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GOVERNMENT GAZETTE
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The following Act was passed by Parliament on 17th January 2000 and assented to by the President on 8th February 2000:—

SECURITIES INDUSTRY (AMENDMENT) ACT 2000

(No. 2 of 2000)

I assent.

S R NATHAN,
President.
8th February 2000.

Date of Commencement: 6th March 2000

An Act to amend the Securities Industry Act (Chapter 289 of the 1985 Revised Edition) and to make related amendments to the [Monetary Authority of Singapore Act \(Chapter 186 of the 1985 Revised Edition\)](#).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1.

—(1) This Act may be cited as the Securities Industry (Amendment) Act 2000 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

(2) The Minister may appoint different dates for the coming into operation of the different provisions of this Act.

Amendment of section 2

2. Section 2(1) of the Securities Industry Act (referred to in this Act as the principal Act) is amended —

(a)

by deleting the word “or” at the end of paragraph (v) of the definition of “investment adviser”;

(b)

by inserting, immediately after paragraph (vi) of the definition of “investment adviser”, the following paragraphs:

“(vii)

a person who owns, operates or provides an information service through an electronic, broadcasting or telecommunications medium, where —

(A)

the service is generally available to the public;

(B)

any advice given or analysis or report issued or promulgated is given, issued or promulgated only through that service;

(C)

that person receives no commission or other consideration for giving the advice or for issuing or promulgating the analyses or reports; and

(D)

the advice is given and the analyses and reports are issued or promulgated solely as incidental to that person's ownership, operation or provision of that service; or

(viii)

a person who provides credit rating services, where any analysis or report issued or promulgated by that person —

(A)

is issued or promulgated solely as incidental to the conduct of that person's business of providing credit rating services; and

(B)

does not contain any specific recommendation with respect to the acquiring of, disposing of, subscribing for, or underwriting of, any securities.”;

(c)

by inserting, immediately after the word “means” in the definition of “member company”, the words “, except for the purposes of Part VIII,”;

(d)

by inserting, immediately after the definition of “member company”, the following definition:

“ “newspaper” has the same meaning as in the [Newspaper and Printing Presses Act \(Cap. 206\)](#);”;

(e)

by deleting the definition of “stockbroker”; and

(f)

by deleting paragraph (c) of the definition of “stock market” and substituting the following paragraph:

“(c)

information is regularly provided concerning the prices at which, or the consideration for which, particular persons, or particular classes of persons propose, or may reasonably be expected, to sell, purchase or exchange securities,

but excludes an electronic facility which merely provides price or other information on the sale, purchase or exchange of securities (whether or not the facility is part of or operated in conjunction with the provision of any other information not related to the sale, purchase or

exchange of securities) and which does not permit users of the facility to channel orders for, execute transactions in, or make a market in, securities;”.

Amendment of section 16

3. Section 16 (2) of the principal Act is amended by deleting the words “stockbroker or dealer” in the penultimate and last lines of paragraph (b) (vi) and substituting the words “dealer or a director of a member company”.

Amendment of section 21

4. Section 21 of the principal Act is amended —

(a)
by inserting, immediately after the word “issue” in the 2nd line of subsection (1) and in the marginal note thereto, the word “written”;

(b)
by inserting, immediately before the word “direction” wherever it appears in subsections (1) (last line), (2) (2nd line), (3) and (5) (penultimate line), the word “written”; and

(c)
by inserting, immediately after subsection (2), the following subsection:

“(2A) For the avoidance of doubt, a written direction issued under subsection (1) shall be deemed not to be subsidiary legislation.”.

Amendment of section 33

5. Section 33 of the principal Act is amended by inserting, immediately after subsection (1), the following subsection:

“(1A) Without limiting the generality of subsection (1), the Authority may in granting or renewing a dealer’s licence impose such conditions or restrictions as it thinks fit as to the class or classes of business that a dealer may carry on.”.

New section 33A

6. The principal Act is amended by inserting, immediately after section 33, the following section:

“Authority may issue written notices

33A.

—(1) The Authority may, where it appears to the Authority to be necessary or expedient in the public interest or in the interest of the securities industry to do so, by notice in writing direct any holder or class of holders of a dealer’s licence, an investment adviser’s licence or a representative’s licence to comply with such requirements as the Authority may specify in the notice.

(2) For the avoidance of doubt, a notice issued under subsection (1) shall be deemed not to be subsidiary legislation.

(3) Without prejudice to the generality of subsection (1), any requirement specified in a notice issued by the Authority under that subsection may relate to —

(a)
the standards to be maintained by the person concerned in the conduct of his business; and

(b)
the type and frequency of financial returns and other information to be submitted to the Authority.

(4) A holder of a dealer's licence, an investment adviser's licence or a representative's licence who contravenes or fails to comply with any of the requirements specified in a notice issued to him under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction."

Repeal and re-enactment of section 34

7. Section 34 of the principal Act is repealed and the following section substituted therefor:
"Deposit to be lodged in respect of dealer's licence

34.

—(1) Except in the case of a dealer who is a member company, the Authority shall not grant or renew a dealer's licence unless there is lodged with the Authority, at the time of the application for the licence and in such manner as the Authority may determine, an amount of \$100,000 or such other amount as the Authority may by regulations prescribe in respect of that licence.

(2) Without limiting the generality of subsection (1), the Authority may prescribe different amounts of deposits in respect of different classes of dealer's licences."

Amendment of section 43

8. Section 43 (1) of the principal Act is amended by inserting, immediately after the word "securities", the words "or, if the register is in electronic form, the place at which full access to the register may be gained".

New section 43A

9. The principal Act is amended by inserting, immediately after section 43, the following section:

"Place at which register is kept

43A.

—(1) A person to whom this Part applies shall keep the register of his interests in securities —
(a)

in the case of a natural person, at his principal place of business; or

(b)

in the case of a body corporate, at any of its places of business.

(2) Where a register of interests in securities is kept in electronic form, a person shall be deemed to be in compliance with subsection (1) if he ensures that full access to the register in electronic form may be gained by the Authority at the place referred to in subsection (1)(a) or (b), as the case may be."

Amendment of section 53

10. Section 53 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

"(1) A dealer or an investment adviser shall not grant, directly or indirectly, any unsecured advance, unsecured loan or unsecured credit facility to any of its directors or employees or to a person who, to its knowledge, is associated with any of its directors or employees if —

(a)

the unsecured advance, unsecured loan or unsecured credit facility is given for the purpose of enabling or assisting the person to whom the unsecured advance, unsecured loan or unsecured credit facility is given to purchase or subscribe for any securities; or

(b)

the person giving the unsecured advance, unsecured loan or unsecured credit facility knows or has reason to believe that the unsecured advance, unsecured loan or unsecured credit facility will be used for the purpose of purchasing or subscribing for any securities.”.

Repeal and re-enactment of section 54

11. Section 54 of the principal Act is repealed and the following section substituted therefor:
“Dealer or dealer’s representative to give priority to client’s orders

54.

—(1) Except as permitted by subsection (3) —

(a)

a dealer acting as principal or on behalf of a person associated with him; or

(b)

a dealer’s representative acting for his own account or on behalf of a person associated with him, shall not enter into a transaction for the purchase or sale of securities that are permitted to be traded on the stock market of a securities exchange if a client of that dealer or dealer’s representative, who is not associated with that dealer or dealer’s representative, has instructed that dealer or dealer’s representative to purchase or sell, respectively, securities of the same class and that dealer or dealer’s representative has not complied with the instruction.

(2) A dealer or a dealer’s representative who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) Subsection (1) does not apply in relation to the entering into of a transaction by a dealer as principal or on behalf of a person associated with him, or by a dealer’s representative for his own account or on behalf of a person associated with him, if —

(a)

the instructions from the client of that dealer or dealer’s representative, as the case may be, 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 that dealer or dealer’s representative has been unable to purchase or sell the securities by reason of those conditions; or

(b)

the transaction is entered into in prescribed circumstances.”.

New section 55A

12. The principal Act is amended by inserting, immediately before the sub-heading “*Division 1 — Accounts — Dealer*”, the following section:

“Interpretation of this Part

55A. In this Part —

“custodian” means —

(a)

a bank licensed under the [Banking Act \(Cap. 19\)](#);

(b)

a merchant bank that is approved as a financial institution under [section 28 of the Monetary Authority of Singapore Act \(Cap. 186\)](#);

(c)

a trust company registered under the [Trust Companies Act \(Cap. 336\)](#);

(d)

a depository agent as defined in Division 7A of [Part IV of the Companies Act \(Cap. 50\)](#); or

(e)

such other financial institution or corporation as the Authority may prescribe;

“foreign custodian” means such financial institution or corporation, having a place of business outside Singapore, as may be prescribed by the Authority;

“property” includes securities;

“trust account” means a current or deposit account or property account which —

(a)

is kept with a custodian or foreign custodian, as the case may be; and

(b)

is designated or evidenced as a trust or client’s account.”.

Repeal and re-enactment of section 58

13. Section 58 of the principal Act is repealed and the following section substituted therefor:

“Certain moneys or property received by dealers to be paid into trust account

58.

—(1) A dealer shall establish and maintain with a custodian or custodians in Singapore one or more trust accounts in Singapore for his clients.

(2) A dealer shall pay or deposit any moneys or property held by him on trust for a client into a trust account not later than the next bank business day following the day on which the dealer has received the moneys or property.

(3) A dealer who contravenes or fails to comply with subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

(4) Without limiting the generality of subsection (2), a dealer shall pay into a trust account within the time specified in that subsection —

(a)

the moneys (less any brokerage or other proper charges) that are received from or on account of the client for the purchase of securities and that are not attributable to securities delivered to the dealer;

(b)

the moneys (less any brokerage or other proper charges) that are received for or on account of the client from the sale of securities and that are not paid to the client or paid as the client directs; and

(c)

any other moneys received from or on account of the client that are not paid to the person entitled to the payment or paid as the client directs.

(5) Without prejudice to subsection (1), a dealer may establish and maintain a trust account for any of his clients with a foreign custodian that is appointed by —

(a)

the dealer with the prior consent of the client concerned; or

(b)

the client concerned.

(6) A dealer who maintains a trust account for a client with a foreign custodian may pay or deposit into that trust account moneys or property in a currency, or denominated in a currency, other than the Singapore dollar, and no other moneys or property shall be paid or deposited into that trust account.

(7) For the purposes of this section, “client”, in relation to a dealer, means any person on whose behalf a dealer holds moneys or property, but does not include the dealer himself.”.

Repeal and re-enactment of section 65

14. Section 65 of the principal Act is repealed and the following section substituted therefor:

“Operation of trust account

65.

—(1) An investment adviser shall make arrangements for a custodian or custodians in Singapore to maintain one or more trust accounts in Singapore for his clients.

(2) The custodian shall be appointed by —

(a)

an investment adviser with the prior written consent of the client concerned; or

(b)

the client concerned.

(3) An investment adviser shall pay or deposit any moneys or property held by him on trust for a client into a trust account not later than the next bank business day following the day on which the investment adviser received the moneys or property.

(4) Without prejudice to subsection (1), an investment adviser may make arrangements to establish and maintain a trust account for any of his clients with a foreign custodian which is appointed by —

(a)

the investment adviser with the prior consent of the client concerned; or

(b)

the client concerned.

(5) An investment adviser who maintains a trust account for a client with a foreign custodian may pay or deposit into that trust account moneys or property in a currency, or denominated in a currency, other than the Singapore dollar, and no other moneys or property shall be paid or deposited into that trust account.

(6) An investment adviser who withdraws any moneys from a trust account other than for the purpose of making a payment —

(a)

to the person entitled thereto; or

(b)

that is otherwise authorised by law,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

(7) An investment adviser who, with intent to defraud, withdraws any moneys from a trust account shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both.

(8) Except as otherwise provided in this Division, moneys or property held in a trust account shall not be available for payment of the debts of an investment adviser or be liable to be paid or taken in execution under the order or process of a court.

(9) The holder of an investment representative's licence shall neither accept nor hold client's moneys or property unless he does so on behalf of an investment adviser and in the course of employment under a contract of service with that investment adviser.

(10) Nothing in this Division shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any money or property held in a trust account or against or upon any money or property received for the purchase or from the sale of securities before such money is paid or property is deposited into the trust account."

Amendment of section 74

15. Section 74 of the principal Act is amended by inserting, immediately after the definition of "fidelity fund" or "fund", the following definition:

"member company", in relation to a securities exchange, means a company which is —

(a)

licensed by the Authority to carry on the business of dealing in securities; and

(b)

recognised as a member company by a securities exchange;

Repeal and re-enactment of section 81

16. Section 81 of the principal Act is repealed and the following section substituted therefor:

"Fidelity fund to consist of an amount of \$20 million, etc.

81. The fidelity fund of a securities exchange shall consist of an amount of not less than —

(a)

\$20 million; or

(b)

such other amount as the Minister may, by order published in the *Gazette*, specify in substitution of the amount specified under paragraph (a),

to be paid to the credit of the fund on the establishment of the securities exchange under this Act or at any time after its establishment as determined by the Minister."

Amendment of section 82

17. Section 82 of the principal Act is amended —

(a)

by deleting the words "the sum of \$5 million or such other sum as the Minister may, by order, determine" in the 1st, 2nd and 3rd lines and substituting the words "the minimum amount referred to in section 81"; and

(b)

by deleting the words "\$5 million" in the marginal note and substituting the words "minimum amount".

Repeal and re-enactment of section 86

18. Section 86 of the principal Act is repealed and the following section substituted therefor:
“Application of fidelity fund

86.

—(1) Subject to this Part, the fidelity fund shall be held and applied for —

(a)

compensating any person who suffers pecuniary loss from any defalcation committed by a member company or any of its directors or dealer’s representatives or employees in relation to any money or property which in the course of or in connection with the business of that member company —

(i)

was entrusted to or received by that member company or any of its directors or dealer’s representatives or employees for or on behalf of any other person; or

(ii)

was entrusted to or received by the member company as sole trustee or trustees or as trustee or trustees with any other person, or any of its directors or dealer’s representatives or employees as trustee or trustees or for or on behalf of the trustees of that money or property; and

(b)

paying to a liquidator of a member company that is being wound up an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising because the available assets of the member company are insufficient to satisfy the debts arising from dealings in securities that have been proved in the winding up by creditors of the member company.

(2) Where a claim has been made for compensation in respect of a pecuniary loss under subsection (1)(a), no claim shall be made for a payment under subsection (1)(b) in respect of the same pecuniary loss.

(3) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (1)(b), no claim shall be made for compensation under subsection (1)(a) in respect of the same deficiency.

(4) Moneys paid under subsection (1)(b) may only be applied by the liquidator for the purpose of satisfying debts arising from dealings in securities, and for no other purpose.

(5) Subject to the provisions of this section, the amount or the sum of the amounts that may be paid out of the fidelity fund for the purpose of —

(a)

compensating pecuniary loss under subsection (1)(a); or

(b)

making a payment under subsection (1)(b),

shall not, in respect of each member company, exceed the prescribed amount.

(6) Subject to the provisions of this section —

(a)

the amount that may be paid out of the fidelity fund to each claimant under subsection (1)(a); or

(b)

the amount that a liquidator may pay to each creditor of a member company from any amount paid to the liquidator out of the fidelity fund under subsection (1)(b),

shall not exceed the prescribed amount.

(7) For the purposes of subsections (5) and (6), any amount paid from the fidelity fund shall, to the extent to which the fund is subsequently reimbursed therefor, be disregarded.

(8) If, in any particular case after taking into account all ascertained or contingent liabilities of the fidelity fund, the committee considers that the assets of the fund so permit, the committee may apply out of the fund such amount in excess of the total amount limited by or under this section as the committee in its discretion thinks fit, in or towards the compensation of any person who has suffered pecuniary loss as referred to in subsection (1)(a) or the making of a payment under subsection (1)(b).

(9) Notwithstanding any provision in subsection (1)(b), (5), (6), (7) or (8), the Minister may, by order, direct the committee to increase the total amount which shall be applied from the fidelity fund to a member company for the compensation of any person who suffers pecuniary loss from any defalcation committed by that member company or any of its directors or dealer's representatives or employees.

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

Amendment of section 94

19. Section 94 (2) of the principal Act is amended by deleting "86 (2)" in the 5th line and substituting "86 (5)".

New Part VIIIA

20. The principal Act is amended by inserting, immediately after section 96, the following Part:

"PART VIIIA

ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

Interpretation of this Part

96A. In this Part, unless the context otherwise requires —

"appointed day" means the date of commencement of the Securities Industry (Amendment) Act 2000;

"enforce" means enforce through criminal, civil or administrative proceedings;

"enforcement" means the taking of any action to enforce a law or regulatory requirement against a specified person, being a law or regulatory requirement that relates to the securities industry of the foreign country of the regulatory authority concerned;

"financial institution" means —

(a)

a bank licensed under the [Banking Act \(Cap. 19\)](#);

(b)

a merchant bank that is approved as a financial institution under [section 28 of the Monetary Authority of Singapore Act \(Cap. 186\)](#);

(c)

a finance company licensed under the [Finance Companies Act \(Cap. 108\)](#);

(d)

a dealer, or investment adviser, licensed under this Act; (e)

a person providing or maintaining an exempt stock market; (f)

a body corporate approved as a stock exchange or an approved securities organisation under this Act; (g)

a Depository within the meaning of [section 130A of the Companies Act \(Cap. 50\)](#); (h)

a futures broker, futures trading adviser, or futures pool operator, licensed under the Futures Trading Act (Cap. 116); (i)

a person providing or maintaining a futures market that is declared under section 3(3) of the Futures Trading Act to be exempt from section 3(1) of that Act; (j)

a Futures Exchange within the meaning of the Futures Trading Act; (k)

a clearing house of a futures market within the meaning of the Futures Trading Act; (l)

a company or society registered under the [Insurance Act \(Cap. 142\)](#) to carry out insurance business in Singapore; (m)

an insurance intermediary licensed under the [Insurance Intermediaries Act 1999](#); (n)

a money-changer licensed to conduct money-changing business, or a remitter licensed to conduct remittance business, under the [Money-changing and Remittance Businesses Act \(Cap. 187\)](#); or (o)

such other person or class of persons as the Minister may by order prescribe;

“foreign country” means a country or territory other than Singapore;

“investigation” means an investigation to determine if a specified person has contravened or is contravening a law or regulatory requirement, being a law or regulatory requirement that relates to the securities industry of the foreign country of the regulatory authority concerned;

“material” includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

“prescribed written law” means this Act or any of the following written law and any subsidiary legislation made thereunder —

Banking [Act \(Cap. 19\)](#); (a)

Finance [Companies Act \(Cap. 108\)](#); (b)

Futures [Trading Act \(Cap. 116\)](#); (c)

Insurance [Act \(Cap. 142\)](#); (d)

(e)

Insurance [Intermediaries Act 1999](#);

(f)

Monetary [Authority of Singapore Act \(Cap. 186\)](#);

(g)

Money-changing and [Remittance Businesses Act \(Cap. 187\)](#); or

(h)

such other written law as the Minister may prescribe;

“regulatory authority”, in relation to a foreign country, means an authority of the foreign country exercising any function that corresponds to a regulatory function of the Authority under this Act;

“supervision” means the taking of any action for or in connection with the supervision of the operations of a securities exchange, intermediary or any other person regulated by the regulatory authority, or the issuance of or trading in securities, in the foreign country of the regulatory authority concerned.

Conditions for provision of assistance

96B.

—(1) The Authority, or a person authorised by the Authority, may provide the assistance referred to in section 96D to a regulatory authority of a foreign country if the Authority is satisfied that all of the following conditions are fulfilled:

(a)

the request by the regulatory authority for assistance is received by the Authority on or after the appointed day;

(b)

the assistance is intended to enable the regulatory authority, or any other authority of the foreign country, to carry out supervision, investigation or enforcement;

(c)

the contravention of the law or regulatory requirement to which the request relates took place on or after the appointed day;

(d)

the regulatory authority has given a written undertaking that any material or copy thereof obtained pursuant to its request shall not be used for any purpose other than a purpose that is specified in the request and approved by the Authority;

(e)

the regulatory authority has given a written undertaking not to disclose to a third party (other than a designated third party of the foreign country in accordance with paragraph (f)) any material received pursuant to the request unless the regulatory authority is compelled to do so by the law or a court of the foreign country;

(f)

the regulatory authority has given a written undertaking to obtain the prior consent of the Authority before disclosing any material received pursuant to the request to a designated third party, and to make such disclosure only in accordance with such conditions as may be imposed by the Authority;

(g)

the material requested for is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means;

(h)

the matter to which the request relates is of sufficient gravity; and

(i)

the rendering of assistance will not be contrary to the public interest or the interest of the investing public.

(2) For the purposes of subsection (1)(e) and (f), “designated third party”, in relation to a foreign country, means —

(a)

any person or body responsible for supervising the regulatory authority in question;

(b)

any authority of the foreign country responsible for carrying out the supervision, investigation or enforcement in question; or

(c)

any authority of the foreign country exercising a function that corresponds to a regulatory function of the Authority under the Futures Trading Act (Cap. 116).

Other factors to consider for provision of assistance

96C. In deciding whether to grant a request for assistance from a regulatory authority of a foreign country for assistance referred to in section 96D, the Authority may also have regard to the following:

(a)

whether the act or omission that is alleged to constitute the contravention of the law or regulatory requirement to which the request relates would, if it had occurred in Singapore, have constituted an offence under this Act or any regulations made thereunder;

(b)

whether the regulatory authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the regulatory authority for similar assistance;

(c)

whether the regulatory authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance that the regulatory authority has requested for.

Assistance that may be rendered

96D.

—(1) Notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, the Authority or any person authorised by the Authority may, in relation to a request by a regulatory authority of a foreign country for assistance —

(a)

transmit to the regulatory authority any material in the possession of the Authority that is requested by the regulatory authority or a copy thereof;

(b)

order any person to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority;

(c)

order any person to transmit directly to the regulatory authority any material that is requested by the regulatory authority or a copy thereof;

(d)

order a person to make an oral statement to the Authority on any information requested by the regulatory authority, record such statement, and transmit the recorded statement to the regulatory authority; or

(e)

request any Ministry, Government department or statutory authority to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority.

(2) The assistance referred to in subsection (1)(c) may only be rendered if the material sought is to enable the regulatory authority to carry out investigation or enforcement.

(3) An order under subsection (1)(b), (c) or (d) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any rule of law, any prescribed written law or any requirement imposed thereunder, any contract or any rule of professional conduct.

(4) Nothing in this section shall compel an advocate and solicitor —

(a)

to furnish or transmit any material or copy thereof that contains; or

(b)

to disclose,

a privileged communication made by or to him in that capacity.

(5) If the advocate and solicitor refuses to furnish or transmit the material or copy or to disclose such privileged communication, he shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom or by or on behalf of whom the communication was made.

(6) A person is not excused from making an oral statement pursuant to an order made under subsection (1)(d) on the ground that the statement might tend to incriminate him but, where the person claims before making the statement that the statement might tend to incriminate him, that statement is not admissible in evidence against him in criminal proceedings other than proceedings for an offence under section 96E.

Offences

96E. Any person who —

(a)

without reasonable excuse refuses or fails to comply with an order under section 96D(1)(b), (c) or (d); or

(b)

in purported compliance with an order under section 96D(1)(b) or (c), furnishes to the Authority or transmits to the regulatory authority any material or copy known to the person to be false or misleading in a material particular; or

(c)

in purported compliance with an order made under section 96D(1)(d), makes a statement to the Authority that is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Immunities

96F.

—(1) No civil or criminal proceedings, other than proceedings for an offence under section 96E, shall lie against any person for —

(a)

furnishing to the Authority or transmitting any material or copy thereof to the Authority or a regulatory authority of a foreign country if he had furnished or transmitted that material or copy in good faith in compliance with an order made under section 96D(1)(b) or (c);

(b)

making a statement to the Authority in good faith and in compliance with an order made under section 96D(1)(d); or

(c)

doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) Any person who complies with an order referred to in subsection (1)(a) or (b) shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any rule of law, any prescribed written law or any requirement imposed thereunder, any contract or any rule of professional conduct.”.

Repeal and re-enactment of section 104

21. Section 104 of the principal Act is repealed and the following section substituted therefor:

“Penalties

104.

—(1) Any person who contravenes any provision of this Part shall be guilty of an offence and shall be liable on conviction —

(a)

in the case of a person who is not a body corporate, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both; or

(b)

in the case of a body corporate, to a fine not exceeding \$500,000.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of section 103 after a court has made an order against him for the payment of a civil penalty under section 104A for the contravention.”.

New sections 104A to 104G

22. The principal Act is amended by inserting, immediately after section 104, the following sections:

“Civil penalty for insider dealing

104A.

—(1) Whenever it appears to the Authority that any person has contravened [section 103](#), the Authority may, with the consent of the Public Prosecutor, bring an action in a court against him to seek an order for a civil penalty in respect of that contravention.

(2) If the court is satisfied on a balance of probabilities that the person has contravened [section 103\(1\)](#), (2), (3) or (6), the court may make an order against him for the payment of a civil penalty of a sum —

(a)

not exceeding 3 times —

(i)

the amount of the profit that the person gained; or

(ii)

the amount of the loss that he avoided,

as a result of the contravention; or

(b)

equal to \$50,000 if the person is not a body corporate, or \$100,000 if the person is a body corporate, whichever is the greater.

(3) If the court is satisfied on a balance of probabilities that the person has contravened section 103(4) or (5), the court may make an order against him for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$250,000.

(4) A civil penalty imposed under this section shall be payable to the Authority.

(5) If the person fails to pay the civil penalty imposed on him within the time specified in the court order, the Authority may sue for and recover the civil penalty as though the civil penalty were a judgment debt due to the Authority.

Action under section 104A not to commence, etc., in certain situations

104B.

—(1) An action under section 104A shall not be commenced after the expiration of 6 years from the date of the contravention of [section 103](#).

(2) An action under section 104A shall not be commenced if the person has been convicted or acquitted in criminal proceedings for the contravention of [section 103](#), except where he has been acquitted on the ground of the withdrawal of the charge against him.

(3) An action under section 104A shall be stayed after criminal proceedings under [section 104](#) have been commenced against the person for the contravention of [section 103](#), and may thereafter be continued only if —

(a)

that person has been discharged in respect of that contravention and the discharge does not amount to an acquittal; or

(b)

the charge against him in respect of that contravention has been withdrawn.

Civil liability for insider dealing

104C.

—(1) A person who has acted in contravention of [section 103\(1\)](#), (2), (3) or (6) (referred to in this section and sections 104D and 104E as the insider) shall, whether or not he had been convicted or had a civil penalty imposed on him in respect of that contravention, be liable to pay compensation to any person (referred to in this section and sections 104D and 104E as the claimant) who —

(a)
contemporaneously with the dealing in securities that is the subject of the contravention (referred to in this section as the insider dealing in securities), had purchased (where the insider dealing in securities consisted of a sale of the securities) or sold (where the insider dealing in securities consisted of a purchase of the securities) securities of the same description; and

(b)
had suffered loss by reason of the difference between —

(i)
the price at which the securities were dealt in in the contemporaneous dealing; and

(ii)
the price at which the securities would have been likely to have been so dealt in at the time of the contemporaneous dealing if the contravention had not occurred.

(2) The amount of compensation that the insider is liable to pay to the claimant is the amount of the loss suffered by the claimant, up to the maximum recoverable amount.

(3) An action under this section shall not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing in which the loss occurred.

(4) In determining whether a dealing in securities took place contemporaneously with the insider dealing in securities under subsection (1), the court shall take into account the following matters:

(a)
the volume of securities of the same description traded between the date and time of the insider dealing in securities and the date and time of the dealing in securities;

(b)
the date and time the insider dealing in securities was cleared and settled;

(c)
whether the dealing in securities took place before or after the insider dealing in securities;

(d)
whether the dealing in securities took place before or after the information to which the contravention of [section 103\(1\)](#), (2), (3) or (6), as the case may be, relates became generally known;

(e)
such other factors and developments, whether in Singapore or elsewhere, as the court may consider relevant.

(5) For the purposes of this section and section 104E, “maximum recoverable amount”, in respect of each contravention by an insider of [section 103\(1\)](#), (2), (3) or (6), means —

(a)
the amount of the profit that the insider gained; or

(b)

the amount of the loss that he avoided,
as a result of the contravention, after deducting all amounts of compensation that the insider had previously been ordered by a court to pay to other claimants under this section because of the same contravention.

Action under section 104C not to commence, etc., in certain situations

104D.

—(1) Except with the leave of court, no action under section 104C may be brought against the insider in respect of a contravention of [section 103\(1\)](#), (2), (3) or (6) after the commencement of —

(a)
criminal proceedings under [section 104](#) against the insider for the same contravention; or
(b)
an action under section 104A against the insider for the same contravention.

(2) Any action under section 104C against the insider in respect of a contravention of [section 103\(1\)](#), (2), (3) or (6), being an action that is pending on the date of commencement of —

(a)
criminal proceedings under [section 104](#) against the insider for the same contravention; or
(b)
an action under section 104A against the insider for the same contravention,
shall be stayed, and may not thereafter be continued except with the leave of court.

(3) Leave under subsection (1) or (2) may not be granted if a date has been fixed by a court under section 104E(1) for the filing of claims, and in that event the claimant to the proposed action or the action that has been stayed, as the case may be, shall comply with such directions relating to the filing and proof of his claim under section 104E as that court may issue in his case.

Civil liability for insider dealing in event of conviction, etc.

104E.

—(1) Notwithstanding section 104C, where the insider —

(a)
has been convicted of an offence under [section 104](#); or
(b)
has an order for the payment of a civil penalty made against him under section 104A,
in respect of the contravention of [section 103\(1\)](#), (2), (3) or (6), as the case may be, the court which convicted him or made the order against him (referred to in this section as the relevant court) may, after the conviction or the order imposing the civil penalty has been made final, fix a date on or before which all claimants have to file and prove their claims for compensation in respect of that contravention.

(2) For the purposes of subsection (1), the relevant court shall not fix a date that is earlier than 3 months from the date the conviction or the order imposing the civil penalty, as the case may be, has been made final.

(3) The relevant court may, after the expiry of the date fixed under subsection (1), make an order against the insider to pay to each claimant who has filed and proven his claim for compensation an amount —

(a)
equal to the amount of compensation which that claimant has proven to the satisfaction of the court that he would have been entitled to if he had brought an action under section 104C against the insider himself; or

(b)
equal to the pro-rated portion of the maximum recoverable amount, calculated according to the relationship which the amount referred to in paragraph (a) bears to all amounts proved to the court,
whichever is the lesser.

(4) For the purposes of this section, a conviction is made final if —

(a)
the conviction is upheld on appeal, revision or otherwise;

(b)
the conviction is not subject to further appeal;

(c)
no notice of appeal against the conviction is lodged within the time prescribed by [section 247 of the Criminal Procedure Code \(Cap. 68\)](#); or

(d)
any appeal against the conviction is withdrawn.

(5) For the purposes of this section, an order imposing a civil penalty is made final if —

(a)
the order is not set aside on appeal or revision or is varied only as to the amount of the civil penalty to be imposed;

(b)
the order is not subject to further appeal;

(c)
no notice of appeal against the imposition of the penalty is lodged within the time prescribed by [Rules of Court](#) made under section 104G; or

(d)
any appeal against the imposition of the penalty is withdrawn.

(6) For the purposes of this section, “maximum recoverable amount” has the same meaning given to that expression in section 104C(5).

Jurisdiction of District Court

104F. A District Court shall have jurisdiction to hear and determine any action under section 104A, 104C or 104E regardless of the monetary amount.

Rules of Court

104G.

—(1) [Rules of Court](#) may be made —

(a)
to regulate and prescribe the procedure and practice to be followed in respect of proceedings under sections 104A, 104C and 104E; and

(b)

to provide for costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.

(2) Without prejudice to the generality of subsection (1), [Rules of Court](#) may, in relation to proceedings under section 104E —

- (a) provide for the advertisement of a notice for the filing and proof of claims under that section;
- (b) prescribe the procedure for the filing, proof and hearing of those claims; and
- (c) provide for the payment of the costs and fees of an action that has been stayed under section 104D(2).”.

Amendment of section 105

23. Section 105 of the principal Act is amended —

- (a) by deleting the words “under this Part” in the 1st and 2nd lines of subsection (1) and substituting the words “under section 104 for a contravention of any provision of this Part other than section 103,” and
- (b) by deleting the words “two years” in subsection (3) and substituting the words “6 years”.

Amendment of section 106

24. Section 106 of the principal Act is amended by deleting subsection (1).

Amendment of section 118

25. Section 118 (1) of the principal Act is amended —

- (a) by deleting the word “stockbrokers” in the 2nd and 7th lines of paragraph (i) and substituting in each case the words “member companies of a securities exchange”;
- (b) by deleting the words “and stockbrokers” in paragraph (j); and
- (c) by deleting the word “and” at the end of paragraph (k), and by inserting immediately thereafter the following paragraph:

“(ka)”

the prohibition or regulation of dealing in securities in circumstances where the person who deals in the securities does not hold or have an interest in the securities which are being or are proposed to be dealt with; and”.

Amendment to the Monetary Authority of Singapore Act

26. The [Monetary Authority of Singapore Act \(Cap. 186\)](#) is amended by inserting, immediately after section 39, the following section:

“Legal officer of Authority may act for Authority in civil proceedings

39A. Notwithstanding the provisions of any written law, a legal officer of the Authority who has been admitted as an advocate and solicitor under the [Legal Profession Act \(Cap. 161\)](#) or a State Counsel may —

(a)

appear in any civil proceedings on behalf of the Authority under the Futures Trading Act (Cap. 116) or the Securities Industry Act (Cap. 289), including proceedings referred to in section 104A of the Securities Industry Act; and

(b)

make and do all acts and applications in respect of such proceedings on behalf of the Authority.”.