the client has received the document referred to in paragraph (b); and
- (d) use the money only— (i) for the purpose and in the manner set out in the document referred to in paragraph (b); or (ii) for any other purpose or in any other manner agreed to by the client in writing after the document referred to in paragraph (b) was furnished to the client.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding four million shillings or to imprisonment not exceeding two years or to both and is, in addition, liable to refund the money to the client together with interest at the prevailing commercial bank rate.

**63. Short selling.**

(1) Subject to this section and the regulations, a person shall not sell securities to a purchaser unless, at the time when he or she sells them—

- (a) he or she has or, where he or she is selling as agent, his or her principal has an existing exercisable and unconditional right to

rest the securities in the purchaser; or (b) he or she believes on reasonable grounds that he or she has, or where he or she is selling as agent, his or her principal has, an existing exercisable and unconditional right to vest the securities in the purchaser.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment not exceeding one year or to both.

(3) For the purpose of this section, a person shall be taken to sell securities if he or she—

- (a) purports to sell securities;
- (b) offers to sell securities;
- (c) holds himself or herself out as entitled to sell securities; or
- (d) instructs a broker or dealer to sell securities.

#### PART VII—ACCOUNTS AND AUDIT.

#### **64. Application of Part VII.**

(1) This Part applies to the holder of a broker or dealer's licence and to the business of dealing in securities carried on by the holder of a broker or dealer's licence, whether in Uganda or elsewhere.

(2) In this Part, unless the contrary intention appears, a reference to a book, security, trust account or business or in relation to a broker or dealer who carries on business in partnership, shall be read as a reference to such a book, security, trust account or business in relation to the partnership.

#### **65. Broker or dealer to keep accounting records.**

- (1) A broker or dealer shall—
  - (a) keep such accounting records as will correctly record and explain the transactions and financial position of the business of dealing in securities carried on by him or her;
  - (b) keep his or her accounting records in such a manner as will enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and
  - (c) keep his or her accounting records in such a manner as will enable profit and loss accounts and balance sheets of the business

of dealing in securities carried on by him or her to be conveniently and properly audited.

(2) A broker or dealer who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding four million shillings or imprisonment not exceeding two years or both.

(3) A broker or dealer shall be taken not to have complied with subsection (1) in relation to records unless those records—

- (a) are kept in writing in the English language or in such a manner as will enable them to be readily accessible and readily converted into writing in the English language;
- (b) are kept in sufficient detail to show particulars of—
  - (i) all monies received or paid by the broker or dealer, including monies paid to, or disbursed from, a trust account;
  - (ii) all purchases and sales of securities made by the broker or dealer, the charges and credits arising from them, and the names of the buyer and seller, respectively, of each of those securities;
  - (iii) all income received from commissions, interest and other sources, and all expenses, commissions and interest paid, by the broker or dealer;
  - (iv) all the assets and liabilities, including contingent liabilities, of the broker or dealer;
  - (v) all securities that are the property of the broker or 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 broker or dealer and for which the broker or dealer or any nominee controlled by the broker or 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;
  - (vii) all arbitrage transactions entered into by the broker or dealer; and
  - (viii) all underwriting transactions entered into by the broker or dealer;

- (c) are kept in sufficient detail to show separately particulars of every transaction by the broker or dealer;
- (d) specify the day on which or the period during which each transaction by the broker or dealer took place; and
- (e) contain copies of acknowledgements of the receipt of securities or of documents of title to securities received by the broker or dealer from clients for sale or safe custody clearly showing the name or names in which the particular securities are registered.

(4) Without prejudice to subsection (3), a broker or dealer shall keep records in sufficient detail to show separately particulars of all transactions by the broker or dealer with, or for the account of—

- (a) clients of the broker or dealer, excluding, where the broker or dealer carries on business in partnership, the partners of the firm;
- (b) the broker or dealer himself or herself, or where the broker or dealer carries on business in partnership, the partners of the firm;
- (c) other brokers or dealers carrying on business in Uganda;
- (d) brokers or dealers outside Uganda; and
- (e) employees of the broker or dealer.

(5) An entry in the accounting and other records of a broker or dealer required to be kept in accordance with this section shall be taken to have been made by or with the authority of the broker or dealer.

(6) Where a record required by this section to be kept is not kept in writing in the English language, the broker or dealer shall, if required to convert the record into writing in the English language by a person who is entitled to examine the record, comply with the requirement within a reasonable time.

(7) Notwithstanding any other provision of this section, a broker or dealer shall not be taken 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 record relating to any business other than dealing in securities that is carried on by him or her.

(8) Where accounting or other records are kept by a broker or dealer at a place outside Uganda, the broker or dealer shall cause to be sent to and kept at a registered place of business such particulars with respect to the business dealt with in those records as will enable true and fair profit and loss accounts and balance sheets to be prepared.

**66. Securities documents in the custody of a broker or dealer.**

(1) Where a broker or dealer receives for safe custody documents that are securities or are documents of title to securities of any person in this subsection referred to as “client”, and for which the broker or dealer or a nominee controlled by the broker or dealer is accountable, the broker or dealer shall—

- (a) if the documents are not registered in the name of the client by the body corporate by whom the securities were issued or made available, and the client does not make a request as mentioned in paragraph (b) or (c), cause the documents to be so registered;
- (b) if the client requests that the documents be registered by the body corporate by whom the securities were issued or made available in the name of a nominee controlled by the broker or dealer, cause them to be so registered; or
- (c) if the client requests that the documents be deposited in safe custody with the broker or dealers’ bankers, cause them to be so deposited.

(2) A broker or dealer shall not deposit as security for a loan or advance documents that are securities or are documents of title to securities of a client and for which the broker or dealer or a nominee controlled by the broker or dealer is accountable, unless an amount is owed to the broker or dealer by the client in connection with a transaction entered into on behalf of the client and the broker or dealer—

- (a) gives a written notice to the client identifying the documents and stating that he or she intends to deposit them as security for a loan or advance made to the broker or dealer; and
- (b) deposits the documents as security for a loan or advance that does not exceed the amount owed to the broker or dealer on the day of the deposit by the client in connection with a transaction entered into on his or her behalf by the broker or dealer.

(3) Where—

- (a) a broker or dealer has given a notice to a person as mentioned in subsection (2) and has deposited the documents referred to in the notice as security for a loan or advance; and
- (b) the person pays the amount owed by him or her to the broker or dealer, the broker or dealer shall withdraw the documents from deposits as soon as practicable after he or she receives the

amount owed to him or her.

(4) Where a broker or dealer deposits, as security for a loan or advance made to him or her, documents that are securities or are documents of title to securities of another person and for which the broker or dealer or a nominee controlled by the broker or dealer is accountable, the broker or dealer shall, at the expiration of six months after the date on which the documents are deposited, and at the expiration of each subsequent period of six months if the documents are still maintained on deposit, send to the other person written notice to that effect.

(5) A broker or dealer who contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment not exceeding one year or to both.

#### **67. Broker or dealer's trust account.**

(1) A broker or dealer shall open and maintain with a bank in Uganda an account designated as a trust account.

(2) A broker or dealer shall pay into the trust account all monies held by him or her in trust for a client not later than the next day on which the bank is open for business following the day on which the monies are received by the broker or dealer.

(3) Notwithstanding subsection (1), where monies that are required by this section to be paid into a trust account are received by a broker or dealer in a place outside Uganda, the broker or dealer may pay those monies in a trust account maintained by the broker or dealer in that place.

(4) For the purposes of subsection (2), all monies received by a broker or dealer from a client other than the following shall be taken to be held in trust for that client—

- (a) monies received in respect of brokerage and other proper charges;
- (b) monies received in payment or part payment for securities delivered to the broker or dealer before the monies are received;
- or
- (c) monies to which section 62 applies.

(5) Subsection (2) does not apply to a cheque, bank draft, money

order or postal order made payable to or to the order of a specified person or bearer, received from or on behalf of a client with instructions, express or implied, that the cheque, bank draft, money order or postal order is to be delivered to the person to whom it is payable.

(6) Subsection (5) does not except from the provisions of subsection (2) a cheque, bank draft, money order or postal order in which the payee is the broker, a partner of the broker or dealer or the firm in which the broker or dealer is a partner.

(7) A person who contravenes any provision of this section commits an offence and is liable on conviction to a fine not exceeding four million shillings or to imprisonment not exceeding two years or to both.

(8) A person who, with intent to defraud, contravenes any provision of this section that is applicable to him or her commits an offence and is liable on conviction to a fine not exceeding six million shillings or to a term of imprisonment not exceeding three years or to both.

**68. Purpose for which money may be withdrawn from a trust account.**

(1) A broker or dealer who withdraws monies from a trust account except for the purpose of—

- (a) making a payment to a person entitled to the monies or in accordance with the written direction of a person entitled to the monies;
- (b) defraying brokerage and other proper charges;
- (c) paying to the broker or dealer monies to which he or she is entitled, being monies that were paid in a trust account but were not required to be so paid; or

(d) making a payment that is otherwise authorised by law, commits an offence and is liable on conviction to a fine not exceeding four million shillings or imprisonment not exceeding two years or both.

(2) A broker or dealer who, with intent to defraud, withdraws monies from a trust account commits an offence and is liable on conviction to a fine not exceeding six million shillings or imprisonment not exceeding three years or both.

(3) Except as otherwise provided in this Part, monies held in a trust account are not available for payment of the debts of a broker or dealer or

liable to be paid or taken in execution under the order or process of a court.

(4) Nothing in this Part takes away or affects a lawful claim or lien that a person has against or on any monies held in a trust account or any monies received for the purchase of securities or from the sale of securities before those monies are paid into a trust account.

(5) A broker or dealer does not commit an offence under subsection (1) where he or she withdraws from a trust account an amount that is the whole or any part of the amount of a cheque that has been deposited into the account but that has not been paid, but has not been refused payment by the banker on whom it is drawn.

(6) Where a broker or dealer withdraws from a trust account an amount that is the whole or any part of the amount of a cheque that has been deposited into the account but that has not been paid by the banker on whom it is drawn and the banker on whom it is drawn refuses payment of the cheque, the broker or dealer shall immediately pay into the trust account by cash or bank cheque an amount equal to the amount withdrawn from the trust.

- (7) Where a broker or dealer fails to comply with subsection (6)—
- (a) he or she commits an offence; and
  - (b) where the broker or dealer is a member of a stock exchange the failure shall, for the purposes of Part IX, be taken to be a defalcation by the broker or dealer.

(8) A person who commits an offence under subsection (7)(a) is liable on conviction to a fine not exceeding six million shillings or to imprisonment not exceeding three years or to both.

(9) Notwithstanding anything in this section, a person convicted of an offence under this section is, in addition to any penalty imposed on him or her for the offence, liable to refund any monies lost by reason of the act constituting the offence.

#### **69. Appointment of auditor by broker or dealer.**

(1) Within one month after a person becomes the holder of a broker or dealer's licence, he or she shall appoint an auditor to audit his or her account.



(2) A person shall not consent to be appointed as auditor of a broker or dealer, act as an auditor of a broker or dealer or prepare a report required to be prepared under this Act by an auditor of a broker or dealer—

- (a) if, in the case of an individual he or she—
  - (i) is not a qualified company auditor;
  - (ii) is indebted to the broker or dealer for an amount exceeding a prescribed amount; (iii) is a partner or employee of the broker or dealer; or
- (b) in the case of a body corporate, unless—
  - (i) at least one member of the body is ordinarily resident in Uganda; (ii) all the members of the body ordinarily resident in Uganda are qualified company auditors; (iii) no member of the body is indebted in an amount exceeding a prescribed amount; (iv) no member of the body is a partner or employee of the broker or dealer.

(3) The appointment of a company or a firm as auditor of a broker or dealer shall be taken to be the appointment of all persons who are members of the firm or company, whether resident in Uganda or not, at the date of the appointment.

(4) Where a body corporate or firm contravenes this section, each member of the company or firm commits an offence.

(5) A person shall not, if he or she has been appointed auditor of a broker or dealer, wilfully disqualify himself or herself or itself while the appointment continues, from acting as auditor of the broker or dealer.

(6) An auditor of a broker or dealer shall, unless he or she ceases to qualify as an auditor under subsection (2), hold office until he or she dies, is removed or resigns from office in accordance with section 70.

(7) Within fourteen days after a vacancy occurs in the office of an auditor of a broker or dealer, if there is no surviving or continuing auditor of the broker or dealer, the broker or dealer shall appoint another auditor to fill the vacancy.

(8) While a vacancy in the office of an auditor continues, the

surviving or continuing auditor, if any, may act.

(9) A broker or dealer shall not appoint a person as his or her auditor unless that person has, before the appointment, consented by notice in writing given to the broker or dealer to act as auditor and has not withdrawn his or her or its consent by notice in writing given to the broker or dealer.

(10) A report or notice made or given by a firm or company appointed as auditor of a broker or dealer for the purposes of this Part shall be signed in the name of the firm or company and be signed by a member of the firm or company who is a qualified company auditor.

(11) Where a person is appointed as an auditor under subsection (1), not being an appointment made by virtue of subsection (8), the broker or dealer shall, within fourteen days after the appointment, lodge with the authority a notice in writing stating that he or she has made the appointment and specifying the name of the person or firm.

(12) The provisions of this Part relating to auditors shall apply in addition to the provisions applicable to auditors under the Companies Act.

#### **70. Removal and registration of auditors.**

(1) A broker or dealer may, with the consent of the authority, remove his or her auditor from office.

(2) An auditor of a broker or dealer may, by notice in writing given to the broker or dealer, resign as auditor of the broker or dealer if—

- (a) he or she has, by notice in writing given to the authority, applied for consent to resign and has, at or about the same time as he or she gave notice to the authority, notified the broker or dealer in writing of his or her application to the authority; and
- (b) he or she has received the consent of the authority.

(3) The authority shall, as soon as practicable after receiving a notice from an auditor under subsection (2), notify the auditor and the broker or dealer whether it consents to the resignation of the auditor.

(4) A statement made by an auditor in an application to the authority under subsection (2) or in answer to an inquiry by the authority relating to the reasons for the application—

- (a) is not admissible in evidence in any civil or criminal proceedings against the auditor other than proceedings for an offence under section 37; and
- (b) may not be made the ground of a prosecution other than a prosecution for an offence under section 37, or for an action or suit against the auditor,

and a certificate of the authority that the statement was made in the application or in answer to an inquiry by the authority is conclusive evidence that the statement was so made.

- (5) Subject to subsection (6) and to any order of a court under subsection (8), the resignation of an auditor takes effect—
  - (a) on the date, if any, specified for the purpose in the notice of resignation;
  - (b) on the date on which the authority consents to the resignation; or
  - (c) on the date, if any, fixed by the authority for the purpose, whichever last occurs.

(6) Where, on the retirement or withdrawal from a firm or company of a member, the body will no longer be capable, by reason of section 69(2)(b)(i) of acting as auditor of a broker or dealer, the member retiring or withdrawing shall, if not disqualified from acting as auditor of the broker or dealer, be taken to be the auditor of the broker or dealer until he or she obtains the consent of the authority to his or her retirement or withdrawal.

(7) Within fourteen days after the receipt of a notice of resignation from an auditor or a broker or dealer or, where an auditor of a broker or dealer is removed from office, within fourteen days after the removal, the broker or dealer shall lodge a notice of the resignation or removal in the prescribed form with the authority.

(8) A person aggrieved by the refusal of consent by the authority to the removal or resignation of an auditor of a broker or dealer may, within thirty days after the date of refusal, appeal to the court against the refusal; and thereupon the court may confirm or reverse the refusal and may make such further order in the matter as it considers proper.

## **71. Fees and expenses of auditors.**

The reasonable fees and expenses of an auditor of a broker or dealer shall be payable by the broker or dealer.

## **72. Broker or dealer's account.**

(1) A broker or dealer shall, in respect of each financial year, other than a financial year that ended before the date of commencement of this Act or ended on or after that date but before the date on which the broker or dealer commenced to carry on business as a broker or dealer, prepare a true and fair profit and loss account and balance sheet on the basis of such accounting principles, if any, and containing such information and matters as are prescribed, and lodge them with the authority before the prescribed day for the financial year, together with an auditor's report containing the prescribed information and matters.

(2) The authority may, on application made by a broker or dealer and his or her auditor before the expiration of the period of two months or, as the case requires, the period of three months referred to in the definition of "prescribed day" in subsection (4) or if that period has been extended in accordance with an approval previously given under this subsection, before the expiration of the extended period, approve an extension or further extension of the period; and the approval may be given subject to such conditions, if any, as the authority may impose.

(3) Where an approval under subsection (2) in relation to a broker or dealer is given subject to conditions, the broker or dealer shall comply with those conditions.

(4) In this section—

- (a) "financial year", in relation to a broker or dealer which is a body corporate, means the financial year of the body corporate within the meaning of the Companies Act;
- (b) "prescribed day", in relation to a financial year of a broker or dealer which is a body corporate, means the day that is three months after the end of that financial year, or where time is approved under subsection (2), the day on which the extended time expires.

## **73. Auditor to report to the authority in certain cases, etc.**

(1) Where an auditor, in the performance of his or her duties as auditor of a broker or dealer, becomes aware of a prescribed matter, he or she shall, within seven days after becoming aware of the matter, lodge with the

authority a written report on the matter and send a copy of the report to the broker or dealer and to each stock exchange of which the broker or dealer is a member.

(2) In this section, “prescribed matter” means a matter that, in the opinion of the auditor—

- (a) has adversely affected, is adversely affecting or may adversely affect the ability of the broker or dealer to meet his or her obligations as a broker or dealer;
- (b) constitutes or may constitute contravention of section 65, 66, 67 or 68 or Part VII; or
- (c) constitutes or may constitute contravention of a condition of a licence issued to the broker or dealer under this Act.

#### **74. Certain matters to be reported to the authority.**

(1) Where, in relation to a broker or dealer who is a member of a stock exchange, the stock exchange becomes aware of a prescribed matter, the stock exchange shall, as soon as practicable after becoming aware of the matter, lodge with the authority a written report on the matter and send a copy of the report to the broker or dealer.

(2) In this section, “prescribed matter”, in relation to a broker or dealer, means a matter that, in the opinion of the stock exchange concerned—

- (a) has adversely affected, is adversely affecting or may adversely affect the ability of the broker or dealer to meet his or her obligations as a broker or dealer;
- (b) constitutes or may constitute contravention of section 65, 66, 67 or 68 or Part VII; or
- (c) constitutes or may constitute a contravention of a condition of a licence issued to the broker or dealer under this Act.

#### **75. Defamation.**

(1) An auditor is not, in the absence of malice on his or her part, liable to an action for defamation in respect of a statement, whether oral or written, made or issued by him or her in the course of his or her duties as an auditor.

(2) A person is not, in the absence of malice on his or her part, liable to an action for defamation in respect of the publication of a document

prepared by an auditor in the course of his or her duties as an auditor and required by or under this Act to be lodged with the authority, whether or not the document has been lodged.

(3) Nothing in this section limits or affects any other right, privilege or immunity that an auditor or other person has as defendant in an action for defamation.

**76. Right of a stock exchange to impose obligations, etc. on members not affected by Part VII.**

Nothing in this Part prevents a stock exchange imposing on members of the stock exchange any obligations or requirements, being obligations or requirements consistent with this Act, that the stock exchange thinks fit with respect to—

- (a) the audit of accounts, including the audit of accounts by an auditor appointed by the stock exchange;
- (b) the information to be furnished in the reports from auditors; or
- (c) the keeping of books.

**77. Power of the court to restrain dealings with broker or dealer's bank accounts.**

Where the authority shows to the satisfaction of the court—

- (a) that there are reasonable grounds for believing that there is a deficiency in a trust account, whether kept within or outside Uganda, of a person who is or has been a broker or dealer or in an account kept by virtue of section 62(1)(a), whether within or outside Uganda, by a person who is or has been a broker or dealer;
- (b) that there has been undue delay, or unreasonable refusal, on the part of a person who is or has been a broker or dealer, in paying, applying or accounting for trust monies as required by this Act.
- (c) that a person who is or has been a broker or dealer has not paid monies into a trust account as provided by section 67 or into an account as provided by that section; or
- (d) where a business of dealing in securities is carried on, was carried on or was last carried on, as the case may be, by a natural person otherwise than in partnership— (i) that the broker's or dealer's licence of that person under Part IV has been revoked or suspended;

(ii) that the person is incapable, by reason of physical or mental infirmity, of managing his or her affairs; (iii) that the person has ceased to carry on a business of dealing in securities; or (iv) that the person has died, the court may make an order restraining dealing in respect of all or any of the bank accounts of that person, subject to such terms and conditions as the court may impose.

**78. Duty of a banker to make full disclosure.**

Where an order made under section 77 is directed to a banker, the banker shall—

- (a) disclose to the authority every account kept at the bank in the name of the person to whom the order relates and any account that the banker reasonably suspects is held or kept at the bank for the benefit of that person; and
- (b) permit the authority to make a copy of, or to take an extract from, any account of the person to whom the order relates or any of the banker's books relating to that person.

**79. Power of the court to make further orders to give directions.**

Where an order is made under section 77, the court may, on the application of the authority or of a person affected by the order, make further orders—

- (a) dealing with such ancillary matters as the court considers necessary or desirable;
- (b) directing that all or any of the money in an account affected by an order so made be paid by the bank to the authority or a person nominated by the authority, on such terms and conditions as the court thinks fit;
- (c) discharging or varying the order.

**80. Power of the court to make orders relating to payment of monies.**

- (1) An order made under section 79 may include directives to the person to whom the monies are repaid directing that the person—
  - (a) pays the monies into a separate trust account;
  - (b) prepares a scheme for distributing the monies to persons who claim, during a period of six months after the authority or the person receives the monies, to be entitled to the monies and

satisfy the authority or that other person that they are so entitled; or (c) where the monies received are insufficient to pay all proved claims, may apportion the monies among the claimants in proportion to their proved claims and show in the scheme how the monies are so apportioned.

(2) Where a person prepares a scheme for distribution of monies under subsection (1), he or she shall apply to the court for approval of the scheme and for directions in respect of it.

(3) The court may give such direction as to the monies held in a separate trust account under subsection (1), as to the persons to whom and in what amounts the whole or any portion of those monies shall be paid, and as to the payment of the balance of the monies, if any, remaining in the account, as the court thinks fit.

#### PART VIII—INVESTOR COMPENSATION FUND.

### **81. Establishment of the Investor Compensation Fund.**

(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 or her contractual obligations.

- (2) The compensation fund shall consist of—
- (a) contributions by the authority from the General Fund;
  - (b) such monies as are required to be paid into the compensation fund by licensed persons;
  - (c) such sums of money as are paid under section 89 as ill-gotten gains where those harmed are not specifically identifiable;
  - (d) such sums of money as accrue from interest and profits from investing monies from the compensation fund;
  - (e) such sums of money recovered by or on behalf of the authority from entities whose failure to meet their obligations to investors results in payments from the compensation fund; and
  - (f) such sums of money as are received for purposes of the compensation fund from any other source approved by the Minister.



(3) Monies which have accumulated in the compensation fund may be invested by the authority in such manner as may be determined by the authority.

PART IX—TRADING IN SECURITIES.

**82. False trading and market rigging transactions.**

(1) Any person who creates or causes to be created, or does anything that is likely to create, a false or misleading appearance of active trading in any securities on a stock exchange in Uganda or a false or misleading appearance with respect to the market for, or the price of, any such securities commits an offence.

(2) A person who 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 maintains, inflates, depresses or causes fluctuations in the market price of any securities commits an offence.

(3) Without prejudice to the general effect of subsection (1), any 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 or purchase any securities at a specified price where he or she has made or caused to be made or proposes to make, or knows that a person associated with him or her has made or caused to be made or proposes to make, an offer to sell or purchase the same number, or substantially the same number, of securities at a price that is substantially the same as the specified price,

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

(4) In a prosecution of a person for an act referred to in subsection (3), it is a defence if the defendant establishes that the purpose for which he or she did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on the stock 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 that person, acquires an interest in the securities after the purchase or sale.

(6) In a prosecution for an offence under 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 defendant establishes that the purpose for which he or she 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) 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.

### **83. Stock market manipulation.**

(1) Any person who effects, takes part in, is concerned in or carries out, either directly or indirectly, two or more transactions in securities of a body corporate which are transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities of the body corporate on a stock exchange in Uganda with intent to induce other persons to sell, purchase or subscribe for securities of the body corporate or of a related body corporate commits an offence.

(2) 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 those 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 those securities of the body corporate.

#### **84. False or misleading statements, etc.**

A person commits an offence who makes a statement, or disseminates misleading information, that is false or misleading in a material particular statement, that 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 he or she makes or disseminates the information—

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

#### **85. Fraudulently inducing persons to deal in securities.**

(1) A person commits an offence if he or she induces or attempts to induce another person to deal in securities—

- (a) by making or publishing any statement, promise or forecast which he or she 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 he or she knows to be false or misleading in a material particular.

(2) It is a defence to a prosecution for an offence under subsection (1)(d) to establish that at the time when the defendant recorded or stored the information described in that provision, he or she had no reasonable grounds for expecting that the information would be available to any other person.

#### **86. Dissemination of illegal statements.**

A person commits an offence who circulates or disseminates any statement 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 in contravention of any of the provisions of this Part where—

- (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.

**87. Employment of manipulative and deceptive devices.**

It is an offence for any person directly or indirectly in connection with the purchase or sale of any securities—

- (a) to employ any device, scheme or artifice to defraud;
- (b) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or
- (c) to make any untrue statement of a material fact or to omit to state a material fact necessary with the result that the statements made in the light of the circumstances under which they were made, appear truthful.

**88. Prohibition of dealings in securities by insiders.**

(1) A person who is, or has at any time in the six months immediately preceding a specific deal, been connected with a body corporate shall not deal in any securities of that body corporate if by reason of his or her association he or she is in possession of information that is not generally available but, if it were, might materially affect the price of those securities.

(2) A person who is, or has at any time in the preceding six months immediately preceding a specific deal been, connected with a body corporate shall not deal in any securities of another body corporate if by reason of his or her being, or having been, connected with the first-mentioned body corporate he or she is in possession of information that—

- (a) is not generally available but, if it were, would be likely to affect materially the price of those securities; and
- (b) relates to any transaction, whether actual or expected, involving both those bodies corporate or involving one of them and the securities of the other.

(3) Where a person is in possession of any information described in subsection (1) or (2), but he or she is not precluded by either of those subsections from dealing in those securities, he or she shall not deal in those

securities if—

- (a) he or she has obtained the information directly from another person and is aware, or ought reasonably to be aware, of the facts or circumstances by virtue of which that other person is himself or herself precluded by subsection (1) or (2) from dealing in those securities; or
  - (b) when the information was obtained as described in paragraph (a), he or she was associated with that other person or had with him or her an arrangement for the communication of information of a kind to which subsections (1) and (2) apply with a view to dealing in securities by himself or herself or with that other person.
- (4) No person shall at any time when he or she is precluded by subsection (1), (2) or (3) from dealing in any securities—
- (a) cause or procure any other person to deal in those securities; or
  - (b) communicate that information to any other person if— (i) trading in those securities is permitted on a stock exchange whether within or outside Uganda; and (ii) he or she 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.
- (5) Without prejudice to subsection (3) but subject to subsections (6) and (7), no body corporate shall 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.
- (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 that officer;
  - (b) it had in operation at that time arrangements to ensure that the information was not communicated to any person and that no advice with respect to the transaction was given to him or her by a person in possession of the information; and
  - (c) the information was not so communicated, and the advice was not so given.

(7) A body corporate is not precluded by subsection (5) from dealing in securities of another body corporate by reason only of information in possession of its officer which was obtained by the officer in the course of his or her duties as its officer but relates to proposed dealings by the first-mentioned body corporate in securities of the other body corporate.

(8) For the purposes of this section, a person is connected with a body corporate if, being an individual—

- (a) he or she is an officer of that body corporate or of a related body corporate;
- (b) he or she is a substantial shareholder in that body corporate or in a related body corporate; or
- (c) he or she occupies a position that may reasonably be expected to give him or her access to information of a kind to which subsections (1) and (2) apply by virtue of— (i) any professional or business relationship existing between himself or herself or his or her employer or a body corporate of which he or she is an officer, and that body corporate or a related body corporate; or (ii) his or her being an officer or a substantial shareholder in that body corporate or in a related body corporate.

(9) This section does not preclude the holder of a broker or dealer's licence from dealing in securities, or rights or interests in securities, of a body corporate, where the securities, rights or interests are permitted by a stock exchange to be traded on the stock market of that stock exchange, if—

- (a) the holder of the licence enters into the transaction concerned as agent for another person in accordance with a specific instruction of that 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) Where a prosecution is instituted against a person for entering into a transaction while in possession of certain information contrary to 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.

(11) For the purposes of subsection (7), “officer”, in relation to a body corporate, includes—

- (a) a director, a secretary, an executive officer or an employee of the body corporate;
- (b) a receiver, or a 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.

## **89. Penalties and compensation.**

(1) A person who contravenes any of the provisions of this Part is liable on conviction—

- (a) in the case of a person not being a body corporate, to a fine not exceeding ten million shillings or to imprisonment not exceeding five years or to both; or
- (b) in the case of a person being a body corporate, to a fine not exceeding twelve million shillings.

(2) A person convicted of an offence under this Part is liable to pay compensation to any person who, in a transaction for the purchase or sale of securities entered into with him or her or with a person acting for or on his or her behalf, suffers loss because of the difference between the price at which the securities were dealt in and the price at which they might have been dealt in at the time when the transaction took place if the contravention had not occurred.

(3) The amount of compensation for which a person is liable under subsection (2) is the amount of the loss sustained by the person claiming the compensation.

(4) Where 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.

(5) 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 (3) shall be made to the compensation fund.

(6) An action under subsection (2) for the recovery of a loss shall not be commenced after the expiration of three years after the date of completion of the transaction in which the loss occurred.

(7) Nothing in subsection (2) affects any other liability that a person may incur under any other law.

#### PART X—INTERIM STOCK TRADING FACILITY.

### **90. Interim stock trading facility.**

(1) Notwithstanding anything in this Act, but subject to this Part, the authority may permit any person who holds a broker or dealer's licence or persons who hold broker or dealers' licences to establish and maintain an interim stock trading facility in which other holders of broker or dealers' licences may participate until an approved stock exchange is established under Part III.

(2) The provisions of this Act, other than sections 23 and 24 of Part III, shall apply, with necessary modifications in relation to an interim stock trading facility established under subsection (1) and, in particular, with such modifications as may from time to time be prescribed.

(3) Subject to subsection (2), the authority may make such rules as may be required for the purpose of ensuring orderly and fair trading in securities on the interim stock trading facility and the protection of investors in connection with such trading and, in particular, rules to regulate—

- (a) the listing of securities on the facility;
- (b) the obligations of issuers of listed securities;
- (c) the trading and settlement rules of that facility;
- (d) the brokers or dealers who, and the conditions on which, those dealers may deal in securities on the facility;
- (e) the transitional arrangements for the assumption of the operations of the facility by an approved stock exchange;
- (f) any other matter relating to the operation of the facility, including the establishment and management of the compensation fund, as the authority may consider necessary.



(4) Where an approved stock exchange is established under Part III, the management and operation of the interim stock trading facility shall be assumed by the approved stock exchange in accordance with the rules made under subsection (3).

#### PART XI—MISCELLANEOUS.

### **91. Restriction on use of the title “stockbroker” or “stock exchange”.**

(1) A person who is not a broker within the meaning of this Act shall not use or, by inference, adopt the name or title of broker or exhibit at any place a name, title or description implying or tending to create the belief that he or she is a broker.

(2) A body corporate that is not a stock exchange shall not use or, by inference, adopt the name or title of stock exchange or exhibit at any place a name, title or description implying or tending to create the belief that the body corporate is a stock exchange.

### **92. Offences by directors or managers, etc.**

(1) A director or manager of a stock exchange or of a broker or dealer or of an investment adviser, who—

- (a) fails to take all reasonable steps to ensure compliance with this Act; or
- (b) fails to take all reasonable steps to ensure the accuracy and correctness of any statement submitted by him or her under this Act,

commits an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment not exceeding one year or to both.

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

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

**93. Falsification of records by directors, employees and agents.**

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

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

commits an offence and is liable on conviction to a fine not exceeding four million shillings or to imprisonment not exceeding two years or to both.

**94. False reports to the authority or stock exchange.**

Any person who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to the authority, a stock exchange or any officers of the authority relating to—

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

commits an offence and is liable on conviction to a fine not exceeding four million shillings or to imprisonment not exceeding two years or to both.

**95. Immunity of the authority and its employees, etc.**

(1) No action or other legal proceedings shall lie against the authority or any officer or employee of the authority or any person, including a stock exchange, acting under the direction of the authority for any act done or purported to be done in good faith in the performance or intended performance of any duty, or in the exercise of any power under this Act or the regulations.

(2) For the avoidance of doubt, nothing in subsection (1) shall absolve from liability any officer or employee of the authority for any act referred to in that subsection if in relation to that act he or she acted in bad

faith.

**96. Offences by a body corporate.**

Where a body corporate commits 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 taken to have committed the offence.

**97. Power of the court to prohibit payment or transfer of monies, 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 which 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) civil proceedings have been instituted against a person under this Act,

and the court considers it necessary or desirable for the purpose of protecting the interests of any persons to whom the person referred to in paragraph (a), (b) or (c) of this subsection, referred to in this section as the relevant person, is liable or may become liable to pay any monies, whether in respect of a debt, or by way of damages or compensation or otherwise account for any securities or other property, the court may, on application by the authority, make any one or more of the orders specified in subsection (2).

- (2) (a) The court may make—
  - 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;
- (b) an order prohibiting, either absolutely or subject to conditions, a person holding money, or securities or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of the securities or other property to any person;
- (c) an order prohibiting, either absolutely or subject to conditions,

- the taking or sending out of Uganda of monies of the relevant person or of any person associated with the relevant person;
- (d) 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 Uganda to a place outside Uganda, including the transfer of securities from a register in Uganda to a register outside Uganda;
  - (e) an order appointing a receiver or a receiver and manager, with such powers as the court may order, of the property or part of the property of that person;
  - (f) an order where the relevant person is an individual— (i) requiring him or her to deliver up to the court his or her passport and such other documents as the court considers fit; or (ii) prohibiting him or her from leaving Uganda without the consent of court.

(3) Where an application is made to the court for an order under subsection (1), the court may, before considering the application, on an application of the authority grant an interim order pending the determination of the original application.

(4) Where the authority makes an application to the court for an order under subsection (1), the court shall not require the authority or any other person, as a condition of granting an interim order under subsection (3), to give any undertakings as to damages.

(5) Where the court has made an order under this section, the court may, on application by the authority or by any person affected by the order, make a further order rescinding or varying the earlier order.

(6) 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 (5).

(7) A person who contravenes an order by the court under this section applicable to him or her commits an offence and is liable on conviction to a fine not exceeding four million shillings or to imprisonment not exceeding two years or to both.

## **98. Injunctions and orders of mandamus.**

(1) Where a person has engaged or attempts to engage in any conduct that constitutes or would constitute a contravention of this Act, the court may, on the application of—

- (a) the authority; or
- (b) any person whose interests have been, are or would be affected by that conduct, grant an injunction restraining the person from engaging in the conduct.

(2) Where a person refuses or fails to do an act or thing that he or she is required by this Act to do, the court may, on the application of—

- (a) the authority; or
- (b) any person whose interest has been, is or would be affected by the refusal or failure to do the act or thing,

issue an order of mandamus requiring the person to do that act or thing.

(3) The powers of the High Court relating to orders of injunctions and mandamus shall apply to any act or omission under this Act.

(4) Where the court has power under this section to grant an injunction restraining a person from engaging in a particular conduct or an order of mandamus 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 or order of mandamus, order that person to pay damages to any other person.

## **99. Offences and penalties.**

(1) Any person who contravenes section 23, 30, 31, 32 or 33 commits an offence.

(2) A person who commits an offence under subsection (1) or who commits any other offence under this Act for which no specific penalty is provided is liable on conviction to a fine not exceeding four million shillings or to imprisonment not exceeding two years or to both.

## **100. Proceedings for offences against this Act.**

Prosecution for an offence against any provision of this Act may be taken by the Director of Public Prosecutions.

## 101. Regulations.

(1) The authority may make regulations prescribing any matter required or permitted by this Act to be prescribed and for carrying out or giving effect to this Act.

(2) Without prejudice to the general effect of subsection (1), regulations may provide for—

- (a) the forms to be used for the purposes of this Act;
- (b) the publication of advertisements offering the services of brokers or dealers or investment advisers or offering securities for purchase or sale, and the form and content of those advertisements;
- (c) the form of balance sheets and profit and loss accounts required by this Act to be prepared by brokers or dealers;
- (d) the furnishing to the authority of information in addition to or in variation of the information contained in a prescribed form lodged with it;
- (e) the times within which information required to be furnished to the authority under this Act shall be furnished;
- (f) the procedures under which and the conditions on which a public company may appeal to the authority against a refusal of a stock exchange to list its securities or a decision of a stock exchange to suspend trading in its securities;
- (g) exempting any person or class of persons from the application of any provision of this Act;
- (h) prescribing the relevant educational qualifications and experience required for a person to be granted a broker's or dealer's or investment adviser's licence under this Act; (i) the conduct of business by brokers and dealers, exempt dealers, investment advisers and their representatives; (j) the publication of advertisements in respect of securities and prospectuses by issuers of securities and the form and contents of such advertisements and prospectuses; (k) the terms and conditions of licences or any approval or authorisation granted under this Act or under regulations made under it; (l) matters incidental to the licensing of any persons or the grant of any approval or authorisation under this Act or under regulations made under it; or

(m) the form and contents of financial statements to be maintained and submitted to the authority by brokers or dealers, exempt dealers, investment advisers and their representatives.

(3) Except as otherwise expressly provided in this Act, regulations made under this section may be of general or specifically limited application.

(4) Any regulation made under this section may prescribe in respect of a contravention of the regulation, a penalty of a fine not exceeding four million shillings or imprisonment not exceeding twelve months or both; and in the case of a continuing offence, an additional fine not exceeding one hundred thousand shillings in respect of each day on which the offence continues.

#### **102. Jurisdiction to try offences under this Act.**

No court inferior to a magistrate's court over which a magistrate grade I presides shall try any offence under this Act.

#### **103. Minister's power to amend the Schedule.**

The Minister may, by statutory order, with the approval of Parliament, amend the Schedule to this Act.

#### *Schedule.*

s. 1.

#### **The relevant bodies.**

1. Institute of Certified Public Accountants of Uganda
2. Insurance Institute of Uganda
3. Uganda Association of Securities Dealers (to be formed)
4. Uganda Bankers Association
5. Uganda Chamber of Commerce
6. Uganda Law Society
7. Uganda Manufacturers Association

**History:** Statute 1/1996; S.I. 28/1996; S.I. 40/1996.

## **Cross References**

Bank of Uganda Act, Cap. 51.  
Companies Act, Cap. 110. Financial  
Institutions Act, Cap. 54. Insurance  
Act, Cap. 213.