

CHAPTER 79

THE CAPITAL MARKETS AND SECURITIES ACT

An Act to establish a Capital Markets and Securities Authority for the purposes of promoting and facilitating the development of an orderly, fair and efficient capital market and securities industry in Tanzania, to make provisions with respect to stock exchanges, stockbrokers and other persons dealing in securities, and for connected purposes.

[1st October, 1994]

[G.N. No. 363 of 1994]

Acts Nos.

5 of 1994

4 of 1997

G.Ns. Nos.

14 of 1997

15 of 1997

PART I

PRELIMINARY PROVISIONS (ss 1-5)

[PCh79s1]1. Short title and application

(1) This Act may be cited as the Capital Markets and Securities Act.

(2) This Act shall apply to Tanzania Zanzibar as well as Mainland Tanzania.

[PCh79s2]2. Interpretation Act No. 4 of 1997 s. 2

In this Act, unless the context otherwise requires—

"advertisement" includes every form of advertising whether in a publication, brochure, handout, by letter head, by display of notice, circular or other documents by exhibition of photographs or cinematography films or videos, or by sound broadcasting or television broadcasting or distribution of recordings or in any other manner;

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

"arbitrage" means profiting from differences in price of the same security traded on two or more markets;

"auditor" means a company auditor qualified as such under the Companies Act *;

"Authority" means the Capital Markets and Securities Authority established by section 6;

"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;

"collective investment scheme" means—

- (a) an open-ended investment company;
- (b) a unit trust scheme;
- (c) such other arrangements being arrangements with respects to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the

acquisition, holding, management or disposal of the property or sums paid out of such profits or income; and

(d) any other scheme or arrangement deemed by the Authority to be a collective investment scheme for the purposes of this Act;

"Companies Act" means the Companies Act *, and includes the Companies Decree of the Laws of Zanzibar *;

"company" means a company formed and registered under the Companies Act;

"council", in relation to a stock exchange, means the persons for the time being in whom the management of the stock exchange is vested;

"court" means the court having jurisdiction under this Act;

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

"dealer's representative" means a person, in the direct employment of, or acting for, or by arrangement with, a dealer, who performs for that dealer any of the functions of a dealer, other than work ordinarily performed by accountants, clerks or cashiers, whether his remuneration is by way of salary, wages, commission or otherwise; and where the dealer is a body corporate, includes any director or officer of the body corporate who performs for the body corporate any of the said functions;

"dealing in securities" means whether as principal or agent making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into—

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

(b) any agreement the purpose or the 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;

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

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

"exempt dealer" means a person specified under section 49;

"investment adviser" subject to section 3, means a person who—

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

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

(c) pursuant to a contract or arrangement with a client, undertakes on behalf of the client, (whether on a discretionary authority granted by the client or otherwise) the management of a portfolio of securities for the purpose of investment;

"investment company" means a body corporate, which has its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that body;

"investment representative" means a person, in the direct employment of or acting for or by arrangement with an investment adviser, who performs for such investment adviser any of the functions of an investment adviser (other than work ordinarily performed by accountants, clerks or cashiers) whether his remuneration is by way of salary, wages, commission or otherwise, and includes any director or officer of a body corporate who performs for such body corporate any of the said functions;

"licence" means—

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

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

(a) the admission to the official list of the body corporate, of bodies corporate, governments, unincorporate bodies or other persons for the purpose of the quotation on the stock market, or made available by bodies corporate, governments unincorporated bodies or other persons or the removal from that official list and for other purposes; or

(b) the activities or conduct of bodies corporate, governments, unincorporate bodies and other persons who are admitted to that list,

whether those rules—

(i) are made by the body corporate or are contained in any of the constituent documents of the body corporate; or

(ii) are made by another person and adopted by the body corporate;

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

"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;

"Minister" means the Minister for the time being responsible for finance;

"open-ended investment company" means a body corporate—

(a) which has as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that body; and

(b) the members in which have rights represented by share or securities of that body which—

(i) those members are entitled to have redeemed or purchased from them by, or out of funds provided by, that body; or

(ii) the body ensures it can be sold by the members on an investment exchange at a price related to the value of the property to which they relate;

"prescribed interest" subject to section 3, means any right to participate or any interest, whether enforceable or not and whether actual, prospective or contingent—

(a) in any profits, assets or realisation of any financial or business undertaking or scheme whether in Tanzania or elsewhere;

(b) in any enterprise, whether in Tanzania 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

(c) in any investment contract, whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset;

"prospectus" means any prospectus, notice, circular, advertisement or other invitation offering to the public for subscription or purchase any shares or debentures of company and includes a prospectus in respect of the issue of any other security;

"public company" means a company whose articles of association do not restrict the right to transfer its shares, do not limit the number of its members and do not prohibit any invitation to the public to subscribe for any shares or debentures of the company;

"relevant authority" means—

(a) in relation to a member company or member firm, the stock exchange by which the company is recognised; and

(b) in relation to any other person, the Authority;

"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;

"securities" include—

(a) debentures, stock, shares, bonds, or notes issued or proposed to be issued by a body corporate and any right, warrant or option in respect thereof;

(b) bonds or other loan instrument of the Government of Tanzania or of any other country;

(c) rights or interests, whether described as units or otherwise under any collective investment scheme;

(d) such other rights, interests or instruments as the Minister may, by notice in the Gazette prescribe.

"securities business" means the business of dealing in or advising on securities and includes such other activity as may be prescribed;

"share" means the interest of members of a body corporate who are entitled to share in the capital or income of such body corporate,

"stockbroker" means a person who is—

(a) a director of a member company; or

(b) a partner of a member firm.

"stock exchange" means any body corporate which has been approved by the Authority under section 26;

"stock market" means a market, exchange of other place, at which, or a facility by means of which, securities are regularly offered for sale, purchased or exchanged;

"substantial shareholder" means a shareholder entitled to exercise or control the exercise of 30% 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;

"trust account" means a trust account opened and maintained under section 69;

"underwriting" means the purchase or commitment to purchase or distribute by dealers or other persons of any issue or offer of securities for immediate or prompt public distribution by or through them;

"unit" in relation to a unit trust, means a right or interest, whether described as a unit, sub-unit or otherwise which may be acquired under the trust; and

"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.

[PCh79s3]3. Construction of the terms "investment adviser" and "prescribed interest"

For the purposes of this Act and notwithstanding the provisions of section 2—

(a) the phrase "investment advisor" shall not be construed to include—

(i) a bank as defined in the Banking and Financial Institutions Act *.

(ii) an insurance company;

(iii) an Advocate or accountant whose carrying on of that business is solely incidental to the practice of his profession;

(iv) a dealer or his employee or a dealer's representative or an exempt dealer whose carrying on of that business is solely incidental to the conduct of his business of dealing in securities; or

(v) a person who is the proprietor of a newspaper where—

(aa) in so far as the newspaper is distributed generally to the public, it is distributed only to subscribers to, and purchasers of, the newspaper for value;

(bb) the advice is given or the analyses or reports are issued or published only through that newspaper;

(cc) that person received no commission or other consideration for giving the advice or for issuing or publishing the analyses or reports; and

(dd) 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

(vi) such other persons as the Minister may, by notice in the Gazette, prescribe;

(b) the phrase "prescribed interest" shall not be construed to include—

(i) any share in, or debenture of a body corporate;

(ii) any interest in, or arising out of a policy of life insurance;

(iii) an interest in a partnership agreement, unless the agreement or proposed agreement—

(aa) 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; or

(bb) is or would be an agreement, within a class of agreements, prescribed by the regulations for the purposes of this paragraph;

(iv) a right or interest, or a right interest included in a class or kind of rights or interests, declared by the regulations to be an exempt right or interest, or a class or kind of exempt rights or interests;

[PCh79s4]4. Construction of the term "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 such a related body corporate;

(b) where the matter to which the reference relates is the extent of power of 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 either of those persons may acquire from each other shares in the body corporate or may be required to dispose of such 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 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 as mentioned 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) and (ii) was associated with another person at a particular time, that person shall be deemed 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 not be taken to be associated with another person by virtue of paragraph (b), (c), (e) or (f) of subsection (1) by reason only that one of those persons furnished advice to, or acts on behalf of, the other person in the proper performance of functions that relate to his professional capacity or to his business relationship with the other person.

[PCh79s5]5. Persons deemed to have 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 has an interest, that person shall be deemed to have an interest in those securities.

(2) A person shall be deemed to have an interest in a security where a body corporate has an interest in a security and—

(a) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person in relation to that security;

(b) that person has a controlling interest in the body corporate; or

(c) that person is, or the associates of that person or that person and his associates are, entitled to exercise or control the exercise of not less than 30% of the votes attached to the voting shares in the body corporate.

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

(a) where he has entered into a contract to purchase a security;

(b) where he has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in future and whether on the fulfilment of a condition or not;

(c) where he has the right to acquire a security or an interest in a security, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

(d) where he is entitled, otherwise than by reason of his 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 is the registered holder.

(4) A person shall be deemed 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—

(a) an interest in a security if the interest is that of a person who holds the security as bare trustee;

(b) an interest in a security of a person whose ordinary business includes the lending of money if he 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 by reason of his 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 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

THE CAPITAL MARKETS AND SECURITIES AUTHORITY (ss 6-24)

[PCh79s6]6. Establishment of the Authority

(1) There is hereby established an authority to be known as the Capital Markets and Securities 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 such 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 Chairman to be appointed by the President on the recommendation of the Minister;
- (b) four other members who have experience and expertise in either legal, financial, business or administrative matters to be appointed by the Minister;
- (c) the Principal Secretary to the Treasury or an officer of the Treasury nominated by him in writing for that purpose;
- (d) the Governor of the Bank of Tanzania or an officer of the Bank of Tanzania nominated by him in writing for that purpose;

(e) the Registrar of Companies or an officer in the office of the Registrar of Companies nominated by him in writing for that purpose; and

(f) the Attorney-General or an officer in the office of the Attorney General nominated by him in writing for that purpose;

(g) the Chief Executive of the Authority.

(4) The Chairman and every member appointed under paragraph (b) of subsection (3) shall hold office for a period of three years and shall be eligible for re-appointment.

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

(a) he delivers to the Minister a written resignation of his appointment;

(b) on the advice of the Authority, the Minister removes him from office on the grounds that he 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 has been absent from three consecutive meetings of the Authority without leave or good cause;

(d) he is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

(e) he is sentenced by a court to imprisonment for a term of six months or more without the option of a fine;

(f) he is convicted of an offence involving dishonesty, fraud or moral turpitude; or

(g) in the case of a person in possession of a professional qualification, he is disqualified or suspended, otherwise than at his own request, from practicing his profession in Tanzania or in any other country by an order of any competent authority made in respect of him personally.

(6) In the event of vacation of office by any member appointed under paragraph (b) of subsection (3), 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 is appointed.

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

(8) The members of the Authority other than public officers in receipt of a salary, shall be paid such remuneration and allowances out of the general fund of the Authority as may be determined by the Minister.

[PCh79s7]7. Meetings of the Authority

(1) The Chairman of the Authority shall convene meetings at least once each month to carry on the business of the Authority and whenever he receives a written request signed by at least two members; and in the absence of the Chairman, meetings shall be convened by the Chief Executive and the members present shall elect one of their number to preside as Chairman.

(2) The quorum for any meeting of the Authority shall be five, and the Authority may, subject to the requirement for a quorum, regulate the procedure in regard to meetings of the Authority and the transaction of business at such meetings.

(3) All questions for decisions at any meeting of the Authority shall be decided by the vote of the majority of the members present and, in case of an equality of votes, the Chairman of the meeting shall have a casting vote.

(4) If the Chairman of the Authority, by reason of extended illness or absence is temporarily unable to perform the duties of his office, the President, on the recommendation of the Minister, shall appoint another member of the Authority to act in his place during the period of absence.

(5) The Chairman may at any time resign by a letter addressed to the President and the resignation shall take effect upon being accepted by the President.

(6) 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 such interest at the meeting of the Authority where such decision is being taken and the disclosure shall be recorded in the minutes of the meeting and, if either the member or the majority of the members of the Authority believe that such member's interest in the matter is such as to influence his judgment, he shall not participate in the deliberation or the decision of the Authority on such matter:

Provided that if a majority of the members in attendance at a meeting where such matter is considered determine that the experience or expertise of the interested member is necessary for the deliberation on the matter, they may permit such member to participate as they deem appropriate.

(7) 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.

(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 Chairman, or, in the case of a decision taken at a meeting at which the Chairman is not present, under the hand of the person presiding at such meeting.

[PCh79s8]8. Appointment of Chief Executive and other staff

(1) The Minister shall, after consultation with the Authority, appoint a Chief Executive of the Authority on such terms and conditions as he may determine.

(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 objectives, functions and duties including the administration and control of the officers and other employees of the Authority.

(3) The Minister may remove from office the Chief Executive appointed under subsection (1).

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

(5) The officers and other employees employed 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 other employee of the Authority shall, subject to this Act, exercise such powers and functions and perform the duties assigned to him from time to time by the Chief Executive.

[PCh79s9]9. General Fund, financial year and accounts

(1) There is hereby established a fund of the Authority to be known as the General Fund.

(2) There shall be paid into the General Fund—

- (a) all such sums of money as may be paid as fees under this Act;
- (b) all such sums of money as may be received by the Authority for its operations from any other source;

(3) There shall be paid out of the General Fund all such sums of money required to defray the expenditure incurred by the Authority in the exercise, discharge and performance of its objectives, functions and duties.

(4) The financial year of the Authority shall be the period of twelve months commencing on the first day of July in each year.

(5) The Authority shall cause proper books of accounts to be kept of its income and expenditures, assets and liabilities and all other transactions of the Authority.

[PCh79s10]10. General functions of the Authority

The functions of the Authority shall be—

- (a) to advise the Minister on all matters relating to the securities industry;

(b) to maintain surveillance over securities to ensure orderly, fair and equitable dealings in securities;

(c) to register, license, authorise or regulate, in accordance with this Act, or any regulations made under it stock exchanges, investment advisers, securities dealers, and their agents and to control and supervise their activities with a view to maintain proper standards of conduct and professionalism in the securities business;

(d) to formulate principles for the guidance of the industry;

(e) to determine the minimum capital requirement for a licence holder, depending on the size of operations and risk;

(f) to monitor the solvency of licence holders and take measures to protect the interest of customers where the solvency of any such licence holder is in doubt;

(g) to protect the integrity of the securities market against any abuses arising from the practice of inside trading;

(h) to adopt measures to minimise and supervise any conflict of interest that may arise for dealers;

(i) to review, approve and regulate takeovers, mergers, acquisitions and all forms of business combinations in accordance with any existing rules of practice authorising or requiring the security to do so;

(j) to create the necessary environment for the orderly growth and development of the capital market;

(k) to perform the function referred to in section 35 of the Companies Act *;

(l) to undertake such other activities as are necessary or expedient for giving full effect to the provisions of this Act; and

(m) to do anything which is calculated to facilitate the discharge of its functions or is incidental or conducive to their discharge, under this Act.

[PCh79s11]11. Power of the Authority to require production of books by a stock exchange and certain persons

(1) The Authority may by notice in writing, at any time, where it considers that there is sufficient cause to do so, give a direction to—

(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 dealer or an investment adviser or is or has been a 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, to produce to a person authorised by the Authority such books, subject to subsection (2), as may be specified in the direction.

(2) A reference in subsection (1) 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.

(3) For the purposes of subsection (1), books in respect of which a request to produce may be made shall relate to—

- (a) the business or affairs of a stock exchange;
- (b) any dealing in securities;
- (c) any advice concerning securities or the issuing or publication 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 paragraph (c) or (d) of subsection (1); or
- (e) an audit of, or any report of an auditor concerning a dealing in securities or any accounts or records of a dealer or of an investment adviser.

(4) No direction to produce shall be made to any person pursuant to paragraph (g) of subsection (1) of this section—

- (a) unless the Authority has reason to believe that the person has in his custody or under his control books relating to a matter specified under subsection (2) of this section;
- (b) at a time or place that may unduly interfere with the proper conduct of the normal daily business of that person.

(5) The Authority may in writing authorise any person to exercise the power to request for the production of books conferred on it under this section.

(6) An authorisation from the Authority to any person under subsection (5) may be of general application or may be limited to making requirements of a particular stock exchange or other person.

(7) Where the Authority, or a person authorised by the Authority, requires the production of any books under this section and a person has a lien on the books, the production of the books does no prejudice the lien.

(8) An authorised officer shall where required to do so produce evidence of his authorisation.

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

(10) A power conferred by this section to give a direction to a person extends, if the person is a body corporate, to giving that 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.

[PCh79s12]12. Action on production of books or when books are not produced

(1) Where the required books are produced under section 11, the person to whom they are produced—

- (a) may take possession of them, make copies or take extracts from them;
- (b) may require the person who produced the books or any person who was a party to the compilation of the books to make a statement providing an explanation of any of the books;

(c) may retain 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; and

(d) shall permit the person who produced them, upon giving a reasonable notice and specification of the books, to have access to them.

(2) Where the books are not produced, the Authority or the authorised person may require the person who should have produced the books—

(a) to state, to the best of his knowledge and belief, where the books may be found;

(b) to identify the person who, to the best of his knowledge and belief, last had custody of the books and where he may be found; or

(c) to state the reasons why the books cannot be produced.

[PCh79s13]13. Order by District Magistrate to search premises

(1) Whenever it appears to any District Magistrate upon written information on oath, and after any enquiry he may think necessary, that there are reasonable grounds for suspecting that there are on any premises books the production of which has been directed and which have not been produced in compliance with the direction, the District Magistrate may issue a warrant authorising the Authority or any person named therein—

(a) to search the premises and to break open and search any cup-board, 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 the Criminal Procedure Act *, relating to search of premises.

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

[PCh79s14]14. Incriminating statement

(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 under section 11 on the grounds that statement might tend to incriminate him.

(2) Notwithstanding subsection (1) where the person claims before making a statement required of him that the statement might tend to incriminate him, the statement provided in answer to the request shall not be admissible in evidence against him in any criminal proceedings other than proceedings under sections 11, or 12 of this Act.

(3) Subject to subsection (2) of this section, a statement made by a person in compliance with a requirement under section 12 may be used in evidence in any criminal or civil proceedings against the person.

[PCh79s15]15. Penalties

A person who—

(a) without reasonable excuse, refuses or fails to comply with a direction given under section 11 or 12; or

(b) knowingly furnishes information or makes a statement that is false or misleading in a material particular for the purposes of section 11 or 12; or

(c) without reasonable excuse, obstructs or hinders the Authority or any person in the exercise of a power under section 11, 12 or 13 is guilty of an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than five years or to both such fine and imprisonment.

[PCh79s16]16. Copies of extracts of books to be admitted in evidence

(1) Subject to this section and section 18 a copy of or extract from a book relating to a matter specified in subsection (1) or (2) of section 11 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 books 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.

[PCh79s17]17. Protection of privileged communication with advocate

Nothing in section 11, 12 or 13 shall compel an advocate to produce a document that contains privileged communication made by or to him in his professional capacity or authorise the taking of possession of any such document which is in his possession:

Provided that an advocate shall not be entitled under this section to withhold the name and address of the person to whom or by or on whose behalf the communication was made.

[PCh79s18]18. Secrecy of information from books

(1) No information obtained from any books that have been produced under section 11, 12 or 13 shall be published or disclosed to any person other than to the Authority, its officers and employees, without the previous consent in writing of the person who had custody or control of the book, 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 11, 12 or 13 of this Act.

(2) Any person who publishes or discloses any information in contravention of this section is guilty of an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than five years or to both such fine and imprisonment.

[PCh79s19]19. Disclosure to the Authority

(1) The Authority may, where it considers it necessary for the protection of investors, require a dealer or an exempt 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 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 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 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 name of the members of that stock exchange who acted in the acquisition or disposal.

[PCh79s20]20. Where the Authority suspects breach of specified provision

(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 31; 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 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 purpose of paragraph (a) (b) or (c) of subsection (1), the Authority may require a person whom the Authority believes on reasonable grounds to be capable of giving information concerning—

- (a) any dealing in relevant securities;
 - (b) any advice given by a dealer, an investment adviser, a dealer's representative or an investment representative concerning securities;
 - (c) the issuing or publication of a report or analysis by a dealer, an investment adviser, a dealer's 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 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 or an auditor concerning any accounts or records of a dealer or of an investment adviser, being accounts or records relating to dealings in relevant securities,
- to disclose to the authority the information that the person has in relation to any of the matters specified in this subsection.

(3) For the purposes of subsection (2), the term "relevant securities" means securities of, or made available by, the body corporate referred to in subsection (1) of this section.

(4) A person is not excused from disclosing information to the Authority pursuant to a requirement made of him under subsection (1) or (2) on the ground that the disclosure of the information might tend to incriminate him.

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

(6) Any person who or any stock exchange which, without reasonable excuse, refuses or fails to comply with a requirement of the Authority under subsection (1), (2), (3) of section 18 or subsection (1) or (2) of this section is guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(7) Any person who, for the purpose of subsection (1), (2) or (3) of section 18 or subsection (1) or (2) of this section, discloses information, or makes a statement which he knows or has reason to believe is false or misleading in a material particular, is guilty of an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than five years or to both such fine and imprisonment.

(8) It is a defence to a prosecution for an offence under subsection (7) for the defendant to prove that he 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 complied with a requirement made or purporting to have been made under this section.

[PCh79s21]21. 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 * it may make such investigation as it thinks proper in pursuance of this Act.

[PCh79s22]22. Inspection by the Authority

(1) For the purposes of investigations pursuant to section 21, the Authority may, inspect the books, accounts, documents and transactions of a stock exchange, a dealer or an investment adviser.

(2) The powers of inspection under subsection (1) may be exercised by the Authority itself or by any person appointed in writing by the Authority to exercise those powers.

(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 or any person appointed by the Authority under subsection (2) access to, and shall produce, its or his books, accounts and documents and shall give such information and facilities as may be required to conduct the inspection.

(4) The Authority and any person appointed by the Authority shall for the purposes of investigations have the power to copy or take possession of the books, accounts and other documents of a stock exchange, a dealer or investment adviser.

(5) Any person who, without reasonable excuse, fails to produce any book, account or document or furnish any information or facilities in accordance with subsection (3) is guilty of an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than five years or to both such fine and imprisonment.

[PCh79s23]23. Power of 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 restrictions of 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 orders within its powers, make one or more of the following orders—

(i) in the case of persisted or continuing breaches of this Act, or of the conditions or restriction of a licence, or of the rules or listing rules of a stock exchange, an order restraining the person from carrying in securities, acting as an investment adviser or as a dealer's representative or investment representative, or from holding himself out as carrying on such business or so acting;

(ii) an order restricting a person from acquiring, disposing of or otherwise dealing with any securities that are specified in the order;

(iii) an order appointing a receiver of the property of a dealer or of property that is held by a dealer for or on behalf of another person whether on trust or otherwise;

(iv) an order declaring a contract relating to securities to be void or voidable;

(v) for the purposes 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

(vi) any order ancillary to any of the orders specified in this subsection considered desirable.

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

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

(a) require the 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 that may reasonably be required;

(b) acquire and take possession of any property of which he has been appointed receiver;

(c) deal with any property that he has acquired or of which he has taken possession in any manner in which the dealer might lawfully have dealt with the property; and

(d) exercise such other powers in respect of the property as specified in the order.

(4) In subsections (1) and (3), "property", in relation to a dealer, includes moneys, securities and documents of title to securities or other property entrusted to or received on behalf of any other person by the dealer or another person in the course of or in connection with a business of dealing in securities carried on by the dealer.

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

(6) Subsection (5) shall not affect the powers of the Court to punish for contempt of court.

(7) Any person who, without reasonable excuse, contravenes or fails, to comply with—

(a) an order under subsection (1) applicable to him; or

(b) a requirement of a receiver appointed by order of the Court under subsection (1),

is guilty of an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than five years or to both such fine and imprisonment.

[PCh79s24]24. Statements of principle

(1) The Authority may issue statements of principle 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 permission of the Authority by a person or body other than the Authority.

(3) Failure to comply with a statement of principle given under this section shall constitute a ground for disciplinary action or the exercise of the powers of intervention, but shall 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) shall include the exercise of any of the powers under section 41 or 46 of this Act.

(5) Where a statement of principle relates to compliance with a code or standard issued a person or body other than the Authority, the statement of principle may provide that failure to comply with the code or standard shall constitute a ground for disciplinary action or for exercising any of the powers under section 41 or 46 of this Act, in such cases and to such extent as may be specified:

Provided 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 powers under this section in such manner as it may appear to the Authority to be appropriate to secure compliance with statements of principle under this section.

PART III

STOCK EXCHANGES (ss 25-31)

[PCh79s25]25. Establishment of stock exchange Act No. 4 of 1997 s. 3

(1) No person shall establish or assist in establishing or maintain or hold himself out as providing or maintaining a stock market unless it is a stock market or a stock exchange.

(2) Any person who contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

[PCh79s26]26. 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, in consultation with the Minister, 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 independent 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 exclusion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of or failure to comply with 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) for the terms and conditions of the Chief Executive Officer of the body corporate, including a term that such Chief Executive Officer shall not be liable to dismissal or removal from his office without the prior approval of the Authority;

(v) 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;

(vi) with respect to the obligations of the issuers of the listed securities;

(vii) with respect to the conditions governing dealing in securities by members;

(viii) with respect to the class of securities that may be dealt in by members;

(ix) with respect to a 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

(x) 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 shall preclude the Authority from appointing any person who is knowledgeable about the securities industry and who is not associated with a stockbroker or dealer, to be on the Council of a stock exchange to represent the public interest; and the 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; and

(b) shall hold office for a period specified by the Authority which may at any time revoke such an appointment.

(5) The Authority shall publish in the Gazette notice of approval for the establishment of stock exchange and every cancellation or suspension of any approval.

(6) 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 a written notice and after giving an opportunity to the Council to be heard on the matter, it may cancel the approval:

Provided that such cancellation shall not take effect until after the expiration of three months from the date on which the cancellation is published in the Gazette.

(7) 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:

Provided that during the three months between the said publication and the effective date of the cancellation, the Council may take steps to wind up the business of the stock exchange.

[PCh79s27]27. 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 thereof 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 in question and until such notice is given the amendment shall not have any effect.

(3) Nothing in this section shall preclude 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 those amendments shall have force and effect but the Authority may dispense with such 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.

[PCh79s28]28. Stock exchange to provide certain assistance to the Authority and the disciplinary power of the Authority

(1) A stock exchange shall provide such assistance to the Authority as it reasonably requires for the performance of its functions and duties, including the furnishing of such returns and providing such information relating to its business 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 take 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 stock exchange decision 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 stock exchange but before doing so the Authority shall give the member of the stock exchange an opportunity to be heard.

(5) Any person who is aggrieved by the decision of a stock exchange or of the Authority under this section may, within one month after he is notified of the decision, appeal to the Minister whose decision shall be final.

[PCh79s29]29. Power of court to order observance or enforcement of rules of a stock exchange

(1) Where a person who is under an obligation to comply with, observe, enforce or give effect to the rules or listing rules of a stock exchange fails in performing the duty, the Authority, or the court on the application of the Authority, a stock exchange or a person aggrieved by the failure, and after giving to the person against whom the order is sought

an opportunity of being heard, may 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 the listing rules of that stock exchange to the extent to which rules apply in relation to it or to him.

[PCh79s30]30. Power to issue directions to a stock exchange

(1) The Authority may, where it appears 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; or

(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 or refuses to comply with a direction given under subsection (1), is guilty of an offence and is liable on conviction to fine of not less than one million shillings and in addition, every director and

every officer of a stock exchange who is in such contravention shall be liable to imprisonment for a term of not less than five years, unless such director or officer proves that such contravention occurred without his knowledge or consent, except that such defence shall not be available if having regard to the duties of his office, the director or officer ought to have known of the contravention.

(3) A stock exchange that is aggrieved by any direction of the Authority under subsection (1) may appeal to the Minister within thirty days of the date of the direction.

(4) In any appeal under subsection (3), the decision of the Minister shall be 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 thereunder or the rules of a stock exchange; or

(b) has without reasonable justification or excuse, failed to enforce compliance with such provisions by a member of the stock exchange or a person associated with that member,

the Authority may, if it thinks it necessary in the public interest or for the protection of investors, and after giving the executive officer, an opportunity of being heard, censure the executive officer or 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.

[PCh79s31]31. Power of the Authority to prohibit trading in particular securities

(1) Without prejudice to the generality of section 30, 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 interest 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) Where, 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 such 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 the giving of the notice; and

(b) as soon as practicable furnish to the Minister a written report setting out the reasons for the giving of 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 such a request is made, the Authority shall forthwith refer the matter to the Minister, who may, if he thinks fit, direct the Authority to revoke the notice or confirm the prohibition imposed by the Authority and the decision of the Minister shall be final.

(6) A stock exchange which permits trading in securities on the stock market of the stock exchange in contravention of a notice under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine of not less than one million shillings and in addition every director or officer of a stock exchange who is in such contravention, shall be liable to imprisonment for a term of not less than five years, unless such director proves that such contravention occurred without his knowledge or consent, except that a defence shall not be available if having regard to the duties of his office, the director or officer ought to have known of the contravention.

PART IV

LICENCES (ss 32-49)

[PCh79s32]32. Dealer's licence Act No 4 of 1997 s. 4

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

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

(3) Any person who contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

[PCh79s33]33. Dealer's representative's licence Act No. 4 of 1997 s. 5

(1) No person shall act as a dealer's representative unless he is a holder of a dealer's licence issued under this Part.

(2) Any person contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

[PCh79s34]34. Investment adviser's licence Act No. 4 of 1997 s. 6

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

(2) Any person who contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(3) A licence granted under subsection (1) shall not authorise any dealing in securities by the holder.

[PCh79s35]35. Investment representative's licence Act No. 4 of 1997 s. 7

(1) No person shall act as an investment representative unless he is the holder of investment representative's licence issued under this Part.

(2) Any person who contravenes subsection (1) of an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

[PCh79s36]36. Application for or renewal of 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 (which shall 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 one month before the expiry 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 without first giving the applicant or the holder of the licence an opportunity of being heard.

(4) Where the Authority rejects an application for a licence or the renewal of a licence, the prescribed fee shall be refundable to the applicant but the fee shall not be refundable to the applicant on the withdrawal of an application.

[PCh79s37]37. Grant of dealer's licence or investment adviser's licence

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

(2) A 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 dealer's licence, as are provided in such rules of a stock exchange as have been approved by the Authority.

(3) Subject to section 36(3) and the regulations made under this Act, where an application is duly made for the grant or renewal of a dealer's licence or investment adviser's licence, the Authority shall refuse the application if—

- (a) in the case of an applicant who is a natural person–
 - (i) the applicant has been adjudged a bankrupt anywhere;
 - (ii) the applicant has been convicted in Tanzania or elsewhere, of an offence involving fraud or dishonesty punishable on conviction with imprisonment for a term of three months or more;
 - (iii) the Authority is not satisfied as to the educational qualifications or experience of the applicant having regard to the nature of the duties of a holder of a 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 dealer's licence, or an investment adviser'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 Tanzania, 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, or partners in the application who are to perform duties in connection with the holding of the dealer's licence or investment advisor'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 dealer's licence or an investment adviser's licence, efficiently, honestly and fairly.

[PCh79s38]38. Grant of representative's licence Act No. 4 of 1997 s. 8

(1) A representative's license shall be granted only to an individual.

(2) Subject to section 36(3) and the regulations made under this Act, the Authority shall grant or renew a 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 dealer's representative's or an investment representative's licence, efficiently, honestly and fairly.

[PCh79s39]39. False statements

Any 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 becomes misleading in a material particular, is guilty of an offence and shall be liable on conviction to a fine of not less than two hundred thousand shillings or to imprisonment for a term of not less than two years or to both such fine and imprisonment.

[PCh79s40]40. Power of Authority to enquire into securities transactions in relation to the holder of a licence

(1) In deciding whether a dealer or the his representative or an investment adviser or his representative shall hold a licence under this Act, the Authority may enquire 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 such transaction or series of transactions used dishonest, unfair or unethical methods or trading practices, whether such methods or trading practices, constitute an offence under this Act or not.

(2) For the purpose of subsection (1), the Authority may, in such form and within such time as it may specify by notice in writing, require a dealer or his representative or an investment adviser or his representative to submit detailed information of all or any transactions which 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 knowingly 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 licence revoked under section 46 and in the case of first application for a licence to have his application refused.

[PCh79s41]41. 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 generality 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 condition or restriction that—

(a) he shall only carry on the class of business of advising others concerning securities; or

(b) he shall only carry on the class of business of issuing or promulgating analyses in reports concerning securities; or

(c) he 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 shall carry on any of the classes of business in paragraphs (a), (b) and (c) 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 to—

(a) call at any residence; or

(b) telephone any residence in Tanzania for the purpose of dealing in any securities.

(4) Any holder of a licence who contravenes or fails to comply with any condition or restriction in the licence shall be guilty of an offence.

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

[PCh79s42]42. Deposit to be lodged in respect of dealer's licence

(1) The Authority shall not grant or renew a dealer's licence unless a deposit in the sum of one hundred thousand shillings or such greater sum as the Authority may determine in respect of the licence is lodged with the Authority at the time of the application for the licence.

(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 an account to be designated 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.

[PCh79s43]43. Period of licence

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

(2) A licence that has been renewed in accordance with the provisions of this Part shall continue in force for a period of one year from the date of the renewal.

[PCh79s44]44. Notification of change of particulars

Where—

(a) the holder of a dealer's licence ceases to carry on the business to which the licence relates; or

(b) the holder of a representative's licence ceases to be a representative of the dealer or investment advisor 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 45 to be entered in the register of licence holders in relation to the holder of a licence, such holder of a 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.

[PCh79s45]45. 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 dealer's or investment advisor's licence—

(i) the name of the holder;

(ii) the address of the principal place of business at which the holder carries on the business in respect of which the licence is held; and

(iii) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and

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

(i) the name of the holder;

(ii) the name of the dealer or investment advisor in relation to whom the licence was issued; and

(iii) where the business of the dealer or investment advisor is carried on under a name or style other than the name of the dealer or investment advisor, the name or style under which that business is carried on.

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

[PCh79s46]46. Revocation or suspension of licenses

(1) A licence shall be deemed to be revoked, in 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 has not been satisfied;
 - (ii) if he ceases to carry on business for which he was licensed;
 - (iii) if he has been adjudged a bankrupt in any jurisdiction;
 - (iv) if, in the case of a representative, the licence of the dealer or investment advisor 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 duties efficiently, honestly or fairly;

(vi) if he is convicted of an offence involving fraud or dishonesty punishable by imprisonment for a term of not less than three months;

(vii) if the licensed person contravenes or fails to comply with any condition or restriction applicable in respect of the licence or 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 a 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 duties efficiently, honestly or fairly; or

(vii) if the licensed person contravenes or fails to comply with any conditions or restrictions applicable in respect of the licence or any other 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 remove the suspension.

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

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

(6) A revocation or suspension of a licence of a person shall not operate so as to—

(a) avoid or affect any arrangement, transaction or arrangement relating to the trading in securities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the licence; or

(b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[PCh79s47]47. Operation pending renewal of 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 the licence expires before the grant of the renewal or refusal or withdrawal of the application as the case may be, the licence shall, until the licence is renewed or the application for the renewal of the licence is refused or withdrawn, be deemed to continue in force.

[PCh79s48]48. Appeals Act No. 4 of 1997 s. 9

(1) Any person who is aggrieved by the decision of the Authority refusing to grant a licence may appeal to the Minister within thirty days of such decision.

(2) in the determination of the appeal the Minister may confirm or rescind the decision of the Authority or give such directions as he may deem proper for the determination of the appeal.

(3) In any appeal under this section the decision of the Minister shall be final.

(4) Any person who is aggrieved by a decision of the Authority refusing to renew a licence or revoking a licence may appeal to the High Court within thirty days of such decision.

[PCh79s49]49. Exempt dealers Act No. 4 of 1997 s. 10

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

- (a) any bank as defined in the Banking and Financial Institutions Act; and
- (b) such other persons as the Minister may by regulation exempt.

(2) An exempt dealer shall be exempted from the requirement of subsection (3) and any conditions or restrictions as may be prescribed, carry out dealing in securities on his own account and on behalf of any third party.

(3) An exempt dealer shall, in respect of any transactions of dealing in securities carried out or performed by the exempt dealer on behalf of any third party, be subject to all obligations, requirements and duties imposed upon a dealer under this Act other than the requirement to hold a dealer's licence.

PART V

REGISTERS OF INTERESTS IN SECURITIES (ss 50-56)

[PCh79s50]50. Application of this Part Act No. 4 of 1997 s. 11

(1) This Part applies to a person who is—

- (a) a dealer;
- (b) a dealer's representative;
- (c) an investment adviser; or
- (d) a financial journalist.

(2) In this Part, "financial journalist" means a person who contributed advice concerning securities or prepares analysis 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 which are quoted on a stock exchange in Tanzania.

[PCh79s51]51. Register of securities Act No. 4 of 1997 s. 12

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

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

(3) Where there is a change in the interest or interests in securities of a person to whom this Part applies he shall, within seven days after the date of the change enter in the register full particulars of the change including the date of change and the circumstances by reason of which that change has occurred; and for the purposes of this subsection,

where a person acquires or disposes of securities, there shall be deemed to be change in the interest or interests of that person in the securities concerned.

(4) A person who fails to keep a register as required by this section commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

[PCh79s52]52. Notice of particulars to the Authority Act No. 4 of 1997 s. 13

(1) A person to whom this Part applies shall notify the Authority in the prescribed form such particulars as are prescribed including the place at which he will keep the register of his 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 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 shall, within fourteen days of his ceasing to be such a person, give notice of the fact to the Authority.

(5) Any person who fails or neglects to give notice as required by this section is guilty of an offence and is liable on conviction to a fine of not less than one hundred

thousand shillings and in addition, to a further fine of not less than fifty thousand shillings for every day the contravention continues after conviction.

[PCh79s53]53. Defence to prosecution

(1) It is a defence to a prosecution for failing to comply with section 51 or 52 if the accused proves that his failure was due to his not being aware of a fact or an occurrence the existence of which constitutes the offence and that—

(a) he was not so aware on the date of the summons; or

(b) he became so aware not less than fourteen days before the date of the summons 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, who has duties or acts in relation to his employer's or principal's interest in the securities concerned, became aware.

[PCh79s54]54. Production of 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 51 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 extracts from the register is guilty of an offence.

[PCh79s55]55. 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 with the name and address of the financial journalist who has contributed any advice 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) shall be guilty of an offence.

[PCh79s56]56. Extract of register

The Authority may supply a copy of the extract of a register obtained under section 54 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 SECURITIES BUSINESS (ss 57-65)

[PCh79s57]57. Certain representations 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 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).

[PCh79s58]58. Issue of contract notes

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

(a) the person for whom the dealer entered into the transaction where the transaction took place in the ordinary course of business at a stock exchange and the dealer entered into the transaction otherwise than as principal;

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

(c) the person with whom the dealer entered into the transaction where the transaction did not take place in the ordinary course of business at a stock exchange and the dealer entered into the transaction as principal.

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

(a) the name or style under which the dealer carries on his business as a dealer and the address of the principal place at which he carries on business;

(b) where the dealer is dealing as principal with a person who is not the holder of a dealer's licence, a statement that he is so acting;

(c) the name and address of the person to whom the dealer gives the contract note;

(d) the day on which the transaction took place and, if the transaction did not take place in the ordinary course of business at a 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 per unit of the securities;

(g) the amount of the consideration;

(h) the rate and amount of commission (if any) charged;

(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 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 dealer shall not include in a contract note given under subsection (1), as the name of the person with or for whom he has entered into the transaction, a name that he knows, or could reasonably be expected to know, is not the name by which that person is ordinarily known.

(4) A reference in this section to a dealer dealing, or entering into a transaction, as principal includes a reference to a person—

(a) dealing or entering into a transaction on behalf of a person associated with him;

(b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or

(c) where he carries on business as a dealer on behalf of a body corporate in which his interest and the interest of his directors together constitute a controlling interest.

(5) For the purpose of this section—

(a) a 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 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 transaction that is a prescribed transaction for the purposes of this section.

(6) Notwithstanding section 4 of this Act, a person is not associated with another person for the purposes of this section by reason only that he 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.

[PCh79s59]59. Certain persons to disclose certain interests in securities

(1) Where a person who is a dealer, investment advisor, dealer's representative or investment representative sends a circular or other similar written communications in which he makes a recommendation, whether expressly or by implication, with respect to securities or a class of securities, he shall cause to be included in each circular or other communication, in type not less legible than that used in the reminder 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 a person associated with him has at the date on which the circular or other communications 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 was not aware and could not reasonably be expected to have been aware—

(a) that he has 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 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 subsection (1) and (2) of this section—

(a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will, or is likely to, accrue directly or indirectly to the person upon or arising out of the disposal of the securities;

(b) without limiting the generality of paragraph (a), a person who has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities; and

(c) notwithstanding section 4 of this Act, a person is not associated with another person by reason only that he 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 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;

(b) he offers any of those securities for purchase, he 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 has informed each person to whom the recommendation is made that he acquired the securities for that purpose;

(c) securities have been offered for subscription or purchase; and

(d) 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 purchase,

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 has acquired, or will or may require, under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.

(5) A person who is a 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 is a natural person;
- (b) a director, executive officer or secretary of the body corporate if the person is a body corporate; or
- (c) a partner if the person is a partnership.

(6) When a person who is a 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 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.

(7) 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 by expressly or impliedly invites a person to whom it is made to offer to acquire securities.

(8) 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 deemed to have been sent by the body corporate and if it is signed by a partner in a partnership, be deemed to have been sent by the partnership.

(9) The Authority may, if it is in the public interest, exempt a security or any class of securities from the application of this section.

(10) Any person who contravenes the provisions of this section is guilty of an offence and is liable on conviction to a fine of not less than one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment, and in addition to a further fine of not less than fifty thousand shillings for every day the contravention continues after conviction.

[PCh79s60]60. Recommendations by adviser Act No. 4 of 1997 s. 14

(1) An investment adviser who—

(a) makes a recommendation with respect to securities or a class of securities to a person who may reasonably be expected to rely on the recommendation; and

(b) does not have a reasonable basis for making the recommendation to the person,

contravenes this subsection and shall be liable on conviction to a fine of not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years or to both.

(2) For the purpose of subsection (1), an investment adviser does 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 concerning the investment objective, financial situation and particular needs of the person, given such consideration to, and conducted such investigation of, the subject matter of the recommendation as is reasonable in all the circumstances; and

(b) the recommendation is based on that consideration and investigation.

(3) An adviser who contravenes subsection (1) is guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(4) Where—

(a) an advisor contravenes subsection (1) by making a recommendation to a person; and

(b) the person, relying on the recommendation, does any particular act, or refrains from doing any particular act; and

(c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to have done that act, or to have refrained 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 advisor is liable to pay damages to the person in respect of that loss or damage.

(5) In this section—

(a) a reference to an advisor is a reference to a person who is a dealer, investment advisor, dealer's representative or investment representative; and

(b) a reference to the making of a recommendation in making of the recommendation, whether express or by implication.

[PCh79s61]61. Dealings as principal

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

(2) A reference in this section to a dealer dealing or entering into a transaction as principal, includes a reference to a person—

(a) dealing or entering into a transaction on behalf of a person associated with him;

(b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or

(c) where he carries on business as a dealer on behalf of a body corporate in which his interest and the interests of his directors together constitute a controlling interest.

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

(4) Subsection (1) shall not apply in relation to a transaction entered into by a dealer who is a member of a stock exchange and specialises in transactions relating to odd lots of securities.

(5) Where a dealer fails to comply with subsection (1) or (3) in respect of a contract for the sale of securities by him, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission in writing given to the dealer not later than thirty days after the receipt of the contract note; and, where a dealer

fails to comply with subsection (1) or (3) in respect of a contract for the purchase of securities by him, the vendor of the securities may, in like manner rescind the contract.

(6) Nothing in subsection (5) affects any other right that a person has apart from the right under that subsection.

(7) A person who contravenes or fails to comply with any of the provisions of this section is guilty of an offence and liable on conviction to a fine of not less than one hundred thousand shillings or to imprisonment for a term of not less than two years or to both such fine and imprisonment and in addition to a fine of not less than one hundred thousand shillings for every day the contravention continues after conviction.

[PCh79s62]62. Dealings by employees of holders of licences

(1) A dealer or an investment adviser shall not give unsecured credit to his employee or to a person who he knows is associated with such an 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 or fails to comply with any of the provisions of subsection (1) commits an offence and shall be liable on conviction to a fine of not less than five hundred thousand shillings or to imprisonment for a term of not less than two years or to both such fine and imprisonment and in addition, to a fine of not less than one hundred thousand shillings for every day the contravention continues after conviction.

[PCh79s63]63. Dealer to give priority to clients' orders

(1) A dealer shall not, except as permitted by subsection (3), enter into as principal or on behalf of a person associated with him, 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 dealer, who is not associated with the dealer, has instructed the dealer to purchase or sell, respectively, securities of the same class and the dealer has not complied with the instruction.

(2) A dealer who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine of not less than five hundred thousand shillings or to imprisonment for a term of not less than two years or to both.

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

(a) the instructions from the client of the dealer required the purchase or sale of securities on behalf of the client to be effected only on specified conditions at which the securities were to be purchased or sold and the dealer has been unable to purchase or sell the securities by reason of those conditions; or

(b) the transaction is entered into in prescribed circumstances.

[PCh79s64]64. Use by dealer of clients' money

(1) Where a person, in this section referred to as "the client", deposits money with, or lends money to, a dealer, the 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 moneys and the account shall not contain any money other than money deposited with or lent to the 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 dealer;

(c) retain the money in the bank account until the client gives him 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 another 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) is guilty of an offence and shall be liable on conviction to a fine of not less than two million shillings or to imprisonment for a term of not less than four years or to both such fine and imprisonment and shall in addition be liable to refund the money of the client together with interest at the prevailing commercial bank rate to the client.

[PCh79s65]65. 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 sells them—

(a) he has or, where he is selling as agent, his principal has; or

(b) he believes on reasonable grounds that he has, or where he is selling as agent, his principal has,

an existing exercisable and unconditional right to vest the securities in the purchaser.

(2) A person who contravenes the provisions of subsection (1) is guilty an offence and shall be liable on conviction to a fine of not less than five hundred thousand shillings or to imprisonment for a term of not less than two years or to both such fine and imprisonment.

(3) For the purpose of this section a person shall be deemed to sell securities if—

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

PART VII

ACCOUNTS AND AUDIT (ss 66-82)

[PCh79s66]66. Application of this Part Act No. 4 of 1997 s. 15

(1) This Part applies to the holder of a dealer's licence and to the business of dealing in securities carried on by the holder of a dealer's licence, or subject to section 49, by an exempt dealer whether in Tanzania 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 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.

[PCh79s67]67. Accounts to be kept by dealers

(1) Every dealer shall keep—

(a) such accounting records as will reflect correctly and explain the transactions and financial position of the business of dealing in securities carried on by him;

(b) his 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) his 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 to be conveniently and properly audited.

(2) A dealer who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(3) A dealer shall be deemed 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 moneys received or paid by the dealer, including moneys paid to, or disbursed from, a trust account;

(ii) all purchases and sales of securities made by the dealer, the charges and credits arising from them, and the names of the buyer and seller, 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 dealer;

(iv) all the assets and liabilities, including contingent liabilities, of the dealer;

(v) all securities that are the property of the dealer, showing by whom the securities, or the documents of title to the securities, are held and, where they are held by some other person, whether or not they are held as security against loans or advances;

(vi) all securities that are not the property of the dealer and for which the dealer or any nominee controlled by the dealer is accountable, showing by whom, and for whom, the securities or the documents of title to the securities are held and the extent to which they are either held for safe custody or deposited with a third party as security for loans or advances;

(vii) all arbitrage transaction entered into by the dealer; and

(viii) all underwriting transactions entered into by the dealer;

(c) are kept in sufficient detail to show separately, particulars of every transaction by the dealer;

(d) specify the day on which or the period during which each transaction by the dealer took place; and

(e) contain copies of acknowledgements of the receipt to securities or of documents of title to securities received by the dealer from clients for sale or for safe custody clearly showing the name or names in which the particular securities are registered.

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

(a) clients of the dealer, excluding, where the dealer carries on business in partnership, the partners of the firm;

(b) the dealer himself, or, where the dealer carries on business in partnership, the partners of the firm;

(c) other dealers carrying on business in Tanzania; and

(d) dealers outside Tanzania; and

(e) employees of the dealer.

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

(6) Where a record required by this section to be kept is not kept in writing in the English language, the 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 provisions of this section, a dealer shall not be deemed to have failed to keep a record referred to in subsection (1) by reason only that the record is kept as a part of, or in conjunction with the record relating to any business other than dealing in securities that is carried on by him.

(8) Where accounting or other records are kept by a dealer at a place outside Tanzania, the dealer shall cause to be sent to and kept at a place in Tanzania 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.

[PCh79s68]68. Security documents in custody of dealer Act No. 4 of 1997 s. 16

(1) Where a 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 "the client" and for which the dealer or a nominee controlled by the dealer is accountable, the 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) of this subsection 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 dealer, cause them to be so registered; or

(c) if the client requests that the documents be deposited in safe custody with the dealer's bankers, cause them to be so deposited.

(2) A 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 dealer or a nominee controlled by the dealer is accountable, unless an amount is owed to the dealer by the client in connection with a transaction entered into on behalf of the client and the dealer—

(a) gives a written notice to the client identifying the documents and stating that he intends to deposit them as security for a loan or advance made to the dealer; and

(b) deposits the documents as security for a loan or advance that does not exceed the amount owed to the dealer on the day of the deposit by the client in connection with a transaction entered into on his behalf by the dealer.

(3) Where—

(a) a 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 to the dealer,

the dealer shall withdraw the documents from deposits as soon as practicable after he receives the amount owed to him.

(4) Where a dealer deposits, as security for a loan or advance made to him, documents that are securities, or are documents of title to securities of another person, and for which the dealer or a nominee controlled by the dealer is accountable, the 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 and deposited, send to the other person a written notice to that effect.

(5) A dealer who fails to comply with subsection (4) commits an offence and shall be liable on conviction to a fine of not less than five hundred thousand shillings or to imprisonment for a term not less than two years or to both such fine and imprisonment.

[PCh79s69]69. Dealer's trust accounts

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

(2) A dealer shall pay into such account all moneys held by him 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 moneys are received by the dealer.

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

(4) For the purposes for subsection (2), all moneys received by a dealer from a client other than—

- (a) moneys received in respect of brokerage and other proper charges;
- (b) moneys received in payment or part payment for securities delivered to the dealer before the moneys are received; or
- (c) moneys to which section 64 applies, shall be deemed to be held in trust for the client.

(5) Subsection (2) shall not apply to a cheque, bank draft, money order of a specified person or bearer not being a cheque, bank draft, money order or postal order in which the payee is the dealer, a partner of the dealer or the firm in which the dealer is a partner 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) Any person who contravenes or fails to comply with a provisions of this section that is applicable to him is guilty of an offence and is liable on conviction to a fine of not less than one million shillings or to a term of imprisonment of not less than five years or to both such fine and imprisonment.

(7) Any person who, with intent to defraud, contravenes or fails to comply with a provision of this section that is applicable to him is guilty of an offence and is liable on conviction to a fine of not less than five million shillings or to a term of imprisonment of not less than seven years or to both such fine and imprisonment.

[PCh79s70]70. Purposes for which money may be withdrawn from a trust account

(1) A dealer who withdraws moneys from a trust account except for the purposes of—

- (a) making a payment to a person entitled to the moneys or in accordance with the written directions of a person entitled to the moneys;
- (b) defraying brokerage and other proper charges;
- (c) paying to the dealer moneys to which he is entitled being moneys 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,

is guilty of an offence and shall be liable on conviction to a fine of not less than two million shillings or to imprisonment for a term of not less than five years or both such fine and imprisonment.

(2) Any dealer who, with intent to defraud, withdraws moneys from a trust account commits an offence and shall be liable on conviction to a fine of not less than five million shillings or to imprisonment for a term of not less than seven years or to both such fine and imprisonment.

(3) Except as otherwise provided in this Part, moneys held in a trust account are not available for payment of the debts of a dealer or liable to be paid or taken in execution under the order or process of a court.

(4) Nothing in this Part shall take away or affect a lawful claim or lien which any person has against or on any moneys held in a trust account or any money received for the purchase of securities or from the sale of securities, before those moneys are paid into a trust fund.

(5) Any dealer is not guilty of an offence under subsection (1) where he 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 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 been paid by the banker on whom it is drawn and the banker on whom it is drawn refuses

payment of the cheque, the dealer shall immediately pay into the trust account by cash or bank cheque an amount equal to the amount withdrawn from the trust account.

(7) Where a dealer fails to comply with subsection (6)–

(a) he shall be guilty of an offence; and

(b) where the dealer is a member of a stock exchange the failure shall, for the purpose of Part VIII, be deemed to be a defalcation by the dealer.

(8) Any person guilty of an offence under subsection (7)(a) shall be liable on conviction to a fine of not less than two million shillings or to imprisonment for a term of not less than five years or to both such fine and imprisonment.

[PCh79s71]71. Appointment of auditor by dealer

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

(2) No person shall consent to be appointed as auditor of a dealer, act as an auditor of a dealer or prepare a report required to be prepared under this Act by an auditor of a dealer–

(a) if in the case of a natural person he–

(i) is not a qualified company auditor;

(ii) is indebted in an amount exceeding one hundred thousand shillings

to the dealer; or

(iii) is a partner or employee of the dealer; or

(b) in the case of a body corporate unless–

- (i) at least one member of the body is ordinarily resident in Tanzania;
- (ii) all the members of the body ordinarily resident in Tanzania are qualified company auditors;
- (iii) no member of the body is indebted in an amount exceeding one hundred thousand shillings to the dealer; and
- (iv) no member of the body is a partner or employee of the dealer.

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

(4) A person who has been appointed auditor of a dealer shall not wilfully disqualify himself while the appointment continues, from acting as auditor of the dealer.

(5) An auditor of a dealer unless he sooner dies, shall hold office until he is removed or resigns from office in accordance with section 72 or unless he ceases to qualify as an auditor pursuant to subsection (2) of this section.

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

(7) While a vacancy in the office of an auditor continues, the surviving or continuing auditor may act as the auditor.

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

(9) A report or notice made or given by a firm or company appointed as auditor of a 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.

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

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

(12) Any person who contravenes the provisions of this section shall be guilty of an offence.

[PCh79s72]72. Removal and registration of auditors

(1) A dealer may, with the consent of the Authority, remove his auditor from office.

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

(a) he has, by notice in writing given to the Authority, applied for consent to resign and has, at or about the same time as he gave notice to the Authority, notified the dealer in writing of his application to the Authority; and

(b) he 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 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 reason 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 39; and

(b) may not be made a ground for a prosecution other than a prosecution for an offence under section 39, 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 specified for the purpose in the notice of resignation; or

(b) on the date on which the Authority consents to the resignation; or

(c) on the date fixed by the Authority for the purpose,

whichever last occurs.

(6) Where, on the retirement or withdrawal from a body corporate of a member, the body corporate will no longer be capable, by reason of the provisions of section 70 (2)(b)(i) of acting as auditor of a dealer, the member retiring or withdrawing shall, if not

disqualified from acting as auditor of the dealer, be deemed to be the auditor of the dealer until he obtains the consent of the Authority to his retirement or withdrawal.

(7) Within fourteen days after the receipt of a notice of resignation from an auditor or a dealer or, where an auditor of a dealer is removed from office, within fourteen days after the removal, the dealer shall lodge a notice of the resignation or removal in accordance with 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 dealer may, within one month 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 deems proper.

[PCh79s73]73. Fees and expenses of auditors

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

[PCh79s74]74. Dealer's account

(1) A 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 the date but before the date on which the dealer commenced to carry on business as a dealer, prepare a true and fair profit and loss account and balance sheet on the basis of such accounting principles 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 dealer and his 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 as "prescribed day" in subsection (4) or if that period has been extended pursuant to an approval previously given under this subsection, before the expiration of the extended period, approve an extension or further extension of the period, and such an approval may be given subject to such conditions as the Authority may impose.

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

(4) In this section—

"financial year" in relation to a dealer, being a body corporate, means the financial year of the body corporate within the meaning of the Companies Act *;

"prescribed day", in relation to a financial year of a dealer, being 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.

[PCh79s75]75. Auditor to report to Authority in certain cases

(1) Where an auditor, in the performance of his duties as auditor of a the dealer, becomes aware of a prescribed matter he shall, within seven days after becoming aware of that matter, lodge with the Authority a written report on the matter and send a copy of the report to the dealer and to each stock exchange of which the 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 dealer to meet his obligations as a dealer;

(b) constitutes or may constitute a breach of section 67,68,69 or 70 or Part VIII of this Act; or

(c) constitutes or may constitute a breach of a condition of a licence issued to the dealer under this Act.

[PCh79s76]76. Certain matters to be reported to the Authority

(1) Where, in relation to a 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 prescribed matter and send a copy of the report to the dealer.

(2) In this section, "prescribed matter", in relation to a dealer has the meaning assigned to that term by subsection (2) of section 75.

[PCh79s77]77. Defamation

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

(2) A person is not, in the absence of malice on his part, liable to an action for defamation in respect of the publication of a document prepared by an auditor in the course of his 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.

[PCh79s78]78. Right of stock exchange to impose obligations, on members not affected by this Part

Nothing in this Part prevents a stock exchange imposing on members of that stock exchange any obligations or requirements, not being obligations or requirements inconsistent with this Act that the stock exchange thinks fit with respect to—

(a) the audit or accounts including the audit of accounts by an auditor appointed by the stock exchange;

(b) the information to be furnished in reports from auditors; or

(c) the keeping of books.

[PCh79s79]79. Power of Court to restrain dealings in certain 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 Tanzania, of a person who is or has been a dealer or in an account kept by virtue of section 64(1)(a), whether within or outside Tanzania, by a person who is or had been a dealer;

(b) that there has been undue delay, or unreasonable refusal, on the part of a person who is or has been a dealer, in paying, applying or accounting for trust moneys as required by this Act;

(c) that a person who is or has been a dealer has not paid moneys into a trust account as provided by section 69 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 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 affairs;

(iii) that the person has ceased to carry on a business of dealing in securities; or

(iv) that the person had 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.

[PCh79s80]80. Duty of banker to make full disclosure

Where an order made under section 79 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 the 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.

[PCh79s81]81. Power of Court to make further orders and give directions

Where an order is made under section 79 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.

[PCh79s82]82. Power of Court to make order relating to payment of moneys

(1) An order made under section 81 may include directives to the person to whom the moneys are paid directing that the person—

- (a) pays the money into a separate trust account;
- (b) prepares a scheme for distributing the moneys to persons who claim, during a period of six months after the Authority or the person received the moneys, to be entitled to the moneys and satisfy the Authority or that other person that they are so entitled; or
- (c) where the moneys received are insufficient to pay all proved claims, may, apportion the moneys among the claimants in proportion to their proved claims and show in the scheme how the moneys are so apportioned.

(2) Where a person prepares a scheme for distribution of moneys under subsection (1), he 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 moneys 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 moneys shall be paid, and as to the payment of the balance of the moneys remaining in the account, as the Court thinks fit.

PART VIII

FIDELITY FUNDS (ss 83-105)

[PCh79s83]83. Establishment of fidelity funds

(1) Every stock exchange shall establish and keep a fidelity fund which shall be administered by its Council on behalf of the stock exchange.

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

[PCh79s84]84. Moneys constituting fidelity fund

The fidelity fund of a stock exchange shall consist of—

- (a) all moneys paid to the stock exchange by member companies and member firms in accordance with the provisions of this Part;
- (b) the interest and profits accruing from the investment of the fidelity fund;
- (c) all moneys paid to the fidelity fund by the stock exchange;
- (d) all moneys recovered by or on behalf of the stock exchange in the exercise of any right of action conferred by this Part;

(e) all moneys paid by an insurer under a contract of insurance or indemnity entered into by the Council of the stock exchange under section 103; and

(f) all other moneys lawfully paid into the fidelity fund.

[PCh79s85]85. Fund to be kept in separate bank account

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

[PCh79s86]86. Payments out of fidelity fund

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

(a) the amount of all claims, including costs, allowed by the Council or established against the stock exchange under this Part;

(b) all legal and other expenses incurred in investigating or defending a claims made under this Part or incurred in relation to the fidelity fund or in the exercise by the Council of the rights, powers and authorities vested in it by this Part in relation to the fund;

(c) all premiums payable in respect of contracts on insurance or indemnity entered into by the Council under section 103;

(d) the expenses incurred or involved in the administration of the fund including the salaries and wages of persons employed by the Council for that purposes; and

(e) all other moneys payable out of the fund in accordance with the provisions of this Act.

[PCh79s87]87. Accounts of fund

(1) A stock exchange shall establish and keep proper accounts of its fidelity fund and shall, within three months of the end of each financial year, cause a balance sheet of the accounts as at the end of that financial year to be prepared.

(2) The Council, of the stock exchange shall appoint an auditor to audit the accounts of the fidelity fund.

(3) The auditor appointed by the Council shall regularly and fully audit the accounts of the fidelity fund and shall audit each balance sheet and cause it to be laid before the Council not later than three months after the balance sheet is made out.

[PCh79s88]88. Management committee

(1) The Council of a stock exchange may appoint a management committee of not less than three and not more than five persons, of whom at least one shall be a member of the Council.

(2) The Council of a stock exchange may by resolution delegate to the management committee all or any of its powers under this Part other than those under this section, sections 91 and subsections (3), (4), (5) and (6) of section 94.

(3) Any power, authority or discretion so delegated may be exercised by a majority of the management committee.

(4) Any such delegation may at any time in like manner be rescinded or varied.

(5) The Council of a stock exchange may at any time remove any member of the management committee appointed by it under this section and may fill any vacancy in the committee.

[PCh79s89]89. Minimum amount of fidelity fund

(1) The fidelity fund of a stock exchange shall consist of an amount of not less than one hundred million shillings or such other sum as the Minister may, by Notice in the Gazette, direct to be paid to the credit of the fund on the establishment of a stock exchange under this Act.

(2) The fidelity fund shall be increased by an annual payment into the fund of a sum that is equal to ten per centum or more of the net income of a stock exchange for any one financial year, but the Minister may, after consultation with the stock exchange, increase that percentage.

[PCh79s90]90. Measures where fidelity fund is reduced

If the fidelity fund is reduced below the sum of fifty million shillings or such other sum as the Minister may, by Notice in the Gazette determine, the Council shall take steps to make up the deficiency—

(a) by transferring an amount that is equal to the deficiency from other funds of the stock exchange to the fidelity fund; or

(b) in the event that there are insufficient funds to transfer under paragraph (a), by determining the amount which each member company and member firm shall contribute to the fund.

[PCh79s91]91. Levy to meet liabilities

(1) If at any time a fidelity fund is not sufficient to satisfy the liabilities that are ascertained to relate to the stock exchange, the Council may impose on every member company and member firm a levy of such sum which shall in the aggregate be equivalent to the amount as specified in the order.

(2) The amount of such levy shall be paid within the time and in the manner specified by the Council either generally or in relation to any particular case.

[PCh79s92]92. Power of stock exchange to make advances to fund

(1) A stock exchange may from its general funds give or advance on such terms as the Council thinks fit any sums of money to its fidelity fund.

(2) Any moneys advanced under subsection (1) may be repaid from the fidelity fund to the general funds of the stock exchange.

[PCh79s93]93. Investment of fund

Any moneys in a fidelity fund that are not immediately required for its purposes may be invested by the Council in any manner in which trustees are for the time being authorised by law to invest trust funds.

[PCh79s94]94. Application of fund

(1) Subject to this Part, a fidelity fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss from any defalcation committed by a member company or member firm or any of its directors or partners or by any of the employees of such member company or member firm in relation to any money or other property which in the course of or in connection with the business of that company or firm—

(a) was entrusted to or received by a member company or member firm or any of its directors or partners or any of the employees of the company or firm for or on behalf of any other person; or

(b) the member company or member firm, being in respect of the money or other property, either the sole trustee or trustees, was entrusted to receive by the member company or member firm or any of the employees of the company or firm as trustee or trustees or for or on behalf of the trustees of that money or property.

(2) Except as otherwise provided in this section, the total amount that may be paid under this Part to all person who suffer loss through defalcations by a member company or member firm or any of its directors or partners or through defalcations by any of the employees of the company of firm shall not, in any event, exceed in respect of that member company or member firm the sum of one hundred thousand shillings but for the purposes of this subsection any amount paid from a fidelity fund shall to the extent to which the fund is subsequently reimbursed, be disregarded.

(3) Where, after taking into account all ascertained or contingent liabilities of a fidelity fund, the Council consider that the assets of the fund so permit, the Council may decide to increase the total amount which may be applied from that fund under subsection (2) and shall inform the Authority accordingly.

(4) The Authority shall then cause notice of the decision to be published in the Gazette, and from the date of the publication until the notice is revoked or varied, the amount specified in the notice shall be the total amount which may be applied for compensation for pecuniary loss.

(5) Where the Council decides to revoke or vary the contents of the notice under subsection (4), the Council shall inform the Authority which shall then cause notice of such revocation or variation to be published in the Gazette.

(6) If, in any particular case after taking into account all ascertained or contingent liabilities of a fidelity fund, the Council considers that the assets of the fund so permit, the Council may apply out of the fund such sum in excess of the total amount limited by or under this section as the Council in its discretion thinks fit towards the compensation of persons who have suffered pecuniary loss as provided in subsection (1).

(7) Notwithstanding any provision in subsections (2), (3), (4) and (6) of this section, the Minister may, by order in writing, direct the Council to increase the total amount which shall be applied from a fidelity fund in respect of a particular member company or member firm in payment to persons who suffer loss through defalcations by that particular member company or member firm or by any of its directors or partners or by any of the employees of that company or firm.

(8) For the purposes of this section, "director of a member company" or "partner of a member firm" includes a person who has been, but at the time of any defalcation in question has ceased to be, such director or partner if, at the time of the defalcation, the person claiming compensation has reasonable grounds for believing that person to be a director of a member company or a partner of a member firm.

[PCh79s95]95. Claims against fund

(1) Subject to this Part, every person who suffers pecuniary loss as provided in subsection (1) of section 94 shall be entitled to claim compensation from the fidelity fund and to take proceedings in Court against the stock exchange.

(2) Subject to subsection (3), a person shall not have any claim against the fidelity fund in respect of a defalcation in respect of moneys or other property which prior to the commission of the defalcation had in the course of the administration of a trust ceased to be under the sole control of the director of the member company concerned or the partner of the member firm concerned.

(3) Subject to this Part, the amount which any claimant shall be entitled to claim as compensation from fidelity fund shall be the amount of the actual pecuniary loss suffered by him, including the reasonable costs of and disbursements incidental to the making and proof of his claim, less the amount or value of all moneys or other benefits received or receivable by him from any other source other than the fund in reduction of the loss.

(4) In addition to any compensation payable under this Part, interest shall be paid out of the fidelity fund concerned on the amount of compensation, less any amount attributable to costs and disbursements, at the rate of fifteen per centum per annum calculated from the day upon which the defalcation was committed and continuing until the day upon which the claim is satisfied.

[PCh79s96]96. Notice calling for claims against fund

(1) The Council of a stock exchange may publish in a daily newspaper published and circulating generally in Tanzania a notice, in or to the effect of the form prescribed specifying a date, not being earlier than three months after the said publication, on or

before which claims for compensation from the fidelity fund, in relation to the person, specified in the notice, may be made.

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

(a) where a notice under subsection (1) has been published, before the date specified in the said notice; or

(b) where no such notice has been published, within six months after the claimant becomes aware of the defalcation.

(3) Any claim which is not so made in accordance with subsection (2) shall be barred unless the Council otherwise determines.

(4) No action for damages shall lie against a stock exchange or against any member or employee of a stock exchange or of a Council or management committee as a result of any notice published in good faith and without malice for the purposes of this section.

[PCh79s97]97. Power of Council to settle claims

(1) The Council may, subject to this Part, allow and settle any proper claim for compensation from a fidelity fund at any time after the commission of the defalcation in respect of which the claim arose.

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

(a) the Council has disallowed his claim; and

(b) the claimant has exhausted all relevant rights of action and other legal remedies available against the member company or member firm in relation to which the claim arose and other persons liable in respect of the loss suffered by the claimant for the recovery of the money or other properties in respect of which the defalcation was committed.

(3) A person who has been refused leave by a Council may apply for leave to a judge of the High Court who may make such order in the matter as he thinks fit.

(4) The Council after disallowing, whether in whole or in part any claim for compensation from a fidelity fund shall serve notice of the disallowance in the prescribed form on the claimant or his lawyer.

(5) No proceedings against a stock exchange in respect of a claim which has been disallowed by the Council shall be commenced after the expiration of three months after service of notice of disallowance under subsection (4).

(6) In any proceedings brought to establish a claim, evidence of any admission or confession by, or other evidence which would be admissible against, the member company, member firm, or other person by whom it is alleged a defalcation was committed, shall be admissible to prove the commission of the defalcation, notwithstanding that the member company, member firm or other person is not the defendant in or party to these proceedings, and all defences which would have been available to that member company, member firm or other person shall be available to the stock exchange.

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

[PCh79s98]98. Form of order of Court establishing claim

Where in any proceedings brought to establish a claim the Court is satisfied that the defalcation on which the claim is founded was actually committed and that the claimant has a valid claim, the Court shall by order—

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

[PCh79s99]99. Power of Council to require production of securities

(1) The Council may require a person to produce and deliver any securities, documents or statements or statements of evidence necessary—

- (a) to support a claim made by him; or
- (b) for the purpose either of exercising its rights against a member company, a member firm or the directors or partners of the member company or firms or any other person concerned; or

(c) to enable criminal proceedings to be taken against any person in respect of a defalcation.

(2) Where the person fails to deliver any such securities, documents or statement of evidence, the council may disallow any claim by him under this Part.

[PCh79s100]100. Subrogation of stock exchange to rights, etc., of claimant upon payment from fund

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

[PCh79s101]101. Payment of claims only from fund

No moneys or other property belonging to a stock exchange, other than the fidelity fund, shall be available for the payment of any claim under this Part whether the claim is allowed by the Council or is made the subject of an order of the Court.

[PCh79s102]102. Provisions where fund insufficient to meet claims where claims exceed total amount payable

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

(2) Where the aggregate of all claims made in relation to defalcations by or in connection with a member company or member firm exceeds the total amount which may, under section 94(2) be paid under this Part in respect of that member company or member firm, then the total amount shall be apportioned between the claimants in such manner as the Council thinks equitable.

[PCh79s103]103. Power of Council to enter into contracts of insurance

(1) A stock exchange may enter into any contract with any insurer in Tanzania to be insured or indemnified against liability in respect of claims under this Part.

(2) Any such contract may be entered into in relation to member companies and member firms generally in relation to any particular member company or firm named therein, or in relation to member companies generally with the exclusion of any particular member company named therein.

(3) No action shall lie against a stock exchange or against any member or servant of a stock exchange or its Council or against any member of a management committee for injury alleged to have been suffered by any member company or firm by reason of publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to it.

[PCh79s104]104. Application of insurance moneys

No claimant against a fidelity fund shall have any right to action against any insurer with whom a contract of insurance or indemnity is made under this Part in respect of such contract, or have any right or claim on any moneys paid by the insurer under any such contract.

[PCh79s105]105. Interpretation of this Part

In this Part, unless the context otherwise requires—

"Council" in relation to a fidelity fund of a stock exchange, means the Council of that stock exchange;

"fidelity fund" or "fund" means a fidelity fund established under section 83;

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

PART IX

TRADING IN SECURITIES (ss 106-113)

[PCh79s106]106. False trading and market rigging transactions

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

(2) Any 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 has made or caused to be made or proposes to make, or knows that person associated with him 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 deemed to have created a false or misleading appearance of active trading in securities on a stock exchange.

(4) In the 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 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 such 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

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.

[PCh79s107]107. 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 transactions 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 Tanzania with intent to induce other persons to sell, purchase or subscribe for securities of the body corporate or of a related body corporate shall be guilty of 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 such securities of the body corporate; and
- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase securities of the body corporate.

[PCh79s108]108. False or misleading statements

Any person who makes a statement, or disseminates information, that is false or misleading in a material particular 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 makes or disseminates the information—

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

[PCh79s109]109. Fraudulently inducing persons to deal in securities

- (1) Any person who—
- (a) by making or publishing any statement, promise or forecast which he 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, which information he knows to be false or misleading in a material particular, induces or attempts to induce another person to deal in securities is guilty of an offence.

(2) It is a defence to a prosecution for an offence under subsection (1) (d) to establish that, at the time when the defendant so recorded or stored the information, he

had no reasonable grounds for expecting that the information would be available to any other person.

[PCh79s110]110. Dissemination of information about illegal transactions

Any person who circulates, disseminates or is concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a body corporate will or is likely to rise or fall or be maintained by reason of any transaction entered into or other act or thing done in relation to securities of that body corporate, or of a body corporate that is related to that body corporate, in contravention of any of the provisions in this Part is guilty of an offence 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,

[PCh79s111]111. Employment of manipulative and deceptive devices

It is unlawful 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 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.

[PCh79s112]112. Prohibition of dealings in securities by insiders

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

(a) is not generally available but, if it were, would be likely to affect materially the price of those securities; and

(b) relates to any transaction (actual or expected) involving both those bodies corporate or involving one of them and the securities of the other.

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

(a) he has obtained the information, directly, from another person and is aware, or ought reasonably to be aware, of the facts of circumstances by virtue of which

that other persons is himself precluded by subsection (1) or (2) from dealing in those securities; or

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

(4) No person shall at any time when he is precluded by subsection (1), (2) or (3) of this section 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 Tanzania; and

(ii) he 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 subsection (7) and (8), no body corporate shall deal in any securities at a time when any officer of the body corporate is precluded by subsection (1), (2) or (3) from dealing in those securities.

(6) A body corporate is not precluded by subsection (6) from entering into a transaction at any time by reason only of information in the possession of an officer of that body corporate if—

(a) the decision to enter into the transaction was taken on its behalf by a person other than 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 by a person in possession of the information; or

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

(7) A body corporate is not precluded by subsection (6) 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 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 a natural person—

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

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

(c) he occupies a position that may reasonably be expected to give him access to information of a kind to which subsection (1) and (2) apply by virtue of—

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

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

(9) This section does not preclude the holder of a dealer's licence from dealing in securities, or rights or interests in securities, of a body corporate, 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 to effect that transaction;

(b) the holder if 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 whilst 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 (8), "officer", in relation to a body corporate, includes—

(a) a director, secretary, executive officer or employee of the body corporate;

(b) a receiver, or receiver and manager, of property of the body corporate;

(c) 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.

[PCh79s113]113. Penalties and compensation

(1) Any person who contravenes any of the provisions of this Part is liable on conviction to a fine of not less than five million shillings or to imprisonment for a term of not less than five years or to both such fine and imprisonment.

(2) A person convicted of an offence under this Part shall be liable to pay compensation to any person who, in a transaction for the purchase or sale of securities entered into with him or with a person acting for or on his 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) An action under subsection (2) for the recovery of a loss shall not be commenced after the expiration of two years after the date of completion of the transaction in which the loss occurred.

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

PART X

INTERIM STOCK TRADING FACILITY (s 114)

[PCh79s114]114. Provision for interim stock trading facility Act No. 4 of 1997 s. 17

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

(2) The provisions of this Act, other than section 25 and 26 and Part VIII, shall apply *mutatis mutandis*, in relation to an interim stock trading facility established pursuant to subsection (1) with such modifications as the Minister may from time to time specify by order published in Gazette.

(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 therewith, and in particular, rules to regulate—

- (a) the listing of securities on such facility;
- (b) the obligations of issuers of listed securities;
- (c) the trading and settlement rules of such facility;
- (d) the dealers who, and the conditions on which, such dealers may deal in securities on such facility;
- (e) the transitional arrangements for the assumption of the operations of such facility by an approved stock exchange; and
- (f) any other matter relating to the operation of such facility, including the establishment and maintenance of a fidelity 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

COLLECTIVE INVESTMENT SCHEMES (ss 115-129)

[PCh79s115]115. Authorisation and regulation of schemes Act No. 4 of 1997 s. 18

(1) The Authority may authorise collective investment schemes for the purposes of this Part.

(2) Any such authorisation may be granted subject to such terms and conditions as the Authority considers to be necessary or desirable for the protection of investors.

(3) The Minister may make regulations for or with respect to—

(a) the criteria for and conditions of any authorisation for the purposes of this Part;

(b) the establishment and operation of a collective investment scheme;

(c) the promotion, marketing and distribution of shares, units or other securities representing the rights or interests of participants in a collective investment scheme;

(d) the administration of collective investment schemes;

(e) the provisions by any body corporate or individual of trustee, custodial and related services, or any other services, for or in connection with collective investment schemes,

(4) Without limiting the generality of subsection (3), regulations made for the purposes of that subsection with respect to any aspect of or matter concerning a collective investment scheme may be made to differ according to whether the scheme is operated by a unit trust or by an open-ended investment company or another kind of investment company.

(5) A person who enters into or offers to enter into any agreement for or with a view to acquiring, disposing of or subscribing for any shares units or other securities representing an interest in a collective investment scheme that is not authorised under this Part, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both.

[PCh79s116]116. Restriction of promotion Act No. 4 of 1997 s. 18

A person who—

(a) issue or causes to be issued any advertisement or invitation inviting persons to become or offer to become participants in a collective investment scheme that is not authorised under this Part or containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in such a scheme; or

(b) advises or procures any person to become or offer to become a participant in such a scheme; shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or both.

[PCh79s117]117. Authorised collective investment scheme Act No. 4 of 1997 s. 18

No person shall set up or manage any collective investment scheme in Tanzania unless—

- (a) the scheme is authorised by the Authority; and
- (b) the manager and trustee/custodian of the scheme are—
 - (i) authorised by the Authority, upon application made in writing to act as manager or trustee/custodian, regard being had to their financial standing, their knowledge and experience of investment business and their honesty and integrity;
 - (ii) corporate bodies designated as such in the scheme; and
 - (iii) independent of each other.

[PCh79s118]118. Application to operate a collective investment scheme Act No. 4 of 1997 s. 18

(1) Every person who proposes to set up or operate a collective investment scheme in Tanzania shall make an application to the Authority.

(2) No application shall be made by any person unless he is the Manager or trustee or custodian or the proposed manager or trustee or custodian of the scheme.

(3) Every application shall be made in such form and contain such information as the Authority may determine or as may be prescribed.

(4) Authority may—

(a) call for such additional information as it may require for any purpose under this Part; and

(b) direct that any information supplied shall be verified in such manner as it may require.

[PCh79s119]119. Qualifications of trustee or custodian Act No. 4 of 1997 s. 18

(1) Subject to subsection (2), the trustees or custodian shall—

- (a) be a statutory body or a company incorporated in Tanzania;
- (b) have and maintain at all times an issued and paid-up capital of not less than such amount as may be prescribed;
- (c) satisfy the Authority upon request and from time to time that it has assets which are sufficient to meet its expenses and liabilities, including liabilities in respect of the repayment of capital.

(2) Where the capital of a trustee or custodian is held by another corporation, it shall be sufficient for the purposes of this section that the holding corporation has and maintains at all times capital and assets which comply with subsection (1) (b) and (c).

[PCh79s120]120. Publication of scheme particulars Act No. 4 of 1997 s. 18

(1) The Manager shall publish information about the scheme, to be known as scheme particulars, under such conditions and in the manner as may be prescribed.

(2) Any person designated as responsible for any scheme particulars shall pay compensation, under such conditions and in the manner as may be prescribed, to any person who has become or agreed to become a participant in the scheme and suffered loss as a result of any untrue or misleading statement in the particulars or the omission from them of any prescribed matter.

(3) Subsection (2) shall not affect any liability which any person may incur otherwise than that prescribed under this section.

[PCh79s121]121. Publication of alterations Act No. 4 of 1997 s. 18

(1) The manager shall give written notice to the Authority of any proposed alteration to the scheme or any proposal to replace the trustee or custodian.

(2) The trustee or custodian shall give written notice to the Authority of any proposal to replace the manager.

(3) No alteration to a scheme or change of manager or trustee/custodian shall be effected without the approval in writing of the Authority.

(4) The Authority shall not give its approval unless—

(a) it is satisfied that the proposed alteration will not affect the compliance of the scheme with the requirements of this Act and any regulations made under it; and

(b) the new trustee or custodian or manager, as the case may be, satisfies the requirements of this Act and any regulations made under it.

[PCh79s122]122. Revocation of approval Act No. 4 of 1997 s. 18

(1) The Authority may, revoke the approval of a collective investment scheme or parts thereof if—

(a) any of the requirements for granting the approval are no longer satisfied;

(b) it is undesirable in the interests of the investors or unit holders or part thereof in the scheme that it should continue to be authorised;

(c) without prejudice to paragraph (b), the manager or the trustee or custodian has contravened any provision of this Act or any regulations made under it or, in purported compliance with any such provision, has furnished false, inaccurate or misleading information or contravened any prohibition; or

(d) a request for revocation has been made by the manager or the trustee or custodian.

(2) For the purposes of subsection (1) (b) the Authority may take into account any matter relating to the scheme, the manager or trustee or custodian, a director or officer of the manager or trustee or custodian or any person employed by or associated with the scheme.

(3) Before revoking an approval or refusing to do so, the Authority shall give the manager or the trustee/custodian, as the case may be, an opportunity to make such representations as he may wish to make.

(4) Any person who is aggrieved by the decision of the Authority made pursuant to subsection (1) may appeal to the High Court, within 30 days of the decision.

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

[PCh79s123]123. Investigation Act No. 4 of 1997 s. 18

(1) The Authority may appoint one or more inspectors to investigate and report on the administration of any scheme if it appears to the Authority that—

(a) it would be in the interests of investors or unit holders or potential unit holders in the scheme to do so; and

(b) The matter is one of public concern.

(2) An inspector appointed under subsection (1) shall have all the powers of an inspector appointed under the Companies Ordinance.

(3) The expenses of any investigation under this section shall be borne by the collective investment scheme which is investigated.

[PCh79s124]124. Directions of the Authority Act No. 4 of 1997 s. 18

(1) The Authority may, for any of the reasons specified in section 123 (1) issue a direction in writing requiring—

(a) the manager to cease the issue or redemption, or both the issue and redemption, of units or other rights or interests of investors under the scheme on a date specified in the direction until such further date as is specified in that or another direction.

(b) the manager and trustee/custodian to wind it up by such date is specified in the direction of, if no date is specified, as soon as practicable.

(2) The revocation of the approval of a scheme shall not affect the operation of any direction under subsection (1) which is then in force.

[PCh79s125]125. Injunctions Act No. 4 of 1997 s. 18

(1) The Court may, on the application of the Authority—

(a) grant an injunction restraining the contravening of any provision of this Part or any regulation made under it where there is reasonable likelihood that any person will contravene or repeal the contravention of any such provisions; or

(b) make an order, where appropriate, requiring that person or any other person who appears to the Court to have been knowingly concerned in the contravention to take steps as the Court may direct to remedy it.

(2) The Court may, on the application of the Authority, make an order under subsection 1(b) if satisfied—

(a) that profits have accrued to any person as a result of his contravention of any provision mentioned in subsection (1) (a); or

(b) any such accounts or information as are mentioned in paragraph (a) to be verified in such manner as it may direct.

[PCh79s126]126. Restitution order Act No. 4 of 1997 s. 18

(1) The Court may, on an application made under section 125(1) also order the person concerned to pay into court, or appoint a receiver to recover from him, such sum as appears to the Court to be just, having regard to the facts of the case.

(2) Any amount paid into Court by or recovered from a person in pursuance of an order under subsection (1) shall be paid out to such person or distributed among such person as the Court may direct, being a person or persons appearing to the Court to have entered into transactions with that person as a result of which profits have accrued or, as the case may be, loss or adverse effect has been suffered as mentioned in section 125(2).

(3) Nothing in this section or section 125 shall affect the right of any person other than that Authority or bring proceedings in respect on the matters to which this section or section 125 applies.

[PCh79s127]127. Application to Court Act No. 4 of 1997 s. 18

(1) In case in which the Authority has power to give a section under section 125 in relation to collective investment scheme, including a scheme which has ceased to be an authorised scheme, the Authority may apply to the Court—

(a) for an order removing the manager or trustee/custodian of the scheme or both of them and replacing either or both of them by a person or persons nominated by the Authority and appearing to the Authority to satisfy the requirements of this Part and any regulations made thereunder;

(b) if it appears to the Authority that no person or no suitable person satisfying those requirements is available, for an order removing the manager or trustee/custodian, or both of them, and appointing a receiver to wind up the scheme.

(2) On an application under this section, the Court may make such order as it thinks fit and on the application of the Authority, rescind an order made under subsection (1)(b) and substitute such an order as is mentioned in subsection (1)(a).

(3) Subsection (2) shall not apply to a receiver appointed by an order made under subsection (1)(b).

[PCh79s128]128. Submission of reports Act No. 4 of 1997 s. 18

(1) The Manager shall submit an annual report of a collective investment scheme to the Authority within three months of the closing of accounts in every year and such other periodic information, returns and reports as may be prescribed.

(2) The Annual Report shall contain the following—

- (a) the manager's investment report;
- (b) a statement of assets and liabilities;

- (c) a statement of income and distribution;
- (d) a copy of the auditor's report on the accounts of the scheme; and
- (e) such other particulars as the Minister may prescribe.

(3) Without prejudice to subsection (1), the Manager and Custodian of a collective investment scheme shall furnish to the Authority such periodic reports, returns and information on the activities and operations of the scheme as may be prescribed.

[PCh79s129]129. Offences Act No. 4 of 1997 s. 18

Subject to sections 115 and 116 any person who contravenes any provisions of this Part or any regulation made under it shall commit an offence and shall, on conviction be liable to a fine not exceeding five hundred thousand shillings and to imprisonment for a term not exceeding two years or both the fine and imprisonment.

PART XII

PUBLIC OFFERS OF SECURITIES (ss 130-134)

[PCh79s130]130. Advertisements Act No. 4 of 1997 s. 18

For the purposes of this Part, an advertisement publicly offers securities if—

- (a) it invites a person to enter into an agreement for or with a view to subscribing for or otherwise acquiring or underwriting any securities; or
- (b) it contains information calculated to lead directly or indirectly to a person entering into such an agreement.

[PCh79s131]131. Prospectus to be approved by Authority Act No. 4 of 1997 s. 18

Subject to subsection (2), no person shall issue or cause to be issued in Tanzania an advertisement publicly offering any securities unless the issuer or offeror of such securities has submitted for approval to the Authority, and the Authority has approved, a prospectus which complies with the requirements of this Part.

[PCh79s132]132. Contents of prospectus Act No. 4 of 1997 s. 18

(1) The Authority shall not approve a prospectus unless—

(a) it contains all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of—

(i) the assets and liabilities, financial position, profits losses, and prospects of the issuer of the securities; and

(ii) the right attaching to those securities; and

(b) it contains in addition such other information and particulars, and complied with such other requirements, as may be prescribed by regulations made under this Act,

(2) The requirements of subsection (1) are in addition to those provided in the Companies Act * in relation to the contents of prospectuses.

[PCh79s133]133. Compensation Act No. 4 of 1997 s. 18

(1) Every director of an issuer shall be liable to pay compensation to any person who has acquired any of the securities in question and suffered loss in respect of them as a result of any untrue or misleading statement in the prospectus or the omission from the prospectus of any matter required to be included by or under section 132.

(2) For the purposes of subsection (1), acquisition by any person of securities includes the contracting to acquire them or to have an interest in them.

[PCh79s134]134. Issuer of securities publicly held prior to the coming into operation of this Act Act No. 4 of 1997 s. 18

(1) Every issuer or securities that are the subject of a public offer or which are publicly held, shall keep the Authority, members of the issuer and other holders of its securities informed as soon as reasonably practicable of any information relating to the issuer and its subsidiaries if any, that—

(a) is necessary to enable them and the public to appraise the financial position of the issuer and of its subsidiaries;

(b) might reasonably be expected materially to affect market in its subsidiaries;
or

(c) might reasonably be expected materially to affect market activity in the price of its securities.

(2) For the purposes of this section, securities are publicly held if the issuer has more than fifty holders of its securities.

(3) In addition to the requirements of subsection (1), every such issuer shall also comply with such further obligations and requirements as may be prescribed by regulations made under this Act.

(4) For the avoidance of doubt this section applies to the issuer of securities publicly held prior to the coming into operation of this Act.

(5) An issuer of securities that fails or neglects to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings.

PART XIII

ADVERTISEMENTS RELATING TO SECURITIES BUSINESS (ss 135-136)

[PCh79s135]135. Advertisements relating to securities business Act No. 4 of 1997 s.
18

(1) An advertisement for offer of any services in relation to securities business may not be published by any person other than a licensed dealer's representative, investment adviser, investment representative or exempt dealer.

(2) Any person who intends to publish an advertisement for other of any services in securities business shall register a copy of the advertisement with the Authority seven days prior to its submission for publication.

(3) Every advertisement offering any services in relation to securities business shall include such particulars and information as may be prescribed under this Act or as the Authority may direct.

(4) The Authority may, after consultation with a person who intends to publish an advertisement direct that the proposed advertisement be amended and where such direction is given, the advertisement shall not be published without compliance with such amendment:

Provided that where a proposed advertisement has been registered with the Authority pursuant to the provisions of subsection (2), the Authority shall within seven

days indicate to the person who has registered the advertisement whether it has any particulars or information to be prescribed.

(5) Any person who fails to comply with the provisions of this sections commits an offence and shall be liable on conviction to a fine of not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding one year or to both the fine and imprisonment.

[PCh79s136]136. Advertisement for offer of securities Act No. 4 of 1997 s. 18

(1) An advertisement for offer of any securities may not be published by any person other than a licensed dealer, dealer's representative, exempt dealer or, in relation to its securities, by the public company concerned.

(2) Subsection (1) shall not apply to advertisements relating to Government securities published by a recognised agency of the Government.

(3) Every advertisement offering securities shall be registered with the Authority fourteen days prior to publication and shall comply with such requirements as may be prescribed.

(4) A licensed dealer, dealer representative, exempt dealer or public company may publish an advertisement in a newspaper of general circulation in Tanzania approved by the Authority attracting the attention of the public to the publication of a prospectus provided that the advertisement is limited to indicating—

- (a) the name of the company;
- (b) that a prospectus has been issued in accordance with this Act; and
- (c) the address where the prospectus may be obtained.

(5) The Authority may after consultation with a person who intends to issue a prospectus and direct that a proposed prospectus be amended and, where such direction is given, the prospectus shall not be published without compliance with such amendment:

Provided that where a proposed advertisement offering securities or a prospectus has been submitted to the Authority, the Authority shall within fourteen days indicate to the person who registered the advertisement offering securities or intends to issue a prospectus whether it has any particulars or information to be prescribed.

(6) Any person who fails to comply with the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both fine and imprisonment.

PART XIV

MISCELLANEOUS PROVISIONS (ss 137-150)

[PCh79s137]137. Restriction on use of title "stock broker" or "stock exchange" Act No. 4 of 1997 s. 19

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

(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.

[PCh79s138]138. Offences by directors or managers Act No. 4 of 1997 s. 19

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

(a) fails to take all reasonable steps to ensure compliance with the provisions of this Act; or

(b) fails to take all reasonable steps to ensure the accuracy and correctness of any statement submitted by him under this Act,

is guilty of an offence and subject to subsection is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(2) In any proceedings against a person under subsection (1), it shall be a defence for the defendant to prove that he 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 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 committed the offence wilfully.

[PCh79s139]139. Falsification of records by directors, employees and agents Act No. 4 of 1997 s. 19

Any director, manager, auditor, employee or agent of a stock exchange, of a dealer or 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 such entry to be omitted; or

(c) wilfully alters, abstracts, conceals or destroys an entry or wilfully causes such entry to be altered, abstracted, concealed or destroyed,

in any book or in any report, slip, document or statement of the business, affairs, transaction, conditions assets or accounts of that stock exchange, dealer or investment adviser, is guilty of an offence and is liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than three years or to both such fine and imprisonment.

[PCh79s140]140. False reports to the Authority or stock exchange Act No. 4 of 1997 s. 19

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,

is guilty of an offence and is liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than four years or to both.

[PCh79s141]141. Immunity of the Authority and its employees Act No. 4 of 1997 s.

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 made thereunder.

[PCh79s142]142. Offences by body corporate Act No. 4 of 1997 s. 19

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

[PCh79s143]143. Power of Court to prohibit payment or transfer of moneys, securities or other property Act No. 4 of 1997 s. 19

(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, in this section referred to as "the relevant person"; is liable or may become liable to pay any moneys, whether in respect of a debt, or by way of damages or

compensation or otherwise 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) The Court may make—

(a) 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 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 Tanzania of moneys 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 Tanzania to a place outside Tanzania including the transfer of securities from a register in Tanzania to a register outside Tanzania;

(e) an order appointing a receiver or receiver and manager, with such powers as the Court may order, of the property or part of the property of the relevant person or of any person associated with the relevant person;

(f) an order where the relevant person is a natural person—

(i) requiring him to deliver up to the Court his passport and such other documents as the Court thinks fit; or

(ii) prohibiting him from leaving Tanzania 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 made under subsection (5).

(7) A person who contravenes or fails to comply with an order by the Court under this section is guilty of an offence and is liable on conviction to a fine of not less than five hundred thousand shillings or to imprisonment for a term of not less than two years or to both such fine and imprisonment.

(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 the conduct,

grant an injunction restraining the person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring the person to do any act or thing.

(2) Where a person refuses or fails, to do an act or thing that he 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 that act or thing,

make an order requiring the person to do that act or thing.

(3) The powers of the High Court relating to orders of injunction are 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 requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution of the grant of the injunction or order, order that person to pay damages to any other person.

[PCh79s145]145. General penalty Act No. 4 of 1997 s. 19

A person who is guilty of an offence under this Act for which no specific penalty is provided, shall be liable on conviction to a fine of not less than five hundred thousand shillings or imprisonment for a term of not less than two years or to both.

[PCh79s146]146. Proceedings, by whom to be taken and power to compound offences Act No. 4 of 1997 s. 19

(1) Prosecution for an offence against any provision of this Act may be undertaken by the Director of Public Prosecutions or by the Authority.

(2) The Authority may, without instituting proceedings against any person for an offence punishable only by a fine under this Act or the regulations made thereunder demand the amount of such fine or such reduced amount as it thinks fit from the person liable and—

(a) where the person pays the amount to the Authority within fourteen days of the demand, no proceedings shall be taken against him in relation to the offence; or

(b) where the person does not pay the amount the Authority may commence proceedings in relation to the offence.

(3) The powers conferred upon the Authority under subsection (2) shall only be exercised where a person admits the offence and agrees in writing to the offence being dealt with under that subsection.

[PCh79s147]147. Power of Minister to give directions to the Authority Act No. 4 of 1997 s. 19

The Minister may give to the Authority directions of a general or specific character as to the exercise of its functions; and it shall be the duty of the Authority to give effect to any such directions.

[PCh79s148]148. Regulations Act No. 4 of 1997 s. 20

(1) The Minister may make regulations for or with respect to any matter which under this Act is required or permitted to be prescribed, or which is necessary or convenient to be prescribed for better carrying out or for giving effect to this Act.

(2) Without prejudice to 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 dealers or investment advisers or offering securities for purchase or sale, and the form and content of those advertisements;
- (c) the forms of balance sheets and profit and loss accounts required by this Act to be prepared by 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; and
- (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) the conduct of business by dealers, exempt dealers, investment advisers and their representatives;

(h) the regulation of collective investment schemes;

(i) the terms and conditions of licence or any approval or authorisation under this Act;

(j) matters incidental to the licensing of any persons or grants of any approval and authorisation under this Act;

(k) the form and content of accounts to be maintained and financial statements to be prepared by dealers, exempt dealers, investment advisers and their representatives and submitted to the Authority.

(3) The Minister may by order published in the Gazette exempt any person or class of person from the application of any of the provisions of this Act.

(4) Except as otherwise expressly provided in this Act, the regulations—

(a) may be of general or specifically limited application; and

(b) may impose a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years or to both fine and imprisonment for any contravention.

[PCh79s149]149. Omitted

[Interim provision.]

[PCh79s150]150. Court of original jurisdiction Act No. 4 of 1997 s. 19

No court which is below a District Court presided over by a Resident Magistrate may give any order or try any offence under this Act.