

No. 66 of 2015.

Capital Market Act 2015.

Certified on : 6/12/17



No 6 of 2015.

Capital Market Act 2015.

ARRANGEMENT OF SECTIONS.

PART I. - PRELIMINARY.

1. Compliance with constitutional requirements.
2. Interpretation -

“accounting records”
“acquire”
“adjustment agreement”
“advertisement”
“advising on corporate finance”
“affiliate”
“agreement”
“allot”
“application”
“approved stock exchange or derivatives exchange”
“assets”
“associated person”
“audio or visual service”
“auditor”
“board”
“books”
“borrower”
“broker or stock broker”
“broking service”
“business”
“business rules”
“call debt security”
“capital market”
“capital market licence”
“capital market product”
“capital market representative licence”
“central depository”
“chattel”
“chief executive”
“clearing facilities”
“clearing house”
“client”
“client money”
“client property”

“close out”
“company”
“conduct in relation to a take-over offer”
“constitution”
“contract note”
“corporation”
“Court”
“date of balance sheet” or “date of interim balance sheet”
“dealing”
“debenture”
“debt security”
“decision”
“derivative”
“derivatives issuer”
“derivatives market”
“derivatives option”
“derivatives report”
“director”
“dispose of”
“distribute”
“document”
“eligible delivery agreement”
“eligible exchange-traded option”
“employee share purchase scheme”
“engaging in conduct”
“entity”
“equity securities”
“exempt derivatives market”
“exempt stock market”
“expert”
“financial planning”
“fund management”
“guarantor”
“indemnify”
“information service”
“insolvent”
“inspection period”
“instrument”
“investment adviser”
“investor”
“issue”
“issuer”
“licence”
“licensed person”
“listed”
“listed corporation”
“listing rules”
“long position”
“management investment scheme”
“member”

“money”
“offer”
“officer”
“official list”
“over-the-counter derivative”
“participant”
“participating organisation”
“party”
“person”
“premises”
“prescribed”
“principal officer”
“promoter”
“prospectus”
“public interest directors”
“quoted”
“record”
“Registrar”
“regulated activity”
“related corporation”
“relevant circumstances”
“relevant time”
“representative”
“rules”
“securities”
“Securities Commission” and “Commission”
“senior manager”
“settlement”
“special resolution”
“specified person”
“specify”
“standardised derivative”
“stock exchange”
“stock market”
“subsidiary”
“Take-overs Code”
“this Act”
“trade repository”
“trading day”
“trust account records”
“trustee”
“underlying”
“unit”
“unit holder or member”
“unit trust scheme”
“unsolicited offer”
“value”
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6. Conversion of agreements to derivatives contracts.
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47. False statements in relation to application for grant or variation of licence.
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- 374. The purpose of this part.

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SCHEDULE 1.

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SCHEDULE 3.

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SCHEDULE 10.



No. of 2015.

AN ACT

entitled

Capital Market Act 2015.

Being an Act to regulate the capital markets, and practices relating to the offering of securities to the public, trading of derivatives, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C. (*qualified rights*) of the *Constitution*, namely -

- (a) the right to liberty of the person conferred by Section 42; and
- (b) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (c) the right to freedom of expression and publication conferred by Section 46; and
- (d) the right to peacefully assemble and associate and to form or belong to, or not belong to, political parties, industrial organisations and other associations conferred by Section 47; and
- (e) the right to freedom of employment conferred by Section 48; and
- (f) the right to privacy conferred by Section 49; and
- (g) the right to freedom of information conferred by Section 51,

of the *Constitution*, is a law that is made for the purpose of giving effect to the public interest in public welfare.

(2) For the purposes of -

- (a) Section 29 of the *Organic Law on Provincial Governments and Local-level Governments*; and
- (b) Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*,

it is declared that this law relates to a matter of national interest.

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2. INTERPRETATION.

(1) In this Act, unless the contrary intention appears -

“accounting records”, in relation to a corporation, means invoices, receipts, orders for payment of money, bills of exchange, cheque, promissory notes, vouchers and other documents of prime entry and includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up and howsoever compiled, recorded or stored;

“acquire” means -

- (a) to obtain by buying, subscribing or taking an assignment or transfer of; and
- (b) agreeing to acquire; and
- (c) in relation to a derivative, entering into the legal relationship that constitutes the derivative;

“adjustment agreement” means one of two or more standardised agreements the effect of which -

- (a) a particular person will either be under an obligation to pay, or will have a right to receive, an amount of money depending on a state of affairs existing at a particular future time, including, without limiting the generality of the foregoing, a state of affairs that relates to fluctuations in the value or price of an instrument or other property, or in the numerical level of an index, an interest rate or other factor; and
- (b) the amount of money will be calculated in a particular manner by reference to that state of affairs, whether or not the agreement is capable of being varied or discharged before that future time;

“advertisement” means -

- (a) in relation to an offer, or intended offer, of a capital market product, any form of communication made to the public or a section of the public for the purpose of promoting the offer or intended offer;
- (b) in relation to the supply of capital market services, any form of communication made to the public or a section of the public for the purpose of promoting the supply of the services;

“advising on corporate finance” has the same meaning as in Part II of Schedule 2;
“affiliate”, in relation to a derivatives exchange or a clearing house of a

derivatives exchange, means any person, however described, who is a party to a subsisting contract with the derivatives exchange or clearing house of a derivatives exchange, as the case may be, under which the person agrees to be bound by its rules;

“agreement” means any contract, arrangement, or understanding;

“allot” means sell, issue, assign and convey and “allotter” and “allotment” has a corresponding meaning;

“application”, in relation to capital market product, means an offer to acquire the capital market product whether in writing or otherwise;

“approved stock exchange or derivatives exchange” means a body corporate that has been approved as a stock exchange or a derivatives exchange under Section 9;

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“assets”, in relation to a holder of a licence, means all the assets of the holder, whether or not used in connection with the carrying on, of the business of the regulated activity by the holder;

“associated person” shall be construed as provided in Section 3;

“audio or visual service” means an audio or visual service provided to users of the service by means of telecommunication;

“auditor” means an approved company auditor within the meaning of Section 190 of the *Companies Act 1997*;

“board”, in relation to a corporation, means the board of directors or other governing authority of the corporation;

“books” include -

(a) a register; and

(b) any other record of information; and

(c) accounts or accounting records, however compiled, recorded or stored; and

(d) a document;

“borrower”, in relation to a debenture, means the corporation that is or will be liable to repay money under the debenture;

“broker or stock broker” means an individual or an entity who carries on a business of providing or offering to provide a broking service to a client, whether or not the business is the provider’s only business or the providers principal business, but does not include a bank;

“broking service” means -

(a) the receipt, holding, payment or transfer of client money or property by a person acting as an intermediary for a client; and

(b) a person acts as an intermediary if the person does not receive, pay or transfer the money or property on the person’s own account,

but the mere transmission of a non-transferable instrument payable to another person is not a broking service;

“business” means any profession, trade, or undertaking, whether or not carried on with the intention of making a pecuniary profit;

“business rules”, in relation to a body corporate, means -

(a) in the case of a body corporate that conducts or proposes to conduct a stock market, the provisions of the constitution of that body corporate and any other rules, regulations or by-laws made by the body corporate, other than rules, regulations or by-laws that are listing rules of the body corporate; and

(b) the provisions of the constitution of the body corporate and any other rules, regulations or by-laws made by the body corporate;

“call debt security” means a debt security under which -

(a) the security holder has a right to demand repayment of the principal sum in full at any time; and

(b) the issuer has an obligation to repay the principal sum in full not later than one working day after the demand is made; and

(c) the rate of interest payable or any other benefit provided does not alter as a result of the demand being made; and

(d) no fee or other amount is payable as a result of the principal sum not having been held by the issuer for a particular period of time;

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“capital market” means the capital markets established under Part II of this Act;
“capital market licence” means a capital market licence issued under Section 36
of this Act;

“capital market product” means -

- (a) a debt security; or
- (b) an equity security; or
- (c) a managed investment scheme or unit trusts; or
- (d) a derivative; or
- (e) any product or arrangement which is based on securities or derivatives, or
any combination of securities and derivatives; and
- (f) any other product which the Commission may prescribe as a capital
market product;

“capital market representative licence” means licence issued under Section 40 of
this Act;

“central depository” means a central depository which has been approved
pursuant to Section 5 of the *Central Depositories Act 2015* -

- (a) to establish and operate a system for the central handling of securities,
whether or not listed on any stock exchange -
 - (i) whereby all such securities are deposited with and held in custody
by, or registered in the name of, the company or its nominee
company for the depositors and dealings in respect of these
securities are effected by means of entries in securities accounts
without the physical delivery of scripts; or
 - (ii) which permits or facilitates the settlement of securities transactions
or dealings in securities without the physical delivery of scripts;
and
- (b) to provide other facilities and services incidental to handling of securities;

“chattel” includes livestock;

“chief executive”, in relation to a corporation, means the principal executive
officer of the corporation for the time being, by whatever name called, and
whether or not he is a director;

“clearing facilities” means -

- (a) a facility for the clearing or settlement of -
 - (i) transactions in securities traded on a stock exchange; or
 - (ii) derivatives contracts traded on a derivatives market; or
- (b) a facility for the guarantee of settlement of transactions referred to in
Paragraph (a); or
- (c) such other clearing or settlement facility or class of clearing or settlement
facilities as the Commission may allow;

“clearing house” means a clearing house that has been approved under Section
31(4), and whose activities or objects includes the provision of clearing
facilities;

“client”, in relation to a holder of a licence, issued under this Act or the *Central
Depositories Act 2015*, means -

- (a) a person on whose behalf the holder carries on or will carry on any
regulated activity; or
- (b) any other person with whom the holder, as principal, enters or will enter
into transactions -
 - (i) for purposes of dealing in securities; or

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- (ii) for purposes of trading in derivatives contract, but does not include such person or class of persons as may be prescribed;
- “client money” means money received from, or on account of, a client in relation to acquiring, holding or disposing of a capital market product;
- “client property” means property received from, or on account of, a client in relation to acquiring, holding or disposing of a capital market product;
- “close out”, in relation to a derivatives contract, means to discharge the obligations of a person in the long position or short position under a derivatives contract and shall include the discharge of these obligations as a result of the matching up of the derivatives contract with a derivatives contract of the same kind under which the person has assumed an offsetting short position or offsetting long position, as the case may be;
- “company” means a company within the meaning of the *Companies Act 1997* and includes an overseas company within the meaning of that Act;
- “conduct in relation to a take-over offer” means conduct following the public announcement by a person of an intention to make an offer, being an offer that is regulated by the Take-overs Code 2015, whether or not the offer has already begun and whether or not the offer proceeds, and includes conduct incidental or preliminary to a takeover that is regulated by the Takeovers Code 2015;
- “constitution”, in relation to a company means the constitution of the company adopted pursuant to Section 33 of the *Companies Act 1997*;
- “contract note” means the document issued by a holder of a capital market licence issued by the Commission under this Act;
- “corporation” means a body corporate formed or incorporated or existing within or outside Papua New Guinea and includes any foreign company but does not include -
- (a) a body corporate that is incorporated within Papua New Guinea and is, by notice of the Minister, charged with the responsibility for companies published in the National Gazette, declared to be a public authority or an instrumentality or agency of the National Government or a Provincial Government or to be a body corporate which is not incorporated for commercial purposes; and
 - (b) any corporation sole including a business name registered under the *Business Names Act 2014*; and
 - (c) any society registered under any written law relating to co-operative societies; and
 - (d) any trade union registered under any written law as a trade union; and
 - (e) an Association registered under the *Association Incorporation Act* (Chapter 142); and
 - (f) a business group registered under the *Business Groups Incorporations Act* (Chapter 144); and
 - (g) an Incorporated Land Group registered under the *Land Group Incorporations Act* (Chapter 147);
- “Court” means the National Court;
- “date of balance sheet” or “date of an interim balance sheet” means the date as at which the statement of affairs contained in the balance sheet has been drawn up;
- “dealing”, in relation to a capital market product, means any of the following:

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- (a) acquiring or disposing of a capital market product; or
 - (b) offering a capital market product for issue or sale and issuing and transferring a capital market product; or
 - (c) underwriting a capital market product; or
 - (d) promoting, by any means, the acquisition or disposal of a capital market product; or
 - (e) in relation to a derivative, discharging obligations under the derivative contract; or
 - (f) anything that is preparatory to, or related to, any dealing in a capital market product (for example, giving financial advice), unless an exception applies to the dealing under this Act,
- but does not include a dealing excluded by the regulations;

“debenture” means debenture stock, bonds, notes and any other debt instruments of a corporation for borrowed monies, whether or not constituting a charge on the assets of the corporation, but shall not be construed as applying to any of the following:

- (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray the consideration payable under, a contract for sale or supply of goods, property or services or any contract of hire in the ordinary course of business; and
- (b) a cheque, banker’s draft or any other bill of exchange or a letter of credit; and
- (c) a banknote, guarantee or an insurance policy; and
- (d) a statement, passbook or other document showing any balance in a current, deposit or savings account; and
- (e) any agreement for a loan where the lender and borrower are signatories to the agreement and where the lending of money is in the ordinary course of business of the lender, and any promissory note issued under the terms of such an agreement; and
- (f) any instrument or product or class of instruments or products as the Commission, may prescribe by order published in the National Gazette;

“debt security” means -

- (a) a right to be repaid money or paid interest on money that is, or is to be, deposited with, lent to, or otherwise owing by, any person and includes -
 - (i) a debenture, bond or note; and
 - (ii) a convertible note; and
 - (iii) a redeemable share in an entity that would otherwise be an equity security, except a share is redeemable only at the option of the entity; and
- (b) any securities, or class or kind of securities, that is declared by the Securities Commission, by notice in the National Gazette to be debt securities for the purposes of this Act, but does not include -
 - (i) a derivative; or
 - (ii) a unit, proportionate interest, or membership interest in a unit trust or a managed investment scheme; or
 - (iii) a life insurance policy; or
 - (iv) debt securities issued by -

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- (A) the State or a government department, agency or authority; or
- (B) a superannuation fund established under the *Superannuation (General Provisions) Act 2000*; or
- (C) a bank or licensed financial institution, as defined in Section 3 of the *Banks and Financial Institutions Act 2000*; or

“decision” includes a declaration, order, class orders or other decisions of the Commission;

“derivative” means an agreement in relation to which the following conditions are satisfied:

- (a) under the agreement, a party to the agreement must, or may be required to provide at some future time consideration of a particular kind or kinds to another person; and
- (b) that future time is not less than the time, prescribed for the purposes of this subparagraph, after the time at which the agreement is entered into; and
- (c) the amount of the consideration, or the value of the agreement, is ultimately determined, is derived from, or varies by reference to, wholly or in part, the value or amount of something else, of any nature whatsoever and whether or not deliverable, including, one or more of the following:
 - (i) an asset; and
 - (ii) a rate (including an interest rate or exchange rate); and
 - (iii) an index; and
 - (iv) a commodity,

and includes a transaction that is recurrently entered into in the capital markets in Papua New Guinea or overseas and is commonly referred to in those markets as -

- (d) a futures or forward; or
- (e) an option (other than an option to acquire by way of issue of an equity security, a debt security, or a managed investment scheme); or
- (f) a swap agreement; or
- (g) a contract for difference, margin contract, or rolling spot contract; or
- (h) a cap, collar, floor, or spread,
but does not include -
 - (i) an agreement for the future provision of services; or
 - (j) a debt security, an equity security, or a managed investment scheme; or
 - (k) an agreement in relation to which all of the following subparagraphs are satisfied:
 - (i) a party has, or may have, an obligation to buy, and another party has, or may have, an obligation to sell, property, other than capital market products or foreign currency, at a price and on a date in the future; and
 - (ii) the agreement does not permit the seller's obligations to be wholly settled by cash, or by set-off between the parties, rather than by delivery of the property; and
 - (iii) neither usual market practice nor the rules of a market permit the seller's obligations to be closed out by the matching up of the agreement with another agreement of the same kind under which the seller has offsetting obligations to buy; or

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(I) an agreement which is -

- (i) a currency swap; or
- (ii) an interest rate swap; or
- (iii) a forward exchange rate contract; or
- (iv) a forward interest rate contract, authorised by the Bank of Papua New Guinea and to which a licensed institution is a party; or
- (v) when entered into, is in a class of agreements prescribed not to be derivatives contract; or
- (vi) prescribed to be an agreement that is not to be traded on a derivatives market;

“derivatives issuer” means a person that is in the business of entering into derivatives;

“derivatives market” means a market or other place at which, or a facility by means of which, derivatives are regularly traded;

“derivatives option” means an option or right to assume, at a stated price or value and within a stated period, a long position or a short position, in relation to a derivative;

“derivatives report” means an analysis or report that contains recommendations about trading in derivatives;

“director” means -

- (a) a person occupying or acting in the position of director of a corporation, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position; or
- (b) a person in accordance with whose directions or instructions, the directors of a corporation are accustomed to act; or
- (c) an alternate or substitute director; or
- (d) in relation to a partnership, any partner; or
- (e) in relation to a body corporate or unincorporated, other than a company or partnership, any person occupying a position in the body that is comparable with that of a director of a company; and
- (f) in relation to any other person, that person; and
- (g) in the case of a company formed or incorporated or existing outside the country -
 - (i) a member of the company’s board of directors or governing body; or
 - (ii) a person occupying or acting in the position of a member of the corporation’s board, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in the position; or
 - (iii) a person in accordance with whose directions or instructions the members of the corporation’s board are accustomed to act;

“dispose of” means to dispose of by allotting, withdrawing from or terminating and agreeing to dispose of;

“distribute” means make available, publish and circulate, and includes disseminate by letter, newspaper, broadcasting, facsimile, computer transmission or image, television, cinematic film, or any other means whatsoever;

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“document” means a document in any form and includes -

- (a) any writing on any material; and
- (b) information recorded or stored by means of a tape-recorder, computer, mobile phones, records on social media networks or other electronic device, and material subsequently derived from information so recorded or stored; and
- (c) a book, graph or drawing; and
- (d) a photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of equipment, of being reproduced;

“eligible delivery agreement” means an agreement that is one of two or more standardised agreement, the effect of which is that a person is under an obligation to make or accept delivery at a particular future time of a particular quantity of a particular instrument -

- (a) for a particular price; or
- (b) for a price to be calculated in a particular manner, whether or not -
 - (i) the subject matter of the agreement is in existence; or
 - (ii) the agreement is capable of being varied or discharged before that future time, and in respect of which it appears likely at the relevant time, having regard to all relevant circumstances, that -
 - (A) the obligation of the person in the short position to make delivery will be discharged except by the person making the delivery; and
 - (B) the obligation of the person in the long position to accept delivery will be discharged except by the person accepting the delivery; and
 - (C) the person in the short position or long position will assume an offsetting long position or offsetting short position, as the case may be, under another agreement of the same kind;

“eligible exchange-traded option” means a contract that is entered into on a derivatives market under which a party acquires from another party an option or right, exercisable at or before a stated time -

- (a) to buy from, or to sell to, that other party a stated quantity of a named instrument at a price stated in, or to be determined in accordance with, the contract; or
- (b) to be paid by that other party, at the time when the option or right is exercised, an amount of money to be determined by reference to a state of affairs that relates to fluctuations in the value or price of an instrument or other property, or in the numerical level of an index, an interest rate or other factor;

“employee share purchase scheme” means a scheme established by an entity under which employees or directors of the entity or of any of its subsidiaries may acquire specified securities (as defined in that clause) that are issued by the entity;

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“engaging in conduct” means doing or refusing to do an act, and includes omitting to do an act or making it known that an act will or will not be done;

“entity” means a body corporate and an unincorporated body (including partners in a partnership, members of a joint venture, or the trustees of a trust) and the sole trustee of a trust acting in his, her, or its capacity as trustee of that trust but does not include an individual or a business name registered under the *Business Names Act 2014*;

“equity securities” means any interest in or right to a share in the share capital of a company, and includes -

- (a) a share and a preference share; and
- (b) any securities, or class or kind of securities, that is declared by the Minister, acting on a recommendation of the Securities Commission, by notice in the National Gazette to be equity securities for the purposes of this Act,

but does not include a debt security;

“exempt derivatives market” means a derivatives market which is declared to be an exempt derivatives market under Section 8(2)(b);

“exempt stock market” means a stock market which is declared to be an exempt stock market under Section 8(1)(b);

“expert” means any person who holds himself out to be of a profession or calling that gives authority to a statement made by him, and includes an accountant, lawyer, engineer, valuer, quantity surveyor and geologist, but does not include a person acting in his capacity as an auditor or as a director or officer of a body;

“financial planning” has the same meaning as in Part II of Schedule 2;

“fund management” has the same meaning as in Part II of Schedule 2;

“guarantor”, in relation to a debenture, means a person who guarantees or has agreed to guarantee the repayment of any money secured or payable under the debenture;

“indemnify” means to relieve, exempt or to be excused from liability, whether before or after the liability arises;

“information service” means -

- (a) a broadcasting service; and
- (b) an interactive or broadcast videotext or teletext service or other similar service; and
- (c) an online database service or other similar service; and
- (d) any other service as may be prescribed by the Commission,

but does not include bond pricing facilities;

“insolvent” means -

- (a) in relation to an issuer of a debt security or a managed investment Scheme -
 - (i) the issuer is unable to pay the issuer’s debts as they become due in the normal course of business; or
 - (ii) the value of the issuer’s assets is less than the value of the issuer’s liabilities, including contingent liabilities, and for this purpose Section 4(4) of the *Companies Act 1997* applies in respect of the issuer as if it were a company even if it is not; and

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- (b) in relation to a registered scheme that is a defined benefit scheme, the value of the assets in the scheme is less than the value of the vested benefits that may in due course flow from, or are attributable to, membership of the scheme; and
- (c) in relation to any other registered scheme -
 - (i) the funds in the scheme are not sufficient to enable debts in respect of the scheme to be paid as they become due in the normal course of business; or
 - (ii) the value of the assets in the scheme is less than the value of the liabilities in respect of the scheme, including contingent liabilities, and for this purpose Section 4(4) of the *Companies Act 1997* applies in respect of the scheme as if it were a company;

“inspection period” means the period commencing on the 3rd working day after the day on which notice of intention to inspect is served on the issuer by the person concerned and ending with the 8th working day after the day of service;

“instrument”, in relation to derivatives means -

- (a) anything that is capable of delivery under an agreement for its delivery, including a commodity or a document creating or evidencing a thing in action; or
- (b) any other thing that is prescribed to be an instrument for the purposes of this Act;

“investment adviser” has the same meaning as in Part II of Schedule 2;

“investor” means -

- (a) a person to whom an offer of capital market product is made; and
- (b) a person who acquires, or may acquire, a capital market product; and
- (c) a person who receives, or may receive, a capital market service;

“issue” means -

- (a) in relation to securities, to bring or grant or cause to be brought into existence those securities; and
- (b) in relation to a notice, prospectus or other document, to circulate, distribute or disseminate such notice, prospectus or document;

“issuer” means -

- (a) in relation to equity securities or debt securities, the corporation whose shares or debentures are being issued, offered for subscription or purchase or in respect of which an invitation to subscribe for or purchase has been made; and
- (b) in relation to a unit of a unit trust or a managed investment scheme, the trustee; and
- (c) in the case of any other securities, the person making available, issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, such securities;

“licence” means a capital market licence issued under Section 37 of this Act and includes a representative’s licence;

“licensed person” means a person holding a capital market licence including a person holding a capital market representative licence;

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“listed”, in relation to a security or a corporation, as the case may be, means such security or corporation whose securities or any class of its securities having gained admission to be quoted on a stock market of a stock exchange;

“listed corporation” means a corporation whose securities or any class of its securities have gained admission to be quoted on a stock market of a stock exchange;

“listing rules”, in relation to a stock market of a stock exchange, means the rules governing or relating to -

- (a) the admission to or removal of securities from the official list of exchange; or
- (b) the activities or conduct of corporate bodies, unincorporated bodies and other persons who are admitted to that list;

“long position” -

- (a) in relation to an eligible delivery agreement, or in relation to a derivatives that is an eligible delivery agreement, means the position of a person who, because of the agreement, is under an obligation to accept delivery in accordance with the agreement; and
- (b) in relation to a derivative that is an adjustment agreement, means the position of a person who, because of the agreement -
 - (i) will, if the value or worth of the agreement (as determined in accordance with the agreement) as at a particular future time is less, by a particular amount, than the value or worth of the agreement (as so determined) as at a particular earlier time, be under an obligation to pay that amount; and
 - (ii) will, if the value or worth of the agreement (as so determined) as at a particular future time is greater, by a particular amount, than the value or worth of the agreement (as so determined) as at a particular earlier time, have a right to receive that amount; or
- (c) in any other case, has such meaning as may be prescribed;

“management investment scheme” means a scheme to which each of the following applies -

- (a) the purpose or effect of the scheme is to enable persons taking part in the scheme to contribute money, or to have money contributed on their behalf, to the scheme as consideration to acquire interests in the scheme; and
 - (b) those interests are rights to participate in, or receive, financial benefits produced principally by the efforts of another person under the scheme, whether those rights are actual, prospective, or contingent, and whether they are enforceable or not; and
 - (c) the holders of those interests do not have day-to-day control over the operation of the scheme, whether or not they have the right to be consulted or to give directions,
- but does not include -
- (d) a scheme under which each participant takes part in the scheme only by holding one or more interests in property if, in respect of each interest -
 - (i) it is an interest in separately identifiable underlying property; and

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- (ii) either the participant holds both the legal and beneficial interest in the property or the legal interest in the property is held on a bare trust for the participant; and
 - (iii) the value of the interest is not substantially dependent on contributions being made by other participants or the use of other participants' contributions; and
 - (e) a scheme that would be a managed investment scheme only because it involves pure risk contracts of insurance; and
 - (f) a scheme that would be a managed investment scheme only because it involves life insurance policies under the *Banking and Financial Institutions Act 2000*; and
 - (g) a pure risk contract of insurance in Paragraph (b) means a contract of insurance that does not, and never will, have a value on its cancellation or surrender that is greater than the sum of premiums paid to the insurer;
- “member” means a holder of securities in a corporation, a unit holder in a unit trust scheme, or a member of a managed investment scheme;
- “money” includes money’s worth;
- “offer” means an invitation, and any proposal or invitation to make an offer, and “to offer” has a corresponding meaning;
- “officer”, in relation to -
- (a) the Commission, an officer of the Commission; and
 - (b) a corporation, includes -
 - (i) any director, secretary or employee of the corporation; and
 - (ii) a receiver and manager, appointed under a power contained in any instrument, of any part of the undertaking or property of the corporation; and
 - (iii) any liquidator of a corporation appointed in a voluntary winding up,
- but does not include -
- (iv) a receiver appointed by the Court; or
 - (v) a liquidator appointed by the Court or by the creditors;
- “official list”, in relation to a stock market of a stock exchange, means a list specifying all securities which have been admitted for quotation on the stock market of the stock exchange;
- “over-the-counter derivative” means a derivative other than a standardised derivative traded under Subdivision 3 of Division 3 of Part III of this Act;
- “participant” means -
- (a) a person who may participate in one or more of the services provided by a stock exchange; or
 - (b) a person who, under the rules of a clearing house, may participate in one or more of the services provided by the clearing house;
- “participating organisation” means any person who carries on the business of dealing in securities and is recognised as a participating organisation by the rules of the stock exchange;
- “party”, in relation to a proposed or discharged agreement, means a person who would be a party to the agreement if it were in effect;

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“person” includes a corporation sole, a company or other body corporate, whether incorporated in the country or elsewhere, an unincorporated body of persons, a public body, and a government department, agency or authority;

“premises” means any place, whether enclosed or built on or not, and in particular, includes -

- (a) a building, aircraft, vehicle or vessel; and
- (b) any structure, whether fixed or movable; and
- (c) a part of premises, including a part of premises of a kind referred to in Paragraph (a) or (b);

“prescribed” means prescribed by this Act or any regulations made under this Act, and where no mode is mentioned means prescribed by order published in the National Gazette, and a power to prescribe includes the power to prescribe differently for different persons, securities, derivatives or transactions, or different classes, categories or descriptions of persons, securities, derivatives or transactions;

“principal officer”, in relation to a body corporate or other body, means -

- (a) a director of the body; or
- (b) a person in accordance with whose directions or instructions, any or all of the directors of the body are accustomed to act, other than a person in accordance with whose directions or instructions, any or all of the directors of a body are accustomed to act by reason only that the directors act on advice given by him solely in a professional capacity; or
- (c) in relation to any particular requirement of this Act, any person whose function is, or who has undertaken, to ensure that that requirement is complied with by the body;

“promoter”, in relation to equity securities, debt securities, or units offered to the public for subscription, means -

- (a) a person who is instrumental in the formulation of a plan or program under which the securities are offered to the public; and
- (b) where a body corporate is a promoter, includes every person who is a director of that body corporate,

but does not include a director or officer of the issuer of the securities or a person acting solely in his professional capacity;

“prospectus” means a document that contains an offer of equity securities, debt securities, or units to the public for subscription, and that is intended to be, or has been, submitted to the Commission for approval and registration;

“public interest directors”, in relation to a stock exchange or derivatives exchange, means persons who are appointed by the Minister under Section 12;

“quoted”, in relation to -

- (a) capital market products of a listed issuer, means capital market products of the issuer that are approved for trading on a licensed stock market, and, to avoid doubt, capital market products do not cease to be quoted merely because trading in those products is suspended; and
- (b) derivatives, means derivatives that are approved for trading on a licensed derivative market, and to avoid doubt, derivatives do not cease to be quoted merely because trading in those products is suspended;

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“record” means -

- (a) a file, register, ledger, book of account, or passbook, and any reproduction or copy of them or any entry in any of them; and
- (b) an apparatus or equipment in or on which information is recorded, stored, or embodied in any form so as to be capable of being retrieved, reproduced, or processed by any means; and
- (c) any material by means of which information is supplied to, or derived from, any such apparatus or equipment;

“Registrar” means the person for the time being holding the office of Registrar of Companies in accordance with the *Companies Act 1997*;

“regulated activity” means any of the types of regulated activities specified in Part I of Schedule 2;

“related corporation”, in relation to a company, means a corporation that is related to the first-mentioned company or corporation by virtue of Section 6 of the *Companies Act 1997*;

“relevant circumstances”, in relation to an eligible delivery agreement, means -

- (a) the provisions of any agreement; and
- (b) the rules and practices of any market; and
- (c) the manner in which the respective obligations of persons in short positions and persons in long positions under agreements of the same kind as the agreement concerned are generally discharged,

but does not include the respective intentions of the person in the short position and the person in the long position under the agreement concerned;

“relevant time”, in relation to an eligible delivery agreement, means the time -

- (a) when the agreement concerned is entered into; or
- (b) if the agreement concerned is not a delivery agreement, when it is entered into, becomes a delivery agreement;

“representative” means a person, by whatever name called, in the direct employment of, or acting for, or by arrangement with, a person who carries on business in any regulated activity, who carries out for that person any such regulated activity, other than work ordinarily performed by accountants, clerks or cashiers, whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

“rules”, in relation to -

- (a) a stock exchange, means the constitution, or listing rules or the rules or directions, by whatever name called, governing the membership, management, operations or procedures of the stock exchange, or the conduct of its participating organisations and, without limiting the generality of the foregoing, includes -
 - (i) rules contained in the constitution, list rules or other constituent document of the stock exchange; and
 - (ii) rules and procedures governing the quotation of securities on the stock market of the stock exchange and listing requirements; and
 - (iii) rules to ensure compliance by participating organisations of any obligations imposed by this Act or any other written law; and
 - (iv) rules in respect of such other matters as may be necessary or desirable for the proper and efficient operation and management of the stock exchange, including rules specifying fees and charges; and

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(b) a clearing house, means the constitution, or the rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of the clearing house and, without limiting the generality of the foregoing, includes rules and directions relating to -

- (i) the provision of clearing and settlement services, and the suspension or withdrawal of such services; and
- (ii) the provision of services other than the services referred to in Subparagraph (i); and
- (iii) the persons who may participate in one or more of the services referred to in Subparagraph (i) or (ii); and
- (iv) the specification of fees and charges; and
- (v) the default rules; and

(c) a central depository, has the meaning assigned to it in the *Central Depositories Act 2015*; and

(d) a derivatives exchange, means the constitution, or the rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of the derivatives exchange or the conduct of its affiliates; and

(e) a recognised self-regulatory organisation, means the constitution of a recognised self-regulatory organisation, or the rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of a recognised self-regulatory organisation or the conduct of the members of the recognised self-regulatory organisation;

“securities” means -

- (a) debentures, stocks, bonds issued or proposed to be issued by any government; and
- (b) shares in or debentures of, a body corporate or an unincorporated body; and
- (c) units in a unit trust scheme or prescribed investments, and includes any right, option or interest in respect of units in a unit trust scheme or prescribed investments, but does not include derivatives; and
- (d) other rights, interests or instruments that the Minister may, by notice in the National Gazette prescribed under Section 5;

“Securities Commission” and “Commission” means the Securities Commission of Papua New Guinea established by Section 4 of the *Securities Commission Act 2015*;

“senior manager” means a person who is not a director but occupies a position that allows that person to exercise significant influence over the management or administration of an entity, for example, a chief executive or a chief financial officer;

“settlement”, in relation to a market contract, means the discharge of the rights and liabilities of the parties to the market contract whether by performance, compromise or otherwise and includes partial settlement effected in accordance with the rules of an approved clearing house;

“special resolution”, in relation to -

(a) holders of debt securities in any other case, means a resolution approved by product holders holding debt securities with a combined nominal value of no less than 75 percent of the nominal value of the debt securities held by those persons who are entitled to vote and who vote on the question; and

(b) holders of units in managed investment schemes or a unit trust in any other case, means a resolution approved by unit holders holding units with a combined value of no less than 75 percent of the value of the managed investment units held by those persons who are entitled to vote and who vote on the question;

“specified person” means a person or classes of person specified in Schedule 3; “specify”, where no mode is mentioned, means specify in writing, and a power to specify includes the power to specify differently for different persons, securities, derivatives or transactions, or different classes, categories or descriptions of persons, securities, derivatives or transactions;

“standardised derivative” means a derivative, including a futures contract, that is traded on a derivatives exchange, whose intrinsic characteristic is determined by that derivatives exchange and whose trade is cleared and settled by an approved clearing house;

“stock exchange” means a body corporate approved by the Commission pursuant to Section 9 of this Act.

“stock market” means a market, exchange, or other place at which, or a facility by means of which -

(a) offers to sell, purchase, or exchange equity securities, debt securities, or units are regularly made or accepted; or

(b) offers or invitations are regularly made, being offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange equity securities, debt securities, or units; or

(c) information is regularly provided about 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 equity securities, debt securities, or units;

“subsidiary” has the meaning assigned to it in Section 5 of the *Companies Act 1997*;

“Take-overs Code” means the Take-overs Code in force under Section 277;

“this Act” includes the regulations made under this Act;

“trade repository” means a trade repository approved under Section 77 for the purposes of trading in over-the-counter derivatives;

“trading day” means, in relation to a licensed market, a day on which the market is open for the trading of securities;

“trust account records” means -

(a) records relating to a trust account; and

(b) includes any information that relates to a trust account,

that is recorded or stored by means of any tape recorder, computer, or other device, and any material subsequently derived from information so recorded or stored;

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“trustee”, in relation to a unit trust or managed investment scheme, means a person appointed as trustee of a unit trust or managed investment;

“underlying”, in relation to a derivative, means -

- (a) the underlying asset, rate, index, commodity; or
- (b) the amount of the consideration, or the value of the agreement, is ultimately determined, is derived from, or varies by reference to, wholly or in part, the value or amount of something else, of any nature whatsoever and whether or not deliverable, including, for example, one or more of the following:
 - (i) an asset; and
 - (ii) a rate, including an interest rate or exchange rate; and
 - (iii) an index; and
 - (iv) a commodity;

“unit”, in relation to a unit trust or managed investment scheme, means any right or interest in a unit trust or managed investment scheme by whatever name called and includes any sub-unit in a unit trust or managed investment scheme;

“unit holder or member” means the unit holder of a unit trust or managed investment scheme as the case may be;

“unit trust scheme” means any arrangement made the purpose of, or having the effect of, providing facilities for the participation by persons as beneficiaries under a trust on profits or income arising from the acquisition, holding, management, or disposal of -

- (a) equities securities, or
- (b) debt securities, or
- (c) derivatives; or
- (d) any other property;

“unsolicited offer” means an offer to which all of the following apply -

- (a) the offer is to acquire a capital market product, to acquire a power to dispose of a capital market product, or to acquire another interest in or right attaching to a capital market product, made by a person (A) to another person (B) (whether the acquisition is by A or an associated person of A); and
- (b) the offer is unsolicited by B; and
- (c) the offer is not made on a licensed market; and
- (d) the offer is within the class or classes of unsolicited offers to which the regulations apply; and
- (e) the offer is not a takeover offer for a capital market product under the Take-overs Code 2015 nor an acquisition or a redemption by a company of its shares under the *Companies Act 1997*;

“value”, in relation to an asset, includes amount;

“voting product”, in relation to an entity means -

- (a) a capital market product of the entity that confers a right to vote at meetings of members or shareholders, whether or not there is any restriction or limitation on the number of votes that may be cast by or on behalf of the holder of the product; and

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- (b) a capital market product that is convertible into a capital market product of the kind referred to in Paragraph (a), but does not include a capital market product that confers only a right to vote that, under the conditions attached to the product, is exercisable only in one or more of the following circumstances:
- (c) during a period in which a dividend (or part of a dividend) in respect of the product is in arrears; and
 - (d) on a proposal to reduce the capital of the entity; and
 - (e) on a proposal that affects rights attached to the product; and
 - (f) on a proposal to put the entity into liquidation; and
 - (g) on a proposal for the disposal of the whole or a material part of the property, business and undertaking of the entity; and
 - (h) during the liquidation of the entity.

(2) In this Act, a reference to "this Act" or a "securities law" shall, unless otherwise expressly stated, include a reference to any regulations, rules, order, class order, notification or other subsidiary legislation made under this Act or a securities law, as the case may be.

3. ASSOCIATED PERSON.

(1) In this Act, a reference to a person associated with another person shall be construed as a reference to -

- (a) the spouse, or any minor child, natural or adopted, or minor step child, of the person; and
- (b) an employee or a partner of the person; and
- (c) another person in accordance with whose directions or instructions the person is accustomed or obliged to act; and
- (d) where the other person is a body corporate -
 - (i) a director or secretary of the body corporate; and
 - (ii) a body corporate that is related to the other person; and
 - (iii) a director or secretary of such a related body corporate; and
- (e) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate, a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied -
 - (i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the body corporate; or
 - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the body corporate; or
 - (iii) under which either of those persons may acquire from the other, shares in the body corporate or may be required to dispose of such shares in accordance with the directions of the other person; and
- (f) where the matter to which the reference relates is a matter other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate -
 - (i) a corporation in partnership with which the other person carries on a business of derivatives; or

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- (ii) subject to Subsection (2), a person who is a partner of the other person, otherwise than as a result of him dealing in securities or trading in derivatives in partnership with the other person; or
 - (iii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money; or
 - (iv) a person who is a director of a body corporate that carries on a business of dealing in securities or trading in derivatives and of which the other person is also a director; or
 - (v) 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 trading in derivatives; and
- (g) a person with whom the other person is, by virtue of any regulation that may be introduced, to be regarded as associated in respect of the matter to which the reference relates; and
- (h) 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; and
- (i) 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 any of the preceding paragraphs, that last-mentioned person.

(2) Where, in proceedings under this Act, it is alleged that a person referred to in Subsection (1)(f)(ii) or (v) was associated with another person at a particular time, that person shall be deemed not to have been so associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first-mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) A person shall not be taken to be associated with another person by virtue of Subsection (1)(e), (g) or (h) by reason only that one of those persons furnishes advice to, or acts on behalf of, the other person in a professional capacity.

4. INTEREST IN SECURITIES.

(1) Where any property held in trust consists of or includes securities in which a person knows or has reasonable grounds for believing that he has an interest, he shall be deemed to have an interest in those securities.

- (2) A right does not constitute an interest in a security where -
- (a) the right, being a right or an interest issued or offered to the public for subscription or purchase; or
 - (b) the public was invited to subscribe for or purchase such a right and the right was so subscribed for or purchased; or
 - (c) such a right is held by the trustee or its agent and was issued for the purpose of an offer to the public.

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(3) 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 is 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; and
- (b) that person has a controlling interest in the body corporate; and
- (c) that person, or the associates of that person or that person and his associates are entitled to exercise or control the exercise of not less than 15 percent of the votes attached to the voting shares in the body corporate.

(4) For the purposes of Subsection (3)(c), a person is an associate of another person, if the first-mentioned person is -

- (a) a corporation which, by virtue of Sections 5 and 6 of the *Companies Act 1997* is deemed to be related to that other person; or
- (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security referred to in Subsection (3); or
- (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security; or
- (d) a body corporate which is, or the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security; or
- (e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.

(5) A person shall be deemed to have an interest in a security in any one or more of the following circumstances where he:

- (a) has entered into a contract to purchase a security; and
- (b) 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 the future and whether on the fulfillment of a condition or not; and
- (c) has the right or power to acquire a security or an interest in a security, under an option, whether the right or power is exercisable presently or in the future and whether on the fulfillment of a condition or not; and
- (d) is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation 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.

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

(7) 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.

- (8) The following shall be disregarded for the purposes of this section -
- (a) 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; and
 - (b) an interest of a person in a security being an interest held by him by reason of his holding a prescribed office; and
 - (c) a prescribed interest in a security being an interest of such person, or of the persons included in such class of persons, as is prescribed.
- (9) An interest in a security shall not be disregarded by reason only of -
- (a) its remoteness; or
 - (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.

5. PRESCRIPTION OF SECURITIES AND DERIVATIVES.

(1) Notwithstanding the definition of "securities" and "derivatives" under this Act, the Minister may, upon the recommendation of the Commission, by order published in the National Gazette, prescribe any instrument or product or class of instruments or products to be -

- (a) securities; or
- (b) derivatives,

for the purposes of securities laws.

(2) Where an exemption has been granted under Section 77 of the *Companies Act 1997*, the Commission may, by order published in the National Gazette, prescribe an exempted interest or a class or category of exempted interests to be -

- (a) securities; or
- (b) derivatives,

for the purposes of this Act or any particular provision of this Act.

(3) In a prescription made under Subsection (1) or (2) in respect of securities or derivatives, as the case may be, the Commission may -

- (a) for the purposes of regulating the issue, offer for subscription or purchase, or the making of an invitation to subscribe for or purchase, any securities, specify in the prescription any provision of this Act to apply to such securities; and
- (b) in the case of derivatives, specify in the prescription any provision of this Act to apply to such derivatives contract.

6. CONVERSION OF AGREEMENTS TO DERIVATIVES CONTRACTS.

If an agreement that was not a derivatives contract when it was entered into becomes a derivatives contract as a result of an action taken by any of the parties to the agreement at a later time -

- (a) the parties to the agreement shall be deemed to have entered into a derivatives contract at that later time; and
- (b) the agreement shall constitute the derivatives contract referred to in Paragraph (a).

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7. ACT BINDS THE STATE.

This Act binds the State.

PART II. - CAPITAL MARKETS.

Division 1. - Markets.

8. LIMITATIONS ON STOCK AND DERIVATIVES MARKETS.

(1) A person shall not establish, operate or maintain, or assist in establishing, operating or maintaining, or hold himself out as providing, operating or maintaining, a stock market that is not -

- (a) a stock market of a stock exchange; or
- (b) an exempted stock market; or
- (c) a registered electronic facility under Section 27(1).

(2) A person shall not establish, operate or maintain, or assist in establishing, operating or maintaining, or hold himself out as providing, operating or maintaining, a derivatives market that is not -

- (a) a derivatives market of a derivatives exchange; or
- (b) an exempted derivatives market; or
- (c) a registered electronic facility under Section 27(1); or
- (d) a trade repository under Section 77.

(3) The Commission may, by order published in the National Gazette -

- (a) declare a particular stock market or derivatives market, or a stock market or derivatives market included in a particular class of stock or derivatives markets, to be an exempted stock market or exempted derivatives market for the purposes of this Act subject to such terms and conditions as he thinks reasonable and appropriate after having regard to, among other things -
 - (i) the types of securities or derivatives to be traded; and
 - (ii) the types of participants; and
 - (iii) the types of investors; and
 - (iv) the volume of trading,relating to the particular stock market or derivatives market, or stock market or derivatives market included in the particular class of stock markets or derivatives markets; and
- (b) revoke any declaration made under Paragraph (a) or vary any term or condition as may be specified in the declaration, after having regard to, among other things -
 - (i) any breach of the terms and conditions specified in the declaration; or
 - (ii) such other matters as the Commission thinks fit.

(4) For the purposes of this section, the facilities specified in Schedule 1 that are -

- (a) established and operated by the Bank of Papua New Guinea; or
- (b) operated by or on behalf of the Bank of Papua New Guinea, shall be deemed to be exempted under Subsection (3).

(5) A person who contravenes this section commits an offence and is liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding 10 years, or both.

Division 2. - Market institutions.

Subdivision 1. - Stock exchange and derivatives exchange.

9. APPROVAL OF STOCK EXCHANGE OR DERIVATIVES EXCHANGE.

(1) An application for the approval of a body corporate as a stock exchange or derivatives exchange may be made in writing to the Commission.

(2) The Commission may, by notice in the National Gazette, approve a body corporate as a stock exchange or a derivatives exchange, subject to any terms and conditions as it thinks fit, if it is satisfied that -

- (a) the body corporate will ensure that, as far as is reasonably practicable, it will operate an orderly and fair market in relation to securities that are traded through its facilities; and
- (b) the body corporate will manage any risk associated with its business and operations prudently; and
- (c) the body corporate, in discharging its obligations under Paragraph (a), will not act contrary to the public interest and in particular the interest of investors; and
- (d) the body corporate is able to take appropriate action against its participating organisations or affiliates to whom the rules apply for any breach of its rules; and
- (e) the rules of the body corporate make satisfactory provision -
 - (i) for an orderly and fair market in relation to the securities that are traded through its facilities; and
 - (ii) for the proper regulation and supervision of its participating organisations; and
 - (iii) for the exclusion of persons who are not of good character and high business integrity from being recognised as participating organisations; and
 - (iv) for the expulsion, suspension or disciplining of its participating organisations or affiliates and any person acting on behalf of such participating organisations or affiliates, for conduct that is 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 derivatives exchange; and
 - (v) with respect to the conditions under which securities may be listed for trading in the market proposed to be conducted by the body corporate or under which derivatives may be traded on the market through its facilities; and
 - (vi) with respect to the conditions governing dealings in securities or trading in derivatives by its participating organisations or affiliates; and
 - (vii) with respect to the class of securities or derivatives that may be dealt in or traded on its facilities; and
 - (viii) generally for the carrying on of the business of the proposed stock exchange or derivatives exchange with due regard to the need for the protection of investors and public interest; and
- (f) the body corporate shall at all times have sufficient financial, human and other resources to ensure the provision of -

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- (i) an orderly and fair market in relation to securities and derivatives that are traded through its facilities; and
- (ii) adequate and properly equipped premises for the conduct of its business; and
- (iii) competent personnel for the conduct of its business; and
- (iv) automated systems with adequate capacity, security arrangements and facilities to meet emergencies; and
- (g) the interest of the public or the proper regulation of the market will be served by the granting of this approval.

(3) An applicant under Subsection (1), shall provide such information as the Commission considers necessary in relation to the application.

(4) Without limiting the generality of the terms and conditions specified in Subsection (2), the Commission may, in writing, amend, revoke or impose new terms and conditions, if the Commission is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the stock market.

10. MEMBERSHIP OF STOCK EXCHANGE AND AFFILIATION OF DERIVATIVES EXCHANGE.

(1) A stock exchange or a derivatives exchange shall ensure that all persons, except a trustee, manager, investment advisor, financial journalist and an underwriter, issued with a licence under this Act is a member of the stock exchange or an affiliates of a derivatives exchange.

(2) A company listed on a stock exchange or a derivatives exchange or its wholly owned subsidiary shall not be a member of the stock exchange or affiliates of a derivatives exchange.

(3) The stock exchange or the derivatives exchange shall ensure that there is no monopoly over the membership of the stock exchange, or the affiliates of the derivatives exchange confine to a certain interest group or groupings.

(4) Where a stock exchange or a derivatives exchange fails to comply with Subsection (3), the Commission shall direct the stock exchange or the derivatives exchange to take steps to ensure that there is a fair distribution of the membership or affiliates of the stock exchange or the derivatives exchange.

(5) Regulation made for the purposes of this section shall provide for matters including the membership requirements and fees required for application for membership.

(6) Where the stock exchange or the derivatives fails to comply with a directive under Subsection (4), every director of the exchange is guilty of an offence and is liable to a fine not exceeding K5,000,000.00 or imprisonment for a term not exceeding seven years, or both.

11. COMMISSION TO APPROVE AMENDMENT OF RULES.

(1) A stock exchange, derivatives exchange, a trade depository or a clearing house shall, within seven days, submit or cause to be submitted to the Commission for its approval any proposed rules or any proposed amendments to existing rules.

(2) An amendment to the rules of a stock exchange, derivatives exchange, a trade repository or a clearing house shall not have effect until it has been approved by the Commission under Subsection (5).

(3) Where a stock exchange, or a derivatives exchange, or a trade repository or a clearing house proposes to make any amendment to its rules, it shall submit to the Commission -

- (a) the text of the proposed amendment; and
- (b) an explanation of the purpose of the proposed amendment.

(4) Where -

- (a) proposed rules or amendments to existing rules involves the introduction of a class of derivatives, the instrument in respect of which is a commodity, to be offered for trading on a derivatives market of the derivatives exchange; and
- (b) the Minister responsible in respect of the commodity is the Minister for the time being responsible for agriculture,

the Commission shall consult the Minister before notifying the derivatives exchange of its decision under Subsection (5).

(5) The Commission shall, within four weeks after the receipt of any proposed amendment under Subsection (1), give notice in writing to the stock exchange, derivatives exchange, a trade repository or a clearing house of its approval or disapproval of the proposed amendment or any part of the proposed amendment, as the case may be.

(6) The Commission may, by notice in writing, declare any class of rules of a stock exchange, a derivatives exchange, a trade repository or a clearing house to be a class of rules whose amendments do not require the approval of the Commission under Subsection (5), and accordingly, any amendment to the rules of a stock exchange, derivatives exchange, a trade repository or a clearing house that belongs to that class shall, subject to Subsections (7) and (8) have effect.

(7) Where the Commission is of the opinion that any amendment to the rules of a stock exchange, a derivatives exchange, a trade repository or a clearing house made under Subsection (6), does not fall within the class of rules declared by the Commission under that subsection as not requiring its approval, the Commission may, after consultation with the stock exchange, a derivatives exchange, a trade repository or a clearing house, require the stock exchange, derivatives exchange, a trade repository or clearing house to submit such amendment for its approval under Subsection (5).

(8) Where a rule amended by the stock exchange, a derivatives exchange, a trade repository or a clearing house under Subsection (6), is the subject of a requirement made by the Commission under Subsection (7), such amendment shall cease to have effect from the date of the Commission making such a requirement or such later date as the Commission may determine.

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(9) This subsection shall not have effect until a reasonable time has been given to the stock exchange, derivatives market, a trade repository or a clearing house to notify the persons affected by such amendment.

(10) Notwithstanding the provisions of this section, the Commission may, from time to time, after consultation with the stock exchange, a derivatives exchange, a trade repository or a clearing house, by written notice require the stock exchange, the derivatives exchange, the trade repository or the clearing house to amend or supplement its constitution or any of its rules in such manner and within such period as may be specified in the notice.

(11) A stock exchange, a derivatives exchange, a trade repository or a clearing house which contravenes a requirement made under Subsection (7), or a written notice made under Subsection (9), commits an offence.

(12) The directors, chief executive officer, the chief financial officer and the company secretary are liable to a fine not exceeding K5,000,000.00 each or imprisonment for a term not exceeding seven years, or both.

12. APPOINTMENT OF DIRECTORS OF STOCK EXCHANGE AND DERIVATIVES EXCHANGE.

(1) In relation to a stock exchange or derivatives exchange, one-third of the number of directors on the board of a stock exchange or a derivatives exchange, shall be appointed by the Minister, in consultation and with the concurrence of the Commission, to be public interest directors of the stock exchange or the derivatives exchange and, notwithstanding the provision of any other written law, such public interest directors so appointed -

- (a) shall have the same rights, powers, duties and obligations, liberties and privileges as any director of the stock exchange or the derivatives exchange; and
- (b) shall hold office for a period specified by the Minister, who may at any time revoke such an appointment.

(2) The constitution of the stock exchange or derivatives exchange shall provide for the appointment of a non-executive Chairman of the Board of the exchange from one of the public interest directors.

(3) If the constitution of the exchange fails to provide a clause in the terms of Subsection (2), the Minister shall, upon recommendation from the Commission, appoint one person from amongst the public interest directors so appointed under Subsection (1), to be the non-executive Chairman of the Board of the stock exchange or the derivatives exchange.

(4) Notwithstanding Subsection (1), the Minister may, upon advice from the Commission, revoke the appointment of a person where -

- (a) any proposed director is an undischarged bankrupt, whether within or outside Papua New Guinea; or
- (b) a judgment debt against the proposed director has not been satisfied in whole or in part; or
- (c) the proposed director has, whether within or outside Papua New Guinea, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or

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- (d) the proposed director -
 - (i) has been convicted, whether within or outside Papua New Guinea, of an offence, involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under the securities laws; or
 - (iii) has been investigated for money laundering or related activities within or outside Papua New Guinea; or
- (e) the Commission is not satisfied that the proposed director is a person of integrity and is fit and proper to be a director.

(5) Where the concurrence of the Commission is required under Subsection (1) or (2), the Commission may refuse to concur if -

- (a) a proposed director is an undischarged bankrupt, whether within or outside Papua New Guinea; or
- (b) a judgement debt against the proposed director has not been satisfied in whole or in part; or
- (c) the proposed director has, whether within or outside Papua New Guinea, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (d) the proposed director -
 - (i) has been convicted, whether within or outside Papua New Guinea, of an offence, involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under the securities laws; or
 - (iii) has been investigated for money laundering or related activities within or outside Papua New Guinea; or
- (e) the Commission is not satisfied that the proposed director is a person of integrity and is fit and proper to be a director.

(5) For the purposes of this section, a director includes a person who is a chief executive officer.

13. DUTIES OF EXCHANGE.

- (1) For the purposes of this section and Sections 14, 15 and 20 -
 - (a) "exchange" refers to a stock exchange or a derivatives exchange; and
 - (b) "relevant person" means a participating organisation or an affiliate.

(2) It shall be the duty of an exchange to ensure, so far as may be reasonably practicable, an orderly and fair market in the securities or derivatives contracts that are traded through its facilities.

- (3) In performing its duty under Subsection (2), the exchange shall -
 - (a) act in the public interest having particular regard to the need for the protection of investors; and
 - (b) ensure that where any interests that it is required to serve under any law relating to corporations conflict with the interest referred to in Paragraph (a), the latter shall prevail.

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(4) It shall be the duty of the exchange to take appropriate action as may be provided for under its rules for the purpose of monitoring or securing compliance with such rules.

- (5) An exchange shall immediately notify the Commission if it becomes aware of -
- (a) any matter which adversely affects, or is likely to adversely affect, the ability of any relevant person to meet its obligations in respect of its business of dealing in securities, or dealing in derivatives, including the ability of any relevant person to comply with the minimum financial requirements as may be prescribed under this Act, the *Securities Commission Act 2015* or the *Central Depositories Act 2015*; or
 - (b) any irregularity, breach of any provision of the securities laws or the rules of the exchange or a clearing house, or any other matter which, in the opinion of the exchange, indicates or may indicate, that the financial standing or financial integrity of any relevant person or of the chief executive or directors of the relevant person in question may reasonably be affected.

(6) Without prejudice to Subsection (5), when an exchange reprimands, fines, suspends, expels or otherwise disciplines any relevant person, it shall, within seven days, give to the Commission in writing the following particulars:

- (a) the name and address of the business of the relevant person; and
- (b) the reason for and the nature of the action taken; and
- (c) the amount of the fine; and
- (d) the period of suspension, if any; and
- (e) any other disciplinary action taken.

(7) An exchange and its relevant persons shall, at all times, have sufficient financial, human and other resources to ensure the provision of -

- (a) an orderly and fair market in relation to securities that are traded through its facilities; and
- (b) adequate and properly equipped premises for the conduct of its business; and
- (c) competent personnel for the conduct of its business; and
- (d) automated systems with adequate capacity, security arrangements and facilities to meet emergencies.

(8) Notwithstanding Section 16, the Commission shall conduct an annual independent audit of the exchange and its relevant persons to ensure that the exchange and its relevant persons comply with the requirements under Subsection (7).

14. REVOCATION OF APPROVAL OF EXCHANGE.

(1) The Commission may, by notice published in the National Gazette, and by such other means as the Commission considers appropriate -

- (a) revoke an approval granted under Section 9, to an exchange, with effect from the date specified in the notice; or
- (b) direct the exchange to cease to provide or operate such facilities, or to cease to provide such services, as are specified in the notice, with effect from the date specified in the notice.

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(2) The Commission shall not revoke an approval or issue a direction under Subsection (1), unless the Commission is satisfied that it is appropriate to do so for the protection of investors, or in the public interest or for the proper regulation of markets in securities, or derivatives where any of the following circumstances occurs:

- (a) the exchange ceases to operate its stock market or derivatives market, as the case may be; or
- (b) the exchange is being wound up or otherwise dissolved, whether within or outside Papua New Guinea; or
- (c) the exchange has contravened any term or condition of its approval or is charged with any offence under any securities laws; or
- (d) the exchange has failed to comply with a condition, requirement or direction given under Sections 13(7), 19, 443 or 444; or
- (e) any information provided for the purposes of Section 9, was false or misleading in a material particular; and
- (f) a judgment debt against the exchange has not been satisfied in whole or in part; or
- (g) a receiver, a receiver and manager, or equivalent person has been appointed, whether within or outside Papua New Guinea, in respect of any property of the exchange; or
- (h) the exchange has, whether within or outside Papua New Guinea, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (i) the exchange on its own accord applies to the Commission to revoke the approval as a stock exchange or derivatives exchange granted to it; or
- (j) the exchange has been deregistered by the Registrar of Companies for non-compliance with the provisions of the *Companies Act 1997*.

(3) For the purposes of Subsection (2)(a), an exchange shall be deemed to have ceased to operate its stock market, or derivatives market, as the case may be, if it has ceased to operate its stock market or derivatives market for a period of one month unless it has obtained the prior approval of the Commission to do so.

(4) Notwithstanding the revocation of an approval or the issuance of a direction under Subsection (1), the Commission may permit the exchange to continue, on or after the date on which the revocation or direction is to take effect, to carry on such activities affected by the revocation or direction as the Commission may specify in the notice published under that subsection for the purpose of -

- (a) closing down the operations of the exchange or ceasing to provide the services as specified in the notice; or
- (b) protecting the interest of investors or the public interest.

(5) Where the Commission has granted permission to an exchange under Subsection (4), the exchange shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened Section 8.

(6) The Commission shall not take any action under Subsection (1), without giving an exchange an opportunity to be heard.

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(7) Where an exchange has ceased to comply with any term or condition specified in Section 9, the Commission may, instead of revoking the approval under Subsection (1), direct that trading on the exchange be suspended until such time as the exchange has, to the satisfaction of the Commission, complied with such term or condition, or rectified the matter forming the basis of the revocation, or until the Commission revokes the direction.

(8) The Commission shall give the exchange not less than 14 days' notice in writing of its intention to direct suspension of trading under Subsection (7) and the notice shall specify the grounds for the suspension.

15. EFFECT OF REVOCATION OF APPROVAL OF AN EXCHANGE.

A revocation of approval or direction issued under Section 14, shall not operate so as to -

- (a) avoid or affect any agreement, transaction or arrangement entered into on the stock market or a derivative market operated by an exchange, as the case may be, whether the agreement, transaction or arrangement was entered into before or, where Section 14(4), applies, after the revocation of the approval or issuance of the direction under Section 14; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

16. ANNUAL REGULATORY REPORT ON COMPLIANCE WITH ONGOING REQUIREMENTS.

(1) Within three months after the end of each financial year, a body corporate that has been approved as a stock exchange, or derivatives exchange, or a registered electronic facility, or a clearing house shall prepare and submit to the Commission a regulatory report on the extent to which it has complied with the requirements under Section 13, 27(2) or 31(3) and its rules, during the financial year.

(2) Subsection (1) applies to a central depository approved under Section 5 of the *Central Depository Act 2015* and a body corporate that has been issued with a capital market licence under this Act, in so far as regulatory reports are concerned.

17. QUARTERLY REPORT.

(1) Within six weeks after the end of each quarter within a financial year, a body corporate that has been -

- (a) approved as a stock exchange; or
- (b) approved as a derivatives exchange; or
- (c) approved as a clearing house; or
- (d) approved as a trade repository; or
- (e) any person issued with a capital market licence under this Act,

shall prepare and submit to the Commission a regulatory report on its operation during a quarter.

(2) A body corporate may seek the Commission for an extension of time to comply with the requirement under Subsection (1), within three weeks after the end of the quarter.

(3) The Commission may grant an extension of time if it is satisfied that the body corporate is not likely to meet the deadline.

(4) The Commission may impose a fine on the body corporate which failed to comply with the requirements under Subsection (1), by way of an order, specifying the amount and the timeframe within which the body corporate shall pay such fines.

(5) If a body corporate failed to comply with an order under Subsection (2), the Commission shall advise the body corporate to show cause why its licence should not be revoked.

(6) The body corporate shall, within seven days after the receipt of a notice under Subsection 5, respond to the Commission.

(7) The Commission shall, within 14 days after the receipt of the response of the body corporate under Subsection 6, determine whether the licence of the body corporate be revoked.

(8) Where the Commission revokes the licence of the body corporate, the body corporate shall cease its business activities.

(9) The Commission shall immediately advise the Registrar of Companies to remove the body corporate from the Registrar of Companies registry.

18. DISPOSAL AND ACQUISITION OF ASSETS.

(1) Where -

- (a) a stock exchange; or
- (b) a derivatives exchange; or
- (c) a clearing house; or
- (d) a central depository; or
- (e) a trade repository,

intends to enter into an agreement or arrangement, to dispose of or acquire such assets or classes of assets of such value as may have been specified by the Commission, it shall give the Commission prior written notification of such intention.

(2) Where the Commission makes a specification under Subsection (1), it shall have regard to whether the assets referred to in the specification are integral to the operations of a stock exchange, a derivatives exchange, a clearing house, a central depository, or a trade repository, as the case may be, or significant in affecting the business direction of such persons.

19. POWER TO ISSUE DIRECTIONS.

(1) The Commission may serve a written notice on a stock exchange, a derivatives exchange, a clearing house, a central depository, a trade repository or a relevant body corporate if the Commission is satisfied that -

- (a) a conflict exists or may come into existence between -
 - (i) the interest of a body corporate that has been approved as a stock exchange, a clearing house, a central depository, a trade repository or a relevant body corporate, as the case may be; and
 - (ii) the interest of the proper performance of the functions or duties conferred by this Act or any other law, on the stock exchange, a derivatives exchange, clearing house, central depository, a trade repository or the relevant body corporate, as the case may be; or

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- (b) such conflict of interest as set out under Paragraph (a), is likely to continue or be repeated; or
- (c) it is necessary or expedient for -
 - (i) ensuring fair and orderly markets; and
 - (ii) the protection of investors, or in the public interest; and
 - (iii) ensuring the integrity of the capital market; and
 - (iv) the effective administration of securities laws.

(2) Where the Commission exercises its powers under Subsection (1), the Commission may state the reasons in support of the ground for the notice and direct the person referred to in Subsection (1), to take such actions as are specified in the notice, including steps in relation to any of its affairs, business or property.

(3) A notice served under Subsection (1), shall take effect immediately.

(4) A body corporate that has been served with a notice under Subsection (1), shall not without reasonable excuse, fail to comply with the notice.

(5) A body corporate that has been served with a notice under Subsection (1), may appeal against the notice to the National Court not later than 14 days after the date of service of the notice or such longer period if any, as the Commission may specify in the notice, but the notice shall take effect immediately notwithstanding that the appeal has been or may be made under this subsection.

(6) Notwithstanding anything under any securities laws, if the Commission thinks it necessary or expedient for the protection of investors or the effective administration of securities laws or in the public interest, the Commission may discharge any of the duties of an exchange in relation to -

- (a) the supervision of the capital market and market participants; or
- (b) the supervision of a derivatives market and its affiliates; or
- (c) the enforcement of -
 - (i) the rules of the stock exchange governing the quotation of securities on the stock market of the stock exchange and the listing requirements; or
 - (ii) the rules governing compliance by participating organisations of the stock exchange or affiliates of the derivatives exchange.

(7) Where the Commission exercises its power under Subsection (6), Section 13(4) shall not apply to the extent of the power exercised by the Commission.

(8) Where the Commission exercises its power under Subsection (7), it may levy on the stock exchange or derivatives exchange a regulatory fee of such amount as may be prescribed by the regulations.

20. CLOSURE OF STOCK OR DERIVATIVES EXCHANGE.

(1) The Commission may direct an exchange to close a stock market or a derivatives market of the exchange for a period not exceeding five business days if the Commission is of the opinion that an orderly and fair market for trading in securities on the stock market or trading in derivatives contract on the derivatives market is being or is likely to be prevented because -

- (a) an emergency or natural disaster has occurred within Papua New Guinea; or

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(b) there exists an economic or financial crisis or any other circumstances within or outside Papua New Guinea.

(2) The Commission may extend the closure of the stock market or derivatives market under Subsection (1), for any further periods each not exceeding five business days.

(3) The Commission shall specify the grounds for the closure in the direction given under Subsection (1) and the grounds for any extension of closure under Subsection (2).

(4) The Commission shall, as soon as may be practicable, give a copy of the direction under Subsection (1), or extension under Subsection (2), to a clearing house and direct the clearing house to do all that it is reasonably capable of doing to give effect to the direction under Subsection (1), or extension under Subsection (2), while the direction or extension remains in force.

(5) In this section -

"business day" means any day on which there is official trading on the exchange but for the closure;

"fair market" includes but is not limited to a market that reflects the forces of supply and demand.

21. POWER OF COMMISSION TO PROHIBIT TRADING IN A PARTICULAR SECURITY.

(1) A reference in this section to trading in securities on a stock market or derivatives market is a reference to trading in securities on a stock market or a derivatives market, whether in this jurisdiction or elsewhere.

(2) Where the Commission is satisfied that it is in the public interest, or it is appropriate to do so for the protection of investors, or to maintain fair and orderly market, the Commission may give written notice to a stock exchange, or a derivatives exchange or a clearing house, where relevant, to -

- (a) prohibit the trading of particular securities or a particular class of securities made available by a corporation on the stock market of a stock exchange; and
- (b) terminate or suspend trading on the stock exchange or derivatives exchange; and
- (c) confine trading to liquidation of derivatives positions; and
- (d) order the liquidation of all positions or any part of the positions or the reduction in such positions; and
- (e) limit trading to a specific price range; and
- (f) modify trading days or hours; and
- (g) alter conditions of delivery; and
- (h) fix the settlement price at which positions are to be liquidated; and
- (i) require any person to act in a specified manner in relation to trading in a securities, or a derivatives contract or any class of securities or any class of derivatives; and
- (j) require margins or additional margins for any securities or derivatives; and
- (k) modify or suspend any of the rules of the stock exchange or the rules of a derivatives exchange.

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(3) Where, after receiving the notice, the exchange does not take action to prevent trading in the securities or derivatives on the stock market or the derivatives market and the Commission is still of the opinion that it is necessary to prohibit such trading, the Commission may, by written notice to the exchange, prohibit trading in the securities on the stock market or derivatives on the derivatives market during a period of not more than 21 days.

(4) Where the Commission gives a notice to an exchange under Subsection (3), the Commission shall -

- (a) at the same time deliver a copy of the notice to the person that issued the securities or the derivatives together with a statement setting out the reasons for the giving of the notice; and
- (b) as soon as practicable send a copy of the report to the stock exchange or derivatives exchange.

(5) Any person who is aggrieved by any action taken by the Commission under this section may appeal to the National Court whose decision shall be final.

(6) Notwithstanding any appeal under Subsection (5), any action taken by the Commission under this section shall continue to have force and effect until such time as the Court makes a decision on the appeal.

(7) A stock exchange, derivatives exchange or a clearing house, as the case may be, shall comply with the written notice given under Subsection (2).

(8) An exchange shall not permit trading in securities or derivatives on a stock market or a derivatives market of an exchange in contravention of a notice under Subsection (2) and (3), and where the exchange fails to comply with this subsection, the exchange and each director of the exchange is guilty of an offence.

Penalty: The stock exchange shall be liable to a fine not exceeding K10,000,000.00 and every director shall be liable to a fine not exceeding K5,000,000.00 each or imprisonment for a term not exceeding seven years, or both.

22. PROVISION OF ASSISTANCE TO COMMISSION.

(1) A stock exchange, a derivatives exchange, a trade repository or a clearing house shall provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires including the furnishing of such returns and the provision of such information relating to the operations of a stock exchange, a derivatives exchange, a trade repository or a clearing house or in respect of such dealing in securities or dealing in derivatives or any other information as the Commission or such person may require for the proper administration of the securities laws.

(2) A person acting on behalf of, or authorised by, the Commission shall be entitled at all reasonable times to full and free access for any of the purposes of this Act to the trading facility of a stock market of a stock exchange or a derivatives market of a derivatives exchange, or a trade repository.

(3) A person who refuses or fails, without lawful excuse, to allow a person acting on behalf of, or authorised by, the Commission, access in accordance with Subsection (2), to the trading facility of a stock market of a stock exchange or a derivatives market of a derivatives exchange, a trading facility of a repository commits an offence and is liable to a fine not exceeding K5,000,000.00 or imprisonment for a term not exceeding seven years, or both.

23. SUSPENSION ORDER.

(1) Without prejudice to Section 14, 20 or 21, where the Commission is satisfied that it is in the public interest, or it is appropriate to do so for the protection of investors or for the proper regulation of a stock exchange, a derivatives exchange, a trade repository, a clearing house or a central depository, the Commission may, make an order ("suspension order") relating to all or any of the following:

- (a) the functions of the board of the stock exchange, derivatives exchange, a trade repository, a clearing house or central depository, or any member of its board; or
- (b) the functions of any committee, including a subcommittee, established by a board referred to in Paragraph (a); or
- (c) the functions of the principal officer, by whatever name called, who is responsible for the conduct of the business and operations of the stock exchange, derivatives exchange, a trade repository, a clearing house or central depository, as the case may be.

(2) For so long as a suspension order is in force, the following provisions shall apply:

- (a) none of the functions to which the order relates shall be performed by any board, committee or officer of a stock exchange, derivatives exchange, a trade repository, a clearing house or central depository; and
- (b) any function to which Paragraph (a), applies may be performed by such person as shall be specified in the order in relation to that function; and
- (c) a person referred to in Paragraph (a), shall not, by act or omission, either directly or indirectly, affect the manner in which functions therein referred to are performed unless the person to perform the functions under Paragraph (b) requests for his assistance.

(3) Subject to Subsection (6), a suspension order shall continue in force for such period, being a period not exceeding six months, as shall be specified in the order.

(4) A suspension order or any extension of the suspension order under Subsection (6) shall take effect when a copy of the order or notice of the extension is served, under Subsection (7)(a), on the stock exchange, derivatives exchange, clearing house or central depository to which the order relates.

(5) Without prejudice to Subsection (4), where a suspension order is made or such an order is extended under Subsection (6), the Commission shall, where it is practicable to do so, as soon as may be practicable, give a copy of the order or the notice of its extension, as the case may be, to the principal officer of the stock exchange, derivatives exchange, a trade repository, a clearing house or central depository to which the order relates and to such members of the governing body of the stock exchange, if any, as the Commission may consider appropriate in the circumstances.

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(6) The Commission may extend the period during which a suspension order is to remain in force for any further periods each not exceeding three months.

(7) Where a suspension order is made or extended under this section, the Commission shall -

- (a) serve a copy of the order or notice in writing of the extension on the stock exchange, derivatives exchange, a trade repository, a clearing house or central depository to which the order relates; and
- (b) cause the suspension order or the notice of the extension, as the case may be, to be published in the National Gazette.

(8) A person who contravenes a suspension order issued under Subsection (1), commits an offence and is liable to a fine not exceeding K5,000,000.00 or imprisonment for a term not exceeding seven years, or both.

(9) For the purposes of this section, "principal officer" includes a person, by whatever name called, who either individually or jointly with one or more other persons, is responsible for the conduct of the business and the administration of the stock exchange, derivatives exchange, trade repository, a clearing house or a central depository.

24. POWER OF COMMISSION UPON CONTRAVENTION OF SECTION 18.

(1) Notwithstanding any provisions in any constitution of a corporation, the *Companies Act 1997*, or any rule of law, but subject to the provisions of this Act, where the Commission is satisfied that a person has contravened the provisions of Section 18, it may make a preliminary order in writing, imposing one or more of the following prohibitions or restrictions as may be applicable or appropriate in the circumstances of the contravention in respect of any shares which are the subject of the contravention:

- (a) prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, such voting shares, or, in the case of unissued shares, prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, the right to be issued with them; and
- (b) prohibit the exercise of any voting rights in respect of such shares; and
- (c) prohibit the issue of any further shares.

(2) A preliminary order made under Subsection (1), shall be served on the defaulting person as soon as is practicable, and may be publicised in such manner as the Commission thinks fit, if in the opinion of the Commission, it needs to be publicised.

(3) A preliminary order shall be binding on the defaulting person, on any person for the time being holding the voting shares to which such order applies and on any other person specified in the order or to whom the order is directed.

(4) A person shall not be given an opportunity to be heard, before the Commission makes a preliminary order under Subsection (1), against him or which affects him in any manner.

(5) A defaulting person against whom a preliminary order has been made, or any other person prejudicially affected by such order may, within 14 days of the service of the order on the defaulting person, make representations in writing to the Commission applying for the setting aside of the order on the ground that he had not contravened the provisions in relation to which the order has been made, or for a modification of the order on the ground that it would be just and proper to modify it for reasons to be specified in the representations.

(6) The Commission may, after considering the representations made under Subsection (5), either confirm, revoke or vary the preliminary order in such manner as it thinks fit.

(7) Where the Commission confirms a preliminary order, it may make an order to the holder of the shares to which the preliminary order applies to, directing such holder to dispose of the shares.

(8) The Commission may give instruction or direction to the directors or officers of a stock exchange, derivatives exchange, a clearing house, central depository or any other relevant body corporate as the case may be, as may be necessary or requisite to give effect to any order of the Commission under this section, or as may be incidental, ancillary or consequential to such order.

(9) A transaction, including an agreement or arrangement in relation to any shares, which is in contravention of any preliminary order, or of any order confirmed under Subsection (6), or of any instruction or direction given by the Commission under Subsection (8), shall be void and of no effect.

(10) A person who contravenes a preliminary order, or any order confirmed under Subsection (6), or an instruction or direction given under Subsection (8), commits an offence and is liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

Subdivision 2. - General.

25. PUBLICATION OF NOTICE OF SUSPENSION OF TRADING OR CLOSURE.

Where an action is taken by the Commission under Section 13, 20, 21, 443 or 444, as the case may be, the Commission shall publish a notice of the action taken in such manner as it considers appropriate.

26. RIGHTS NOT TO BE AFFECTED BY LAWS RELATING TO CONTRACTS.

Nothing in any law relating to contracts, to the extent of its inconsistency with the provisions of this Act or the rules of a stock exchange, a derivatives exchange or a clearing house, shall render unenforceable or otherwise adversely affect -

- (a) any rights to be conferred on a stock exchange, derivatives exchange or a clearing house in relation to securities, as the case may be, under this Act or its rules; and
- (b) any rights to be conferred on a party to a securities entered into on a stock market of a stock exchange, derivatives exchange or such other market as approved under this Act or the rules of a stock exchange, or a clearing house, as the case may be; and

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- (c) anything done or omitted to be done under or in relation to a securities or derivatives entered into on a stock market of a stock exchange, a derivative market of a derivatives exchange, an exempted stock market, an exempted derivatives markets or such other market as approved under this Act, as the case may be.

Subdivision 3. - Registered facilities.

27. REGISTERED ELECTRONIC FACILITIES.

(1) For the purposes of Section 8(1)(c), where the Commission is satisfied that it is appropriate to do so, the Commission may, upon application by a person, register an electronic facility subject to such conditions as it considers appropriate.

(2) The conditions imposed under Subsection (1) may include requiring the person referred to in Subsection (1), to -

- (a) make available the services according to such terms and conditions as may be approved by the Commission; and
- (b) ensure, so far as is reasonably practicable, that there is an orderly and fair market in relation to all transactions which are carried out by means of or through the electronic facility; and
- (c) permit any person authorised by the Commission to enter, at any reasonable time, the premises on which the facility is provided and to inspect the electronic facility by means of which the services are provided; and
- (d) ensure adequate capacity, security arrangements and facilities to meet emergencies.

(3) The Commission may from time to time add, vary, amend or revoke any condition imposed under Subsection (1) or (2).

(4) A person who contravenes Subsection (1), commits an offence, and is liable to a fine not exceeding K5,000,000.00 or imprisonment for a term not exceeding seven years, or both.

28. APPLICATION FOR REGISTRATION.

(1) An application under Section 27(1), shall be accompanied by such information and particulars as the Commission may require.

(2) Without limiting the generality of Subsection (1), an application under Section 27(1) shall also be accompanied by such information as may be required by the Commission regarding -

- (a) the services and facilities which the applicant will hold itself out as being able to provide if the application is allowed; and
- (b) the business which the applicant proposes to carry on and to which the application relates; and
- (c) its directors and substantial shareholders and, if any of its substantial shareholders is a corporation, the directors and substantial shareholders of that corporation.

(3) In considering an application under Section 27(1), the Commission may have regard to any information in its possession whether provided by the applicant or not.

29. REVOCATION OF REGISTRATION.

(1) Subject to Subsection (4), where the Commission is satisfied that it is appropriate to do so in the interest of the investors, in the public interest or for the maintenance of an orderly and fair market, it may, by notice in writing, revoke the registration with effect from a date that is specified in the notice.

(2) Such notice referred to in Subsection (1), shall state the reasons in support of the ground for the revocation.

(3) The Commission may by notice in writing under Subsection (1), permit the person to continue, on or after the date on which the revocation is to take effect, to carry on such activities affected by the revocation as the Commission may specify in the notice for the purpose of -

- (a) ceasing to provide the electronic facility to which the revocation relates; or
- (b) protecting the interest of the investors or the public interest.

(4) Where the Commission has granted a permission to a person under Subsection (3), the person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened Section 27.

(5) The Commission shall not exercise its power under Subsection (1), in relation to an electronic facility that has been registered under Section 27(1), unless it has given the person referred to in Section 27(1), a reasonable opportunity of being heard.

- (6) A revocation of registration made under this section shall not operate so as to -
- (a) avoid or affect an agreement, transaction or arrangement entered into on the electronic facility whether the agreement, transaction or arrangement was entered into before or after the revocation of the registration under Subsection (1); or
 - (b) affect a right, obligation or liability arising under such agreement, transaction or arrangement.

Subdivision 4. - Approval of clearing house.

30. ESTABLISHING OR OPERATING A CLEARING FACILITY.

(1) A person shall not establish or operate a clearing facility unless the person has been approved to establish or operate a clearing facility under Section 31(4).

(2) A person who contravenes Subsection (1), commits an offence and is liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(3) Subsection (1) does not apply to any person providing or holding out as providing clearing facilities for an exempted stock market or an exempted derivatives market.

31. POWER OF COMMISSION TO APPROVE CLEARING HOUSE.

(1) An application for the approval to establish or operate a clearing house shall be in writing to the Commission and shall be accompanied by a copy of the rules of the proposed clearing house including a copy of its constitution and any information as may be required by the Commission.

(2) The rules of the proposed clearing house shall provide for -

- (a) the efficient provision of the clearing house facilities in relation to securities that are cleared through its clearing facilities; and
- (b) the proper regulation and supervision of its participating organisations that used its clearing facilities; and
- (c) the clearing house to enter into contracts with participating organisations under which they would agree to be bound by the rules of the clearing house; and
- (d) the making of rules, including rules that make provision for a quick and fair method of settling disputes -
 - (i) between the clearing house and its participating organisations; and
 - (ii) between those participating organisations and their clients; and
- (e) the expulsion, suspension or disciplining of a participating organisation for the failure to comply with the rules of the clearing house; and
- (f) satisfactory provision for the class of securities that may be cleared on its facilities.

(3) The proposed clearing house shall, at all times, have sufficient financial, human and other resources to ensure the provision of -

- (a) adequately and properly equipped premises for the conduct of its business; and
- (b) competent personnel for the conduct of its business; and
- (c) automated systems with adequate capacity, security arrangements and facilities to meet emergencies.

(4) Where the Commission is satisfied that it is appropriate to do so in the public interest, or for the proper regulation of a clearing house, it may, by notice in writing, approve the person to establish or operate a clearing house subject to such conditions as the Commission thinks fit.

(5) The clearing house shall provide clearing house facilities for a stock market of the relevant stock exchange or for a derivatives market of the relevant derivatives exchange, as the case may be.

32. REVOCATION OF APPROVAL.

(1) The Commission may, by notice in writing -

- (a) revoke its approval, granted under Section 31(4), to a clearing house with effect from the date specified in the notice; or
- (b) direct the clearing house to cease to provide or operate, or to cease to provide such services, as are specified in the notice, with effect from the date specified in the notice.

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(2) The Commission shall not revoke its approval or issue a direction under Subsection (1), unless the Commission is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the clearing and settlement of transactions in securities, or derivatives where any of the following circumstances occurs:

- (a) the clearing house ceases to provide clearing facilities; or
- (b) the clearing house is being wound up or otherwise dissolved, whether within or outside Papua New Guinea; or
- (c) the clearing house has contravened Section 11, or any term or condition of its approval or is charged with any offence under any securities laws; or
- (d) the clearing house has failed to comply with a condition, requirement or direction given under Section 19, 443 or 444; or
- (e) any information provided for the purposes of Section 31, was false or misleading in a material particular; or
- (f) a judgement debt against the approved clearing house has not been satisfied in whole or in part; or
- (g) a receiver, a receiver and manager, or an equivalent person has been appointed, whether within or outside Papua New Guinea, in relation to or in respect of any property of the clearing house; or
- (h) the clearing house has, whether within or outside Papua New Guinea, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (i) the clearing house has on its own accord applied to the Commission to cancel the approval granted to it and the Commission thinks it fit to do so.

(3) For the purposes of Subsection (2)(a), the clearing house shall be deemed to have ceased to provide clearing facilities if it has ceased to provide such facilities for a period of one month unless it has obtained the prior approval of the Commission to do so.

(4) Notwithstanding the revocation of an approval or the issuance of a direction under Subsection (1), the Commission may permit the person approved to provide clearing facilities to continue, on or after the date on which the revocation or direction is to take effect, to carry on such activities affected by the revocation or direction as the Commission may specify in the notice published under that subsection for the purpose of -

- (a) closing down the operations of the clearing house or ceasing to provide the services specified in the notice; or
- (b) protecting the investors or the public interest.

(5) Where the Commission has granted permission to the person approved to provide clearing facilities under Subsection (4), the person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened Section 30.

(6) The Commission shall not take any action under Subsection (1), without giving a person an opportunity to be heard.

33. EFFECT OF REVOCATION OF APPROVAL.

A revocation of approval or direction issued under Section 32, shall not operate so as to -

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- (a) avoid or affect any agreement, transaction or arrangement entered into through the clearing house whether the agreement, transaction or arrangement was entered into before or, where Section 32(4) applies, after the revocation of the approval or issuance of the direction under Section 32(2); or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

PART III. - CAPITAL MARKETS REGULATIONS.

Division 1. - Licensing and regulation.

34. REQUIREMENT FOR CAPITAL MARKET LICENCE.

(1) A person shall not, whether as a principal or agent, carry on a business in a regulated activity or hold himself out as carrying on such business unless he is the holder of a capital market licence or is a registered person.

(2) Subsection (1) shall not apply to the persons or classes of persons as specified in Schedule 3.

(3) Except for or in respect of an insurance company licensed under the *Insurance Act 1995*, the Commission may impose such terms and conditions as may be deemed appropriate on specified persons.

(4) A person who contravenes Subsection (1), commits an offence and is liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

35. REQUIREMENT FOR CAPITAL MARKET REPRESENTATIVE'S LICENCE.

(1) A person shall not act as a representative in respect of a regulated activity or hold himself out as doing so unless he is the holder of a capital market representative's licence for that regulated activity or is a registered person with respect to that regulated activity.

(2) A person who contravenes Subsection (1), commits an offence and is liable to a fine not exceeding K5,000,000.00 or imprisonment for a term not exceeding five years, or both.

36. APPLICATION FOR GRANT OR RENEWAL OF LICENCE.

(1) An application for the grant or renewal of a licence shall be -

- (a) made to the Commission in such form and manner as the Commission may specify; and
- (b) in the case of an application for renewal of a licence, made not later than 30 days or such other period as the Commission may specify, before the expiry of the licence.

(2) The Commission may, at any time after receiving an application for the grant of the licence, conduct such inquiry as it may deem necessary to satisfy itself that none of the grounds under Section 40(1) or 41(1) or in any regulation or guideline for the refusal to grant the licence applies, including financial, criminal and professional background checks of the applicant, directors, managers and the controller of the applicant, where relevant.

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(3) The Commission may require an applicant to furnish it with such information or documents as the Commission considers necessary in relation to the application.

(4) An application for the grant or renewal of a licence shall be accompanied by a non-refundable prescribed fee which shall be paid in such manner as may be specified by the Commission.

(5) Where a person submits an application for renewal of his licence before the expiration of his licence but after the period referred to in Subsection (1), the Commission may impose a late renewal fee as may be prescribed for every day or part of the day that the renewal is late.

(6) In the case of an application for the grant or renewal of a capital market representative's licence, such application shall be -

- (a) supported by a holder of a capital market licence or a person who has applied for a capital market licence for that regulated activity, in such manner as may be specified by the Commission; and
- (b) deemed to be revoked with effect from the date on which the holder of a capital market licence who supported the application -
 - (i) withdraws its support in writing; and
 - (ii) withdraws its application for a capital market licence in respect of that regulated activity; and
 - (iii) has its application for a capital market licence in respect of that regulated activity refused by the Commission.

(7) For the purposes of this section, Sections 40, 42 and 47, the word "controller", in relation to a holder of a capital market licence, means a person who -

- (a) is entitled to exercise, or control the exercise of, not less than 15 percent of the votes attached to the voting shares in the holder; or
- (b) has the power to appoint or cause to be appointed a majority of the directors of such holder; or
- (c) has the power to make or cause to be made, decisions in respect of the business or administration of such holder, and to give effect to such decisions or cause them to be given effect to.

(8) For the purposes of this section, Sections 40, 42 and 47, "manager", in relation to a body corporate, means a person who is appointed by the body corporate to manage any part of its business and includes an employee of the body corporate, other than the chief executive, who, under the immediate authority of a director or chief executive of the body corporate, exercises managerial functions or is responsible for maintaining accounts or other records of the body corporate.

37. GRANT OR RENEWAL OF LICENCE.

(1) Subject to requirements under Section 36, the Commission may grant or renew a licence.

(2) In granting or renewing a licence, the Commission may -

- (a) specify and describe the regulated activity to which the licence is granted; and

- (b) specify any condition or restriction of the licence as the Commission thinks necessary; and
- (c) in the case of a capital market representative's licence -
 - (i) relate the licence to the holder of a capital market licence which supported the application for the licence; and
 - (ii) restrict the regulated activity of the licence to the regulated activity of the holder of a capital market licence which supported the application for the licence.

(3) A person who contravenes any condition of, or restriction in a licence commits an offence.

38. POWER OF COMMISSION TO IMPOSE CONDITIONS OR RESTRICTIONS ON LICENCES.

Without prejudice to Section 37, the Commission may at any time, where it deems necessary, vary the conditions or restrictions imposed upon the grant of a licence or impose additional conditions or restrictions on a licence while the licence is in force.

39. FEES.

(1) A licensed person shall pay such prescribed licence fee in respect of each regulated activity on a yearly basis and on such date as the Commission may specify.

(2) Where a licensed person fails to pay the prescribed licence fee by the date on which such fee is due, the Commission may impose a late payment fee of a prescribed amount for every day that the payment is late and such fees shall be recoverable by the Commission as a debt due to the Commission.

(3) Any fees paid to the Commission under this division shall be paid into the Fund established under Section 38 of the *Securities Commission Act 2015*.

40. GROUNDS FOR REFUSAL FOR THE GRANT OR RENEWAL OF CAPITAL MARKET LICENCE.

(1) Where an application is made for the grant or renewal of a capital market licence under Section 36, the Commission may refuse the application on any of the following grounds:

- (a) the application was not made in accordance with Section 36; or
- (b) the applicant has failed to comply with any other requirement of this Act or any guidelines made under this Act; or
- (c) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission; or
- (d) the applicant is in the course of being wound up or otherwise dissolved; and
- (e) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part; or
- (f) a receiver, or an equivalent person has been appointed within or outside Papua New Guinea, or in respect of any property of the applicant; or
- (g) the applicant has, whether within or outside Papua New Guinea, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or

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- (h) the applicant or any of its directors, chief executive, chief financial officer or a senior manager -
 - (i) has been convicted, whether within or outside Papua New Guinea, of an offence involving fraud or other dishonesty or violence or the conviction of which involved a finding that it or he acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under the securities laws or any law outside Papua New Guinea relating to capital markets; or
 - (iii) has been subjected to any action taken by the Commission under Section 443, 444 or 445; or
 - (iv) has contravened any provision made by or under any written law whether within or outside Papua New Guinea appearing to the Commission to be enacted for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies; or
 - (v) has engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on its or his method of conducting business; or
 - (vi) has engaged in or has been associated with any other business practices or otherwise conducted itself or himself in such a manner as to cast doubt on its or his competence and soundness of judgment; or
 - (vii) has been investigated for money laundering activities within or outside of Papua New Guinea; or
 - (viii) is an undischarged bankrupt whether within or outside Papua New Guinea; or
- (i) the Commission has reason to believe that the applicant or any of its directors, chief executive, managers or chief financial controller may not be able to act in the best interest of its clients having regard to their reputation, character, financial integrity and reliability; or
- (j) the Commission is not satisfied as to the financial standing of the applicant or the manner in which the applicant's business is to be conducted; or
- (k) the Commission is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence; or
- (l) there are other circumstances which are likely to -
 - (i) lead to the improper conduct of business by the applicant or by any of its directors, chief executive, chief financial officer or any senior manager; or
 - (ii) reflect discredit on the manner of conducting the business of the applicant or its directors; or
- (m) the Commission has reason to believe that the applicant or any of its directors, chief executive, chief financial officer or senior managers will not carry on the regulated activity efficiently, honestly or fairly; or
- (n) the Commission is of the opinion that it would be contrary to the interests of the public to grant the licence.

41. GROUNDS FOR REFUSAL FOR THE GRANT OR RENEWAL OF CAPITAL MARKET REPRESENTATIVE'S LICENCE.

(1) Where an application is made for the grant or renewal of a capital market representative's licence under Section 36, the Commission may refuse the application on any of the following ground -

- (a) the application was not made in accordance with Section 36; or
- (b) the applicant has failed to comply with any other requirement of this Act or any guidelines made under this Act; or
- (c) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission; or
- (d) the applicant is an undischarged bankrupt whether within or outside Papua New Guinea; or
- (e) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part; or
- (f) the applicant has, whether within or outside Papua New Guinea, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) the applicant has -
 - (i) been convicted, whether within or outside Papua New Guinea, of an offence involving fraud or other dishonesty or violence or the conviction of which involved a finding that he acted fraudulently or dishonestly; or
 - (ii) been convicted of an offence under the securities laws or any law outside Papua New Guinea relating to capital markets; or
 - (iii) been subjected to any action taken by the Commission under Section 443, 444 or 445; or
 - (iv) contravened any provision made by or under any written law whether within or outside Papua New Guinea appearing to the Commission to be enacted for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts; or
 - (v) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business; or
 - (vi) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment; or
 - (vii) been investigated for money laundering activities within or outside Papua New Guinea;
- (h) the Commission is not satisfied as to the educational or other qualification or experience of the applicant having regard to the nature of the duties he is to perform in connection with the holding of the licence; or
- (i) the Commission has reason to believe that the applicant may not be able to act in the best interests of the clients of a holder of a capital market licence having regard to his reputation, character, financial integrity and reliability; or

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- (j) the Commission is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the duties which he may perform in connection with the holding of the licence; or
- (k) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the applicant or any person employed by or associated with him for the purpose of his business; or
- (l) the Commission has reason to believe that the applicant will not carry on the regulated activity efficiently, honestly or fairly; or
- (m) the Commission is of the opinion that it would be contrary to the interests of the public to grant the licence.

42. POWER OF COMMISSION TO ENQUIRE INTO TRANSACTIONS.

(1) The Commission may enquire into any transaction involving the purchase or sale of securities entered into or caused to be entered into or a trade in derivatives contracts by -

- (a) an applicant for grant of a licence, its directors, or chief executive, its chief financial officer or senior managers, whether directly or indirectly, during any period of 12 months preceding the application for grant of the licence; and
- (b) a licensed person, its directors, or chief executive, or manager or controller, whether directly or indirectly, at any time, to ascertain if such person has in such transaction used dishonest, unfair or unethical devices or trading practices, whether such devices or trading practices constitute an offence under this Act or otherwise.

(2) The person referred to in Subsection (1) shall submit to the Commission, the detailed information of any transaction involving the purchase or sale of securities or trading in derivatives contracts for such period, in such form and manner and within such time, as the Commission may specify by notice in writing.

(3) In addition to any other penalty that may be imposed under this Act, a person who fails or refuses to submit information to the Commission within the time specified in the notice referred to in Subsection (2), or who gives false or misleading information or the information contains an omission of a material particular, is liable to have his application -

- (a) for a grant of licence rejected; or
- (b) for renewal of his licence revoked under Section 48.

43. MINIMUM FINANCIAL REQUIREMENTS.

A holder of a capital market licence shall not carry on any regulated activity in respect of its licence without the written consent of the Commission where it does not meet the minimum financial requirements as may be specified by the Commission or as may be provided in the rules of a stock exchange or a derivatives exchange.

44. PERIOD OF LICENCE.

A licence that has been issued in accordance with the provisions in this division shall expire 12 months after the date of issue or on such later date as may be specified by the Commission in writing.

45. VARIATION OR TRANSFER OF LICENCE.

- (1) The Commission may, on the application of -
- (a) a holder of a capital market licence, vary its licence by adding or removing a regulated activity to or from those already specified in the licence; and
 - (b) a holder of a capital market representative's licence, vary the name of the principal, on whose behalf he may act and the regulated activity to which the licence relates; and
 - (c) a holder of a capital market licence, transfer its licence to any other person, after the holder has obtained a court order under Section 115(4).

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

(3) An application under Subsection (1), shall be accompanied by a prescribed application fee which shall be paid in such manner as may be specified by the Commission.

- (4) The Commission may -
- (a) approve the application subject to such conditions or restrictions as it deems necessary; or
 - (b) refuse the application on any of the grounds set out in Section 40(1) or 41(1), or on any other grounds as specified by the Commission.

(5) The Commission shall not refuse an application under Subsection (1), without giving the applicant an opportunity to be heard.

46. DEPOSIT TO BE LODGED IN RESPECT OF CAPITAL MARKET LICENCE.

- (1) A capital market licence to carry on the business of dealing in securities or fund management shall not be granted or renewed unless the applicant for the licence has -
- (a) lodged with the Commission, at the time of the application for the granting or renewal of such licence, a minimum deposit in the sum of K50,000.00 or such other sum as the Head of State may prescribe in regulations made under Subsection (4); or
 - (b) entered into an insurance contract for the indemnification of claims made against the applicant up to an amount of K250,000.00 or such other sum as the regulations may prescribe.

(2) A deposit required by Subsection (1), shall be in cash or in such other form as the Commission may allow.

(3) A deposit lodged under Subsection (1), shall be applied by the Commission in accordance with the regulations made under this Act.

(4) For the purposes of this section, regulations may prescribe different amounts of deposit or extent of insurance coverage for different holders or classes of holders of a capital market licence who carry on the business of dealing in securities or fund management.

47. FALSE STATEMENTS IN RELATION TO APPLICATION FOR GRANT OR VARIATION OF LICENCE.

A person who, in connection with an application for the grant, or variation of a licence, makes a statement which is false or misleading in a material particular knowing it to be false or misleading or wilfully omits to state any matter or thing without which the application is misleading in a material respect, commits an offence and is liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

48. REVOCATION AND SUSPENSION OF LICENCE.

- (1) A licence shall be deemed to be revoked -
 - (a) in the case of a holder of a capital market licence, if the holder is wound up or otherwise dissolved, whether within or outside Papua New Guinea; and
 - (b) in the case of a holder of a capital market representative's licence, if the representative dies.
- (2) The Commission may revoke a licence -
 - (a) in the case of a holder of a capital market licence, if -
 - (i) there exists a ground on which the Commission may refuse an application under Section 40(1); or
 - (ii) the holder fails or ceases to carry on the business in all or any of the regulated activities for which it was licensed for a consecutive period of three months; or
 - (iii) the holder contravenes any condition or restriction in respect of its licence or any direction issued to it by the Commission under this Act; or
 - (iv) the holder contravenes any of the rules of the stock exchange, the clearing house or central depository which is binding upon it; and
 - (v) the holder fails to pay any fee as provided for under Section 39; or
 - (b) in the case of a holder of a capital market representative's licence, if -
 - (i) there exists a ground on which the Commission may refuse an application under Section 40(1); or
 - (ii) he fails or ceases to act as a representative in respect of all or any of the regulated activities for which he was licensed; or
 - (iii) the holder contravenes any condition or restriction in respect of his licence or any direction issued to him by the Commission under this Act; or
 - (iv) the holder fails to pay any fee as provided for under Section 39.
 - (3) Where Subsection (2) applies, the Commission may, if it considers it necessary to do so -
 - (a) suspend a licence for a specific period instead of revoking it under Subsection (2); and
 - (b) at any time, extend or revoke the suspension.
 - (4) Subject to Subsection (5), the Commission shall not revoke or suspend a licence under Subsection (2) or (3), without giving the licensed person an opportunity to be heard.
 - (5) The Commission may revoke or suspend a licence without giving the licensed person an opportunity to be heard -

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- (a) in the case of a holder of a capital market licence, on any of the following grounds:
 - (i) the holder is in the course of being wound up or otherwise dissolved, whether within or outside Papua New Guinea; and
 - (ii) a receiver, receiver and manager or an equivalent person has been appointed, whether within or outside Papua New Guinea in respect of any property of the holder; and
 - (iii) the holder or any of its directors, chief executive, or senior manager has been convicted of any offence described in Section 40(1)(h)(i) or (ii); and
- (b) in the case of a holder of a capital market representative's licence, on any of the following grounds:
 - (i) the holder is an undischarged bankrupt, whether within or outside Papua New Guinea; and
 - (ii) the holder has been convicted of any offence described in Section 41(1)(g)(i) or (ii).

(6) Without prejudice to Subsections (2) and (3), the Commission may, on any ground described in Subsection (2), impose any restriction on the activities of a licensed person to which its licence relates and such restriction may be permanent or be made for such period as may be determined by the Commission.

(7) Where the Commission has revoked or suspended a capital market licence or imposed restrictions on a holder of a capital market licence, such holder shall immediately inform all its representatives by notice in writing of such revocation, suspension or imposition of a restriction.

(8) Where the Commission has revoked or suspended a capital market licence, the representative of the licence holder shall cease to be a holder of a capital market representative's licence for that capital market licence holder.

(9) A holder of a capital market representative's licence who ceases to hold a licence under Subsection (8), may make an application under Section 45(1)(b) to vary his licence.

(10) A person whose licence is revoked or suspended under this section shall, for the purposes of this division, be deemed not to be licensed from the date that the revocation or suspension takes effect, as the case may be.

(11) Any person who -

- (a) carries on a regulated activity after its licence has been revoked or has ceased; or
- (b) carries on a regulated activity while its licence has been suspended or is in breach of a restriction imposed under Subsection (6); or
- (c) contravenes Subsection (7),

commits an offence and is liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

49. EFFECT OF REVOCATION, SUSPENSION OR CESSATION OF LICENCE.

(1) A revocation, suspension or cessation of a licence or the imposition of a restriction on a licence under Section 48, shall not operate so as to -

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- (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, before the revocation, suspension or cessation of the licence or the imposition of restrictions on the licence, as the case may be; or
 - (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.
- (2) Where any licence is revoked or suspended under this division, the Commission may, by notice in writing, permit the holder of a capital market licence to -
- (a) in the case of a revocation, carry on business operations for the purpose of closing down the business connected with the revocation; or
 - (b) in the case of a suspension, carry on only essential business operations for the protection of interests of clients of the licensed person during the period of suspension,
- subject to such conditions as the Commission may specify in the notice.

50. NOTIFICATION OF DISQUALIFYING EVENT.

(1) A licensed person shall, immediately after the happening of an event that is a ground on which the Commission may revoke a licence under Section 40(1) or 41(1) or Section 48(2), provide to the Commission written notice setting out the particulars of the event.

(2) Subject to Subsection (1), it is a defence for a licensed person who is required to give notice under Subsection (1), if it is proved that when the requirement occurred, the licensed person was unaware of the event that gave rise to the requirement.

(3) A person who contravenes Subsection (1) commits an offence.

51. APPOINTMENT, ELECTION AND NOMINATION OF DIRECTORS AND CHIEF EXECUTIVE OF LICENSED PERSON.

(1) A person may be appointed, elected or nominated as a director of a holder of a capital market licence only if the person is a fit and proper person where none of the grounds set out in Section 41(1)(d), (e), (f), (g), (i), (j), (k) or (l) would prevent him from holding such office.

(2) A person shall not be appointed as a chief executive of a holder of a capital market licence without the approval of the Commission.

(3) For the purposes of Subsection (2), in approving the appointment of a chief executive, the Commission may take into consideration whether -

- (a) any of the grounds set out in Section 41(1)(d), (e), (f), (g), (i), (j), (k) or (l) would prevent him from holding such office; or
- (b) it would be contrary to the interest of the public to approve such appointment.

(4) A holder of a capital market licence shall give the Commission written notice in such form and manner as may be specified by the Commission of the appointment, election or nomination to the office of the director.

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(5) A director whose name has been notified to the Commission under Subsection (4), or a chief executive appointed under Subsection (2), who subsequently becomes aware that he does not meet the fit and proper persons' criteria referred to under Subsection (1) or (3), shall immediately inform the Commission.

(6) Where a holder of a capital market licence becomes aware that any of its directors or chief executive does not meet the fit and proper criteria referred to under Subsection (1) or (3), such holder shall immediately, upon becoming aware of such disqualification, inform the Commission.

(7) A person is disqualified from holding the office of a director or chief executive of a holder of a capital market licence, if -

- (a) any of the grounds set out in Section 41(1)(d), (e), (f), (g), (i), (j), (k) or (l) is applicable; or
- (b) it would be contrary to the interest of the public for the person to continue to hold the office of a director or chief executive of a holder of a capital market licence.

(8) A holder of a capital market licence shall ensure that no person holds office as a director or chief executive, as the case may be, if Subsection (7) applies.

(9) Notwithstanding anything in this section, the Commission may direct a capital market licence holder to remove the director or chief executive within such period as may be specified in such direction, if -

- (a) any of the grounds set out in Section 41(1)(d), (e), (f), (g), (i), (j), (k) or (l) is applicable; or
- (b) it would be contrary to the interest of the public for the person to continue to hold the office of a director or chief executive of a holder of a capital market licence.

(10) Notwithstanding the provision of any other written law, the holder of a capital market licence shall, within the period specified in the direction given under Subsection (9), remove such director or chief executive, as the case may be, and shall take such steps as may be necessary to inform the shareholders of such holder and the Registrar of Companies, where applicable, of such removal.

(11) The removal of a director or chief executive, as the case may be, in accordance with the direction given under Subsection (8), shall take effect from the date of the receipt by the director or chief executive, as the case may be, of the notification of removal given by the holder of a capital market licence, notwithstanding the provisions of any other written law or the constitution of such holder or any agreement between the holder and such director or chief executive.

(12) A person who contravenes this section or fails to comply with a direction issued under Subsection (9) commits an offence.

52. REGISTERED PERSONS.

(1) A person is a registered person for the purposes of Section 34(1), where such person is -

- (a) specified to be a registered person under Schedule 4; and
- (b) registered under Subsection (2); and
- (c) registered with a body that is approved by the Commission.

(2) The Commission may on the application made by any person referred to in Subsection (1)(b) register such person for one or more regulated activities.

(3) Any registration under Part II of Schedule 4, Subsection (1)(b) and (c) shall be subject to such terms and conditions as the Commission may impose and the Commission may at any time, by notice in writing served on the registered person concerned, amend or revoke any such condition or impose new conditions.

(4) Where the Commission by notice in writing amends or revokes any term or condition or imposes any new condition under Subsection (3), the amendment, revocation or imposition shall take effect at the time of the service of the notice or at such time specified in the notice, whichever is the later.

(5) In respect of registered persons referred to in Subsection (1)(a), as specified in the third column of Part I of Schedule 4, the registered person shall comply with any guideline issued by the Commission under Section 465, in respect of the carrying on of the particular regulated activity by the registered person.

(6) In respect of persons referred to in Subsection (1)(a), the following shall apply:

- (a) registered persons specified in Column 3 of Part I of Schedule 4 may only carry on the regulated activities specified in Column 2 of Part I of Schedule 4; and
- (b) registered persons specified in Column 3 of Part II of Schedule 4 may only carry on the regulated activities specified in Column 2 of Part II of Schedule 4; and
- (c) to the extent that such registered persons carry on the regulated activities specified in Column 2 of Part II of Schedule 4 -
 - (i) the provisions under Section 67, 68, 70 or 74 or any regulation or guideline made pursuant to these sections shall apply to such registered persons with the necessary modifications as may be applicable; and
 - (ii) the individuals employed by such registered persons to carry on the regulated activities shall be fit and proper persons as may be determined by the relevant authority; and
 - (iii) the registered persons shall maintain a register containing the names of the individuals referred to in Subparagraph (ii) in such form and manner as may be specified by the relevant authority; and
 - (iv) subject to Subsection (5), the relevant authority may authorise in writing any person as an authorised person for the purposes of ensuring compliance by a registered person who is specified in Part I of Schedule 4 with the provisions of Section 67, 68, 70 or 74 or any regulation or guideline made pursuant to Section 67, 68, 70 or 74.

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- (7) For the purposes of Subsection (6), an authorised person may -
- (a) require a registered person to furnish him with any information that the authorised person may require to determine whether the registered person has complied with the provisions referred to in Subsection (6)(c)(i); or
 - (b) require the registered person to take such steps as are necessary to ensure compliance with the provisions referred to in Subsection (6)(c)(i).

(8) A registered person referred to in Subsection (6)(a), shall comply with any requirement made under Subsection (7).

(9) The Commission may withdraw the registration accorded to a person registered under Subsection (2), or a registered person referred to in Part II of Schedule 4, if it is necessary for the protection of investors or public interest or for the maintenance of an orderly market or if any term and condition imposed under Subsection (3), has not been complied with.

(10) The Commission shall not withdraw the registration under Subsection (9) without giving the registered person an opportunity to be heard.

(11) For the purposes of this section, the term "relevant authority" refers to the Bank of Papua New Guinea.

53. REGISTER OF LICENCE HOLDERS.

(1) The Commission shall keep in such form as it thinks fit a register of the holders of current licences, specifying -

- (a) in relation to each holder of a capital market licence -
 - (i) its name; and
 - (ii) where the holder is a corporation, the names of the directors and the secretary of the corporation; and
 - (iii) the address of the principal place of business and any branch at which it carries on the business; and
 - (iv) 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 a holder of a capital market representative's licence -
 - (i) his name; and
 - (ii) the name of the holder of the capital market licence in relation to whom the capital market representative's licence was issued; and
 - (iii) where the business of that holder of the capital market licence is carried on under a name or style other than the name of the holder of the capital market licence, the name or style under which that business is carried on; and
- (c) such other information as the Commission thinks relevant.

(2) The Commission shall remove from the register every entry relating to any person who ceases to be licensed under this division.

(3) A person may, upon payment of the prescribed fee, inspect and take extracts from the register kept under Subsection (1).

54. NOTIFICATION OF CHANGE OF PARTICULARS.

(1) Where -

- (a) the holder of a capital market licence ceases to carry on all or any of the regulated activities to which the licence relates; and
- (b) the holder of a capital market representative's licence ceases to be a representative of the capital market licence holder in relation to whom the capital market representative's licence was issued, and the licence has not been varied under Section 45; and
- (c) a change occurs in any information required to be entered in the register of licence holders under Section 53; and
- (d) a change occurs in the information submitted to the Commission in accordance with Section 36(1) or 36(3),

the holder of the licence shall, not later than 14 days after the occurrence of the event concerned, provide to the Commission, in the specified form, particulars in writing of the event concerned.

(2) Where a licensed person ceases to carry on the business in all or any of the regulated activities to which the licence relates, it shall return the licence to the Commission within 14 days of the date of the cessation.

55. PUBLICATION OF NAMES AND ADDRESSES.

(1) The Commission shall cause to be published in such form and manner as the Commission deems necessary, a list of the names and addresses of all holders of a capital market licence.

(2) The information required to be published under Subsection (1), shall be published at least once in each year.

56. APPEALS.

(1) A person who is aggrieved by the decision of the Commission under this division shall appeal to the National Court within 14 days after the person has been notified of the decision.

(2) The National Court shall determine the appeal and -

- (a) confirm the decision of the Commission; or
- (b) set aside the decision of the Commission; or
- (c) refer the matter to the Commission to deal with the matter through its administrative process.

(3) The appeal under Subsection (1), shall not affect the decision of the Commission which shall take effect immediately upon issue, unless the appellant sought an order against the Commission restraining the Commission from effecting its decision until the National Court deals with the appeal.

(4) The Court shall take into account the interest of investors or public interest when determining the appeal under Subsection (1).

57. SURRENDER OF LICENCE.

(1) Subject to Subsection (2), a licensed person may surrender the licence by sending it to the Commission together with a written notice of its surrender.

(2) The surrender of a licence shall not take effect until the Commission is satisfied that adequate arrangements have been made to meet all the liabilities and obligations of the licensed person which are outstanding at the time when the notice of surrender was given by the licensed person.

(3) A surrender of a licence made under Subsection (1), shall not operate so as to -

- (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the surrender of the licence; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(4) The Commission shall cause to be published, as soon as may be practicable, a notice of every surrender of a licence under Subsection (1), however, any delay in publishing such notice or failure to publish such shall not affect the validity of the surrender.

Division 2. - Records.

58. APPLICATION OF THIS DIVISION.

(1) This division applies to a person who is -

- (a) a licensed person who carries on the business of dealing in securities; and
- (b) a licensed person who carries on the business of fund management; and
- (c) a licensed person who carries on the business of advising on corporate finance; and
- (d) a licensed person who carries on the business of investment advice; and
- (e) a licensed person who carries on the business of financial planning; and
- (f) a financial journalist; and
- (g) an authorised depository agent appointed under Section 14 of the *Central Depositories Act 2015*.

(2) In this division, "financial journalist" means a person who is not a licensed person and, in the course of the person's business or employment contributes advice, or prepares analyses or reports, about securities for publication -

- (a) in a newspaper or periodical; and
- (b) in the course of, or by means of, transmissions made by means of an information service; and
- (c) in sound recordings, video recordings or data recordings.

(3) In this division, a reference to securities is a reference to the securities of a corporation or to the securities which are quoted on a stock exchange in Papua New Guinea, as the case may require.

59. REGISTER OF SECURITIES.

(1) A person referred to in Section 58(1), shall maintain a register in the specified form of the securities in which he has an interest.

(2) The register required to be kept under this division shall be kept at such place within Papua New Guinea as may be nominated by the person referred to in Subsection (1), for the purposes of this division, provided that such person shall notify the Commission in writing after beginning to keep the register.

(3) A person referred to in Section 58(1), shall enter in the register, particulars of the securities in which he has interest and particulars of his interest in those securities within seven days after the date of the acquisition.

(4) Where there is a change, not being a prescribed change, in the interest in securities of a person referred to in Section 58(1), he shall -

- (a) enter in the register full particulars of the change including the date of the change and the circumstances by reason of which that change has occurred; and
- (b) the entry shall be made within seven days after the date of the change.

(5) For the purposes of Subsection (4), where a person acquires or disposes of securities, there shall be deemed to be a change in the interest of that person.

60. NOTICE OF PARTICULARS TO COMMISSION.

(1) A person referred to in Section 58(1) shall give notice to the Commission in such form as may be specified containing such information as may be specified including the place at which he will keep the register of his interest 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 referred to in Section 58(1), within 14 days from the date of his becoming such a person.

(3) The notice shall be given notwithstanding that the person has ceased to be a person referred to in Section 58(1), before the expiration of the period referred to in Subsection (2).

(4) A person who ceases to be a person referred to in Section 58(1), shall give notice to the Commission of his ceasing in the specified form within 14 days of his ceasing.

(5) Any person who fails to give notice as required by this section commits an offence.

61. DEFENCE TO A PROSECUTION.

(1) It is a defence to a prosecution for contravening or failing to comply with Section 59 or 60, where the defendant proves that his failure was due to him not being aware of a fact or event, the existence of which was necessary to constitute the offence and which -

- (a) he was not aware on the date of the summons; or
- (b) he became aware less than 14 days before the date of the summons; or

(c) he became aware not less than 14 days before the date of the summons and complied with the relevant section within such time as may be prescribed after becoming aware of the fact or event as the case may be.

(2) For the purposes of Section (1), a person shall conclusively be presumed to have been aware of a fact or event at a particular time of which an employee or agent of the person being an employee or agent having duties or acting in relation to his employer's or principal's interest in the securities concerned, was aware at that time.

62. PRODUCTION OF REGISTER.

(1) The Commission may require a person referred to in Section 58(1), to produce for inspection the register required to be kept pursuant to Section 59 and the Commission may make a copy of or make extracts from the register.

(2) A person who fails to produce a register for inspection or fails to allow the Commission to make a copy of or make extracts from the register commits an offence.

63. PARTICULARS OF FINANCIAL JOURNALISTS.

(1) The Commission may, by notice in writing, require the proprietor, publisher or producer of a newspaper, periodical, information service or sound, video or data recording to supply the Commission with the name and address of the financial journalist who has contributed any advice or prepared any analysis or report that has been published or broadcasted in a newspaper, periodical, information service or sound, video or data recording owned, published or broadcasted by that proprietor, publisher or producer or with the names and addresses of all the financial journalists who have contributed any such advice or prepared any such analysis or report within a period as may be specified in the notice.

(2) A proprietor, publisher or producer of a newspaper, periodical, information service or sound, video or data recording who contravenes a notice under Subsection (1) commits an offence.

64. COMMISSION MAY SUPPLY COPY OF THE EXTRACT OF A REGISTER.

The Commission may, upon receipt of the prescribed fee, supply to any person a copy of the extract of a register obtained pursuant to Section 62.

Division 3. - Conduct of business.

Subdivision 1. - General.

65. CERTAIN REPRESENTATION PROHIBITED.

(1) A licensed person shall not represent or imply, or knowingly permit to be represented or implied in any manner to another person that the abilities or qualifications of such licensed person have in any respect been approved by the Commission.

(2) A mere representation that a person is the holder of a capital market licence is not a contravention of this section.

66. ISSUE OF CONTRACT NOTES.

(1) The Head of State may make regulations under Section 467 with respect to the issuance of contract notes to clients of a holder of a capital market licence.

(2) A holder of a capital market licence referred to in Subsection (1) shall comply with the requirements of the regulations made by the Head of State in relation to contract notes.

(3) A holder of a capital market licence who contravenes any requirement of the regulations in relation to contract notes commits an offence and shall be liable to a fine not exceeding K5,000,000.00 or imprisonment for a term not exceeding five years, or both.

67. DISCLOSURE OF CERTAIN INTERESTS IN SECURITIES.

(1) Where a licensed person sends circulars or other similar written communications in which he made a recommendation, whether expressly or by implication, with respect to any securities, or class of securities, the licensed person shall cause to be included in each circular or other communication, in type not less legible than that used in the remainder of the circular or other communication, a concise statement of the nature of any relevant interest in, or any interest in the acquisition or disposal of those securities or securities included in that class that the licensed person or a person associated with him has at the date on which the licensed person last sends the circular or other communication.

(2) It is a defence to a prosecution for an offence against Subsection (1), in relation to a failure to include in a circular or other communication a statement of the nature of a relevant interest in, or an interest in the acquisition or disposal of, securities or securities included in a class of securities, being a relevant interest or an interest of the defendant or of a person associated with the defendant, if the defendant establishes 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 that -

- (a) he had a relevant interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class; or
 - (b) the person associated with him had a relevant interest in, or an interest in the acquisition or disposal of, those securities, or securities included in that class, as the case may be.
- (3) For the purposes of Subsections (1) and (2) -
- (a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will, or is likely to, accrue directly or indirectly to the person upon or arising out of the disposal of the securities; and
 - (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 the provisions of Section 3, a person is not associated with another person in relation to the sending of a circular or other communication or the making of a recommendation by reason only that 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 otherwise acting together or under or in accordance with an arrangement made between them, in relation to the sending of the circular or communication or the making of the recommendation.

(4) Where -

- (a) a person has subscribed for or purchased securities for the purpose of offering all or any of them for purchase; and
- (b) the person offers any of those securities for purchase, the person shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the securities offered for purchase unless he has informed each person to whom the recommendation is made that he acquired the securities for that purpose.

(5) Where -

- (a) securities have been offered for subscription or purchase; and
- (b) a person has subscribed for or purchased or is or will or may be required to subscribe for or purchase, any of those securities under an underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased;

the person shall not, during the period of 90 days after the close of the offer, make an offer to sell those securities, otherwise than in the ordinary course of trading on a stock market, 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 is or will or may be required to acquire, under an underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.

(6) For the purposes of Subsection (5), "underwriting" includes sub-underwriting.

(7) A licensed person shall not send to a person a circular or other communication or written offer or recommendation to which Subsection (1), (4) or (5) applies, unless the circular or other communication or the offer or recommendation -

- (a) where the licensed person is a natural person, is signed by the licensed person; and
- (b) where the licensed person is a natural person who carries on business in partnership, is signed by a partner in the partnership in his own name or in the name of the partnership; and
- (c) where the licensed person is a natural person who carries on business in a corporation, is signed by a director, an executive officer or the secretary of the corporation; and
- (d) where the licensed person is a corporation, is signed by a director, an executive officer or the secretary of the corporation.

(8) Where a licensed person sends to a person a circular or other communication or a written offer or recommendation to which Subsection (1), (4) or (5) applies, the licensed person shall preserve a copy of the circular or other communication, or of a written offer or recommendation, duly signed by the person concerned, for a period of seven years.

(9) A reference in this section to an offer of securities shall be construed as including a reference to a statement, however expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire securities.

(10) For the purposes of this section, a circular or other communication or a written offer or recommendation sent to a person shall -

- (a) where it is signed by a person in partnership, be deemed to have been sent by each of the partners in the partnership; or
- (b) where it is signed by a director, or an executive officer or the secretary of a corporation;

be deemed to have been sent by the corporation.

(11) The Commission may, if it is not detrimental to the interest of investors, exempt in writing, any securities or persons or class of securities or persons from this section.

(12) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

68. RECOMMENDATIONS BY A LICENSED PERSON.

(1) A licensed person shall not make a recommendation with respect to any securities to a person who may reasonably be expected to rely on the recommendation without having a reasonable basis for making the recommendation to the person.

(2) For the purposes of Subsection (1), a licensed person does not have a reasonable basis for making a recommendation to a person unless -

- (a) the licensed person has, for the purposes of ascertaining that the recommendation is appropriate, taken all practicable measures to ascertain that the information possessed and relied upon by the licensed person concerning the investment objectives, financial situation and particular needs of the person is accurate and complete; and
- (b) the licensed person has given such consideration to, and conducted such investigation of, the subject matter of the recommendation as may be reasonable in all the circumstances; and
- (c) the recommendation is based on such consideration and investigation.

(3) A licensed person who contravenes Subsection (1), commits an offence.

(4) Where the licensed person contravenes Subsection (1) or Section 67, by making a recommendation to a person and -

- (a) the person, in reliance on the recommendation, does a particular act or refrains from doing a particular act; and
- (b) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act or to refrain from doing that act, as the case may be, in reliance on the recommendation; and
- (c) the person suffers loss or damage as a result of doing that act or refraining from doing that act,

the licensed person shall be liable to pay damages to the person in respect of that loss or damage.

(5) A licensed person shall not be liable under Subsection (4), if it is proved that a reasonable person in the circumstances would have done or omitted to do, that act in reliance on the recommendation even if a licensed person had complied with that subsection in relation to the recommendation.

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(6) In the case of a contravention of Subsection (1), a licensed person shall not be liable if it is proved that the recommendation was, in all circumstances appropriate, having regard to the information that the licensed person had about the client's investment objectives, financial situation and particular needs when the licensed person makes the recommendation.

(7) In this section, a reference to the making of a recommendation is a reference to the making of a recommendation whether expressly or by implication.

69. INFORMATION TO PERSONS INVESTING IN CAPITAL MARKET PRODUCT.

(1) The Commission may specify the nature and extent of information to be provided to a person who invests in any capital market product and such specification may include -

- (a) information that explains the key characteristics of the capital market product; and
 - (b) information that explains the nature of the obligations assumed by the parties dealing in the capital market product; and
 - (c) information that sets out the risks associated with the capital market product; and
 - (d) details of the essential terms of the capital market product.
- (2) Any person who -
- (a) issues or provides false or misleading information; or
 - (b) makes any false or misleading statement; or
 - (c) wilfully omits to state any matter or information without which the statement or information is misleading in a material aspect, to a person who invests in a capital market product,

commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(3) Nothing in this section shall affect any right of action under any other law that is conferred on the person who invests in a capital market product.

70. PRIORITY GIVEN TO CLIENT'S ORDER.

(1) Except as permitted by Subsection (2) -

- (a) the holder of a capital market licence who carries on the business of dealing in securities or fund management when acting as principal or on behalf of a person associated with or connected to the holder; or
- (b) a representative of a holder of a capital market licence when acting for his own account or on behalf of a person associated with or connected to the representative,

shall not enter into 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 that holder or representative who is not associated with or connected to the holder or representative, has instructed the holder or representative to purchase or sell, respectively, securities of the same class and the holder or representative has not complied with the instruction.

(2) Subsection (1), shall not apply in relation to the entering into of a transaction by the holder of a capital market licence who carries on the business of dealing in securities or fund management as principal or on behalf of a person associated with or connected to the holder, or by a representative of such a holder for his own account or on behalf of a person associated with or connected to the representative, if -

- (a) the instructions from the client of such holder required the purchase or sale of securities on behalf of the client to be effected only on specified conditions relating to the price at which the securities were to be purchased or sold and the holder or a representative of the holder has been unable to purchase or sell the securities by reason of those conditions; or
- (b) the transaction is entered into in prescribed circumstances.

(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or an imprisonment term not exceeding ten years, or both.

71. DEALINGS BY EMPLOYEES OF HOLDERS OF LICENCES OR PARTICIPATING ORGANISATIONS.

(1) A holder of a capital market licence and an employee of such holder shall not, as principal, jointly purchase or subscribe for, or agree to purchase or subscribe for, any securities.

(2) A holder of a capital market licence shall not give credit to its employee or to a person who, to the knowledge of such holder, is associated with such an employee if -

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

(3) A person who is an employee of a participating organisation shall not, as principal, purchase or agree to purchase any securities or rights or interests in securities unless the participating organisation acts as the agent of the person in respect of the transaction.

(4) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

72. DUTY TO FURNISH RETURNS AND INFORMATION AS COMMISSION REQUIRES.

(1) A holder of a capital market licence shall furnish such returns and provide such information relating to its business as the Commission may require.

(2) The Commission may specify that any information required under Subsection (1), shall be submitted within such period, at such intervals, in such manner or in such form as the Commission may specify.

73. ADDITIONAL OBLIGATIONS ON LICENSED PERSONS.

(1) In addition to the requirements imposed on licensed persons under this Act, the Commission may impose -

- (a) in the case of licensed persons generally, or any class of licensed persons; or

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- (b) in the case of any particular licensed person, by written direction given to the person;

any further requirements that the Commission considers appropriate with respect to the conduct or the financial affairs of such licensed persons.

(2) A licensed person shall comply with any requirement imposed under Subsection (1).

(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or an imprisonment term not exceeding ten years, or both.

Subdivision 2. - Securities.

74. DEALINGS AS PRINCIPAL.

(1) Subject to Subsection (4), a holder of a capital market licence who carries on the business of dealing in securities shall not, as principal, deal in any securities with a person who is not such a holder unless the holder first informs such person that the holder is acting in the transaction as principal and not as agent.

(2) A reference in this section to a holder of a capital market licence who carries on the business of dealing in securities as principal includes a reference to a person -

- (a) dealing or entering into a transaction on behalf of a person associated with such holder; and
- (b) dealing in securities on behalf of a corporation in which it has a controlling interest; and
- (c) where it carries on a business of dealing in securities on behalf of a corporation in which its interest and the interests of its directors together constitute a controlling interest.

(3) A holder of a capital market licence who carries on the business of dealing in securities, who as principal, deals in securities with a person who is not such a holder shall state in the contract note that the holder is acting in the transaction as principal and not as agent.

(4) Subsection (1), shall not apply to a transaction of sale or purchase of an odd lot of securities entered into by a holder of a capital market licence who is a participating organisation and specialises in transactions relating to odd lots of securities.

(5) Where a holder of a capital market licence who carries on the business of dealing in securities contravenes Subsection (1) or (3), in respect of a contract -

- (a) for the sale of securities by the holder, 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 holder not later than 14 days after the receipt of the contract note or on becoming aware of the contravention of Subsection (1) or (3), whichever is the latter; or
- (b) for a purchase of securities by the holder, the vendor of the securities may rescind the contract by a notice of rescission in writing given to the holder not later than 14 days after the receipt of the contract note or on becoming aware of the contravention of Subsection (1) or (3), whichever is the latter.

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(6) Any right of action that is conferred on a purchaser or vendor under Subsection (5) is in addition to any right that such purchaser or vendor has under any other law.

(7) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

75. SHORT SELLING.

(1) Short selling shall not be allowed to be practiced in the capital markets in Papua New Guinea.

(2) A person who contravenes Subsection (1), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

Subdivision 3. - Over-the-counter derivatives.

76. INTERPRETATION.

For the purposes of this Subdivision, "derivatives" means over-the-counter derivatives.

77. APPROVAL OF TRADE REPOSITORY.

(1) The Commission may in writing, approve a body corporate to be a trade repository.

(2) The Commission shall not grant the approval under Subsection (1), unless the Commission is satisfied that -

- (a) the body corporate will be able to carry out the functions as may be specified; and
- (b) the body corporate has sufficient financial, human or other resources to carry out the functions as may be specified; and
- (c) the body corporate has in place, rules and procedures to enable it to perform its functions.

78. APPLICATION FOR GRANTING APPROVAL.

(1) An application for the grant of approval as a trade repository shall be made to the Commission in such form and manner as may be specified by the Commission.

(2) The Commission may require a body corporate to furnish the Commission with such information or document as the Commission considers necessary for the purpose of the application.

(3) The Commission may in approving the body corporate, impose such condition or restriction as the Commission deems appropriate.

79. WITHDRAWAL OF APPROVAL.

(1) The Commission may withdraw an approval granted to a trade repository where the Commission is satisfied that -

- (a) the trade repository is not able to perform any of its functions and responsibilities as may be specified by the Commission; or
- (b) the trade repository has breached any term and condition imposed under Section 78(3); or

- (c) the trade repository has breached any provision of the securities laws or any other laws involving fraud or dishonesty; or
- (d) the trade repository has failed to comply with any direction issued by the Commission under this subdivision; or
- (e) the trade repository is being wound up or otherwise dissolved; or
- (f) the trade repository has not satisfied in whole or in part a judgment debt against it; or
- (g) a receiver, a receiver and manager or equivalent person has been appointed in relation to any property of the trade repository; or
- (h) the trade repository has, whether within or outside Papua New Guinea, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (i) any information or document that is furnished by the trade repository for the purposes of this subdivision was false or misleading or from which there was a material omission.

(2) Subject to Subsection (3), the Commission may withdraw an approval granted to a trade repository upon a request in writing by the trade repository to cease its operation as a trade repository.

(3) Where a trade repository has on its own accord made a request for cessation under Subsection (2), the Commission may refuse to withdraw the approval if the Commission considers that -

- (a) it is in the interest of the public or the persons referred to under Section 84(1) that any matter concerning the trade repository should be investigated before the approval is withdrawn under Subsection (2); and
- (b) the withdrawal of approval would not be in the interest of the public or the persons referred to under Section 84(1).

(4) The Commission shall not take any action under Subsection (1) without giving the trade repository an opportunity to be heard.

80. APPOINTMENT OF DIRECTORS OR CHIEF EXECUTIVE OF AN APPROVED TRADE REPOSITORY.

A trade repository shall obtain the prior approval of the Commission before appointing any director or chief executive.

81. DUTY TO MAINTAIN SECRECY.

(1) A director, officer, servant or agent of a trade repository shall not disclose any information or document which has been obtained by him in the course of his duties except -

- (a) in the circumstances set out under Section 82; or
- (b) to the Commission if the Commission is of the view that such disclosure is necessary in the interest of the public or for the protection of investors.

(2) A person who has any information or document which to his knowledge has been disclosed in contravention of Subsection (1), shall not in any manner disclose such information or document to any other person.

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(3) A person who contravenes this section commits an offence and shall on conviction, be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

82. PERMITTED DISCLOSURE.

A person referred to in Section 81(1), shall not refuse to disclose any information or document -

- (a) which any person referred to in Section 84(1), has given permission in writing to disclose; and
- (b) in the case where any person referred to in Section 84(1), is declared a bankrupt within or outside Papua New Guinea; and
- (c) for the purpose of instituting, or in the course of, any civil proceedings between a trade repository and any person referred to in Section 84(1); and
- (d) to any person duly authorised to investigate into any offence under any law and such disclosure being, in any case, limited to the affairs of any person referred to in Section 84(1); and
- (e) for the purpose of enabling or assisting the Commission in the discharge of its function under the securities laws or any other written law; and
- (f) for the purpose of enabling or assisting the Bank of Papua New Guinea in giving effect to its objects or carrying out its functions under the *Central Banking Act 2000* and any other laws enforced by the Bank of Papua New Guinea; and
- (g) for the purpose of enabling or assisting auditors of a trade repository to discharge their function.

83. POWERS OF COMMISSION TO ISSUE DIRECTIONS.

(1) The Commission may give a trade repository such directions whether of a general or specific nature if it thinks it necessary or expedient -

- (a) for the effective administration of the trade repository; and
- (b) for ensuring compliance with any conditions or restrictions imposed on the trade repository; and
- (c) in the interest of the public or for the protection of investors.

(2) A trade repository who fails to comply with any directions given under this section commits an offence.

84. REPORTING OBLIGATIONS.

(1) A holder of a capital market licence, registered person or any other person dealing in derivatives shall report information as may be specified by the Commission, including any amendment, modification, variation or changes to the information, to a trade repository.

(2) For the purposes of Subsection (1), the Commission may specify the form and manner in which the information is to be reported to the trade repository.

(3) A trade repository shall, upon a request by the Commission, provide to the Commission the information obtained by it under Subsection (1).

(4) For the purposes of this section, "derivatives" shall include derivatives whose market price, value, delivery or payment obligations are derived from, referenced to or based on exchange rates.

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- (5) Any person who -
(a) fails to comply with any requirement of this section; or
(b) submits false or misleading information or from which there is a material omission to a trade repository,

commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

Division 4. - Books, client's assets protection and audit.

Subdivision 1. - Books.

85. KEEPING OF BOOKS AND FURNISHING OF RETURNS.

- (1) A holder of a capital market licence shall -
(a) maintain, or cause to be maintained, in the English language such accounting records and other books as will sufficiently explain the transactions and financial position of its business and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and
(b) maintain, or cause to be maintained, such accounting records and other books in such a manner as will enable them to be conveniently and properly audited.

(2) An entry in the accounting records and other books of a holder of a capital market licence required to be maintained in accordance with this section shall be deemed to have been made by, or with the authority of, the holder.

(3) A holder of a capital market licence shall retain such accounting records and other books as may be required to be maintained under this Act for a period of not less than seven years.

- (4) A holder of a capital market licence shall -
(a) furnish such returns and records in such form and manner as may be specified by the Commission; and
(b) provide such information relating to its business as may be specified by the Commission.

(5) Without prejudice to the generality of Subsection (1), every holder of a capital market licence shall maintain such accounting records and other books in such form and manner as may be specified by the Commission.

- (6) A person who -
(a) contravenes this section commits an offence and shall be liable to a fine not exceeding K5,000,000.00; or
(b) with intent to defraud contravenes this section, commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

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Subdivision 2. - Treatment of client's assets in respect of securities.

86. APPLICATION OF THIS SUBDIVISION.

This subdivision applies to a holder of a capital market licence who carries on the business of dealing in securities whether that business is carried on within or outside Papua New Guinea.

87. INTERPRETATION.

In this subdivision, unless the context otherwise requires -

“a holder of a capital market licence” means a holder of a capital market licence who carries on the business of dealing in securities;

“client’s assets” include monies or other property received or retained by, or deposited with, a holder of a capital market licence in the course of its business for which the holder is liable to account to its client and any monies or other property accruing therefrom.

88. CERTAIN MONIES TO BE PAID INTO A TRUST ACCOUNT.

(1) A holder of a capital market licence shall establish and keep in an institution licensed under the ***Banks and Financial Institutions Act 2000***, one or more trust accounts designated or evidenced as such into which he shall pay -

- (a) all amounts, less any brokerage and other proper charges, that are received from or on account of any person, other than a holder of a capital market licence, for the purchase of securities and that are not attributable to securities delivered to a holder of a capital market licence not later than the next bank business day or such other day as may be specified by the Commission on which they were received by such holder; and
- (b) all amounts, less any brokerage and other proper charges, that are received for or on account of any person, other than a holder of a capital market licence, from the sale of securities and that are not paid to that person or as that person directs not later than the next bank business day or such other day as may be specified by the Commission on which they were received by such holder.

(2) Notwithstanding Subsection (1), where a holder of a capital market licence receives payment in a place outside Papua New Guinea, the holder may keep such payment in one or more trust accounts in an institution licensed outside Papua New Guinea to provide banking or financial services.

(3) A holder of a capital market licence who -

- (a) contravenes this section commits an offence and is liable to a fine not exceeding K5,000,000.00; or
- (b) with intent to defraud contravenes this section, commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

89. CLIENT’S ASSETS OTHER THAN MONIES RECEIVED BY A HOLDER OF A CAPITAL MARKET LICENCE.

(1) A holder of a capital market licence shall deal with a client’s assets other than monies received, held or deposited with it in the course of its business and for which it is liable to account to its client, in such manner as may be prescribed in regulations made under this Act.

(2) A holder of a capital market licence who contravenes this section commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

90. WITHDRAWAL OF MONIES FROM TRUST ACCOUNT.

(1) A holder of a capital market licence shall not withdraw any monies from a trust account except for the purpose of making a payment -

- (a) to or in accordance with the written instructions of, a person entitled to the monies; or
- (b) defraying brokerage and any other proper charges; or
- (c) that is otherwise authorised by law.

(2) Except as provided in Subsection (1), monies held in a trust account shall not be available for payment of the debts of a holder of a capital market licence or be liable to be paid or taken in execution under an order or process of any Court.

(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment term not exceeding ten years, or both.

91. HOLDER OF A CAPITAL MARKET LICENCE TO SUPPLY COPIES OF ENTRIES IN BOOKS.

(1) A holder of a capital market licence shall supply, on demand, to its clients or any person authorised by the client, copies of all entries in its books relating to any transaction carried out on behalf of that client and the holder shall be entitled to levy a reasonable charge therefor.

(2) A client or any person authorised by the client shall be entitled at any time to inspect any contract notes or documents relating to the transaction referred to in Subsection (1), free of charge.

92. CLAIMS AND LIENS NOT AFFECTED.

Nothing in this subdivision shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any monies -

- (a) held in a trust account; or
- (b) received for the purchase of securities or from the sale of securities before such monies are paid into a trust account.

Subdivision 3. - Treatment of client's assets in respect of derivatives.

93. APPLICATION OF THIS SUBDIVISION.

This subdivision applies to a holder of a capital market licence who carries on the business of trading in derivatives contracts whether that business is carried on within or outside Papua New Guinea.

94. INTERPRETATION.

- (1) For the purposes of this subdivision, unless the context otherwise requires -
“a holder of a capital market licence” means a holder of a capital market licence who carries on the business of trading in derivatives;

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“client”, in relation to a holder of a capital market licence, means a person on behalf of whom the holder trades or from whom the holder accepts instructions to trade in derivatives;

“client’s assets” include monies or other property received or retained by, or deposited with, a holder of a capital market licence in the course of its business for which the holder is liable to account to its client, and any monies or other property accruing therefrom;

“credit facility” means a document evidencing the right of a person to obtain a loan or other facility from another person and without prejudice to the generality of the foregoing, includes a letter of credit and a bank guarantee;

“property” includes credit facilities;

“relevant credit balance”, in relation to a client of a holder of a capital market licence, means the total of -

- (a) the amounts deposited in respect of the client in a client’s segregated account, of the holder, less so much of those amounts as has been withdrawn from the account; and
- (b) the value of property other than monies that -
 - (i) have, in respect of the client, been deposited by the holder in safe custody under Section 95 and have not been withdrawn from safe custody; and
 - (ii) under the terms and conditions on which they were deposited with, or received by, the holder, are available to meet, or to provide security in connection with the meeting of, relevant liabilities of the client;

“relevant liabilities”, in relation to a client of a holder of a capital market licence, means debts and liabilities of the client arising out of trading in derivatives effected by the holder on behalf of the client;

“settling”, in relation to a trading in a derivatives, includes making delivery, or taking delivery, of an instrument to which the derivatives relates.

- (2) For the purposes of the definition of “relevant credit balance” in Subsection (1), means, the value of an item of property at a particular time is -
- (a) if the item is a credit facility, the amount of monies that the person entitled to the right evidenced by the credit facility can, at that time or within a reasonable period after that time, obtain because of that right; or
 - (b) if it is otherwise than a credit facility, the market value of the property as at the end of the last business day before that time.

95. SEGREGATION OF CLIENT’S ASSETS.

- (1) If any client’s assets are deposited with, or are received by, a holder of a capital market licence for or on behalf of a client of the holder in connection with -
- (a) trading in derivatives effected or proposed to be effected, whether within or outside Papua New Guinea; or
 - (b) instructions by such client, whether within or outside Papua New Guinea, the holder shall -
 - (i) in respect of monies, deposit the monies in a client’s segregated account of the holder kept and maintained within Papua New Guinea or in the place where the monies was deposited with or received by, the holder; or

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- (ii) in respect of property, deposit the property in safe custody within Papua New Guinea or in the place where the property was deposited with or received by the holder, in such a manner that the property is segregated from property other than property deposited by the holder in safe custody under this subsection, not later than the next bank business day or such other day as may be specified by the Commission after the monies or property is deposited with or received by, the holder that is a day on which the amount or property can be deposited as first mentioned in Paragraph (i) or (ii), as the case may be.

(2) Without prejudice to the generality of Subsection (1), where trading in derivatives is effected whether within or outside Papua New Guinea, by a holder of a capital market licence, and where the holder receives from a person an amount of monies, some or all of which is attributable to trading in the derivatives, whether within or outside Papua New Guinea on behalf of the clients of the holder, the holder shall, no later than the next bank business day or such other day as may be specified by the Commission on which the amount can be so deposited, deposit the amount in a client's segregated account kept and maintained within Papua New Guinea or in the place where the holder receives the amount.

(3) A holder of a capital market licence shall not withdraw any monies in the client's segregated account except for the purpose of -

- (a) making a payment to or in accordance with the written direction of, a person entitled to the monies; and
- (b) making a payment for or in connection with, the entering into, margining, guaranteeing, securing, transferring, adjusting or settling of trading in derivatives effected by the holder on behalf of the client; and
- (c) defraying brokerage and other proper charges incurred in respect of trading in derivatives effected by the holder on behalf of the client; and
- (d) investing it -
 - (i) on deposit at interest with a licensed bank; or
 - (ii) on deposit with a clearing house for a derivatives exchange; or
 - (iii) in any other prescribed manner; or
- (e) making a payment that is otherwise authorised by law or by the rules of a derivatives exchange or a clearing house of which the holder is an affiliate, or as permitted by Subsection (7).

(4) A holder of a capital market licence shall not deal with property deposited by the holder in safe custody under Subsection (1), except in accordance with the terms and conditions on which the property was deposited with or received by, the holder.

(5) A holder of a capital market licence shall not invest an amount under Subsection (3)(d) by depositing it with a person for that person to invest unless the holder -

- (a) has told the person that the amount has been withdrawn from a client's segregated account of the holder and is monies to which the clients of the holder are entitled; and
- (b) has obtained from the person a written statement that is signed by the person, setting out the amount and acknowledging that the holder has informed the person as required under Paragraph (a).

(6) Where at any particular time, the total amount of the liabilities of a client of a holder of a capital market licence exceeds the credit balance of the client, the holder may, in respect of the client, deposit in a client's segregated account of the holder an amount of monies not greater than the amount of the excess and where the holder does so, the amount so deposited is to be taken, subject to Subsection (7), to be monies to which the client is entitled.

(7) Where -

- (a) a holder of a capital market licence has, in respect of a client of the holder, deposited an amount under Subsection (6), in a client's segregated account of the holder; and
- (b) the relevant credit balance of the client exceeds the total amount of the relevant liabilities of the client,

the holder may withdraw from the account so much of the amount referred to in Paragraph (a) as does not exceed the amount of the excess referred to in Paragraph (b).

(8) A holder of a capital market licence shall keep, in relation to any client's segregated account, accounting records that -

- (a) are separate from any other accounting records of the holder; and
- (b) record separately in respect of each client of the holder particulars of the amounts deposited in and the amounts withdrawn from the client's account; and
- (c) record separately from the particulars referred to in Paragraph (b) -
 - (i) particulars (including particulars of withdrawals) of so much of the amounts deposited in accordance with Subsection (2) in the account as was not attributable to trading in derivatives effected by the holder on behalf of its clients; and
 - (ii) particulars of all amounts deposited in the account under Subsection (6); and
 - (iii) particulars of all amounts withdrawn from the account under Subsection (7).

(9) A holder of a capital market licence shall keep records that -

- (a) relate to the deposits of property in safe custody by the holder under Subsection (1); and
- (b) record separately the particulars of the property deposited in respect of each client.

(10) Section 85 shall apply in relation to accounting records and any other records that are required by Subsections (8) and (9) to be kept by the holder and shall apply as if those accounting records and other records were accounting records required by that section to be kept by the holder.

(11) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

96. MONIES IN SEGREGATED ACCOUNT NOT AVAILABLE FOR PAYMENT OF DEBT.

(1) Notwithstanding anything contained in the *Companies Act 1997*, but subject to Subsections (2) and (3) -

- (a) monies deposited by a holder of a capital market licence under Section 95 in a client's segregated account of the holder; or
- (b) property in which monies deposited by a holder of a capital market licence as mentioned in Paragraph (a) has been invested under Section 95(3)(d); and
- (c) property deposited by a holder of a capital market licence in safe custody under Section 95(1),

shall not be available for the payment of a debt or liability of such holder or liable to be attached or taken in execution under an order or process of a Court at the instance of a person suing in respect of such a debt or liability.

(2) Nothing in Subsection (1), affects the right of a client of a holder of a capital market licence to recover monies or property to which the client is entitled.

(3) Subsection (1), does not apply in relation to monies that a holder of a capital market licence is entitled to withdraw from a client's segregated account of the holder for the purpose of making a payment to the holder or otherwise under Section 95(3).

(4) If a holder of a capital market licence invests monies under Section 95(3)(d) by depositing it with a person for the person to invest, neither that monies nor any property in which the person invests any of that monies, is available for the payment of a debt or liability of the person or is liable to be attached or taken in execution under an order or process of a Court at the instance of a person suing in respect of such a debt or liability.

(5) Without prejudice to the rights of a holder of a capital market licence under any other written law, Subsection (4), may only be invoked by the holder or any person claiming on behalf of or in the name of the holder for the purpose of settling any liabilities due to a clearing house, in respect of derivatives effected by the holder for the clients to whom any monies or property referred to in Subsection (4) relates.

(6) Nothing in Section 95 and this section shall affect a claim or lien that a holder of a capital market licence has, in relation to a business of trading in derivatives carried on by it, under an agreement, any law within or outside Papua New Guinea, against or on -

- (a) monies deposited by the holder under Section 95 in a client's segregated account of the holder; and
- (b) property in which monies so deposited has been invested under Section 95(3)(d); and
- (c) property deposited by the holder in safe custody under Section 95(1).

(7) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding K10,000,00.00 or imprisonment for a term not exceeding ten years, or both.

Subdivision 4. - Treatment of client's assets in respect of fund management.

97. APPLICATION OF THIS SUBDIVISION.

(1) This subdivision applies to a holder of a capital market licence who carries on the business of fund management.

(2) Nothing in this subdivision shall apply to a corporation which manages a portfolio of securities or derivatives solely for or on behalf of any of its related corporations, provided that the second-mentioned corporation's securities or derivatives being managed by the first-mentioned corporation are not securities or derivatives held in trust or on behalf of or beneficially belonging to any other person, or as a result of any investment contract entered into by the second-mentioned corporation.

98. INTERPRETATION.

For the purposes of this subdivision, unless the context otherwise requires -

"a holder of a capital market licence" means a holder of a capital market licence who carries on the business of fund management;

"client's assets" includes monies or other property received or retained by, or deposited with a holder of a capital market licence received in the course of his business for which the holder is liable to account to its client, and includes, monies received or property deposited with or held by a custodian or by any other person as may be permitted by the Commission under this subdivision for which it is liable to account or deliver to the client;

"custodian", in relation to a client of a holder of a capital market licence, means -

- (a) a licensed bank as defined in the *Banking and Financial Institutions Act 2000*, appointed by the fund manager with the prior written consent of the client; and
- (b) a wholly owned subsidiary of any institution specified under Paragraph (a) that provides nominee services; and
- (c) any institution licensed or authorised to provide custodian services outside Papua New Guinea; and
- (d) any other person as may be specified in writing by the Commission;

"trust account" means a current, deposit or property account which -

- (a) is kept with a custodian; and
- (b) is kept by any person as may be permitted by the Commission under Section 99(3).

99. OPERATION OF TRUST ACCOUNT.

(1) A holder of a capital market licence shall open a trust account for its client's assets and shall make arrangements for a custodian to maintain such trust account.

(2) Subsection (1), shall not apply where a client makes his own arrangement for a custodian to maintain a trust account.

(3) The Commission may, where it thinks fit to do so, exempt a holder of a capital market licence from the requirement under Subsection (1), to arrange for a custodian to maintain the trust account and permit any other person to maintain the trust account.

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(4) A holder of a capital market licence shall deposit client's assets into the trust account maintained by a custodian or any other person as may be permitted by the Commission under Subsection (2), as the case may be, not later than the next bank business day or such other day as may be specified by the Commission, following the day on which the holder receives the client's assets.

(5) Notwithstanding Subsection (1), where client's assets which are required by this section to be deposited into a trust account are received by a holder of a capital market licence in a place outside Papua New Guinea, the holder may deposit such assets into a trust account maintained by a custodian outside Papua New Guinea.

(6) A holder of a capital market licence shall not withdraw from or deal with client's assets in a trust account except for the purpose of making a payment -

- (a) to the person entitled thereto; or
- (b) that is otherwise authorised by law.

(7) Except as otherwise provided in this subdivision, client's assets held in a trust account shall not be available for the payment of the debts of a holder of a capital market licence or liable to be paid or taken in execution under an order or process of Court for the payment of the debt of a holder of a capital market licence.

(8) The holder of a capital market representative's licence which permits the holder to carry on the business of fund management shall neither accept nor hold client's assets unless he does so on behalf of a holder of a capital market licence and in the course of employment under a contract of employment with such holder.

(9) Nothing in this subdivision shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any client's assets held in a trust account or against or upon any client's assets received for the purchase or from the sale of securities before such assets are deposited into the trust account.

(10) A person who -

- (a) contravenes this section, commits an offence and shall be liable to a fine not exceeding K1,000,000.00; or
- (b) with intent to defraud, contravenes this section, commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

100. CLIENT'S ASSETS.

(1) A holder of a capital market licence shall not deal in securities for or on behalf of a client unless, to the extent that the holder receives client's assets -

- (a) the holder does so on the basis that the assets shall be applied solely for specified purposes agreed when or before the holder receives the assets; and
- (b) pending such application, the assets are deposited by the next bank business day or such other day as may be specified by the Commission to a custodian with whom a trust account is maintained in accordance with this subdivision or to any other person as may be permitted by the Commission under Section 99(2); and

(c) a separate book entry shall be recorded and maintained for each client by the holder in accordance with this Act or any guidelines issued by the Commission, in relation to client's assets.

(2) A holder of a capital market licence who contravenes Subsection (1), commits an offence.

101. RIGHT TO COPIES OF BOOK ENTRIES AND INSPECTION OF CONTRACT NOTES.

(1) A holder of a capital market licence shall supply on demand, by his client or any person authorised by the client, copies of all entries in his books relating to the client's transaction.

(2) A person referred to in Subsection (1), shall be entitled to inspect any contract note or document relating to the client's transaction free of charge.

Subdivision 5. - Range of actions the Commission may take to protect clients under certain circumstances.

102. COMMISSION'S ACTIONS TO PROTECT CLIENT'S ASSETS.

- (1) This section applies to the following persons:
- (a) a licensed person; and
 - (b) a trustee approved by the Commission under Section 156 or 189; and
 - (c) a custodian as defined under Section 98; and
 - (d) any person registered under Section 34(1), or any registered person referred to in Part II of Schedule 4; and
 - (e) any person who maintains a trust account for clients' assets.
- (2) Without prejudice to Section 443, 444 or 445 where -
- (a) a licensed person or a trustee approved by the Commission under Section 156 or 189 has contravened this Act or guidelines issued under this Act; or
 - (b) the interests of the clients of the holder of a capital market licence or the interests of debenture holders or unit holders are likely to be jeopardised, or are jeopardised; or
 - (c) any of the grounds exist for which an approval may not be granted under Section 156 or 189; or
 - (d) any of the grounds exist for which a licence may be revoked or suspended under Section 48 or any action which may be taken pursuant to Section 158, 201 or 203; or
 - (e) the interests of the unit trust or managed investment scheme likely to be jeopardised, or are jeopardised; or
 - (f) any circumstances exist for which the Commission may take action under Section 52(9),

the Commission may take any one or more of the following actions:

- (g) direct any person in Subsection (1) -
 - (i) not to deal with monies and properties of its clients or members in such manner as the Commission thinks appropriate; and

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- (ii) to transfer the monies and properties of its clients or members to any other person as may be specified by the Commission; and
- (iii) to transfer any records or documents in relation to monies or properties to any other person as may be specified by the Commission; or
- (h) prohibit any person in Subsections (1)(a), (c), (d) and (e) from -
 - (i) entering into transactions of a specified description, in specified circumstances or to a specified extent; and
 - (ii) soliciting business from persons of a specified description; and
 - (iii) carrying on business in a specified manner; or
- (i) require any person in Subsections (1)(a), (c), (d) and (e) to carry on business in a specified manner; or
- (j) direct any person in Subsections (1)(a), (c), (d) and (e) to maintain property within or outside Papua New Guinea such that -
 - (i) the property maintained is of the value and of the description that appear to the Commission to be necessary to ensure that such person will be able to meet its liabilities; and
 - (ii) the property is maintained in a manner that will enable such person at any time freely to transfer or otherwise dispose of the property.

(3) Where a direction, condition, prohibition or requirement imposed under Subsection (2), is in force, the Commission may, where it considers appropriate to do so by notice in writing given to the person on whom the direction, condition, prohibition or requirement is imposed -

- (a) withdraw the direction, condition, prohibition or requirement; or
- (b) substitute another direction, condition, prohibition or requirement for, or vary the direction, condition, prohibition or requirement and such direction, condition, prohibition or requirement so withdrawn or substituted shall remain in force in accordance with the terms thereof until it is -
 - (i) withdrawn; or
 - (ii) substituted by another direction, condition, prohibition or requirement, or varied, by the Commission under this section.

(4) Nothing in this Act, any rules, any terms of any contract or any other law shall invalidate any action taken by the Commission under this section.

(5) The Commission shall not take any action under this section without giving a licensed person or a trustee an opportunity to be heard.

(6) Subsection (5), shall not apply if the Commission considers that any delay in taking an action under this section by giving an opportunity to be heard would be prejudicial to the public interest or the interest of the clients of the licensed person.

Subdivision 6. - Audit.

103. APPOINTMENT OF AUDITOR.

(1) This subdivision applies to the business of a holder of a capital market licence, a stock exchange, a clearing house, a central depository and a recognised self-regulatory organisation.

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(2) A reference to a person in this subdivision shall be construed as a reference to persons referred to in Subsection (1).

(3) Notwithstanding the provisions of the *Companies Act 1997*, as amended, from time to time, a person shall appoint an auditor to carry out an audit of the accounts of the person for the financial year in respect of which he is appointed.

(4) A person shall not appoint a person who is an associate of the person as an auditor of any of its accounts.

(5) A person -

- (a) shall remove an auditor who becomes ineligible by virtue of Subsection (4); and
- (b) may, in any other case, with the Commission's written consent, remove an auditor from office.

(6) An auditor of a person may resign from his office by giving a notice in writing to that effect to the Commission provided that such notice shall be accompanied by -

- (a) a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the Commission; or
- (b) if he considers that there are no such circumstances, a statement that there are none.

(7) Notwithstanding any other provisions of this Act, the Commission may, at any time, remove an auditor appointed by a person if the Commission is not satisfied with the manner in which the auditor is performing his duties.

104. REQUIREMENT TO LODGE AUDITOR'S REPORT.

(1) A person shall, within three months after the close of each financial year, or such further period as the Commission may permit under Subsection (2), lodge with the Commission, the auditor's report containing information on such matters as may be specified.

(2) Where an application for the extension of the period of three months specified in Subsection (1), is made by a person to the Commission and if the Commission is satisfied that there are special reasons for requiring the extension, the Commission may extend that period by a further period not exceeding two months subject to such conditions as the Commission deems appropriate to impose.

(3) A person who contravenes Subsection (1), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(4) For the purposes of Subsection (1), "financial year", means the financial year of the corporation within the meaning of the *Companies Act 1997*, as amended, from time to time.

105. DUTIES OF AUDITOR.

(1) Where in the performance of his duties as auditor of a person, an auditor becomes aware -

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- (a) of any matter which in his opinion may constitute a breach of this Act or any securities laws; or
- (b) of any irregularity that may have a material effect upon the accounts of the relevant person, including any irregularity that jeopardises or may jeopardise the funds or property of the clients of the relevant person, where applicable; or
- (c) that losses have been incurred by the person who is the holder of a capital market licence which renders the person to be unable to meet the minimum financial requirements as may be prescribed in the regulations made under this Act; or
- (d) that the auditor is unable to confirm that the claims of clients or creditors of the person are covered by the assets of the person; or
- (e) that an offence in connection with the business of the person has been committed; or
- (f) in the case of a person who is a holder of a capital market licence, that there has been a contravention of the rules of a stock exchange, a derivatives exchange, a trade repository, a clearing house or a central depository, the auditor shall immediately report the matter to -
 - (i) in the case of a participating organisation, the stock exchange, the derivatives exchange and the Commission; and
 - (ii) in any other case, the Commission.

(2) No auditor shall be liable to be sued in any Court in respect of any statement made by the auditor in good faith in the discharge of his duties under this subdivision.

(3) The Commission may at any time require an auditor appointed under this subdivision -

- (a) to submit such additional information in relation to his audit as the Commission may specify; or
- (b) to enlarge or extend the scope of his audit of the business and affairs of the person in such manner or to such extent as the Commission may specify; or
- (c) to carry out any specific examination or establish any procedure in any particular case; or
- (d) to submit a report on any of the matters referred to in Paragraphs (a) to (c); or
- (e) to submit an interim report on any of the matters referred to in Paragraphs (a) to (d) and the Commission may specify the time within which any of the aforesaid requirements shall be complied with by the auditor and may specify the remuneration which the person shall pay to the auditor in respect thereof.

(4) The auditor shall comply with any requirement of the Commission under Subsection (3) and the person shall remunerate the auditor in respect of the discharge by him of all or any of these additional duties.

(5) The person shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all or any of the additional duties under this subdivision.

106. DUTY OF A PERSON OR ITS DIRECTORS OR OFFICERS TO FURNISH INFORMATION.

- (1) A person and any director or officer of the relevant person shall -
 - (a) furnish to an auditor appointed under any provision of this subdivision -
 - (i) all the information within its or his knowledge or which it or he is capable of obtaining; or
 - (ii) any information which the auditor requires to enable him to carry out his duties; and
 - (b) ensure that all the information which is furnished to the auditor, including information furnished under Paragraph (a), is not false or misleading in any material particular.

(2) A person who contravenes Subsection (1), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(3) It shall be a defence to any proceedings in defamation in respect of any statement made in any such report of an auditor or in any such further report of a relevant authority if the defendant satisfies the Court that the statement was made *bona fide* and without malice.

107. POWER OF COMMISSION TO APPOINT INDEPENDENT AUDITOR.

- (1) Where -
 - (a) a person has failed to submit the auditor's report in compliance with Section 104(1); or
 - (b) the Commission has received a report under Section 104 or Section 105, the Commission may, if the Commission is satisfied that it is in the interests of the person concerned, the members or the clients of that person to do so, appoint in writing an independent auditor or such other person or body of persons as the Commission may decide, to examine, audit and report, either generally or in relation to any particular matter, upon the books, accounts and records of and assets held by the person.
- (2) Where the Commission is of the opinion that the whole or any part of the costs and expenses of an independent auditor, person or body of persons appointed by the Commission under this section should be borne by the person concerned, the Commission may, by order in writing, direct such person to pay a specified amount, being the whole or part of such costs and expenses, within the time and in the manner specified.
- (3) Where a person has failed to comply with an order of the Commission under Subsection (2), the amount specified in the order may be sued for and recovered by the Commission in a Court as a debt due to the Commission.

108. POWER OF COMMISSION TO APPOINT AN INDEPENDENT AUDITOR UPON APPLICATION.

(1) Upon receipt of an application in writing from a person who alleges that a relevant person has failed to account to him in respect of any monies or assets held or received by that relevant person for or on his behalf, the Commission may appoint in writing an independent auditor or such other person as the Commission may decide to examine, audit and report either generally or in relation to any particular matter upon the books, accounts and records of and assets held by that relevant person.

(2) Every application under Subsection (1) shall state -

- (a) particulars of the circumstances under which the relevant person received the monies or assets in respect of which he is alleged to have failed to account; and
- (b) particulars of those monies or assets and of the transactions of the applicant and the relevant person relating thereto; and
- (c) such other particulars as the Commission may require.

(3) Every statement in any such application shall be verified by a statutory declaration made by the applicant and shall, if made *bona fide* and without malice, be privileged.

(4) The Commission shall not appoint an independent auditor or such other person under Subsection (1), unless the Commission is satisfied -

- (a) that the applicant has good reason for making the application; and
- (b) that it is expedient in the interests of the relevant person or the applicant or the general public that the books, accounts and records of and assets held by the relevant person should be examined, audited and reported upon.

109. INDEPENDENT AUDITOR TO REPORT TO COMMISSION.

An independent auditor or such other person appointed by the Commission under Section 107 or 108 shall, upon the conclusion of the examination and audit in respect of which such auditor or other person was appointed, make a report thereon to the Commission.

110. POWERS OF INDEPENDENT AUDITOR APPOINTED BY THE COMMISSION.

(1) An independent auditor or such other person appointed by the Commission under Section 107 or 108 to examine and audit the books, accounts and records of, and assets held by, a relevant person may, for the purpose of carrying out such examination and audit -

- (a) examine on oath any director, executive officer or the secretary of the relevant person concerned and any of the relevant person's employees and agents and any other auditor appointed under this Act in relation to those books, accounts, records and assets; and
- (b) employ such persons as he considers necessary; and
- (c) by instrument in writing under his hand authorise any person employed by him to do, in relation to such examination and audit, any act or thing that he could himself do in his capacity as auditor, except to examine any person on oath or to exercise the power conferred by this paragraph.

(2) The procedures provided under Division 2 of Part V of the *Securities Commission Act 2015*, applies to any examination conducted under Subsection (1).

111. PROHIBITION AGAINST COMMUNICATION OF CERTAIN MATTERS BY INDEPENDENT AUDITOR.

Except for the purpose of carrying into effect the provisions of this Act, or so far as may be required for the purpose of any proceedings, civil or criminal, an independent auditor or such other person appointed by the Commission under Section 107 or 108, and an employee of such auditor or other person shall not communicate any matter, which may come to his knowledge in the performance of his duties to any person other than the Commission, or any other person specified by the Commission and, in the case of an employee, to any person other than the auditor by whom he is employed.

112. BOOKS, ACCOUNTS AND RECORDS TO BE PRODUCED UPON DEMAND.

(1) Upon request by an independent auditor or such other person appointed by the Commission under Section 107 or 108, or by a person who produces a written authority pursuant to Section 110(c) -

- (a) a person and any of its directors, executive officer or secretary, employee or agent shall produce any books, accounts and records of and any assets held by the relevant person relating to his business; and
- (b) an auditor appointed by a person shall produce any books, accounts and records held by him relating to the business of the person.

(2) A person and any of its directors, executive officer, secretary, employee or agent and any auditor appointed by the person, shall answer all questions relevant to an examination and audit which are put to him by an independent auditor or such other person appointed by the Commission under Section 107 or 108, or by a person who produces a written authority pursuant to Section 110(c).

(3) A person who contravenes Subsection (1) or (2), commits an offence and shall be liable to a fine not exceeding K5,000,000.00 or imprisonment for a term not exceeding seven years, or both.

113. PENALTY FOR DESTROYING, CONCEALING OR ALTERING BOOKS.

(1) A person who, with intent to defeat the purposes of this subdivision or with intent to prevent, delay or obstruct the carrying out of any examination and audit under this subdivision -

- (a) destroys, conceals or alters any books or property relating to the business of a relevant person; or
- (b) sends or attempts to send or conspires with any other person to send, out of Papua New Guinea, any such books or any property of any description belonging to or in the disposition of or under the control of a relevant person, commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(2) If, in a prosecution for an offence under Subsection (1), it is proved that the person charged -

- (a) destroyed, concealed or altered any books or property referred to in Subsection (1); or

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- (b) sent or attempted to send or conspired to send out of Papua New Guinea any such books or any property referred to in Subsection (1), the onus of proving that in so doing he did not act with intent to defeat the purposes of this subdivision or with intent to prevent, delay or obstruct the carrying out of an examination and audit under this subdivision shall lie on him.

Division 5. - Vesting.

114. INTERPRETATION.

In this division, unless the context otherwise requires -

“business” means any activity which a holder of a capital market licence carries on pursuant to its licence and includes all property derived from, or used in connection with, or for the purpose of carrying on such activity and all rights and liabilities arising from such activity;

“liabilities” includes debts, duties and obligations of every kind, whether present, future, vested or contingent;

“property” means any movable or immovable property and includes -

- (a) in relation to any property, any right, interest, title, claim, chose in action, power or privilege, whether present, future, vested or contingent or which is otherwise of value; and
- (b) any conveyance executed for conveying, assigning, appointing, surrendering or otherwise transferring or disposing of immovable property, of which the person executing the conveyance is proprietor, possessed or entitled to a contingent right, either for the whole interest or for any less interest; and
- (c) securities; and
- (d) any negotiable instrument, including any bank note, bearer note, treasury bill, dividend warrant, bill of exchange, promissory note, cheque and negotiable certificate of deposit; and
- (e) any mortgage or charge, whether legal or equitable, guarantee, lien or pledge, whether actual or constructive, or trust receipt, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present, future, vested or contingent; and
- (f) any other tangible or intangible property;

“securities account” means an account established by a central depository for a depositor for the recording of securities and for dealings in such securities by the depositor;

“security” includes a mortgage or charge, whether legal or equitable, debenture, bill of exchange, promissory note, guarantee, lien or pledge, whether actual or constructive, hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present, future, vested or contingent.

115. APPLICATION TO COURT TO FACILITATE AGREEMENT OR ARRANGEMENT FOR TRANSFER OF WHOLE OR PART OF BUSINESS OF LICENSED PERSON.

- (1) An applicant seeking approval for matters provided under Subsection (2), shall make an application to the Commission for approval and shall submit documents and information to the Commission in the form and manner as the Commission may specify.

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- (2) Where the Commission has granted its approval for a holder of a capital market licence in relation to an agreement or arrangement -
- (a) for the sale, disposal or transfer in any manner of the whole or any part of the business of such holder; and
 - (b) for the amalgamation or merger of such holder with any other person; and
 - (c) for the reconstruction of such holder, the holder whose business is to be transferred (referred to in this section as "the transferor") and the entity to whom the transfer is to be made (referred to in this section as "the transferee") may make a joint application to the Court by way of *ex parte* originating summons for such order of the Court as may be required by them to facilitate or enable the agreement or arrangement to be given effect to.
- (3) In an application to the Court under Subsection (2), there may be sought all or any of the following orders:
- (a) specifying the date on and from which the agreement or arrangement shall take effect, being a date earlier or later than the date of the application (in this section referred to as "the transfer date"); and
 - (b) vesting any property held by the transferor, either alone or jointly with any other person, in the transferee either alone or, as the case may be, jointly with such person, on and from the transfer date, in the same capacity, upon the trusts and with and subject to the powers, provisions and liabilities applicable to that matter respectively; and
 - (c) for any existing instrument, whether in the form of a deed, will or otherwise, or order of any Court, under or by virtue of which any property became or will become vested in the transferor, to be construed and to have effect as if for any reference in that instrument to the transferor there were substituted a reference to the transferee; and
 - (d) for any existing agreement to which the transferor was a party to have effect as if the transferee had been a party to the agreement instead of the transferor; and
 - (e) for any securities account or other account maintained by or on behalf of a transferor for a client to become a securities account or other account maintained by or on behalf of the transferee for the client, subject to such conditions as are applicable between the transferor and its client; and
 - (f) for any securities account or other account maintained by or on behalf of the transferor as principal to become a securities account or other account maintained by or on behalf of the transferee as principal; and
 - (g) for any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent, whether or not in relation to an account, given to the transferor, either alone or jointly with another person, to have effect, in respect of anything due to be done, as if given to the transferee either alone or, as the case may be, jointly with the other person; and
 - (h) for any monies received from commission, interest and other sources payable by any person to the transferor to be payable by the person to the transferee; and

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- (i) for any negotiable instrument or order for payment of monies drawn on or given to or accepted or endorsed by the transferor or payable at the place of business of the transferor, whether so drawn, given, accepted or endorsed before, on or after the transfer date, to have the same effect on and from the transfer date as if it had been drawn on, given to or accepted or endorsed by the transferee or were payable at the place of business of the transferee; and
- (j) for the custody of any document or property held by the transferor as pledgee or custodian, as the case may be, immediately before the transfer date to pass to the transferee and the rights and obligations of the transferor under any pledge or custody agreement relating to any such document or property to be transferred to the transferee; and
- (k) for any security held before the transfer date by the transferor or by a nominee of, or trustee for, the transferor, as security for the payment or discharge of any liability of any person, to be held by the transferee or, as the case may be, to be held by that nominee or trustee as the nominee of, or trustee for, the transferee and to the extent of those liabilities be available to the transferee as security for the payment or discharge of those liabilities, where any such security extends to future advances or future liabilities, to be held by, and to be available, as previously mentioned, to the transferee as security for future advances by, and future liabilities to, the transferee in the same manner in all respects as future advances by, or future liabilities to, the transferor were secured by such security immediately before the transfer date; and
- (l) where any right or liability of the transferor is transferred to the transferee, for the transferee to have the same rights, powers and remedies and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority, for ascertaining, protecting or enforcing that right or resisting that liability as if it had at all times been a right or liability of the transferee, including those rights or liabilities in respect of any legal proceedings or applications to any authority pending immediately before the transfer date by or against the transferor; and
- (m) for any judgment or award obtained by or against the transferor and not fully satisfied before the transfer date to be enforceable by or, as the case may be, against the transferee; and
- (n) for all such other incidental, consequential and supplemental orders as are necessary to ensure that the agreement or arrangement shall be fully and effectively carried out.

(4) On the hearing of an application under Subsection (3), the Court may grant an order in the terms applied for, or with such modifications or variations as the Court deems just or proper in the circumstances of the case.

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(5) Where the order of the Court granted under Subsection (4) provides for the transfer of any property or business vested in or held by the transferor, either alone or jointly with any other person, then, by virtue of the order, that property or business shall, on and from that transfer date, become vested in or held by the transferee either alone or, as the case may be, jointly with such other person and the order shall have effect according to its terms notwithstanding anything in any written law or any rule of law and shall be binding on any person affected, regardless that the person so affected is not a party to the proceedings under this section or any other related proceedings, or had no notice of the proceedings under this section or of other related proceedings.

(6) The order of the Court granted under Subsection (4), shall subject to the directions of the Court, be published by the transferee in at least one daily newspaper as approved by the Commission.

(7) The transferor shall, within 30 days from the date the order of the Court was granted under Subsection (4), lodge an authenticated copy of such order together with the agreement or arrangement approved by the Commission, as the case may be, with -

- (a) the Registrar of Companies; and
- (b) the appropriate authority, if any, performing the functions of registering or recording dealings in any movable property transferred pursuant to the order.

PART IV. - ISSUES OF SECURITIES.

Division I. - Listed and unlisted capital market product.

116. REQUIREMENT FOR APPROVAL, REGISTRATION, AUTHORISATION OR RECOGNITION.

(1) A person who proposes to undertake a proposal, scheme, transaction, an arrangement or activity, or issue securities or offer for subscription or purchase of securities, or issue an invitation to subscribe for or purchase securities, in relation to -

- (a) the listing and quotation of securities of a corporation on a stock market; or
- (b) the listing or quotation of securities other than securities in Paragraph (a), including units of a unit trust on a stock market; or
- (c) an acquisition or disposal of asset which results in a significant change in the business direction or policy of a listed corporation, listed unit trust scheme or any other listed entity whether or not in relation to any proposal, scheme, transaction, arrangement or activity, under Paragraphs (a) to (c) shall seek the approval of the Commission under Division 2.

(2) A person who proposes to effect a compromise, arrangement or scheme by way of issue of securities for the amalgamation of a listed corporation with a non listed corporation or a listed corporation, shall seek the approval of the Commission under Division 2.

(3) A person who proposes to make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, outside Papua New Guinea, securities of a public company or listed corporation, or to list such securities on a securities exchange outside Papua New Guinea shall seek the approval of the Commission under Division 4.

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(4) A person who intends to make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase unlisted securities, including foreign securities but excluding units in a unit trust scheme, shall -

- (a) seek authorisation of the Commission; and
- (b) register with the Commission, a disclosure document containing information and particulars as may be specified by the Commission under Section 69.

(5) The Commission may specify -

- (a) any other proposal, scheme, transaction, arrangement or activity; or
- (b) the originating, offering or making available of any other securities, that must comply with the requirements under this Part.

(6) The requirements under Subsections (1), (2), (3) and (4) shall not apply to any proposal, scheme, transaction, arrangement, activity, product or matter specified under Schedule 5 or as may be prescribed by the Commission.

(7) A person who contravenes this Section commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

Division 2. - Application for approval.

117. APPLICATION FOR APPROVAL.

(1) In this division and Schedule 5 unless the context otherwise requires -

“expert” includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him;

“officer”, in relation to a corporation, includes -

- (a) a director, a secretary, an executive officer or an employee of the corporation; and
- (b) a receiver and manager appointed under a power contained in any instrument, of any part of the undertaking or property of the corporation; and
- (c) a liquidator of the corporation appointed in a voluntary winding up of the corporation, but does not include a receiver who is not also a manager, a receiver and manager appointed by a Court and a liquidator appointed by a Court;

“exempted company” and “reporting company” have the meaning assigned to them in Section 171(1), of the *Companies Act 1997*, as amended from time to time;

“proposal” means a proposal referred to in Section 116(2).

(2) An applicant seeking approval for matters provided under Section 116, shall make an application to the Commission for approval and shall submit documents and information to the Commission in the form and manner as the Commission may specify.

(3) Notwithstanding Subsection (2), the Commission may require an applicant to furnish it with additional information or documents as the Commission considers necessary in relation to the application.

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118. GRANT OF APPROVAL.

(1) The Commission may in relation to an application for an approval made under Section 117(2) -

- (a) approve the application; or
- (b) approve the application -
 - (i) subject to such terms and conditions; and
 - (ii) with such revision; and
 - (iii) with such revision and subject to such terms and conditions, as the Commission deems fit or necessary.

(2) The Commission may vary, add to or remove any term and condition imposed under Subsection (1) at any time.

(3) No person shall effect, carry out or implement any of the proposal in the application made under Section 117(2), unless -

- (a) the Commission has approved the application under this section; and
- (b) the applicant has obtained the prior approval of the Commission to effect, carry out or implement any part of the proposal in the application.

(4) A person shall not be deemed to have taken any step to effect, carry out or implement a proposal in an application under Section 117(2), if -

- (a) a person enters into an agreement in respect of a proposal in the application; and
- (b) the terms of the agreement are not binding until the fulfilment of any condition as may be set out in the agreement, including that of the approval to be given under this section.

(5) A person who contravenes any term or condition imposed under Subsections (1) or (2), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

119. REFUSAL OF AN APPLICATION.

(1) The Commission may refuse to approve an application made under Section 117(2), if -

- (a) the applicant has failed to comply with any requirement of this Act or any guidelines issued by the Commission; and
- (b) the application contains any statement or information that is false or misleading or from which there is a material omission; and
- (c) the Commission is not satisfied with an issuer's corporate governance record or is concerned with the integrity of any of the issuer's directors; and
- (d) the Commission has reason to believe that the approval of the application would be detrimental to the interest of investors; and
- (e) the Commission has reason to believe that the approval of the application would be contrary to public interest.

(2) Where the Commission is satisfied that -

- (a) there is a contravention of Section 120(1); and
- (b) there is a breach of any term or condition imposed under Section 102; and

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- (c) there is any change or development in the circumstances relating to the application occurring subsequent to the Commission giving its approval under this section and, where such change or development, if known to the Commission prior to the approval, would have affected its decision as regards the application, the Commission may -
- (i) revoke an approval given under Section 118; and
 - (ii) revise an approval; and
 - (iii) impose such further terms or conditions as the Commission deems fit or necessary,

provided that the Commission may only revoke or revise such approval or impose such further terms and conditions where such revocation, revision or imposition shall not affect the rights of third parties that may have been created by, or arising from, the carrying out or implementation of a proposal in the application in accordance with an approval given under Section 118.

(3) The Commission shall give the person an opportunity to be heard before any decision is made under Subsection (2).

- (4) In respect of an application made under Section 118(2) -
- (a) any person may make an announcement of an application before submitting such application to the Commission for its approval; and
 - (b) the Commission may direct an applicant to make an announcement in relation to the application or any matter under this division in accordance with the rules of the stock exchange, where the Commission deems necessary.

(5) For the purposes of Subsection (4), an "announcement" includes any publication by press notice or any other form of a firm intention to make an offer for any securities.

(6) Any person who contravenes Section 118(3) or Section 119(4)(b) commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

120. FALSE OR MISLEADING STATEMENTS.

(1) Where a statement or information is required to be submitted to the Commission under this Division -

- (a) an issuer or an applicant or any of its officers or associates; and
- (b) financial adviser or an expert; and
- (c) any other person, shall not -
 - (i) submit or cause to be submitted any statement or information that is false or misleading; or
 - (ii) submit or cause to be submitted any statement or information from which there is a material omission; or
 - (iii) engage in or aid or abet conduct that he knows to be misleading or deceptive or is likely to mislead or deceive the Commission.

(2) It shall be a defence to a prosecution or any proceeding for a contravention of Subsection (1), where it is proved that the defendant, after making enquiries as were reasonable in the circumstances, had reasonable grounds to believe and did until the time of the making of the statement or provision of the information or engaging in the conduct, was of the belief that -

- (a) the statement or information was true and not misleading; and

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- (b) the omission was not material; and
 - (c) there was no material omission; and
 - (d) the conduct in question was not misleading or deceptive.
- (3) Where -
- (a) a statement or information referred to in Subsection (1) has been submitted or provided to the Commission, or a conduct referred to in Subsection (1) has been engaged in; and
 - (b) a person referred to in that subsection knows or becomes aware, before the proposal in the application has been fully effected, carried out or implemented -
 - (i) that the statement or information may be false or misleading or materially incomplete; and
 - (ii) that the conduct may tend to mislead or deceive,
- the person shall, forthwith, inform the Commission of the facts referred to in Subparagraph (b)(i) or (ii), where applicable and shall take such action as the Commission may require pursuant to Section 119(2).
- (4) For the purposes of Subsection (3)(b), a person who knows or becomes aware includes a person who causes or does an act that causes such statement or information to become false or misleading or materially incomplete.

(5) A person who contravenes Subsection (1) or (3), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

121. APPLICATION MONIES TO BE PAID INTO A TRUST ACCOUNT WHERE NO PROSPECTUS IS REQUIRED.

(1) Any monies received from any person in relation to an application which has been approved by the Commission under Section 118 and for which a prospectus is not required, shall be paid into a trust account established and kept in a licensed institution by the issuer for such person until permission for the listing or quotation on the official list of a stock exchange or other similar exchange outside Papua New Guinea is granted.

(2) Where the permission referred to in Subsection (1), is refused, the issuer shall forthwith repay without interest all monies referred to in Subsection (1) and where any such monies are not repaid within 14 days after the issuer becomes liable to repay it, in addition to the liability of the issuer, the officers of the issuer shall be jointly and severally liable to repay such monies with interest at the rate of ten percent per annum or at such other rate as may be specified by the Commission from the expiration of that period.

(3) Monies paid into a trust account under this Section shall not be available for payment of the debts of the issuer, or be paid or taken in execution under an order or process of any court.

(4) Any condition imposed by an issuer requiring or binding any person to waive compliance with this section or purporting to do so shall be void.

(5) The Commission may specify such categories of applicants that shall not be subject to this section.

(6) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

Division 3. - Prospectus.

122. INTERPRETATION.

In this division, Division 4 and Part V, unless the context otherwise requires -

“approved company auditor” means a person approved under Section 190 of the

Companies Act 1997 as a company auditor and whose approval has not been revoked;

“excluded invitation” or “excluded offer” means an invitation or offer which is specified in Schedule 6 or which is prescribed by the Commission to be an excluded invitation or excluded offer under Section 125(1)(b);

“excluded issue” means an issue which is specified in Schedule 6 or which is prescribed by the Commission to be an excluded issue under Section 126(1)(b);

“preliminary prospectus” means any document which is designed to assist an issuer in setting a price in respect of a proposed issue of, an offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities or to determine the final contents of a prospectus;

“promoter” means -

(a) in relation to a prospectus issued by or in connection with a corporation, a promoter of the corporation; and

(b) in relation to a prospectus in respect of a unit trust scheme or managed investment scheme, a promoter of the scheme; and

(c) in relation to a prospectus in any other case, a person, who is a party to the preparation of the prospectus or any relevant portion thereof, but does not include any person by reason only of his acting in a professional capacity; and

“prospectus” means a notice, circular, advertisement or document inviting applications or offers to subscribe for or purchase securities, or offering any securities for subscription or purchase and, unless expressly specified, includes a supplementary prospectus, replacement prospectus, shelf prospectus, short form prospectus, profile statement, supplementary shelf prospectus and abridged prospectus;

“shelf prospectus” means a prospectus issued under a shelf registration scheme;

“shelf registration scheme” means a scheme applicable for the purpose of any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities by an issuer based on a shelf prospectus and a supplementary shelf prospectus;

“supplementary shelf prospectus” means a document which provides material information necessary to update the information in a shelf prospectus subsequent to the registration of such shelf prospectus.

123. INVITATION.

In this Part, a reference to an invitation includes a reference to an invitation to make an offer or application.

124. OFFER FOR SUBSCRIPTION OR PURCHASE.

For the purposes of this division and Division 5, the expression "offer for subscription or purchase" or "making an invitation to subscribe for or purchase", in relation to units of a unit trust scheme or a managed investment scheme, as the case may be, shall include the making available of such units.

125. EXCLUDED OFFERS AND INVITATIONS.

(1) An offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities is an excluded offer or an excluded invitation where -

- (a) the offer or invitation is specified in Schedule 6; and
- (b) the offer or invitation is made to a person or a class of persons, or made in respect of securities or a class of securities, as the Commission may, prescribe by order published in the National Gazette, to be an excluded offer or an excluded invitation.

(2) Schedule 6 or a prescription made under Subsection (1)(b), may specify the provisions of this Act which shall not apply to an excluded offer or an excluded invitation.

(3) An information memorandum issued by a person or his agent purporting to describe the business and affairs of the person in respect of -

- (a) any excluded offer or excluded invitation specified in Schedule 6; and
- (b) any offer or invitation made to a person or a class of persons or any offer or invitation in relation to securities or a class of securities prescribed under Subsection (1)(b),

shall be deemed to be a prospectus insofar as it relates to the liability of the person or his agent for any statement or information that is false or misleading or from which there is a material omission.

(4) A person issuing the information memorandum referred to in Subsection (3) shall deposit a copy of the information memorandum with the Commission within seven days after it is first issued.

(5) Paragraph 12 of Schedule 6 shall not apply to any securities or class of securities of any private company or class of private companies as the Commission may, prescribe by order published in the National Gazette.

126. EXCLUDED ISSUES.

(1) An issue of securities is an excluded issue where:

- (a) the issue is so specified in Schedule 7; and
- (b) the issue is made to a person or a class of persons, or made in respect of securities or a class of securities, as the Commission may, prescribe by order published in the National Gazette.

(2) Schedule 7 or a prescription made under Subsection (1)(b), may specify the provisions of this Act which shall not apply to an excluded issue.

(3) An information memorandum issued by a person or his agent purporting to describe the business and affairs of the person in respect of -

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- (a) any excluded issue specified in Schedule 7; or
- (b) any issue of securities made to a person or a class of persons or in relation to securities or a class of securities prescribed under Subsection (1)(b);

shall be deemed to be a prospectus insofar as it relates to the liability of the person or his agent for any statement or information that is false or misleading or from which there is a material omission.

(4) A person issuing the information memorandum referred to in Subsection (3), shall deposit a copy of the information memorandum with the Commission within seven days after it is first issued.

(5) Paragraph 12 of Schedule 7 shall not apply to any securities or class of securities of any private company or class of private companies as the Minister may, on the recommendation of the Commission, prescribe by order published in the National Gazette.

127. EXCEPTIONS.

The provisions of this division as specified in Schedule 6 or Schedule 7 or as may be prescribed by the Commission pursuant to Section 125(1)(b) or 126(1)(b), shall not apply to -

- (a) an excluded offer; and
- (b) an excluded invitation; and
- (c) an excluded issue.

128. REQUIREMENT TO REGISTER PROSPECTUS IN RELATION TO SECURITIES.

(1) A person shall not issue, or offer for subscription or purchase, or make an invitation to subscribe for or purchase securities or in the case of an initial listing of securities, make an application for the quotation of the securities on a stock market of a stock exchange unless -

- (a) a prospectus in relation to the securities has been registered by the Commission under Section 129; and
- (b) the prospectus complies with the requirements or provisions of this Act.

(2) Unless authorised in writing by the Commission, a person shall not issue, circulate or distribute any form of application for securities unless the form is accompanied by a copy of a prospectus which has been registered by the Commission under Section 129.

(3) A person shall not issue, circulate or distribute any form of application for securities of a corporation that has not been formed or of a unit trust scheme or prescribed investment scheme that has not been formed.

(4) The Commission may for public information publish the registrable prospectus submitted to the Commission before the registration of the prospectus under Section 129.

(5) The publication under Subsection (4), shall not indicate that the Commission recommends the securities or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the registrable prospectus.

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(6) For the purposes of this section, a “registerable prospectus” refers to a prospectus that has been submitted under Section 129 and which has yet to be approved by the Commission.

(7) A person who contravenes Subsection (1), (2) or (3) commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

129. APPROVAL OF PROSPECTUS.

- (1) The Commission shall refuse to approve a prospectus where -
 - (a) the Commission is of the opinion that the prospectus does not comply with any provision of this Act; and
 - (b) the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase securities to which the prospectus relates does not comply with any other requirement or provision of this Act; and
 - (c) the Commission is of the opinion that the prospectus contains any statement or information which is false or misleading or that the prospectus contains any statement or information from which there is a material omission; and
 - (d) the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the prospectus relates -
 - (i) requires the approval of the Commission under Section 116 and such approval has not been given; and
 - (ii) does not comply with any term or condition imposed under Section 116; and
 - (e) in relation to a unit trust scheme or managed investment scheme, there has been a failure to comply with any term or condition in relation to an approval of a trustee; and
 - (f) the Commission is of the opinion that the issuer has contravened any provision of the securities laws or the *Companies Act 1997* as amended from time to time and that such contravention would cast a doubt as to whether the issuer is a fit and proper person to make an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, any securities.
- (2) No prospectus shall be approved unless it is submitted to the Commission together with -
 - (a) a written application for its approval; and
 - (b) copies of all consents required under Section 140(1), from any person named in the prospectus as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based; and
 - (c) copies of all material contracts referred to in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, verified in accordance with any requirements specified by the Commission; and
 - (d) all such information or documents as may be required by the Commission.
- (3) An issuer shall cause a copy of -
 - (a) any consent required under Section 140(1), in relation to the issue of the prospectus; and

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- (b) every material contract or document referred to in the prospectus, to be deposited -
 - (i) at the registered office of the issuer in Papua New Guinea and, if it has no registered office in Papua New Guinea, at the address specified in the prospectus for that purpose; and
 - (ii) in the case of a unit trust scheme or managed investment scheme, at the registered office of the issuer and the trustee in Papua New Guinea, at the address specified in the prospectus for that purpose, within three days after the approval of the prospectus and shall keep each such copy, for such period as may be specified by the Commission, for inspection by any person without charge.

130. REQUIREMENT TO LODGE PROSPECTUS WITH REGISTRAR.

An issuer shall cause a copy of the prospectus approved by the Commission under this Act, and a copy of the form of application accompanying such prospectus to be lodged with the Registrar of Companies before the date of issue of the prospectus.

131. CONTENTS OF PROSPECTUS.

- (1) Without prejudice to Section 132, a prospectus -
 - (a) shall be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus; and
 - (b) shall state that -
 - (i) the prospectus has been approved by the Commission; and
 - (ii) the prospectus has been lodged with the Registrar of Companies; and
 - (iii) the approval of the prospectus shall not be taken to indicate that the Commission recommends the securities or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the prospectus; and
 - (c) shall contain a statement that no securities will be allotted or issued on the basis of the prospectus later than such period as the Commission may specify from the date of issue of the prospectus; and
 - (d) shall, if it contains any statement made by an expert or contains what purports to be a copy of or an extract from a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus; and
 - (e) shall not contain the name of any person named in the prospectus as having made a statement -
 - (i) that is included in the prospectus; and
 - (ii) on which a statement made in the prospectus is based, unless the requirements of Section 140(1), are satisfied; and
 - (f) shall set out such information, matters or reports as may be specified by the Commission.
- (2) A condition requiring or binding an applicant for securities to waive compliance with any requirement of this section or Section 132, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus shall be void.

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(3) Notwithstanding the provisions of this division, the Commission may, either on the written application of any person referred to in Section 128, or of its own accord, make an order relieving such person from or approving any variation of the requirements of this Act relating to the form and content of a prospectus.

(4) In making an order under Subsection (3), the Commission may impose such terms and conditions as it thinks fit.

(5) The Commission shall not make an order under Subsection (3), unless it is satisfied that -

- (a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; and
- (b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.

(6) A prospectus shall be deemed to have complied with all the requirements of this Act relating to the form and content of a prospectus if it is issued in compliance with an order made under Subsection (3).

(7) Where a prospectus relating to any securities is issued and the prospectus does not comply with the requirements of this section, the issuer and each director of the issuer at the time of the issue of the prospectus commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(8) Any person who contravenes any term or condition as may be imposed by the Commission under Subsection (4), commits an offence.

132. GENERAL DUTY OF DISCLOSURE IN PROSPECTUS.

(1) For the purpose of determining whether a prospectus contains any statement or information which is false or misleading or from which there is a material omission under Section 142(1) or 144(1), regard shall be given to whether the prospectus contains all such information which investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed assessment of -

- (a) the assets and liabilities, financial position, profits and losses and prospects of the issuer and, in the case of a unit trust scheme, of the scheme; and
- (b) the rights attaching to the securities; and
- (c) the merits of investing in the securities and the extent of the risk involved in doing so.

(2) The information that investors and their professional advisers would reasonably require and reasonably expect to find in the prospectus under Subsection (1), is information -

- (a) which is known to all or any of the following persons:
 - (i) a person who was a director of the issuer at the time of issue of the prospectus; and

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- (ii) a person who has consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time; and
 - (iii) a promoter; and
 - (iv) the principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase securities; and
 - (v) a person named in the prospectus, with his consent, as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based; and
 - (vi) a person named in the prospectus, with his consent, as a stockbroker, or underwriter, as the case may be, in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities; and
 - (vii) a person named in the prospectus, with his consent, as an auditor, banker or advocate in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities; and
 - (viii) a person named in the prospectus, with his consent, as having performed or performing any function in a professional, advisory or other capacity not mentioned in Paragraphs (iv), (v), (vi) or (vii) in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase securities; and
- (b) which any of the persons referred to in Paragraph (a) above, would have been able to obtain by making such enquiries as were reasonable in the circumstances.

(3) Without prejudice to the generality of Subsection (1) or (2), in determining the information that is required to be included in a prospectus under this section, regard shall be given to -

- (a) the nature of -
 - (i) the securities; and
 - (ii) the business of the issuer of the securities; and
 - (iii) the unit trust scheme or a managed investment scheme; and
- (b) the persons likely to consider acquiring such securities; and
- (c) the fact that certain matters may reasonably be expected to be known to any professional adviser whom investors referred to in Subsection (1), may reasonably be expected to consult; and
- (d) whether the persons to whom an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase securities is to be made are the holders of securities in the corporation, or unit holders in the unit trust scheme or a managed investment scheme and where they are, to what extent (if any) relevant information has previously been given to them by the issuer under any law or any requirement of the rules of a stock exchange, if applicable, or otherwise.

133. ABRIDGED PROSPECTUS FOR RENOUNCEABLE RIGHTS ISSUES.

(1) A corporation or a unit trust scheme or a managed investment scheme shall not issue, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, securities by means of a rights issue which is renounceable in favour of persons other than existing members or debenture holders of that corporation or unit holders of the unit trust scheme or a managed investment and in respect of which an application has been or will be made for permission to deal with or quote such securities on a stock market of a stock exchange unless an abridged prospectus is approved by the Commission.

(2) Any abridged prospectus approved pursuant to Subsection (1), shall contain such particulars or information as may be specified by the Commission.

(3) Nothing in this section shall be construed as preventing a full prospectus from being approved containing the particulars specified by the Commission in respect of full prospectuses in respect of an issue, offer or invitation referred to in Subsection (1).

134. SUPPLEMENTARY OR REPLACEMENT PROSPECTUS.

(1) This section applies -

- (a) in the case of a unit trust scheme or managed investment scheme, where a prospectus has been approved; and
- (b) in any other case, where a prospectus has been approved but before the issue of securities and where the issuer becomes aware that -
 - (i) a matter has arisen and information in respect of that matter would have been required by -
 - (A) Section 131 or 132; and
 - (B) any requirement under this Act; and
 - (C) any guidelines issued by the Commission; and
 - (D) any listing requirement of a stock exchange to be disclosed in the prospectus where the matter arose at the time the prospectus was prepared; and
 - (ii) there has been a significant change affecting a matter disclosed in the prospectus; and
 - (iii) the prospectus contains a material statement or information which is false or misleading; and
 - (iv) the prospectus contains a statement or information from which there is a material omission.

(2) As soon as practicable after becoming aware of a matter referred to in Subsection (1), the issuer shall submit a supplementary or replacement prospectus, as the case may be, to the Commission for registration.

(3) The issuer shall lodge the supplementary or replacement prospectus, as the case may be, with the Registrar immediately upon approval by the Commission.

(4) Subsection (1), shall apply with respect to matters contained in a supplementary or replacement prospectus, as the case may be, previously approved under this section in respect of the securities in question.

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(5) On each page of a supplementary prospectus, there shall be a clear statement in bold type that states that the document is a supplementary prospectus that is to be read in conjunction with the original prospectus and if other supplementary prospectuses have been issued in relation to the original prospectus, both the original prospectus and the supplementary prospectuses.

(6) At the beginning of the replacement prospectus, there shall be a clear statement in bold type that states the document is a replacement prospectus and identifies the prospectus which it replaces.

(7) A supplementary prospectus shall be regarded as being part of the prospectus to which it relates and the provisions of this Act and any other law relating to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply to such supplementary prospectus and shall have effect accordingly.

(8) A replacement prospectus shall be regarded as replacing the prospectus previously registered under Section 129.

(9) Where a supplementary prospectus has been approved by the Commission, every copy of the original prospectus issued after registration of the supplementary prospectus must be accompanied by a copy of the supplementary prospectus.

(10) Notwithstanding the provisions of this section, the Commission may, on the written application of any issuer or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.

(11) In making an order under this section, the Commission may impose such terms and conditions as it deems necessary.

(12) The Commission shall not make an order under Subsection (10), unless it is satisfied that -

- (a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; and
- (b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.

(13) Any person who contravenes Subsection (2), (3), (5), (6) or (9) commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(14) Any person who contravenes any term or condition as may be imposed by the Commission under Subsection (11) commits an offence.

135. CONSEQUENCES OF APPROVAL OF A SUPPLEMENTARY OR REPLACEMENT PROSPECTUS.

(1) This section applies -

- (a) where a person ("the applicant") applies for the issue of, subscription or purchase of, any securities pursuant to a prospectus and -

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- (i) in the case of a unit trust scheme, before the issue of units or transfer of units from the management company or the trustee to the applicant; and
 - (ii) in any other case, before the issue of securities; and
 - (b) the issuer delivers to the Commission for approval a supplementary or replacement prospectus, as the case may be, that relates to the prospectus.
- (2) As soon as practicable after the approval of the supplementary or replacement prospectus, as the case may be, by the Commission, the issuer shall -
- (a) give to the applicant a written notice or such other notice as may be specified by the Commission -
 - (i) advising the applicant that a supplementary or replacement prospectus, as the case may be, has been approved by the Commission;
 - (ii) giving the applicant no less than 14 days from the date of receipt of the notice an opportunity to withdraw his application; and
 - (b) ensure that the written notice referred to in Subsection (2)(a), is accompanied by a copy of a supplementary or replacement prospectus, as the case may be.
- (3) Where the applicant withdraws his application pursuant to Subsection (2)(a)(ii), the issuer shall immediately pay to the applicant any monies that the applicant has paid to the issuer on account of the application.
- (4) Notwithstanding the provisions of this section, the Commission may, on the written application of any issuer or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.
- (5) In making an order under this section, the Commission may impose such terms and conditions as it deems necessary.
- (6) The Commission shall not make an order under Subsection (4), unless it is satisfied that -
- (a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; and
 - (b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.
- (7) Any person who contravenes Subsection (2) or (3), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.
- (8) Any person who contravenes any term or condition as may be imposed by the Commission under Subsection (5) commits an offence.

136. REGULATIONS FOR SHELF PROSPECTUSES, SUPPLEMENTARY SHELF PROSPECTUSES, SHORT FORM PROSPECTUSES AND PROFILE STATEMENTS.

(1) Notwithstanding the provisions of Sections 131 and 132, a person may issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities where at the time of the issue, offer or make an invitation there is in force -

- (a) a shelf prospectus as updated by a supplementary shelf prospectus; and
- (b) a short form prospectus; and
- (c) a profile statement, relating to all matters which the Head of State, may provide by way of regulations made under this Act with respect to a shelf prospectus, supplementary shelf prospectus, a short form prospectus or a profile statement, as the case may be.

(2) The regulations referred to under Subsection (1), may provide for, but shall not be limited to, the following matters:

- (a) a shelf prospectus, including a supplementary shelf prospectus; and
- (b) a short form prospectus; and
- (c) a profile statement; and
- (d) the period during which a person may be permitted to issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities on the basis of a shelf prospectus, as updated by a supplementary shelf prospectus, short form prospectus or profile statement, as the case may be; and
- (e) the form and content of a prospectus referred to in Paragraph (a), (b) or (c); and
- (f) the persons or classes of persons to which any prospectus referred to in Paragraph (a), (b) or (c) may apply; and
- (g) the securities or classes of securities to which any prospectus referred to in Paragraph (a), (b) or (c) may apply.

(3) Where the Head of State makes regulations under Subsection (1), with respect to a shelf prospectus, a supplementary shelf prospectus, short form prospectus or a profile statement, the provisions of this Act and any other law relating to liability in respect of statements in or omissions from prospectuses or otherwise relating to prospectuses shall apply to the shelf prospectus, supplementary shelf prospectus, short form prospectus or profile statement, as the case may be, and shall have effect accordingly.

137. RESTRICTIONS IN ADVERTISING.

- (1) A person shall not publish a notice which -
 - (a) issues, or offers for subscription or purchase, or makes invitations to subscribe for or purchase, securities; and
 - (b) refers whether directly or indirectly to -
 - (i) a prospectus in respect of securities of a corporation; and
 - (ii) in the case of a unit trust scheme or a managed investment, a prospectus in respect of any unit of the unit trust scheme or a managed investment, as the case may be; and
 - (iii) an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities; and

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(iv) another notice that refers to a prospectus in relation to an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities.

(2) Subsection (1) shall apply to such notices mentioned therein which are issued in relation to the securities of a corporation that has not been formed or of a unit trust scheme or a managed investment that has not been formed.

(3) Subsection (1) shall not apply to -

- (a) such notices referred to in Subsection (4) or (5); and
- (b) such preliminary prospectuses referred to in Subsection (6); and
- (c) such reports referred to in Subsection (7); and
- (d) such notices or reports as may be specified by the Commission; and
- (e) such publication of a registrable prospectus referred to in Section 128.

(4) Subsection (1) shall not apply to a notice that is issued or published before the approval of a prospectus -

- (a) with the consent of the Commission and subject to such terms and conditions as it may impose; and
- (b) which does not contain any information or matter other than the following:
 - (i) the name of the issuer of securities; and
 - (ii) in the case of a unit trust scheme or a managed investment scheme, the name of the unit trust scheme or a managed investment scheme and the names of the trustee in relation to the unit trust scheme or a managed investment, as the case may be; and
 - (iii) a concise statement of the general nature of the main business or undertaking or proposed main business or undertaking of the issuer; and
 - (iv) the names, addresses and, where appropriate, occupations of the directors or proposed directors; and
 - (v) the names and addresses of stockbrokers, underwriters and principal adviser in relation to the proposed issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities; and
 - (vi) in the case of debentures, the name and address of the trustee for debenture holders; and
 - (vii) a brief description of the listing status of the corporation, unit trust scheme or a managed investment on any stock exchange or other similar exchange outside Papua New Guinea, or a statement that it is intended to apply for permission to list the corporation, unit trust scheme or a managed investment on any stock exchange or other similar exchange outside Papua New Guinea but no assurance has been given that the corporation, unit trust scheme, or a managed investment will be listed; and
 - (viii) the fact that a prospectus is in the course of preparation and that an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is proposed, together with a brief indication of the nature and number of securities and of the possible timing of the issue of the prospectus; and

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- (ix) in the case of a unit trust scheme or a managed investment, a description of the persons from whom the units are available for purchase or subscription; and
- (x) such other information or matters which the Commission may specify in writing.

(5) Subsection (1) shall not apply to a notice that is issued or published after the approval of a prospectus that -

- (a) states that a prospectus in relation to any securities has been approved; and
- (b) specifies the date of the prospectus; and
- (c) specifies where a copy of the prospectus can be obtained; and
- (d) states that any issue of securities to which the prospectus relates will only be made on receipt of a form of application referred to in and accompanying a copy of the prospectus; and
- (e) states such other information or matters which the Commission may specify in writing.

(6) Subsection (1) shall not apply to a preliminary prospectus where the following requirements are met:

- (a) a copy of the preliminary prospectus is delivered to the Commission prior to its issue; and
- (b) the preliminary prospectus is issued to any person referred to in Paragraph (1), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (22) or (23) of Schedule 6 or to any other person or class or category of persons or in respect of any securities or class or category of securities which the Commission allows in writing; and
- (c) the preliminary prospectus contains on its front page a conspicuous notice that -
 - (i) it is not a prospectus; and
 - (ii) no issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the preliminary prospectus relates is to be made; and
 - (iii) no agreement to subscribe for securities to which the preliminary prospectus relates will be entered into between the issuer and the recipient of the preliminary prospectus; and
- (d) the preliminary prospectus is not to contain, have attached to it or be accompanied by any form of application which would facilitate the issue of, the offer for subscription or purchase of, or the making of an invitation to subscribe for or purchase, securities to which the preliminary prospectus relates or the acceptance of such an issue, offer or invitation; and
- (e) a person to whom a copy of the preliminary prospectus is issued shall not circulate the copy to any other person; and
- (f) securities are only to be issued on the basis of a prospectus duly registered by the Commission under this Act; and

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- (g) where a prospectus which is registered in relation to securities to which the preliminary prospectus relates differs from the preliminary prospectus in a material respect, notice of such difference shall be given to the recipients of the preliminary prospectus and a copy of such notice shall be delivered to the Commission,

provided that the Commission may, either of its own accord or on a written application by an issuer, make an order approving any variation of the requirements of this subsection.

(7) Subsection (1) shall not apply to the issuing or publishing of all or any of the following reports:

- (a) a report that relates to the affairs of a corporation, unit trust scheme or a managed investment that is listed on a stock exchange which is or has been published only to that stock exchange by or on behalf of the corporation, unit trust scheme or a managed investment; and
- (b) a report of the whole or part of the proceedings at a general meeting of a body corporate or at a meeting of unit holders of a unit trust scheme or a managed investment where the body corporate, unit trust scheme or a managed investment is included in the official list of a stock exchange and the report does not contain any matter other than the matters laid before the meeting; and
- (c) a report which is a news report or is a genuine comment, published by a person in a newspaper or periodical or by broadcasting or televising, relating to -
 - (i) a prospectus that has been approved or information that is contained in such a prospectus; and
 - (ii) a report referred to in Paragraph (a) or (b), if none of the following persons receives or is entitled to receive any consideration or other benefit from a person who has an interest in the success of the issue of securities to which the report or comment relates as an inducement to publish, or as the result of the publication of the report or comment:
 - (A) the person making the report or comment; and
 - (B) an agent or employee of the person making the report or comment; and
 - (C) where the report or comment is published in a newspaper or periodical, the publisher of the newspaper or periodical; and
 - (D) where the report or comment is published by broadcasting or televising, the licensee of the broadcasting or television station by which it is published.

(8) A notice which is issued or published under Subsection (4) or (5), or a preliminary prospectus which is issued under Subsection (6), or a report which is issued or published under Subsection (7) shall not constitute a prospectus.

(9) Nothing in this section shall limit or diminish the liability that a person may incur under any other law.

(10) Where it appears to the Commission that a notice, preliminary prospectus or report referred to in this section -

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- (a) contravenes Subsection (1); and
- (b) contains a statement or information that is false or misleading; and
- (c) contains a statement or information from which there is a material omission; and
- (d) contains a material misrepresentation,

the Commission may by order in writing served on the person who publishes or issues the notice, preliminary prospectus or report -

- (i) direct the person to cease issuing or publishing the notice, preliminary prospectus or report; or
- (ii) direct the person to take such other action as may be specified in the order.

(11) In this section, "notice" includes any notice published in a document, newspaper or periodical or on any medium or in any manner capable of suggesting words and ideas.

(12) A person who -

- (a) issues or publishes a notice in contravention of Subsection (1), (4) or (5); and
- (b) issues a preliminary prospectus in contravention of Subsection (6); and
- (c) issues or publishes a report in contravention of Subsection (7),

commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

138. DOCUMENT CONTAINING OFFER OF SECURITIES FOR PURCHASE DEEMED TO BE A PROSPECTUS.

(1) Subject to Subsection (3), where an issuer allots or issues or agrees to allot or issue to any person any securities with a view to all or any of them being offered for purchase -

- (a) any document by which the offer for purchase is made shall, for all purposes, be deemed to be a prospectus issued by the issuer; and
- (b) all laws regulating the contents of prospectuses and providing for liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if persons accepting the offer in respect of any securities were subscribers thereof.

(2) Nothing in Subsection (1), shall prejudice the liability of the persons by whom the offer for purchase is made in respect of statements in, or omissions from, the document by which the offer for purchase is made or otherwise.

(3) Subsection (1), shall not apply in relation to an offer for purchase or an invitation to purchase securities if the offer or invitation is made in the ordinary course of trading on a stock market of a stock exchange.

(4) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment or issue of, or an agreement to allot or issue, any securities was made with a view to the securities being offered for purchase if it is shown that -

- (a) an offer of the securities for purchase was made within such period as may be specified by the Commission under Section 131(1)(c) after the allotment or issue or agreement to allot or issue; and

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(b) at the date when the offer was made, the whole consideration to be received by the issuer in respect of the securities had not been so received.

(5) The requirements of this division as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of issuer.

(6) In addition to complying with the other requirements of this division, the document by which the offer for purchase is made shall state -

- (a) the net amount of the consideration received or to be received by the issuer in respect of the securities to which the offer relates; and
- (b) the place and time at which a copy of the contract under which the securities have been or are to be allotted or issued may be inspected.

(7) Where an offer to which this section relates is made by a corporation or a firm, the document by which the offer for purchase is made shall -

- (a) in the case of a corporation, be signed on behalf of the corporation by two directors of the corporation; and
- (b) in the case of a firm, be signed by not less than half of the members of the firm and any such director or member may authorise his agent in writing to sign on his behalf.

(8) For the purpose of this section, an invitation to make an offer to purchase securities shall be deemed to constitute an offer of the securities for purchase and a person who makes an offer pursuant to such an invitation shall be deemed to be a person who accepted an offer of the securities for purchase.

(9) The provisions of this section shall not apply to an offer for purchase which is an excluded offer, excluded invitation or excluded issue.

139. ALLOTMENT OF SECURITIES WHERE PROSPECTUS IMPLIES THAT APPLICATION FOR LISTING HAD BEEN MADE.

(1) Where a prospectus states or implies that an application has been or will be made for permission for the securities offered to be listed for quotation on the official list of a stock exchange or other similar exchange outside Papua New Guinea, any allotment made on an application to subscribe for securities in pursuance of the prospectus shall, subject to Subsection (3), whenever made, be void where -

- (a) the permission is not applied for in the form for the time being required by the stock exchange before the third day on which the exchange is open after the date of issue of the prospectus; and
- (b) the permission is not granted before the expiration of six weeks from the date of issue of the prospectus or such longer period as may be specified by the Commission, provided that the applicant is notified by or on behalf of the exchange within that six weeks or such longer period as may be specified by the Commission.

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(2) Where permission has not been applied for, or has not been granted by the exchange referred to in Subsection (1), the issuer shall, subject to Subsection (3), forthwith repay without interest all monies received from applicants in pursuance of the prospectus and if any such money is not repaid within 14 days after the issuer so becomes liable to repay it, then, in addition to the liability of the issuer, the officers of the issuer shall be jointly and severally liable to repay such money with interest at the rate of 10 percent per annum or at such other rate as may be prescribed by the Commission from the expiration of that period.

(3) Where in relation to any securities -

- (a) permission is not applied for as specified in Subsection (1)(a); and
- (b) permission is not granted as specified in Subsection (1)(b),

the Commission may, on the application of the issuer, by order published in the National Gazette, before the securities are purported to be allotted, exempt the allotment of securities from the operation of Subsection (1) or (2).

(4) An officer of the issuer shall not be liable under Subsection (2), if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding an applicant for any securities to waive compliance with this section or purporting to do so shall be void.

(6) Without limiting the application of any of its provisions, this section shall have effect -

- (a) in relation to any securities agreed to be taken by a person underwriting an issue, offer or invitation referred to in a prospectus, as if he had applied for the securities in relation to the issue, offer or invitation referred to in the prospectus; and
- (b) in relation to a prospectus offering securities for purchase, as if -
 - (i) a reference to purchase were substituted for a reference to allotment; and
 - (ii) the persons by whom the offer is made and not the issuer, were liable under Subsection (2), to repay monies received from applicants and references to the issuer's liability under that subsection were construed accordingly; and
 - (iii) a reference in Subsection (7), to the issuer and every officer of the issuer who is in default under Subsection (2), were substituted with a reference to any person by or through whom the issue, offer or invitation is made and who knowingly authorises or permits the default.

(7) All monies received from the applicants shall be kept in trust in a separate bank account so long as the issuer may become liable to repay it under Subsection (2) and if default is made in complying with this subsection, the issuer and every officer of the issuer who is in default commits an offence under this Act.

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(8) Where the exchange referred to in Subsection (1), has within the time specified in Subsection (1)(b), granted permission, subject to compliance with any requirements specified by the exchange, permission shall be deemed to have been granted by the exchange if the directors of an issuer have given the exchange an undertaking in writing to comply with the requirements of the exchange, but if any such undertaking is not complied with, each director of the issuer or the management company who is in default commits an offence.

- (9) A person shall not issue a prospectus in relation to any securities if it includes -
- (a) any false or misleading statement that permission has been granted for those securities to be dealt in or listed on an exchange referred to in Subsection (1); or
 - (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to dealing in or quoting or listing the securities on any exchange referred to in Subsection (1), or to any requirements of the exchange unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the exchange within three days of the issue of the prospectus or within such longer period as may be specified by the Commission or the statement has been approved by the Commission for inclusion in the prospectus.

(10) Where a prospectus contains a statement to the effect that the constituent documents of the issuer or the deed as defined under Section 183 complies with, or has been drawn so as to comply with, the requirements of any exchange referred to in Subsection (1), the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been made, or will be made, for permission for the securities offered by the prospectus to be listed for quotation on the stock exchange.

(11) In this section, "officer", in relation to an issuer means a director, a secretary or an executive officer of the issuer.

(12) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

140. CONSENT FROM PERSONS ISSUING PROSPECTUS CONTAINING THEIR STATEMENTS.

(1) A prospectus that includes a statement, other than a statement which is an extract of an official statement or any other statement as may be specified by the Commission, purporting to be made by any person or to be based on a statement made by such person shall not be issued unless -

- (a) the person has given his written consent to the issue of the prospectus with the statement made in the form and context in which it is included and has not, before the date of issue of the prospectus, withdrawn such consent; and
- (b) there appears in the prospectus a statement that the person has given and has not withdrawn his consent.

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(2) Every person who knowingly is a party to the issue of any prospectus in contravention of Subsection (1) commits an offence.

141. STOP ORDER.

(1) Where in the opinion of the Commission -

- (a) a prospectus does not comply with or is not prepared in accordance with any provision of this Act; or
- (b) a prospectus contains a statement or information that is false or misleading; or
- (c) a prospectus contains a statement or information from which there is a material omission; or
- (d) an issuer has contravened any provision of the securities laws or the *Companies Act 1997*,

the Commission may, by order in writing served on the issuer or such other person as the Commission may determine, direct the issuer or such other person not to allot, issue, offer, make an invitation to subscribe for or purchase or sell, further securities to which the prospectus relates, as the case requires.

(2) Subject to Subsections (3) and (4), the Commission shall not make an order under Subsection (1), unless the Commission has given a reasonable opportunity to be heard to any affected person as to whether such an order should be made.

(3) If the Commission considers that any delay in making an order under Subsection (1), by giving an opportunity to be heard would be prejudicial to the public interest, the Commission may make an interim order without giving the opportunity to be heard.

(4) An interim order under Subsection (3), shall, unless sooner revoked, have effect until the end of 21 days after the day on which it is made or the conclusion of the hearing in Subsection (2), whichever date is the later.

(5) While an order made under Subsection (1), or an interim order made under Subsection (3) is in force, this division shall apply as if the prospectus had not been registered.

(6) An interim order made under Subsection (3), may, by further order in writing made by the Commission, be revoked where the Commission becomes satisfied that the circumstances that resulted in the making of the order no longer exists.

(7) Without prejudice to the provisions of Section 121, where applications to subscribe for or purchase securities to which the prospectus relates have been made prior to the order made under Subsection (1) -

- (a) where the securities have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the issuer or such other person who receives the monies, shall, forthwith repay without interest all monies received from the applicants and if any such money is not repaid within 14 days of the stop order, the issuer shall be liable to repay such monies with interest at the rate of ten percent per annum or at such other rate as may be specified by the Commission from the expiration of that period; or

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- (b) where the securities have been issued to the applicants, the issue of securities shall be deemed to be void and the issuer or such other person, shall -
- (i) forthwith repay without interest all monies received from the applicants and if any such money is not repaid within 14 days of the date of service of the stop order, the issuer shall be liable to repay such monies with interest at the rate of ten percent per annum or at such other rate as may be specified by the Commission from the expiration of that period; and
 - (ii) take necessary steps to effect the order.

(8) Notwithstanding Subsections (1) and (2), the Commission shall not serve a stop order if any of the shares or debentures or units of shares or debentures to which the prospectus relates have been listed on a stock market of a stock exchange and trading in them has commenced.

(9) A person who contravenes an order made under Subsection (1), or an interim order made under Subsection (3), commits an offence.

142. CRIMINAL LIABILITY FOR FALSE STATEMENTS IN PROSPECTUS.

- (1) A person shall not authorise or cause the issue of a prospectus which contains -
 - (a) any statement or information that is false or misleading; and
 - (b) any statement or information from which there is a material omission.
- (2) For the purposes of this division, a statement shall be deemed to be in a prospectus if it is -
 - (a) contained in a report or memorandum that appears on the face of the prospectus; and
 - (b) contained in a report or memorandum that is issued with the prospectus with the consent or knowledge of a person who authorised or caused the issue of the prospectus.

(3) A person who contravenes Subsection (1), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

143. PERSONS NOT TO BE TAKEN TO HAVE AUTHORISED OR CAUSED ISSUE OF PROSPECTUS.

(1) For the purposes of this division, neither the Commission nor the Registrar shall be taken to have authorised or caused the issue, or to be involved in the preparation, of a prospectus for any reason including where there has been the performance or purported performance of any function, or the exercise or purported exercise of any power, by the Commission under the securities laws or the Registrar under the *Companies Act 1997* respectively.

(2) For the purpose of Section 142, a person shall not be deemed to have authorised or caused the issue of a prospectus by reason only of his having given consent as required under Section 140(1).

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144. RIGHT TO RECOVER FOR LOSS OR DAMAGE RESULTING FROM FALSE OR MISLEADING STATEMENT IN PROSPECTUS.

(1) A person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any statement or information contained in a prospectus that is false or misleading, or any statement or information contained in a prospectus from which there is a material omission, may recover the amount of loss or damage from all or any of the persons set out in Paragraphs (a), (b), (c), (d), (e) and (f) and to the extent provided for -

- (a) the issuer and each director of the issuer at the time of the issue of the prospectus, for any loss or damage; and
- (b) a person who consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time, for any loss or damage; and
- (c) a promoter, for any loss or damage arising from the prospectus or any relevant portion of the prospectus in respect of which he was a party to the preparation thereof; and
- (d) a principal adviser, for any loss or damage; and
- (e) a person named in the prospectus with his consent as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus; and
- (f) a person named in the prospectus with his consent as a stockbroker, underwriter, auditor, banker or advocate of the issuer in relation to the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities and who has made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus; and
- (g) a person who authorised or caused the issue of a prospectus in contravention of Section 142, for any loss or damage caused by such contravention.

(2) For the purposes of Subsections (1)(a) and (b), a director referred to therein shall include any person by whom the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase securities is made.

(3) For the purpose of Subsection (1)(f), an underwriter shall not include a sub-underwriter.

145. CIVIL LIABILITY FOR MISLEADING OR DECEPTIVE ACTS.

(1) A person shall not act in a manner that is misleading or deceptive or is likely to mislead or deceive in connection with -

- (a) any prospectus issued; and
- (b) the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities; and
- (c) any notice referred to in Subsection 137(4) or (5) or a preliminary prospectus referred to in Subsection 137(6), or any report referred to in Subsection 137(7), or any notice or report as may be specified by the Commission under Section 137(3)(d); and

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(d) the carrying on of negotiations, the making of any arrangements or the doing of any other act preparatory to or in any other way related to any matter referred to in Paragraph (a), (b) or (c).

(2) A person who contravenes this section shall not be guilty of an offence but a person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any act referred to in Subsection (1)(a), (b), (c) or (d) may recover the amount of the loss or damage under Section 446.

146. DUE DILIGENCE DEFENCE.

A person shall not be guilty of an offence under Section 142 and is not liable under Section 144, where he proves that -

- (a) he had made all enquiries as were reasonable in the circumstances; and
- (b) after making such enquiries, he had reasonable grounds to believe and did believe until the time of the making of the statement or provision of the information that -
 - (i) the statement or information was true and not misleading; and
 - (ii) there was no material omission.

147. RELIANCE ON FALSE OR MISLEADING STATEMENT AND INFORMATION.

A person shall not be guilty of an offence under Section 142 and is not liable under Section 144, if the person (hereinafter referred to as the "first-mentioned person") proves that the false or misleading statement or material omission from a statement in a prospectus -

- (a) is or is based on a statement made by a person referred to in Section 140(1) (hereinafter referred to as the "second-mentioned person"); and
- (b) is contained in a copy of or what purports to be a copy of, or an extract from, a report or valuation of the second-mentioned person, and it is proved by the first-mentioned person that -
 - (i) the statement accurately represented the statement made by the second-mentioned person, or the copy or the purported copy or extract was a correct copy of, or extract from, the report or valuation, as the case may be; and
 - (ii) after making such enquiries as were reasonable in the circumstances, the first-mentioned person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the second-mentioned person, in making the statement, report or valuation, as the case may be -
 - (A) was competent to make it; and
 - (B) had given the consent required by Section 140(1); and
 - (C) had not withdrawn that consent.

148. RELIANCE ON STATEMENT AND INFORMATION IN RESPECT OF MISLEADING OR DECEPTIVE ACT.

A person is not liable under Section 145 in respect of an act that is misleading or deceptive or is likely to mislead or deceive where the person (hereinafter referred to as the "first-mentioned person") proves that the act consists of a representation made in reliance on -

- (a) a statement made by a person referred to in Section 140(1), (hereinafter referred to as the "second-mentioned person"); or

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- (b) a report or valuation of the second-mentioned person, and it is proved by the first-mentioned person that -
- (i) the representation accurately reflects the statement made by the second-mentioned person or is contained in the report or valuation of the second-mentioned person, as the case may be; and
 - (ii) after making such enquiries as were reasonable in the circumstances, the first-mentioned person had reasonable grounds to believe and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the second-mentioned person in making the statement, report or valuation, as the case may be -
 - (A) was competent to make it; and
 - (B) had given the consent required by Section 140(1); and
 - (C) had not withdrawn such consent.

149. RELIANCE ON PUBLIC OFFICIAL STATEMENT IN RESPECT OF FALSE AND MISLEADING STATEMENT.

(1) A person shall not be guilty of an offence under Section 142 and is not liable under Section 144, if the person proves that the false or misleading statement or material omission from a statement in a prospectus (hereinafter referred as the "defective statement") is or is based on a statement made by a public officer in the course of his duties or is contained in a copy of or what purports to be a copy of, or an extract from, a public official document and it is proved by the person that -

- (a) the defective statement accurately represented the statement made by the public officer including the context and form in which it was originally made; and
- (b) the defective statement is contained in a copy of or what purports to be a copy of, or extract from, a public official document and the person had reasonable grounds to believe and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the defective statement was true and not misleading and that there was no material omission from the defective statement, as the case may be.

(2) A person is not liable under Section 145, in respect of an act that is misleading or deceptive or is likely to mislead or deceive if the person proves that the act consists of a representation made in reliance on a public official document or statement made by a public officer in the course of his duties and it is proved that -

- (a) the representation accurately reflects the statement made by the public officer including the context and form in which it was originally made; and
- (b) the representation is contained in a copy of, or an extract from, a public official document and the person had reasonable grounds to believe and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the representation was not misleading or deceptive or is likely to mislead or deceive.

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150. DEFENCE OF WITHDRAWAL OF CONSENT.

- (1) A person who is named in a prospectus as -
- (a) a proposed director or director of an issuer or a principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities; and
 - (b) making a statement that is included in the prospectus; and
 - (c) making a statement on the basis of which a statement is included in a prospectus, shall not be guilty of an offence under Section 142 and is not liable under Section 144, if -
 - (i) in the case of a proposed director or director, having consented to become a proposed director or director of the issuer, he withdrew his consent before the issue of the prospectus and the prospectus was issued despite such withdrawal; and
 - (ii) in any other case, where the prospectus was issued without his knowledge or consent, he gave reasonable public notice thereof forthwith after he became aware of its issue.
- (2) A person who is named in a prospectus as -
- (a) a proposed director or director of an issuer, or a principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities; and
 - (b) making a statement that is included in the prospectus; and
 - (c) making a statement on the basis of which a statement is included in a prospectus, shall not be guilty of an offence under Section 142 and is not liable under Section 144, if it is proved that the statement was not included in, or was not included substantially in, the form and context that the person had consented to.

151. RESTRICTION ON OFFERING SECURITIES FOR SUBSCRIPTION OR PURCHASE.

- (1) Except as otherwise expressly provided in this Act, a person shall not make -
- (a) an unsolicited invitation to subscribe for or purchase any securities; and
 - (b) an unsolicited offer for subscription or purchase of any securities; and
 - (c) an unsolicited recommendation of any securities.
- (2) Subsection (1) shall not -
- (a) prohibit a licensed person or any other person allowed in writing by the Commission from making invitations or offers or recommendations -
 - (i) in relation to any securities which are listed on a stock market of a stock exchange within Papua New Guinea or on a stock market of a securities exchange outside Papua New Guinea which is approved by the Commission; and
 - (ii) to a person to whom, or to a number of persons in relation to each of whom, at least one of the following conditions is satisfied -
 - (A) the person has acquired or sold the securities through the licensed person or any other person allowed in writing by the Commission, in the 12 months before the making of the invitation or offer or recommendation; and

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- (B) when the invitation or offer or recommendation is made, a written agreement is in force under which the licensed person or any other person allowed in writing by the Commission is to, or may, whether subject to conditions or otherwise, act on the person's behalf in connection with the acquisition or sale of any securities by the person, or advise the person about the acquisition or sale of any securities by the person; and
- (b) prohibit a trustee from providing further information, notices or recommendations to existing unit holders in relation to the investments of such unit holders; and
- (c) prohibit a person allowed in writing by the Commission from issuing such notices or recommendations relating to units in a unit trust scheme or managed investment scheme containing such information as may be allowed by the Commission; and
- (d) prohibit an invitation, offer or recommendation that is made in, or accompanied by, a prospectus that complies with this Act; and
- (e) prohibit an invitation, offer or recommendation which is made in relation to an excluded invitation or excluded offer; and
- (f) apply to an invitation or offer to which the provisions of the *Companies Act 1997* apply; or
- (g) apply to an invitation, offer or recommendation which is prescribed by the Commission by order published in the National Gazette.

(3) The Commission in exercising its discretion under Subsection (2), may impose such terms and conditions as it deems necessary.

(4) A person allowed in writing by the Commission under Subsection (2)(a) or (c) shall comply with such terms and conditions as may be imposed by the Commission.

(5) The provisions of Subsection (1), shall apply to an invitation, offer or recommendation in relation to any securities of a corporation or units of a unit trust scheme or managed investment scheme that is proposed to be formed.

(6) A person who contravenes Subsection (1) or (4) commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

152. AGREEMENTS TO EXCLUDE OR RESTRICT LIABILITY VOID.

An agreement is void insofar as it purports to exclude or restrict the liability of a person for contravention of Section 142, 144 or 145, or for loss or damage under Section 446.

Division 4. - Debentures.

Subdivision 1. - Trust deeds, duties of trustees, borrowers.

153. APPLICATION OF THIS DIVISION.

(1) The provisions of this subdivision and Section 179, shall not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 8.

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(2) The provisions of this division as specified in Schedule 8, shall not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 9.

(3) The provisions of this division shall not apply to any issue, offer or invitation that is made to a person or a class of persons, or made in respect of a debenture or a class of debentures, as the Minister may, on the recommendation of the Commission, prescribe by order published in the National Gazette.

(4) A prescription made under Subsection (3), may specify the provisions of this Division to which an issue, offer or invitation shall not apply.

154. REQUIREMENT FOR TRUST DEED AND TRUSTEE.

(1) Every person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall -

- (a) enter into a trust deed which meets the requirements of Section 155; and
- (b) appoint a trustee who is a person eligible to be appointed or to act as trustee in accordance with Section 156; and
- (c) comply with the requirements and provisions of this division.

(2) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall not allot such debenture unless the person has entered into a trust deed that meets with the requirements of Section 155 and has appointed a trustee who is a person eligible to be appointed or to act as trustee under Section 156.

(3) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall not revoke the trust deed unless the person has repaid all amounts payable under the debenture in accordance with the terms, provisions and covenants of the debenture and the trust deed.

(4) A person who contravenes Subsection (1), (2) or (3) commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

155. FORM AND CONTENTS OF TRUST DEED.

(1) A trust deed shall contain such provisions, covenants, requirements, information and particulars as may be specified by the Commission.

(2) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall deliver a copy of the trust deed to the Commission together with such other particulars, information or documents as the Commission may specify.

156. PERSONS WHO CAN BE TRUSTEES.

(1) A trustee shall be a corporation that is a reporting or a public company under the *Companies Act 1997*, which has been approved by the Commission to act as trustee for the purposes of this Act.

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(2) A person shall not be eligible to be appointed or to act as trustee for debenture holders without the approval of the Commission where the person -

- (a) is a shareholder who beneficially holds shares in the borrower; and
- (b) is beneficially entitled to monies owed by the borrower to it; and
- (c) has entered into a guarantee in respect of the amount secured or payable under the debenture; and
- (d) is a related corporation of -
 - (i) the persons referred to in Paragraphs (a) to (c); and
 - (ii) the borrower.

(3) An application for approval made under Subsection (1) or (2), shall be made to the Commission in accordance with such procedure or other requirement as may be specified by the Commission.

(4) Notwithstanding the provisions of Subsection (2), a person is not prevented from being appointed or from acting as trustee by reason that -

- (a) the borrower owes to the trustee or any related corporation of the trustee any monies, so long as such monies are -
 - (i) monies that do not, at the time of the appointment or at any time within a period of three months after the debentures are first offered for subscription or purchase or in respect of which an invitation to subscribe for or purchase is made, exceed one-tenth of the amount of the debentures proposed to be issued within that period and do not, at any time after the expiration of that period, exceed one-tenth of the amount the borrower owes to the holders of the debentures; and
 - (ii) monies to which the trustee or any related corporation of the trustee is entitled to as trustee for holders of any debenture of the borrower, in accordance with the terms, provisions or covenants of the debenture or the trust deed; and
- (b) the trustee or a related corporation of the trustee, despite being beneficial owners in the shares of the borrower, do not have the right to exercise more than one-twentieth of the voting power at any general meeting of the borrower.

(5) Where an application has been made to the Commission under Subsection (3), the Commission may approve such application subject to such terms and conditions as it deems necessary.

(6) In exercising its discretion under Subsection (5), the Commission shall have regard to -

- (a) the interests of holders of any debenture; and
- (b) the ability of the trustee to safeguard the interests of such debenture holders as required by the provisions and covenants of the trust deed and the provisions of this Act.

(7) The Commission may revoke its approval under Subsection (5), where the trustee has failed to comply with any term or condition imposed under Subsection (5), or has contravened any provision of this Act.

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- (8) A trustee who -
- (a) contravenes Subsection (1) or (2); and
 - (b) contravenes a term or condition imposed by the Commission under Subsection (5), commits an offence and shall be liable to a fine not exceeding K5,000,000.00 or imprisonment for a term not exceeding seven years, or both.

157. EXISTING TRUSTEE TO CONTINUE TO ACT UNTIL NEW TRUSTEE TAKES OFFICE.

Notwithstanding the provisions of this Act, any other securities law, or any term, provision or covenant in the debenture or trust deed, an existing trustee shall continue to act as trustee until a new trustee is appointed and has taken office as trustee.

158. REPLACEMENT OF TRUSTEE.

(1) Where no provision has been made in the debenture or trust deed for the appointment of a successor to a retiring trustee, the borrower shall, within one month after becoming aware of the intention of the trustee to retire, appoint as successor to the retiring trustee a trustee who is a person eligible to be appointed or to act as trustee under Section 156.

(2) A Court may, on the application of the borrower, or a debenture holder or the Commission -

- (a) appoint, as trustee, a person who is eligible to be appointed or to act as trustee under Section 156, where -
 - (i) the trustee has not been validly appointed; and
 - (ii) the trustee has ceased to exist; and
- (b) terminate the appointment of an existing trustee and appoint in his place, as trustee, a person who is eligible to be appointed or to act as trustee under Section 156, where -
 - (i) the existing trustee is not eligible to be appointed or to act as trustee under Section 156; and
 - (ii) the existing trustee fails or refuses to act in accordance with the provisions or covenants of the trust deed or the provisions of this Act; and
 - (iii) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); and
 - (iv) the trustee is under investigation for conduct that contravenes the *Companies Act 1997*, as amended from time to time or under this Act or any other securities law.

(3) A borrower who contravenes Subsection (1) commits an offence.

159. DUTIES OF THE BORROWER.

- (1) A borrower shall -
- (a) use its best endeavours to carry on and conduct its business in a proper and efficient manner; and

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- (b) provide a copy of the trust deed to -
 - (i) a debenture holder; and
 - (ii) a trustee; and
 - (iii) any other person as may be allowed by the Commission, if they request a copy and upon payment of such reasonable sum as may be imposed by the borrower; and
- (c) make all of its financial and other records available for inspection by -
 - (i) the trustee; or
 - (ii) an officer or employee of the trustee authorised by the trustee to carry out the inspection; or
 - (iii) an approved company auditor appointed by the trustee to carry out the inspection and give the person carrying out the inspection any information, explanation or other assistance that such person may require; and
- (d) comply with any direction issued by the Commission under Section 176(1).

(2) A borrower who contravenes Subsection (1)(a), shall not be guilty of an offence.

(3) A borrower who contravenes Subsection (1)(b) or (c) commits an offence and shall, be liable to a fine not exceeding K5,000,000.00.

(4) A borrower who contravenes Subsection (1)(d) commits an offence.

(5) Where a borrower contravenes Subsection (1)(b) or (c), the Commission may direct the borrower to comply with the provisions of those paragraphs.

(6) A borrower who contravenes a direction of the Commission issued pursuant to Subsection (5) commits an offence.

160. DUTY OF BORROWER TO REPLACE TRUSTEE.

(1) A borrower shall take all reasonable steps to replace a trustee as soon as is practicable after becoming aware that -

- (a) the trustee has ceased to exist; and
- (b) the trustee has not been validly appointed; and
- (c) the trustee is not eligible to be appointed or to act as trustee under Section 156; and
- (d) the trustee has failed or has refused to act as trustee in accordance with the provisions or covenants of the trust deed or the provisions of this Act; and
- (e) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or
- (f) the trustee is under investigation for conduct that contravenes the *Companies Act 1997* and any other securities laws.

(2) A borrower who contravenes Subsection (1) commits an offence.

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161. DUTY OF BORROWER TO INFORM TRUSTEE ABOUT CHARGE.

- (1) Where a borrower creates a charge, it shall -
 - (a) give the trustee written details of the charge within 21 days after it is created; and
 - (b) if the total amount to be advanced on the security of the charge is indeterminate and the advances are not merged in a current account with a bank, trade creditor or any other person, give the trustee written details of the amount of each advance within seven days after it is made.
- (2) A borrower who contravenes Subsection (1) commits an offence.

162. DUTY OF BORROWER TO PROVIDE QUARTERLY REPORT.

- (1) A borrower shall, within one month after the end of each quarter -
 - (a) deliver to the trustee a quarterly report that sets out the information required by Subsections (3), (4), (5) and (7); and
 - (b) lodge a copy of the report with the Registrar; and
 - (c) deliver a copy of the report to the Commission.
- (2) For the purpose of this section -
 - (a) the first quarter shall be a period of three months ending on a day fixed by the borrower by written notice to the trustee, provided that the day fixed shall be less than six months after the first issue of a debenture under the trust deed; and
 - (b) each of the subsequent quarters shall be for periods of three months, or for such shorter time as the trustee may allow in special circumstances.
- (3) The report for a quarter shall include details of -
 - (a) any breach of any limitations on the amount the borrower may borrow; and
 - (b) any failure by the borrower and each guarantor to comply with the terms, provisions or covenants of the debenture or the trust deed or contravention of the provisions of this Act during the quarter; and
 - (c) any event that has happened during the quarter that has caused, or could cause, one or more of the following:
 - (i) any amount secured or payable under the debenture to become immediately payable; and
 - (ii) the debenture to become immediately enforceable; and
 - (iii) any other right or remedy under the terms, provisions or covenants of the debenture or the trust deed to become immediately enforceable; and
 - (d) any circumstance that has occurred during the quarter that would materially prejudice -
 - (i) the borrower, any of its subsidiaries, or any of the guarantors, as the case may be; and
 - (ii) any security or charge included in or created by the debenture or the trust deed; and
 - (e) any substantial change in the nature of the business of the borrower, any of its subsidiaries or its guarantors, as the case may be, that has occurred during the quarter; and

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- (f) any of the following events that has happened in the quarter:
 - (i) the appointment of a guarantor; and
 - (ii) the cessation of liability of a guarantor for the payment of the whole or part of the monies for which it was liable under the guarantee; and
 - (iii) a change of name of a guarantor; and
- (g) the net amount outstanding on any advances at the end of the quarter if the borrower has created a charge where -
 - (i) the total amount to be advanced on the security of the charge is indeterminate; and
 - (ii) the advances are merged in a current account with a bank, trade creditor or any other person; and
- (h) any other matter that may materially prejudice the interests of debenture holders.

(4) If monies are owed to a borrower during the quarter by a related corporation of the borrower, not being such amounts that the borrower deposits with a licensed institution in the normal course of the borrower's business, the report must also include details of -

- (a) the total amount owing by the related corporation during the quarter; and
- (b) the total amount owing by the related corporation at the end of the quarter.

(5) If a borrower has assumed a liability of a related corporation during the quarter, the report shall include details of the extent of the liability assumed during the quarter and the extent of liability as at the end of the quarter.

(6) For purposes of Subsections (4) and (5), the report -

- (a) shall distinguish between amounts owing and assumptions of liability that are secured and those that are unsecured; and
- (b) may exclude any deposit, loan or assumption of liability on behalf of the related corporation if the related corporation has -
 - (i) guaranteed the repayment of the debentures of the borrower; and
 - (ii) secured the guarantee by a charge over all of its property in favour of the trustee for the holders of the debentures of the borrower.

(7) If a prospectus issued in connection with an issue of, offer for subscription or purchase of, or an invitation to subscribe for or purchase, any debenture includes a statement relating to a particular purpose or project for which monies received by a person in response to the issue, offer or invitation are to be applied, the report shall include details of the progress that has been made towards achieving that purpose or completing that project.

(8) The report shall -

- (a) be made in accordance with a resolution of the directors; and
- (b) specify the date on which the report is made.

(9) Where a borrower fails to deliver the report to the trustee, the trustee shall inform the Commission of such fact.

(10) A borrower who contravenes this section commits an offence.

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163. DUTY OF BORROWER TO INFORM OF OCCURRENCE OF MATERIAL EVENT.

(1) Notwithstanding Section 162, a borrower shall inform the trustee and the Commission as soon as possible after the borrower becomes aware -

- (a) of the happening of any event that has caused or could cause, one or more of the following:
 - (i) any amount secured or payable under the debenture to become immediately payable; and
 - (ii) the debenture to become immediately enforceable; and
 - (iii) any other right or remedy under the terms, provisions or covenants of the debenture or the trust deed to become immediately enforceable; and
- (b) of any circumstance that has occurred that would materially prejudice -
 - (i) the borrower, its subsidiaries or its guarantors; and
 - (ii) any security or charge included in or created by the debenture or the trust deed.

(2) A borrower who contravenes Subsection (1) commits an offence.

164. DUTY OF BORROWER WHERE PROSPECTUS STATES PURPOSE FOR WHICH MONIES ARE TO BE APPLIED.

(1) Where the prospectus relating to a debenture contains a statement as to the particular purpose or project for which amounts secured or payable under the debenture to which the trust deed relates are to be applied and the borrower intends to change the purpose or project for which such amounts are to be applied after the debenture has been issued to debenture holders, the borrower shall -

- (a) notify the Commission; and
- (b) give a notice in writing that is approved by the Commission under Subsection (2), to each debenture holder.

(2) A notice referred to in Subsection (1), may be approved by the Commission if the notice -

- (a) specifies the purpose or project for which amounts secured or payable under the debenture would in fact be applied; and
- (b) offers to repay such amounts to each debenture holder; and
- (c) contains such information and particulars as may be approved by the Commission.

(3) The borrower shall not be liable to repay the amount secured or payable under the debenture issued by the borrower under Subsection (1), where the debenture holder does not demand in writing for the repayment of such amounts within 14 days after receipt of the notice or such longer period as may be specified in the notice.

(4) Where the Commission is of the opinion that the new purpose or project is contrary to the approval or to the terms or conditions of the approval granted under Section 118, the Commission may disallow the borrower from pursuing the new purpose or project for which amounts secured or payable under the debenture are to be applied and direct repayment of such amounts to each person from whom such amounts were received.

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(5) Where a borrower receives a notice referred to in Section 169(2)(h) and Section 176(4) or (5), the borrower shall be liable to repay the amount secured or payable under the debenture issued by the borrower to any person to whom such amounts are owed or from whom such amounts were received.

(6) Subject to Subsection (4), a notice given by the borrower under Subsection (1)(b) shall have effect as if the purpose or project specified in the notice is the purpose or project specified in the prospectus.

(7) Notwithstanding the provisions of Subsection (1), the Commission may, on the written application of any borrower or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.

(8) A borrower who contravenes this section commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

165. OBLIGATIONS OF DIRECTORS OF BORROWER TO DELIVER FINANCIAL STATEMENTS.

(1) The directors of every borrower shall deliver to the trustee and the Commission and lodge with the Registrar such financial statements of the borrower as may be specified by the Commission.

(2) Subject to Subsection (3), the directors of the borrower shall deliver to the trustee and the Commission a copy of the borrower's annual audited accounts within two weeks from the date of the borrower's annual general meeting.

(3) Where the borrower is a listed corporation that is required to submit information to the Commission under Section 379, the borrower shall not be required to deliver its annual audited accounts to the Commission under this section.

(4) Where the directors of a borrower do not deliver to the trustee a copy of such financial statements of the borrower as may be specified by the Commission under Subsection (1), or a copy of the borrower's annual audited accounts under Subsection (2), the trustee shall inform the Commission of that fact.

(5) Where the directors of a borrower contravene or fail to take all reasonable steps to secure compliance with Subsection (1) or (2), each director commits an offence.

166. BORROWER TO ISSUE DOCUMENT EVIDENCING INDEBTEDNESS.

(1) The borrower shall, within two weeks or such other period as may be specified by the Commission, after the acceptance of the monies in response to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, a specified number or value of debentures, give to that person a document that acknowledges, evidences or constitutes an acknowledgement of the indebtedness of the borrower in respect of the receipt of monies in response to the issue, offer or invitation.

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(2) A document issued by the borrower in respect of any monies received by the borrower in response to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, any debenture that certifies that a person named in the document -

- (a) is the registered holder of a specified number or value of debentures issued by the borrower; and
- (b) is subject to the provisions and covenants contained in a trust deed referred to or identified in the document, shall be deemed to be a document evidencing the indebtedness of the borrower in respect of such monies.

(3) A borrower shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the borrower has specified in the prospectus -

- (a) that it clearly reserves the right to accept or retain over-subscriptions; and
- (b) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained, being an amount not more than 25 percent in excess of the amount of the issue as disclosed in the prospectus.

(4) A borrower who contravenes Subsection (1) or (3), commits an offence.

167. DUTIES OF GUARANTORS.

(1) Where a borrower is required to enter into a trust deed under Section 154, in relation to any debenture, a guarantor in respect of such debenture shall -

- (a) use its best endeavours to carry on and conduct its business in a proper and efficient manner; and
- (b) make all of its financial or other records available for inspection by -
 - (i) the trustee; or
 - (ii) an officer or employee of the trustee authorised by the trustee to carry out the inspection; or
 - (iii) an approved company auditor appointed by the trustee to carry out the inspection and give the person carrying out the inspection any information, explanation or other assistance that such person may require; and
- (c) furnish the borrower with any information relating to itself which is required under Section 162(3), to be contained in the quarterly report, within 14 days from the date the borrower requests for such information by notice in writing or within such other period which shall not be less than 14 days as may be specified in the notice; and
- (d) where it creates a charge -
 - (i) give the trustee written details of the charge within 21 days after it is created; and
 - (ii) give the trustee written details of -
 - (A) the amount of each advance made within seven days after it is made; or
 - (B) where the advances are merged in a current account with a bank, trade creditor or any other person, the net amount outstanding on the advances at the end of every three months.

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(2) A guarantor who contravenes Subsection (1)(a) shall not be guilty of an offence.

(3) A guarantor who contravenes Subsection (1)(b) commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(4) A guarantor who contravenes Subsection (1)(c) or (d) commits an offence.

(5) Where a guarantor contravenes Subsection (1)(b), the Commission may direct the guarantor to comply with the provisions of that paragraph.

(6) A guarantor who contravenes a direction of the Commission issued pursuant to Subsection (5) commits an offence.

168. OBLIGATIONS OF DIRECTORS OF GUARANTOR TO DELIVER FINANCIAL STATEMENTS.

(1) The directors of every guarantor shall deliver to the trustee and the Commission and lodge with the Registrar of Companies such financial statements of the guarantor as may be specified by the Commission.

(2) Subject to Subsection (3), the directors of the guarantor shall deliver to the trustee and the Commission a copy of the guarantor's annual audited accounts within two weeks from the date of the guarantor's annual general meeting.

(3) Where the guarantor is a listed corporation that is required to submit information to the Commission under Section 389, the guarantor shall not be required to deliver its annual audited accounts to the Commission under this section.

(4) Where the directors of a guarantor do not deliver to the trustee a copy of such financial statements of the guarantor as may be specified by the Commission under Subsection (1) or a copy of the guarantor's annual audited accounts under Subsection (2), the trustee shall inform the Commission of that fact.

(5) Where the directors of a guarantor contravene or fail to take all reasonable steps to secure compliance with Subsection (1) or (2), each director commits an offence.

169. DUTIES OF TRUSTEES.

(1) The trustee of a trust deed which is entered into under Section 154 -

- (a) shall satisfy itself that the provisions of a prospectus or an information memorandum relating to the debenture do not contain any matter which is inconsistent with the terms, provisions and covenants of the debenture and the trust deed; and
- (b) shall take reasonable steps to ensure that the borrower or guarantor remedies a breach of any of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act; and
- (c) shall notify the Commission as soon as practicable if the borrower or guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act; and

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- (d) shall, where the borrower or the guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act, call for a meeting of debenture holders and place before the meeting proposals for the protection of the interest of the debenture holders as the trustee considers necessary or appropriate and obtain their directions; and
 - (e) shall notify the Commission as soon as practicable where the trustee discovers that it is not eligible to be appointed or to act as trustee under Section 156.
- (2) Where a proposal relating to a debenture is approved under Section 118, or authorised, the trustee shall -
- (a) exercise reasonable diligence to ascertain whether the assets of the borrower and of each guarantor which are or may be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates when it becomes due; and
 - (b) notify the Commission as soon as practicable where -
 - (i) the borrower has contravened Section 161 or 162; and
 - (ii) a guarantor has contravened Section 167(1)(d); and
 - (c) where the borrower or the guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act, call for a meeting of debenture holders and place before the meeting proposals for the protection of the interest of the debenture holders as the trustee considers necessary or appropriate and obtain their directions; and
 - (d) comply with any directions given to it at a debenture holders' meeting referred to in Sections 173, 174 and 175 unless -
 - (i) the trustee is of the opinion that the direction is inconsistent with the terms, provision or covenant of the debenture or the trust deed or the provisions of this Act or is otherwise objectionable; and
 - (ii) the trustee has either obtained, or is in the process of obtaining, an order from the Court under Section 178, to set aside or vary such direction; and
 - (e) give the debenture holders a statement explaining the effect of any proposal that the borrower submits to the debenture holders before any meeting that the trustee calls under Section 174(1); and
 - (f) apply to the Commission for a direction under Section 176(1) where the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates as and when it becomes due; and
 - (g) apply to Court for an order under Section 178, where -

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- (i) the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates as and when it becomes due; and
 - (ii) the borrower has failed to comply with a direction made by the Commission under Section 176(1); and
- (h) where the prospectus relating to the debenture contains a statement as to the particular purpose or project for which such amount are to be applied and -
- (i) it appears to the trustee that the purpose or project has not been achieved within the time stated in the prospectus or where no time is stated, within a reasonable time; and
 - (ii) it is the trustee's opinion that notice is necessary for the protection of the interests of debenture holders, give a notice in writing to the borrower requiring it to repay the amounts secured or payable under the debenture to which the trust deed relates within one month after the notice is given and deliver a copy of that notice to the Commission, unless the trustee is satisfied of any or all of the following:
 - (A) that the purpose or project has been substantially achieved or completed; and
 - (B) that the interests of debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time.

(3) For the purposes of Subsection 2(f) and (g), a trustee in making any application to the Commission or to the Court -

- (a) shall have regard to the nature and kind of security given when the debentures were first issued or, if no security was given, shall have regard to the position of debenture holders as unsecured creditors of the borrower; and
- (b) may rely on any certificate or report given or statement made by any advocate, auditor or officer of the borrower or the guarantor if it has reasonable grounds for believing that the advocate, auditor or officer was competent to give or make the certificate, report or statement.

(4) A trustee who contravenes Subsection (1) shall be guilty of an offence.

170. EXEMPTIONS AND INDEMNIFICATION OF TRUSTEE FROM LIABILITY.

(1) Subject to this section, a term, provision or covenant of a debenture or a trust deed or a term of a contract with holders of debentures secured by a trust deed shall be void in so far as the term, provision or covenant, as the case may be, would have the effect of -

- (a) exempting a trustee from liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of it as trustee; and
- (b) indemnifying a trustee against liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of it as trustee, unless the term, provision or covenant -

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- (i) releases the trustee from liability for anything done or omitted to be done before the release is given; and
 - (ii) enables a meeting of debenture holders to approve the release of a trustee from liability for anything done or omitted to be done before the release is given.
- (2) For the purpose of Subsection (1)(b)(i) -
- (a) a release is approved if the debenture holders who vote for the resolution hold 75 percent of the nominal value of the debentures held by all the debenture holders who attend the meeting and vote on the resolution; and
 - (b) a debenture holder attends the meeting and votes on the resolution if -
 - (i) such debenture holder attends the meeting in person and votes on the resolution; or
 - (ii) if proxies are permitted, the debenture holder is represented at the meeting by a proxy and the proxy votes on the resolution.

171. INDEMNITY OF TRUSTEE.

(1) A trustee shall not be liable for anything done or omitted to be done in accordance with a direction given to the trustee by the debenture holders at any meeting called under Section 173, 174 or 175.

(2) A trustee may, in addition to any other rights under the trust deed, seek reimbursement by deducting out of any monies coming into the trustee's hands from the borrower all reasonable costs incurred in explaining the effect of any proposal that the borrower submits to the debenture holders in the circumstances set out in Section 169(2)(e).

172. DUTY OF AUDITOR TO TRUSTEE FOR DEBENTURE HOLDERS.

(1) An auditor of a borrower shall, within seven days after furnishing the borrower with any balance sheet, profit and loss account or any report, certificate or other document which he is required by the *Companies Act 1997*, or by the debenture or trust deed to give to the borrower, send a copy of such balance sheet, profit and loss account, report, certificate or other document by post to every trustee for the holders of debentures of the borrower.

(2) Where, in the performance of his duties as auditor of a borrower, the auditor becomes aware of any matter which, in his professional opinion, is relevant to the exercise and performance of the powers and duties imposed on the trustee -

- (a) by this Act; and
- (b) under the trust deed,

the auditor shall, as soon as practicable after becoming aware of the matter, report the matter to the borrower and the trustee.

(3) Where, in the performance of his duties as auditor for the borrower, the auditor becomes aware -

- (a) of any matter which, in his professional opinion, may constitute a contravention of any provision of this Act; or
- (b) of any irregularities that may have a material effect on the ability of the borrower to repay any amount under the debenture,

the auditor shall immediately report the matter to the Commission.

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(4) The auditor shall not, in the absence of proof of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in the circumstances referred to in Subsection (1), (2) or (3).

(5) An auditor who contravenes Subsection (1) or (2) commits an offence and shall be liable to a fine not exceeding K5,000,000.00.

(6) An auditor who contravenes subsection (3) commits an offence.

173. DUTY OF BORROWER TO CALL A MEETING.

(1) A borrower shall call a meeting of debenture holders if -

- (a) debenture holders who together hold ten percent or more of the nominal value of the issued debentures to which the trust deed relates direct the borrower to do so; and
- (b) the direction is given to the borrower in writing at its registered office; and
- (c) the purpose of the meeting is to -
 - (i) consider the financial statements or annual audited accounts that were last delivered to the trustee under Section 165 or 168; and
 - (ii) give the trustee such directions as the meeting thinks proper; and
 - (iii) consider any other matter in relation to the trust deed.

(2) Where a borrower is required to call a meeting, it must give notice of the time and place of the meeting to -

- (a) the trustee; and
- (b) the borrower's auditor; and
- (c) any debenture holder whose name is entered on the register of debenture holders or record of depositors, as the case may be,

in accordance with the provisions of Subsections (3) and (4).

(3) For the purpose of Subsection (2), notice to joint holders of a debenture must be given to the joint holder named first in the register of debenture holders or record of depositors, as the case may be.

(4) A borrower may give notice to a debenture holder -

- (a) personally; and
- (b) by sending it by post to the address of the debenture holder in the register of debenture holders; and
- (c) by any other means that the terms, provisions or covenants of the debenture or the trust deed permit.

(5) A notice of meeting posted to a debenture holder shall be taken as being given three days after it is posted, unless the terms, provisions or covenants of the debenture or the trust deed provide otherwise.

(6) A trustee may appoint a person to chair a meeting of debenture holders called under Subsection (1) and where the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.

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(7) A borrower who contravenes Subsection (1) or (2), commits an offence.

174. POWER OF TRUSTEE TO CALL A MEETING.

(1) Where a borrower or guarantor fails to remedy any breach of the terms, provisions or covenants of a debenture or a trust deed or any contravention of any provision of this Act when required by the trustee, the trustee may -

- (a) call a meeting of debenture holders; and
- (b) inform the debenture holders of the failure at the meeting; and
- (c) submit proposals for the protection of debenture holders' interests to the meeting; and
- (d) ask for directions from the debenture holders in relation to the matter.

(2) A trustee may appoint a person to chair a meeting of debenture holders called under Subsection (1), and where the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.

(3) A trustee is entitled to be reimbursed by the borrower for any costs incurred in calling for a meeting of debenture holders in pursuance of any of its duties or functions under this Act or any term, provision or covenant of the debenture or the trust deed.

175. COURT MAY ORDER A MEETING OF DEBENTURE HOLDERS.

(1) Without limiting the effect of Section 177 or 178, the Court may make an order under either of those sections for a meeting of all or any of the debenture holders to be held to give directions to the trustee.

- (2) An order made under Subsection (1), may direct the trustee to -
- (a) place before the debenture holders any information concerning the interests of the debenture holders; and
 - (b) place before the debenture holders any proposal to protect the interests of the debenture holders that the Court directs or the trustee considers appropriate; and
 - (c) obtain the debenture holders' directions concerning the protection of the interests of the debenture holders.

(3) The meeting shall be held and be conducted in such manner as the Court may direct.

(4) A trustee may appoint a person to chair the meeting and where the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.

176. POWERS OF COMMISSION TO PROTECT INTERESTS OF DEBENTURE HOLDERS.

(1) The Commission may, on the application of a trustee under Section 169(2)(f) or of its own accord where a trustee fails or refuses to act, issue a written direction to a borrower imposing restrictions on the activities of the borrower as the Commission thinks necessary for the protection of the interests of debenture holders.

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(2) The Commission shall serve the written direction issued under Subsection (1) at the borrower's registered office in Papua New Guinea.

(3) The Commission, in issuing a direction under Subsection (1), shall first give the borrower an opportunity to be heard in relation to the application.

(4) Where a prospectus relating to any debenture contains a statement as to the particular purpose or project for which amounts secured or payable under the debenture are to be applied and -

- (a) it appears to the Commission that the purpose or project has not been achieved within the time stated in the prospectus or, where no time is stated, within a reasonable time; and
- (b) it is the Commission's opinion that notice is necessary for the protection of the interests of debenture holders; and
- (c) the trustee in relation to the debenture has failed or refused to act under Section 169(2)(h), the Commission may, upon due inquiry, direct the borrower in writing to repay the amounts secured or payable under the debenture issued by the borrower within one month after the notice is given, unless the Commission is satisfied on any or all of the following:
 - (A) that the purpose or project has been substantially achieved or completed; and
 - (B) that the interests of debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time.

(5) Where a prospectus relating to any debenture contains a statement as to the particular purpose or project for which the amounts secured or payable under the debenture are to be applied and the Commission becomes aware, by means other than upon notification by a borrower under Section 164(1), that such amounts are in fact used or intended to be used for a purpose or project not specified in the prospectus, the Commission may, upon due inquiry, direct the borrower in writing to repay such amounts to each person from whom such amounts were received or if the debentures have been issued, to each debenture holder, within one month after the notice is given.

177. GENERAL POWER OF COURT TO GIVE DIRECTIONS AND DETERMINE QUESTIONS.

Where a trustee applies to the Court for any direction in relation to the performance of the trustee's functions or to determine any question in relation to the interests of debenture holders, the Court may give any direction and make any declaration or determination in relation to the matter or make any ancillary or consequential orders that the Court considers appropriate.

178. SPECIFIC POWER OF THE COURT.

(1) Where a borrower, trustee or the Commission applies to the Court for an order under the provisions of this Act or pursuant to any term, provision or covenant of a debenture or a trust deed, the Court may make any or all of the following orders:

- (a) an order staying an action or other civil proceedings before a Court by or against a borrower or a guarantor; and

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- (b) an order restraining a borrower from paying any monies to the debenture holders or holders of any other class of debentures; and
- (c) an order that any security for the debentures be enforceable immediately or at the time the court directs, whether or not the debentures are irredeemable or redeemable only on the happening of a contingency; and
- (d) an order appointing a receiver of any property constituting security for the debentures; and
- (e) an order restricting advertising by a borrower for deposits or loans; and
- (f) an order restricting borrowing by a borrower; and
- (g) an order varying or rescinding any order made by the court under this Act; and
- (h) any other order that the Court considers appropriate to protect the interests of existing or prospective debenture holders.

(2) In deciding whether to make an order under Subsection (1), the Court shall have regard to the rights of all creditors of the borrower.

Subdivision 2. - General.

179. REGISTER OF DEBENTURE HOLDERS.

(1) Subject to Subsection (2), every borrower which issues debentures, not being debentures transferable by delivery, shall keep a register of debenture holders at its registered office or at some other place in Papua New Guinea.

(2) Where the borrower is a company, the borrower shall comply with the provisions of Section 67 of the *Companies Act 1997*, that relate to the obligation to keep a register of debenture holders and a branch register of debenture holders.

(3) The register shall contain particulars of -
(a) the names and addresses of debenture holders; and
(b) the amount of debentures held by them.

(4) The register shall be open for inspection by registered debenture holders or shareholders of the borrower except when duly closed under Subsection (5).

(5) A register is deemed to be duly closed -
(a) if it is closed in accordance with the provisions contained in -
 (i) the constituent documents of the borrower; and
 (ii) the debentures or debenture stock certificates; and
 (iii) the trust deed; and
 (iv) any other document relating to or securing the debenture; and
(b) where it is closed for such periods as is specified in any of the documents mentioned in Subsection (5)(a)(i), (ii), (iii) and (iv), provided that such period does not exceed, in the aggregate, thirty days in any calendar year.

(6) A borrower shall, upon request, supply every registered debenture holder or shareholder of the borrower with a copy of the register of debenture holders, or such part thereof, on the payment of a reasonable sum as may be specified by the borrower.

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(7) The copy of the register of debenture holders referred to in Subsection (6), need not include the particulars of any debenture holder other than the name and address of the registered debenture holder and the debentures held by him.

(8) If inspection is refused, or a copy is refused or not forwarded within a reasonable time after a request has been made pursuant to this section, the borrower and every officer of the borrower who is in default commits an offence and shall be liable to a fine not exceeding K5,000,000.00.

(9) A borrower issuing debentures may keep at any place outside Papua New Guinea a branch register of debenture holders which shall be deemed to be a part of the borrower's register of debenture holders and the provisions of Division 9, of Part VI of the *Companies Act 1997* shall, with such adaptations as are necessary, apply to and in relation to the keeping of a branch register of debenture holders.

(10) Notwithstanding the provisions of Subsections (1) to (9), the Commission may, either on the written application of any borrower referred to in Subsection (1), or of its own accord, make an order relieving such borrower from, or approving any variation from, the requirements of this section relating to the maintenance of a register of debenture holders, subject to such terms and conditions as it thinks fit.

(11) A borrower and every officer of the borrower who is in contravention of Subsection (1), (3) or (9), commits an offence and shall be liable to a fine not exceeding K10,000,000.00.

180. SPECIFIC PERFORMANCE.

A contract with a borrower to take up and pay for any debenture of the borrower may be enforced by an order for specific performance.

181. PERPETUAL DEBENTURES.

Notwithstanding any rule of law or equity which disallows perpetual debentures, a condition contained in any debenture or any trust deed relating to a debenture shall not be invalid by reason only that the debenture is -

- (a) irredeemable; and
- (b) redeemable only on the happening of a contingency, however remote; and
- (c) redeemable on the expiration of a period, however long.

182. RE-ISSUE OF REDEEMED DEBENTURES.

(1) Where a borrower has redeemed any debenture -

- (a) unless any provision to the contrary, whether express or implied, is contained in the constituent documents of the borrower or any contract entered into by the borrower; and
- (b) unless the borrower has shown an intention that the debenture shall be cancelled by passing a resolution to that effect or by some other act, the borrower shall have and shall be deemed to have had the power to re-issue the debenture, either by reissuing the same debenture or issuing any other debenture in its place.

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(2) The re-issue of a debenture or the issue of one debenture in place of another under Subsection (1) shall not be regarded as an issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the borrower.

(3) After the re-issue, the person entitled to the debenture shall have and shall be deemed to have had the same priorities as if the debenture had never been redeemed.

(4) Where a borrower has deposited any of its debentures to secure advances on a current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the borrower having ceased to be in debit while the debentures remain so deposited.

PART V. - UNIT TRUST AND MANAGED INVESTMENT SCHEMES.

Division 1. - Interpretation.

183. INTERPRETATION.

In this Part, unless the context otherwise requires -

“deed” means a document having the effect of a deed and, where applicable, includes a supplementary deed;

“member” or “unit holder” means a unit holder or member of the unit trust scheme or the managed investment scheme;

“Officer” means a person who is a director, secretary or executive officer of the trustee;

“registered scheme” means a managed investment scheme or a unit trust that is registered under Section 186;

“scheme property” means -

(a) contributions of money or money’s worth to the scheme; and

(b) money that forms part of the scheme property under provisions of this Act or any other securities laws; and

(c) money borrowed or raised by the trustee for the purposes of the scheme; and

(d) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in Paragraph (a), (b) or (c); and

(e) income and property derived, directly or indirectly, from contributions, money or property referred to in Paragraph (a), (b), (c) or (d);

“subscriber” for securities that are interests in a managed investment scheme means any

person -

(a) accepting an offer, or making an offer pursuant to an invitation, in respect of the interests; or

(b) subscribing for or buying the interests;

“undertaking”, in relation to a managed investment scheme, means the undertaking, scheme, enterprise, contract or arrangement to which the scheme relates.

Division 2. - Registration of managed investment or unit trust schemes.

184. ESTABLISHING OR OPERATING A UNIT TRUST OR MANAGED INVESTMENT SCHEME.

(1) A person shall not establish or operate a unit trust or managed investment scheme unless -

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- (a) the person is a licensed trustee under this Act and appointed by the members or unit holders of a managed investment scheme or a unit trust scheme to act as trustee of the scheme; and
- (b) the unit trust or managed investment scheme is approved and registered by the Commission.

(2) A person who contravenes Subsection (1) commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

185. APPLYING FOR REGISTRATION.

(1) To register a unit trust or managed investment scheme, a person shall lodge an application with the Commission.

(2) The application shall state the name and the address of the registered office, of the proposed trustee of the unit trust or the managed investment scheme.

- (3) The following shall be lodged with the application -
 - (a) a copy of the scheme's trust deed; and
 - (b) a statement signed by the directors of the proposed trustee that the trust deed complies with Section 210.

186. REGISTRATION OF UNIT TRUST OR A MANAGED INVESTMENT SCHEME.

(1) The Commission shall register the scheme within 21 days of lodgment of the application, unless it appears to the Commission that -

- (a) the application does not comply with Section 185; or
- (b) the proposed trustee does not meet the requirements of Section 189; or
- (c) the scheme's trust deed does not meet the requirements of Section 210.

(2) The Commission shall keep a record of the registration of the scheme.

(3) For the purpose of determining whether Subsection (1) is satisfied in relation to the scheme -

- (a) references in Division 4 to a registered scheme is taken to include a reference to the scheme; and
- (b) references in Division 4 to the trustee of a registered scheme is taken to include a reference to the proposed trustee of the scheme.

187. WHEN A UNIT TRUST OR A MANAGED INVESTMENT SCHEME MUST BE REGISTERED.

(1) Subject to Subsection (2), a unit trust scheme or a managed investment scheme shall be registered under Section 186 where -

- (a) it has more than 20 members; or
- (b) it was promoted by a person, or an associate of a person, who was, when the scheme was promoted, in the business of promoting unit trust schemes or a managed investment scheme; or

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(c) a determination under Subsection (2) is in force in relation to the scheme and the total number of members of all of the schemes to which the determination relates exceeds 20 members.

(2) The Commission may, in writing, determine that a number of unit trusts or managed investment schemes are closely related and that each of them has to be registered at any time when the total number of members of all of the schemes exceeds 20 members.

(3) The Commission shall give written notice of the determination under Subsection (2) to the trustee of each of the schemes.

(4) For the purpose of this section, when working out how many members a scheme has -

(a) joint holders of an interest in the scheme count as a single member; and

(b) an interest in the scheme held in trust for a beneficiary is taken to be held by the beneficiary (rather than the trustee) where -

(i) the beneficiary is presently entitled to a share of the trust estate or of the income of the trust estate; or

(ii) the beneficiary is, individually or together with other beneficiaries, in a position to control the trustee.

(5) For the purpose of Section 184(1), a person shall not operate a scheme merely because -

(a) he is acting as an agent or employee of another person; or

(b) he is taking steps to wind up the scheme or remedy a defect that led to the scheme being deregistered.

(6) A person who would otherwise contravene Section 184 because an interest in a scheme is held in trust for two or more beneficiaries prove that they did not know, and had no reason to suspect, that the interest was held in that way.

188. WINDING UP OF UNREGISTERED SCHEMES.

(1) Where a person operates a unit trust or a managed investment scheme in contravention of Section 184(1), the following may apply to the Court to have the scheme wound up -

(a) the Commission; and

(b) the trustee of the scheme; and

(c) a member of the scheme.

(2) The Court may make any orders it considers appropriate for the winding up of the scheme.

(3) Notwithstanding any actions taken under Subsections (1) and (2), every promoter and each individual director, the chief executive officer, the chief financial officer and the company secretary are guilty of an offence and are subject to the penalty under Section 184(2).

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Division 3. - The trustee.

Subdivision 1. - Responsibilities and powers.

189. TRUSTEE TO BE THE RESPONSIBLE ENTITY.

(1) A person licensed as a trustee under this Act shall be the principal responsible entity of a unit trust or a managed investment scheme.

(2) The trustee of a registered scheme shall be a corporation that holds a capital market licence issued under Section 37 of this Act authorising it to operate a unit trust or a managed investment scheme.

(3) The Commission shall issue guidelines under of this Act, providing further requirements relating to the trustee, its functions and any other related matters.

190. TRUSTEE TO OPERATE SCHEME.

(1) The trustee of a registered scheme is to operate the scheme and perform the functions conferred on it by the scheme's trust deed and this Act.

(2) The trustee has power to appoint reasonably qualified persons as agents, or otherwise engage a person, or outsource to a person to perform specific functions for the scheme.

(3) For the purpose of determining whether -

- (a) there is a liability to the members; or
- (b) the trustee has properly performed its duties for the purposes of Section 210(3),

the trustee is taken to have performed (or failed to perform) such duties or functions, which the agent or the person has performed (or failed to perform), even if such duties or functions were performed fraudulently or outside the terms of their engagement.

(4) An agent appointed, or a person otherwise engaged, by the trustee under Subsection (2), shall perform such duties or functions within the terms of that engagement.

(5) Where -

- (a) an agent holds scheme property on behalf of the trustee; and
- (b) the agent is liable to indemnify the trustee against any loss or damage that -
 - (i) the trustee suffers as a result of a wrongful or negligent act or omission of the agent; and
 - (ii) relates to a failure by the trustee to perform its duties in relation to the scheme,

any amount recovered under the indemnity forms part of the scheme property.

191. DUTIES OF TRUSTEE.

(1) In exercising its powers and carrying out its duties, the trustee shall -

- (a) act honestly; and
- (b) exercise the degree of care and diligence that a reasonable person would exercise if they were in the trustee's position; and

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- (c) act in the best interests of the members and, if there is a conflict between the members' interests and its own interests, give priority to the members' interests; and
- (d) treat the members who hold interests of the same class equally and members who hold interests of different classes fairly; and
- (e) not make use of information acquired through being the trustee in order to:
 - (i) gain an improper advantage for itself or another person; or
 - (ii) cause detriment to the members of the scheme; and
- (f) ensure that the scheme's trust deed meets the requirements of Section 210 or 211; and
- (g) ensure that scheme property is -
 - (i) clearly identified as scheme property; and
 - (ii) held separately from property of the trustee and property of any other scheme; and
- (h) ensure that the scheme property is valued at regular intervals appropriate to the nature of the property; and
- (i) ensure that all payments out of the scheme property are made in accordance with the trust deed and this Act; and
- (j) report to the Commission any breach of this Act that -
 - (i) relates to the scheme; and
 - (ii) has had, or is likely to have, a materially adverse effect on the interests of members;as soon as practicable after it becomes aware of the breach; and
- (k) carry out or comply with any other duty, not inconsistent with this Act, that is conferred on the trustee by the trust deed.

(2) The trustee shall hold the scheme property in trust for the unit holders or members.

(3) A duty of the trustee under Subsection (1) or (2) overrides any conflicting duty an officer or employee of the trustee has.

(4) A person who contravenes Subsection (1), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

192. DUTIES OF EMPLOYEES OR OFFICERS OF TRUSTEE.

- (1) An employee or an officer of the trustee of a registered scheme shall -
 - (a) act honestly; and
 - (b) exercise the degree of care and diligence that a reasonable person would exercise if they were in the officer's position; and
 - (c) act in the best interests of the members and, if there is a conflict between the members' interests and the interests of the trustee, give priority to the members' interests; and
 - (d) not make use of information acquired through being an officer of the trustee in order to -
 - (i) gain an improper advantage for the officer or another person; or
 - (ii) cause detriment to the members of the scheme; and

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- (e) not make improper use of their position as an officer to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the members of the scheme; and
- (f) take all steps that a reasonable person would take, if they were in the officer's position, to ensure that the trustee complies with -
 - (i) this Act; and
 - (ii) any conditions imposed on the trustee's licence; and
 - (iii) the trust deed.

(2) A duty of an employee or officer of the trustee under Subsection (1) overrides any conflicting duty the officer may have.

(3) A person who contravenes Subsection (1), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

193. OPERATION OF TRUST ACCOUNT.

(1) Subject to Section 191(2), a trustee shall open a trust account or accounts for the scheme's assets and shall maintain such trust account or accounts.

(2) A trustee shall deposit scheme's assets into the trust account not later than the next bank business day or such other day as may be specified by the Commission, following the day on which the holder receives the scheme's assets.

(3) Notwithstanding Subsection (1), where the assets which are required by this section to be deposited into a trust account are received by a trustee in a place outside Papua New Guinea, the trustee may deposit such assets into a trust account maintained by it in that place.

(4) A trustee shall not withdraw from or deal with a scheme's assets in a trust account except for the purpose of making a payment -

- (a) to the person entitled thereto; or
- (b) that is otherwise authorised by law.

(5) Except as otherwise provided in this division, a scheme's assets held in a trust account shall not be available for the payment of the debts of a trustee or liable to be paid or taken in execution under an order or process of Court for the payment of the debt of a trustee.

(6) A person subcontracted or outsourced to perform a function of the trustee under this part including the function of a fund manager or fund management, shall not accept or hold a scheme's assets in trust on behalf of a unit holder of a unit trust or a managed investment scheme.

(7) For the purposes of this division, a person engaged or subcontracted under Subsection (6), shall not create a bank account in trust for the unit trust or investment scheme or hold a scheme's assets in trust for a unit holder of a unit trust or managed investment scheme.

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(8) 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 scheme's assets held in a trust account or against or upon any scheme's assets received for the purchase or from the sale of securities before such assets are deposited into the trust account.

(9) A person who -

- (a) contravenes this section, commits an offence and shall be liable to a fine not exceeding K5,000,000.00; or
- (b) with intent to defraud, contravenes this section, commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

194. ASSETS OF A UNIT TRUST SCHEME OR A MANAGED INVESTMENT SCHEME.

(1) A trustee shall not deal in securities for or on behalf of a member unless, to the extent that the trustee receives the assets -

- (a) the trustee does so on the basis that the assets shall be applied solely for specified purposes as provided for in the trust deed and in the best interest of the members; and
- (b) pending such application, the assets are deposited in the trust account by the next business day or such other day as may be specified by the Commission in a trust account maintained in accordance with this division; and
- (c) a separate book entry shall be recorded and maintained for each scheme by the trustee in accordance with this Act or any guidelines issued by the Commission, in relation to scheme's assets.

(2) A person other than the trustee who, notwithstanding Subsection (1), keeps in its custody the assets of a unit trust or a managed investment scheme is guilty of an offence.

(3) Subject to Subsection (2), the person or if that person is a corporation, that person or each director of the corporation is personally liable for a fine at a minimum sum of K500,000.00 or imprisonment for a term not exceeding five years, or both.

(4) Where a trustee contravenes Subsection (1), every director of the trustee is personally liable for a fine not exceeding K1,000,000.00 or imprisonment for a term not exceeding five years, or both.

195. RIGHT TO COPIES OF BOOK ENTRIES AND INSPECTION OF CONTRACT NOTES.

(1) A trustee shall supply, on demand, to a member, copies of all entries in its books relating to the member's transaction.

(2) A person referred to in Subsection (1), shall be entitled to inspect any contract note or document relating to the member's transaction free of charge.

196. SURVEILLANCE CHECKS BY THE COMMISSION.

(1) The Commission may, from time to time, check whether a trustee is complying with the trust deed and with this Act.

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(2) The trustee and its officers or employees shall take all reasonable steps to assist the Commission in carrying out a check under Subsection (1).

(3) A trustee who failed to comply with the terms of the trust deed and any provisions of this Act or any other securities laws in relation to a scheme commits an offence and every director of the trustee shall be liable to a fine not exceeding K1,000,000.00 or imprisonment for a term not exceeding five years, or both.

197. ACQUISITION OF INTEREST IN SCHEME BY TRUSTEE.

- (1) The trustee may acquire and hold an interest in the scheme, but it shall only do so -
- (a) for not less than the consideration which would be payable if the interest were acquired by another person; and
 - (b) subject to terms and conditions which would not disadvantage other members; and
 - (c) subject to the approval of the Commission to avoid conflict of interest situation.

(2) A trustee who contravenes Subsection (1), commits an offence and every director of the trustee shall be liable to a fine not exceeding K1,000,000.00 or imprisonment for a term not exceeding five years, or both.

Subdivision 2. - Changing the trustee.

198. CHANGES TO TAKE EFFECT ONLY WHEN COMMISSION ALTERS RECORDS OF REGISTRATION.

(1) Notwithstanding anything in this division, the corporation named in the Commission's record of registration as the trustee or an interim trustee of a registered scheme remains the trustee until the record is altered to name another corporation as the scheme's trustee or interim trustee.

(2) A purported change of the trustee is ineffective unless it is in accordance with this subdivision.

199. REQUIREMENTS FOR APPOINTMENT OF TRUSTEE OR INTERIM TRUSTEE.

A person shall not be chosen or appointed as the trustee or interim trustee of a registered scheme unless it meets the requirements of Section 189.

200. RETIREMENT OF TRUSTEE.

(1) Where the trustee of a registered scheme wants to retire, it shall call a members' meeting to explain its reason for wanting to retire and to enable the members to vote on a resolution to choose a licensed trustee to be the new trustee.

(2) If the members choose a corporation to be the new trustee and that corporation has consented, in writing, to becoming the scheme's trustee -

- (a) as soon as practicable and in any event within two business days after the resolution is passed, the current trustee shall lodge a notice with the Commission asking it to alter the record of the scheme's registration to name the chosen corporation as the scheme's trustee; and

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- (b) if the current trustee does not lodge the notice required by Paragraph (a), the entity chosen by the members to be the new trustee may lodge that notice; and
- (c) the Commission shall accept with the notice when it is lodged.

(3) Where the members do not choose a new trustee, or the corporation they choose does not consent to becoming the scheme's trustee, the Commission shall appointment an interim trustee under Section 202.

(4) A person shall not lodge a notice under Subsection (2), unless the consent referred to in that subsection has been given before the notice is lodged.

201. REMOVAL OF TRUSTEE BY MEMBERS.

(1) Where members of a registered scheme want to remove the trustee, they may take action under Division 5 for the calling of a members' meeting to consider and vote on a resolution that the current trustee should be removed and a resolution choosing a new trustee.

(2) Where the members vote to remove the trustee and, at the same meeting, choose a new trustee that consents, in writing, to becoming the scheme's trustee -

- (a) as soon as practicable and in any event within two business days after the resolution is passed, the current trustee shall lodge a notice with the Commission asking it to alter the record of the scheme's registration to name the trustee for the scheme; and
- (b) if the current trustee does not lodge the notice required by Paragraph (a), the new trustee may lodge that notice; and
- (c) the Commission shall comply with the notice when it is lodged.

(3) A person shall not lodge a notice under Subsection (2), unless the consent referred to in that subsection has been given before the notice is lodged.

202. THE COMMISSION MAY APPOINT AN INTERIM TRUSTEE.

The Commission may appoint an interim trustee of the scheme within 12 hours after the trustee of the scheme become vacant.

203. APPOINTMENT OF INTERIM TRUSTEE BY COURT.

(1) The Court may, on application by a member of the scheme, by order, appoint a company which has a trustee licence issued under this Act as an interim trustee of a registered scheme if the Commission failed to appoint an interim trustee under Section 202 of this Act.

(2) The Court may make any further orders that it considers necessary.

(3) Where the application was made by the current trustee, it shall, as soon as practicable after the Court's order appointing the interim trustee, lodge a notice with the Commission informing the Commission of the appointment made by the Court.

(4) As soon as practicable after the appointment, the Commission shall alter the record of the scheme's registration to name the appointed trustee as the scheme's interim trustee.

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204. INTERIM TRUSTEE TO TAKE STEPS FOR APPOINTMENT OF TRUSTEE.

(1) The interim trustee of a registered scheme appointed under Section 202 or 203, shall call a members' meeting for the purpose, by resolution, to choose a new trustee.

(2) The interim trustee shall call the meeting as soon as practicable and, in any event, within three months of becoming the interim trustee.

(3) Subject to Subsection (2), within the three months, the interim trustee may call further members' meetings for the purpose of choosing a new trustee.

(4) Before the end of the three months, the interim trustee may apply to the Court for an extension of that period.

(5) If the Court grants the extension, the interim trustee may, within the extended period, call further members' meetings for the purpose of choosing a new trustee.

(6) Where the members choose a new trustee and that entity has consented, in writing, to becoming the scheme's trustee, the interim trustee shall, as soon as practicable, lodge a notice with the Commission asking it to alter the record of the scheme's registration to name the new entity as the scheme's trustee.

(7) Subject to Section 189(2), nothing prevents the unit holders from choosing the interim trustee as the new trustee of the scheme.

Subdivision 3. - Consequences of change of trustee.

205. FORMER TRUSTEE TO HAND OVER BOOKS AND PROVIDE REASONABLE ASSISTANCE.

Where the trustee of a scheme changes, the former trustee shall -

- (a) as soon as practicable give the new trustee any books in the former trustee's possession or control that this Act requires to be kept in relation to the scheme; and
- (b) give other reasonable assistance to the new trustee to facilitate the change of trustee.

206. RIGHTS, OBLIGATIONS AND LIABILITIES OF FORMER TRUSTEE.

(1) Where the trustee of a scheme changes, the rights, obligations and liabilities of the former trustee in relation to the scheme become rights, obligations and liabilities of the new trustee.

(2) Notwithstanding Subsection (1), the following rights and liabilities remain rights and liabilities of the former Trustee:

- (a) any right of the former trustee to be paid fees for the performance of its functions before it ceased to be the trustee; and
- (b) any right of the former trustee to be indemnified for expenses it incurred before it ceased to be the trustee; and
- (c) any right, obligation or liability that the former trustee had as a member of the scheme; and

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- (d) any liability for which the former trustee could not have been indemnified out of the scheme property if it had remained the scheme's trustee.

207. EFFECT OF CHANGE OF TRUSTEE ON DOCUMENTS.

- (1) Where the trustee of a scheme changes, a document -
- (a) to which the former trustee is a party, in which a reference is made to the former trustee or under which the former trustee has acquired or incurred a right, obligation or liability, or might have acquired or incurred a right, obligation or liability if it had remained the trustee; and
 - (b) that is capable of having effect after the change,

has effect as if the new trustee (and not the former trustee) were a party to it, were referred to in it or had or might have acquired or incurred the right, obligation or liability under it.

- (2) Subsection (1) does not apply to a right, obligation or liability that remains a right, obligation or liability of the former trustee because of Section 206(2).

Division 4. - Trust deed.

208. APPROVAL AND REGISTRATION OF THE TRUST DEED.

- (1) The trustee shall submit the trust deed of a unit trust or a managed investment scheme to the Commission for approval and registration and such deed shall not have effect unless so registered.

- (2) The Commission may, on an application for approval of a deed -
- (a) approve the deed; and
 - (b) upon approval under Paragraph (a), register the deed with such revisions or subject to such terms and conditions as it thinks fit; and
 - (c) refuse to approve the deed.

- (3) An application under Subsection (2), shall be made in accordance with such procedure or other requirement as may be specified by the Commission.

- (4) The Commission shall refuse to approve a deed under Subsection (2)(c) if -
- (a) it appears to the Commission that the deed does not comply with the requirements of this Act or any other requirement as may be specified by the Commission; and
 - (b) the making available of, offer for subscription or purchase of, or invitation to subscribe for or purchase, a unit to which the deed relates has not been approved by the Commission under Section 118(1); and
 - (c) the trustee has not been appointed for the purposes of the deed by the members of the scheme.

- (5) Subject to Subsection (4), the Commission shall register a deed together with an application for its registration.

209. DEED TO BE LODGED WITH THE REGISTRAR.

The trustee shall lodge a deed with the Registrar of Companies within seven days after the deed has been approved and registered under Section 208.

210. CONTENTS OF THE TRUST DEED.

(1) The trust deed shall make adequate provision for -

- (a) the consideration that is to be paid to acquire an interest in the scheme; and
- (b) the powers of the trustee in relation to making investments of, or otherwise dealing with, scheme property; and
- (c) the method by which complaints made by members in relation to the scheme are to be dealt with; and
- (d) winding up the scheme; and
- (e) the specific nature of the scheme.

(2) Subject to Subsection (1)(e) above, the following are types of schemes, which are applicable under this Act:

- (a) unit trust; and
- (b) property trusts; and
- (c) managed funds; and
- (d) hedge funds; and
- (e) derivatives funds; and
- (f) money market funds; and
- (g) guaranteed funds; and
- (h) capital protected funds; and
- (i) umbrella funds; and
- (j) other funds that the Commission may prescribe by publication in the National Gazette.

(3) Where the trustee has any rights to be paid fees out of scheme property, or to be indemnified out of scheme property for liabilities or expenses incurred in relation to the performance of its duties, those rights -

(a) shall be specified in the trust deed; and

(b) shall be available only in relation to the proper performance of those duties, and any other agreement or arrangement has no effect to the extent that it purports to confer such a right.

(4) Where the trustee is to have any powers to borrow or raise money for the purposes of the scheme -

- (a) those powers shall be specified in the trust deed; and
- (b) any other agreement or arrangement has no effect to the extent that it purports to confer such a power.

(5) Where members are to have a right to withdraw from the scheme, the trust deed shall -

- (a) specify the right; and
- (b) if the right may be exercised while the scheme is liquid, pursuant to Section 257, set out adequate procedures for making and dealing with withdrawal requests; and
- (c) if the right may be exercised while the scheme is not liquid, pursuant to Section 258, provide for the right to be exercised in accordance with Division 5 and set out any other adequate procedures (consistent with that division) that are to apply to making and dealing with withdrawal requests.

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(6) The right to withdraw, and any provisions in the trust deed setting out procedures for making and dealing with withdrawal requests, shall be fair to all members.

211. MODIFICATION OF DEED THROUGH SUPPLEMENTARY DEED.

(1) A modification may be made to a deed only by a deed expressed to be supplementary to the principal deed and submitted by the trustee to the Commission for approval and a supplementary deed shall not have effect unless it has been so approved and registered.

(2) The Commission may, on an application for registration of a supplementary deed -

- (a) approve the supplementary deed; and
- (b) approve and register the supplementary deed with such revisions or subject to such terms and conditions as it thinks fit; and
- (c) refuse to approve the supplementary deed.

(3) The Commission shall refuse to approve a supplementary deed under Subsection (2)(c) if it appears to the Commission that the supplementary deed does not comply with the requirements of this Act or any other requirement as may be specified by the Commission.

(4) The supplementary deed submitted for approval shall be accompanied by -

- (a) a resolution of not less than two-thirds of all unit holders or members at a unit holders' or members' meeting duly convened and held according to Division 5 of this Act sanctioning the proposed modification to the deed; or
- (b) a statement from the trustee certifying that in its opinion such modification, alteration or addition does not materially prejudice the interests of members and does not operate to release the trustee from any responsibility to the members.

(5) The Commission may require the trustee, in any application for approval of a supplementary deed, to obtain a resolution under Subsection (4)(a) if in the Commission's opinion any modification, alteration or addition to the deed may prejudice the interests of members.

(6) A supplementary deed proposing any modification, alteration or addition to the deed which -

- (a) would increase the maximum service charge or annual management fee payable to the trustee, whether payment is made out of the property or assets of the unit trust scheme or managed investment scheme or otherwise; or
- (b) would increase the maximum payment allowed to be made out of the property or assets of the unit trust scheme or managed investment scheme to the trustee by way of remuneration for the trustee's services, shall be submitted for approval accompanied by a resolution under Subsection (4)(a).

(7) A supplementary deed upon approval and registration under this section shall be deemed to be part of the deed to which it relates for the purposes of this Act.

(8) A person who contravenes Subsection (1) commits an offence.

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212. TRUST DEED SHALL BE LEGALLY ENFORCEABLE.

The trust deed shall be a document that is legally enforceable as between the members and the trustee.

Division 5. - Meetings of members of registered unit trust or registered managed investment schemes.

Subdivision 1. - Who may call meetings of members.

213. CALLING OF MEETINGS OF MEMBERS BY TRUSTEE.

The trustee of a registered scheme may call a meeting of the scheme's members.

214. CALLING OF MEETINGS OF MEMBERS BY TRUSTEE WHEN REQUESTED BY MEMBERS.

(1) The trustee shall call and arrange to hold a meeting of the members or unit holders to consider and vote on a proposed special resolution on the request of -

- (a) members with at least 10 percent of the votes which may be cast on the resolution; or
- (b) at least 100 members who are entitled to vote on the resolution.

(2) The regulations may prescribe a different number of members for the purposes of the application of Subsection (1)(b) to -

- (a) a particular scheme; or
- (b) a particular class of scheme.

(3) Without limiting Subsection (2), regulations made for the purposes of this part, may, specify the number as a percentage of the total number of members of the scheme.

(4) The request shall -

- (a) be in writing; and
- (b) state any resolution to be proposed at the meeting; and
- (c) be signed by the members proposing to move the resolution.

(5) The request may be accompanied by a statement about the proposed resolution provided by the members making the request.

(6) Separate copies of a document setting out the request and statement (if any) may be used for signing by members if the wording of the request and statement (if any) is identical in each copy.

(7) The percentage of the votes that members have is to be worked out as at the midnight before the request is given to the trustee.

(8) The trustee shall call the meeting within 21 days after the request is given to it and the meeting is to be held not later than two months after the request is given to the trustee.

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(9) The trustee shall give to each of the members a copy of the proposed resolution and statement (if any) at the same time or as soon as practicable afterwards, as it gives notice of the meeting.

(10) The trustee shall distribute the copies in the same way in which it gives notice of the meeting.

(11) The trustee does not have to distribute a copy of the resolution or statement if either is more than 1,000 words long or defamatory.

(12) The trustee is responsible for the expenses of calling and holding the meeting and making the distribution and the trustee may meet those expenses from the scheme's assets.

215. FAILURE OF THE TRUSTEE TO CALL MEETING OF THE SCHEME'S MEMBERS.

(1) Members with more than 50 percent of the votes carried by interests held by the members who make a request under Section 214 may call and arrange to hold a meeting of the members and distribute the statement (if any) if the trustee does not do so within 21 days after the request is given to the trustee.

(2) The meeting shall be called and the statement is to be distributed in the same way, so far as is possible, in which meetings of the members may be called by the trustee and information is distributed to members by the trustee.

(3) The meeting shall be held not later than three months after the request is given to the trustee.

(4) The trustee shall pay the reasonable expenses the members incurred because the trustee failed to call and arrange to hold the meeting and to make the distribution (if any) and the trustee shall not pay those expenses from the scheme's assets.

(5) A trustee who pays the expenses under Subsection 4 using the assets of the scheme shall repay three times the value of the assets applied under this section to the scheme.

(6) A trustee who failed to repay the value of the assets of the scheme under Subsection (5) is guilty of an offence and every director of the trustee and its chief executive officer is liable to pay three times the value of the assets of the fund applied under this section or imprisonment for a term not exceeding ten years, or both.

216. CALLING OF MEETINGS OF MEMBERS BY MEMBERS.

(1) Members of a scheme who hold interests carrying at least 10 percent of the votes that may be cast at a meeting may call and arrange to hold a meeting of the members to consider and vote on a proposed special resolution and the members calling the meeting shall pay the expenses of calling and holding the meeting.

(2) The meeting shall be called in the same way, so far as is possible, in which meetings of the members may be called by the trustee.

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(3) The percentage of the votes carried by interests that members hold is to be worked out as at the midnight before the meeting is called.

217. CALLING OF MEETINGS OF MEMBERS BY THE COURT.

(1) The Court may order a meeting of unit holders or members of a scheme to be called to consider and vote on a proposed special resolution if it is impracticable to call the meeting in any other way.

(2) The Court may make the order on application by -

- (a) the trustee; or
- (b) the Securities Commission; or
- (c) any member of the scheme who would be entitled to vote at the meeting.

Subdivision 2. - How to call meetings of members.

218. AMOUNT OF NOTICE OF MEETINGS.

At least 21 days notice shall be given of a meeting, however, the trust deed may specify a longer minimum period of notice.

219. NOTICE OF MEETINGS OF MEMBERS TO MEMBERS, DIRECTORS AND AUDITORS.

(1) Written notice of a meeting of members shall be given to -

- (a) each member of the scheme entitled to vote at the meeting; and
- (b) each director of the trustee; and
- (c) the auditor of the scheme; and
- (d) where an interest is held jointly, notice need only be given to one of the members.

(2) Unless the trust deed provides otherwise, notice to joint members shall be given to the joint member named first in the register of members.

(3) Unless the trust deed provides otherwise, the trustee may give notice of the meeting to a member -

- (a) personally; or
- (b) by sending it by post to the address for the member in the register of members or an alternative address (if any) nominated by the member; or
- (c) by sending it to the fax number or electronic address (if any) nominated by the member.

(4) Unless the trust deed provides otherwise, a notice of meeting sent by post is taken to be given three days after it is posted and a notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

220. AUDITORS ENTITLED TO OTHER COMMUNICATIONS.

(1) The trustee shall give the auditor of the scheme any other communications relating to the meeting that a member of the scheme is entitled to receive.

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(2) A trustee who failed to relate a communication to the auditor of the scheme is guilty of an offence and shall be liable to a fine not exceeding K5,000,000.00 or every director of the trustee and its chief executive officer is liable to a fine not exceeding K1,000,000.00 or imprisonment for a term not exceeding five years, or both.

221. CONTENTS OF NOTICE OF MEETINGS OF MEMBERS.

A notice of a meeting of members of a scheme shall -

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
- (b) state the general nature of the meeting's business; and
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- (d) contain a statement setting out the following information -
 - (i) that the member has a right to appoint a proxy; and
 - (ii) that the proxy does not need to be a member of the registered scheme; and
 - (iii) that if the member appoints two proxies the member may specify the proportion or number of votes the proxy is appointed to exercise.

222. NOTICE OF ADJOURNED MEETINGS.

When a meeting is adjourned, new notice of the adjourned meeting shall be given if the meeting is adjourned for one month or more.

Subdivision 3. - Members' rights to put resolutions at meetings of members.

223. MEMBERS' RESOLUTIONS.

(1) The following members may give the trustee notice of a resolution that they propose to move at a meeting of the members -

- (a) members with at least 10 percent of the votes that may be cast on the resolution; or
- (b) at least 100 members who are entitled to vote at a meeting.

(2) Regulations made under this Act for the purposes of this part may prescribe a different number of members for the purposes of the application of Subsection (1)(b) to -

- (a) a particular scheme; or
- (b) a particular class of scheme.

(3) Without limiting the generality of Subsection (2), the regulation may specify the number as a percentage of the total number of members of the scheme.

(4) The resolution shall be -

- (a) a special resolution; or
- (b) a resolution to remove the trustee of a scheme and choose a new trustee.

(5) The notice shall -

- (a) be in writing; and

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- (b) set out the wording of the proposed resolution; and
- (c) be signed by the members giving the notice.

(6) Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.

(7) The percentage of the votes that members have is to be worked out as at the midnight before the members give the notice.

224. TRUSTEE GIVING NOTICE OF MEMBERS' RESOLUTIONS.

(1) Where a trustee has been given notice of a resolution under Section 223, the resolution is to be considered at the next meeting of the members that occurs more than two months after the notice is given.

(2) The trustee shall give all the members of the scheme notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.

(3) The trustee is responsible for the cost of giving members notice of the resolution if the trustee receives the notice in time to send it out to members with the notice of meeting.

(4) The members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the trustee in giving members notice of the resolution if the trustee does not receive the members' notice in time to send it out with the notice of meeting.

(5) The members may pass a resolution at a meeting that the trustee is to meet the expenses out of the scheme's assets.

- (6) The trustee need not give notice of the resolution -
- (a) if it is more than 1,000 words long or defamatory; or
 - (b) if the members making the request are to bear the expenses of sending the notice out, unless the members give the trustee a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

225. MEMBERS' STATEMENTS TO BE DISTRIBUTED.

(1) Members may request a trustee to give to all its members a statement provided by the members making the request about -

- (a) a resolution that is proposed to be moved at a meeting of the scheme's members; or
- (b) any other matter that may be properly considered at the meeting.

- (2) The request shall be made by -
- (a) members with at least 10 percent of the votes that may be cast on the resolution; or
 - (b) at least 100 members who are entitled to vote at the meeting.

(3) The regulations made for the purposes of this part may prescribe a different number of members for the purposes of the application of Subsection (2)(b) to -

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- (a) a particular scheme; or
- (b) a particular class of scheme.

(4) Without limiting the generality of Subsection (3), the regulations may specify the number as a percentage of the total number of members of the scheme.

(5) The request shall be -

- (a) in writing; and
- (b) signed by the members making the request; and
- (c) given to the trustee.

(6) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.

(7) The percentage of the votes that members have is to be worked out as at the midnight before the request is given to the trustee.

(8) After receiving the request, the trustee shall distribute to all the members of the scheme a copy of the statement at the same time or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.

(9) The trustee is responsible for the cost of making the distribution if the trustee receives the statement in time to send it out to members with the notice of meeting.

(10) The members making the request are jointly and individually liable for the expenses reasonably incurred by the trustee in making the distribution if the trustee does not receive the statement in time to send it out with the notice of meeting.

(11) Notwithstanding Subsection (10), a resolution may be passed at a meeting of the scheme's members that the trustee is to meet the expenses out of the scheme's assets.

(12) The trustee need not comply with the request -

- (a) where the statement is more than 1,000 words long or defamatory; or
- (b) where the members making the request are responsible for the expenses of the distribution, unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

Subdivision 4. - Holding meetings of members.

226. TIME AND PLACE FOR MEETINGS OF MEMBERS.

A meeting of a registered scheme or unit trust scheme shall be held at a reasonable time and place.

227. TECHNOLOGY.

A trustee may hold a meeting of the scheme at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

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228. QUORUM.

(1) This section applies to a registered scheme subject to the provisions of the trust deed.

(2) The quorum for a meeting of the members is 50 percent of the voting rights and the quorum shall be present at all times during the meeting.

(3) A meeting that does not have a quorum present within 30 minutes after the time for the start of the meeting set out in the notice of meeting is adjourned to the date, time and place the trustee specifies. If the trustee does not specify one or more of those things, the meeting is adjourned to -

- (a) if the date is not specified, the same day in the next week; and
- (b) if the time is not specified, the same time; and
- (c) if the place is not specified, the same place.

(4) Where there is no quorum present at the resumed meeting within 30 minutes after the time for the start of the meeting, the meeting is dissolved.

229. CHAIRING MEETINGS OF MEMBERS.

(1) The trustee may, in writing, appoint an individual to chair a meeting called under Section 213 or 214.

(2) The members present at a meeting called under Section 213 or 214 shall elect a member present to chair the meeting (or part of it) if -

- (a) a chair has not previously been appointed to chair the meeting; or
- (b) a previously appointed chair is not available, or declines to act, for the meeting (or part of the meeting).

(3) The members present at a meeting called under Section 215, 216 or 217 shall elect a member present to chair the meeting. This is not so if the meeting is called under Section 217 and the Court has directed otherwise.

230. AUDITORS' RIGHT TO BE HEARD AT MEETINGS OF MEMBERS.

(1) The auditor of a scheme is entitled to attend any meeting of the scheme.

(2) An auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.

(3) An auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any meeting of the scheme.

231. ADJOURNED MEETINGS.

(1) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

(2) Only unfinished business shall be transacted at a meeting resumed after an adjournment.

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Subdivision 5. - Proxies and body corporate representatives.

232. WHO CAN APPOINT A PROXY.

(1) A member of a registered scheme who is entitled to attend and cast a vote at a meeting of the scheme may appoint a person as the member's proxy to attend and vote for the member at the meeting.

(2) The appointment may specify the proportion or number of votes that the proxy may exercise.

(3) A member may appoint one or two proxies and if the member appoints two proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.

233. RIGHTS OF PROXIES.

(1) A proxy appointed to attend and vote for a member has the same rights as the member -

- (a) to speak at the meeting; and
- (b) to vote (but only to the extent allowed by the appointment).

(2) The trust deed may provide that a proxy is not entitled to vote on a show of hands.

(3) The trust deed may provide for the effect that a member's presence at a meeting has, on the authority of a proxy appointed to attend and vote for the member.

(4) Notwithstanding Subsection (3), where the trust deed does not make such provision, a proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.

234. PROXY APPOINTMENT FORMS.

(1) Where the trustee sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting -

- (a) where the member requested the form or list, the trustee shall send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (b) otherwise, the trustee shall send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

(2) Where a trustee fails to send any documents required to be sent under Subsection (1), and the member misses out being represented in the meeting, the trustee shall be liable for damages incurred by the member as a result of such failure by the trustee,

(3) A member who suffered loss under Subsection (2) shall seek damages against the trustee in the National Court.

235. APPOINTING A PROXY.

(1) An appointment of a proxy is valid if it is signed by the member of the registered scheme making the appointment and contains the following information:

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- (a) the member's name and address; and
- (b) the scheme's name; and
- (c) the proxy's name or the name of the office held by the proxy; and
- (d) the meetings at which the appointment may be used.

(2) A trust deed may provide that an appointment is valid even if it contains only some of the information required by Subsection (1).

(3) An undated appointment is taken to have been dated on the day it is given to the trustee.

(4) An appointment may specify the way the proxy is to vote on a particular resolution.

(5) Where the proxy form does not specify the way a proxy is to vote on a particular resolution -

- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy shall vote that way; and
- (b) where the proxy has two or more appointments that specify different ways to vote on the resolution, the proxy shall not vote on a show of hands; and
- (c) where the proxy is the chair, the proxy shall vote on a poll, and shall vote that way; and
- (d) where the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy shall vote that way.

(6) Where a proxy appointed under Subsection (1), is also a member, this subsection does not affect the way that the person can cast any votes they hold as a member.

(7) A person who contravenes Subsection (4), is guilty of an offence, but only if their appointment as a proxy resulted from the trustee sending to members -

- (a) a list of persons willing to act as proxies; or
- (b) a proxy appointment form holding the person out as being willing to act as a proxy.

(8) A trustee shall be liable to any loss or damage incurred by a member, as a result of the conduct of the trustee under Subsection (7).

(9) An appointment of a proxy under this section does not have to be witnessed.

(10) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

236. PROXY DOCUMENTS.

(1) Subsections (2), (3) and (4) apply to a scheme subject to the provisions of its trust deed.

(2) For an appointment of a proxy for a meeting of the scheme to be effective, the following documents shall be received by the trustee at least 48 hours before the meeting -

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- (a) the proxy's appointment; and
- (b) if the appointment is signed by the appointer's attorney, the authority under which the appointment was signed or a certified copy of the authority.

(3) If a meeting has been adjourned, an appointment and any authority received by the trustee at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

(4) A trustee receives an appointment authority when it is received at any of the following -

- (a) the trustee's registered office; and
- (b) a fax number at the trustee's registered office; and
- (c) a place, fax number or electronic address specified for the purpose in the notice of meeting.

237. VALIDITY OF PROXY VOTE.

(1) Unless the trustee has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes -

- (a) the appointing member dies; or
- (b) the member is mentally incapacitated; or
- (c) the member revokes the proxy's appointment; or
- (d) the member revokes the authority under which the proxy was appointed by a third party; or
- (e) the member transfers the interest in respect of which the proxy was given.

(2) Subsection (1), applies to a scheme subject to the provisions of the trust deed.

(3) A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

238. BODY CORPORATE REPRESENTATIVE.

(1) A body corporate may appoint an individual as a representative to exercise all or any of its powers at a meeting of a registered scheme.

(2) The appointment shall set out what the representative is appointed to do and may set out restrictions on the representative's powers, and if the appointment is to be by reference to a position held, the appointment shall identify the position.

(3) A body corporate may appoint more than one representative but only one representative may exercise the body's powers at any one time.

(4) Unless otherwise specified in the appointment, the representative may exercise, on behalf of the body corporate, all of the powers that the body could exercise at a meeting or in voting on a resolution.

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Subdivision 6. - Voting at meetings of members.

239. HOW MANY VOTES A MEMBER HAS.

Each member of the scheme has one vote for each interest or unit that member has in the scheme.

240. JOINTLY HELD INTERESTS.

If an interest in a scheme is held jointly and more than one member votes in respect of that interest, only the vote of the member whose name appears first in the register of members counts.

241. TRUSTEE AND ASSOCIATES CANNOT VOTE IF INTERESTED IN RESOLUTION.

(1) The trustee of a scheme and its associates are not entitled to vote on their interest on a resolution at a meeting of the scheme if they have an interest in the resolution or matter other than as a member.

(2) Notwithstanding Subsection (1), where the scheme is listed on an exchange, the trustee and its associates are entitled to vote their interest on resolutions to remove the trustee and choose a new trustee.

242. HOW TO WORK OUT THE VALUE OF AN INTEREST.

The value of an interest in a registered scheme is -

- (a) if it is quoted on a stock exchange the last sale price on that market on the trading day immediately before the day on which the poll is taken; or
- (b) if it is not quoted on a stock exchange and the scheme is liquid and has a withdrawal provision in its trust deed, the amount that would be paid for the interest under that provision on the business day immediately before the day on which the poll is taken; or
- (c) in any other case, the amount that the trustee determines in writing to be the price that a willing but not anxious buyer would pay for the interest if it was sold on the business day immediately before the day on which the poll is taken.

243. OBJECTIONS TO A RIGHT TO VOTE.

A challenge to a right to vote at a meeting of the scheme -

- (a) may only be made at the meeting; and
- (b) shall be determined by the chair, whose decision is final.

244. VOTES NEED NOT ALL BE CAST IN THE SAME WAY.

Notwithstanding Section 239, on a poll a person voting who is entitled to two or more votes -

- (a) need not cast all their votes; and
- (b) may cast their votes in different ways.

245. HOW VOTING IS CARRIED OUT.

(1) A special resolution put to the vote at a meeting of a scheme shall be decided on a poll.

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(2) Any other resolution put to the vote at a meeting of the scheme shall be decided on a show of hands unless a poll is demanded.

(3) The resolution is passed on a poll if it has been passed by at least 50 percent of the votes cast by members entitled to vote on the resolution.

(4) On a show of hands, a declaration by the chair is conclusive evidence of the result and neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

246. MATTERS ON WHICH A POLL MAY BE DEMANDED.

(1) A poll may be demanded on any resolution.

(2) A trust deed may provide that a poll cannot be demanded on any resolution concerning -

- (a) the election of the chair of a meeting; or
- (b) the adjournment of a meeting.

(3) A demand for a poll may be withdrawn.

247. DEMANDING OF A POLL.

(1) At a meeting of the unit holders or members of the scheme, a poll may be demanded by -

- (a) at least five members present entitled to vote on the resolution; or
- (b) members present with at least five percent of the votes that may be cast on the resolution on a poll; or
- (c) the chair.

(2) The trust deed of the scheme may provide that fewer members or members with a lesser percentage of votes may demand a poll.

(3) The poll may be demanded -

- (a) before a vote is taken; or
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

(4) The percentage of votes that members have is to be worked out as at close of business on the day before the poll is demanded.

Subdivision 7. - Minutes and members' access to minutes.

248. MINUTES.

(1) A trustee of a scheme shall keep minute books in which it records within one month -

- (a) proceedings of meetings of the scheme; and
- (b) resolutions passed in that meeting.

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(2) The trustee shall ensure that minutes of a meeting are signed within a reasonable time after the meeting by the chair of the meeting or the chair of the next meeting.

(3) The trustee shall keep the minute books at -

- (a) its registered office; or
- (b) its principal place of business in this jurisdiction; or
- (c) another place in this jurisdiction approved by the Commission.

(4) A minute that is so recorded and signed is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

(5) A trustee who fails to comply with Subsection (3) is guilty of an offence and is liable to a fine not exceeding K1,000,000.00, and each individual director is liable to a fine not exceeding K100,000.00 or imprisonment for a term not exceeding two years, or both.

249. MEMBERS' ACCESS TO MINUTES.

(1) The trustee shall ensure that the minute books for the meetings of the scheme are open for inspection by members free of charge.

(2) A member of a scheme may ask the trustee in writing for a copy of any minutes of a meeting of the scheme or an extract of the minutes.

(3) Where the trustee does not require the member to pay for the copy, the trustee shall send it -

- (a) within 14 days after the member asks for it; or
- (b) within any longer period that the Commission approves.

(4) Where the trustee requires payment for the copy, the trustee shall send it -

- (a) within 14 days after the trustee receives the payment; or
- (b) within any longer period that the Commission approves.

(5) The amount of any payment the trustee requires cannot exceed the prescribed amount.

(6) A trustee who fails to allow a member to have access to books under this section is guilty of an offence and is liable to a fine not exceeding K1,000,000.00, and every individual director of the trustee is liable to a fine not exceeding K100,000.00 or imprisonment for a term not exceeding two years, or both.

Division 6. - Register of unit holders or members.

250. REGISTER OF UNIT HOLDERS OR MEMBERS.

(1) Every trustee shall keep a register of unit holders or members of a scheme and enter into the register -

- (a) in the case of a member who is an individual, the name and address; or
- (b) in the case of a member that is a corporation, the name, registered address and registration number of that corporation, if applicable.

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- (2) The trustee shall enter into the register -
(a) the number of units held by each member; and
(b) the date on which the name of each person was entered in the register as a member; and
(c) the date on which any person ceased to be a member; and
(d) any other relevant information or particulars of the member,

for a period of seven years.

(3) Notwithstanding anything in Subsections (1) and (2), a trustee may keep the names and particulars relating to persons who have ceased to be a member of the scheme in a separate register.

(4) The register of members shall be *prima facie* evidence of any matters inserted therein in accordance with the provisions of this Act.

(5) Where a unit trust scheme or managed investment scheme has more than 50 unit holders or members, the trustee shall, unless the register is in such a form as to constitute in itself an index, keep an index of the names of the members in a convenient form and shall, within 14 days after the date on which any alteration is made in the register of unit holders, make any necessary alteration in the index.

(6) The index shall, in respect of each member, contain sufficient indication to enable the account of that member in the register to be readily found.

(7) Any person who contravenes Subsection (1), (2), (5) or (6) commits an offence and shall be liable to a fine not exceeding K5,000,000.00.

251. WHERE REGISTER IS TO BE KEPT.

(1) A register of members and the index shall be kept at the registered office of the trustee in Papua New Guinea.

(2) Any person who contravenes Subsection (1), commits an offence and shall be liable to a fine not exceeding K5,000,000.00.

252. CLOSURE AND INSPECTION OF REGISTER.

(1) A trustee may, on giving not less than 14 days notice to the Commission, close the register of the members at any time, but no part of the register shall be closed for more than 30 days in the aggregate in any calendar year.

(2) Any unit holder or member may request the trustee to furnish him with an extract from the register in so far as it relates to his name, address, number of units held by him and amounts paid on those units, and the trustee shall, on payment in advance of a reasonable fee as it may require, cause any extract so requested to be sent to that person within 21 days or within a period which the Commission considers reasonable in the circumstances commencing on the day after the date on which the request is received by the trustee.

(3) A trustee who contravenes Subsection (2), commits an offence and shall be liable to a fine not exceeding K500,000.00.

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253. POWER OF COURT TO RECTIFY REGISTER.

(1) Any member or unit holder, trustee or other person aggrieved by the inclusion or exclusion, or the manner of inclusion or exclusion, of any name in the register may apply to the Court for the rectification of the register, and the Court may refuse the application or may order the rectification of the register and the payment by the trustee of any damages sustained by any party to the application.

(2) The Court may, on an application under Subsection (1), decide -

- (a) on any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between registered members or alleged registered members, on the one part and the trustee on the other part; and
- (b) generally, any question necessary or expedient to be decided for the rectification of the register.

254. BRANCH REGISTER.

(1) Notwithstanding the provisions of Section 250, a trustee may cause to be kept in any place outside Papua New Guinea a branch register of members of a scheme which shall be deemed to be part of the register of members of the scheme.

(2) A trustee shall deliver to the Commission a notice of the location of the office where any branch register is kept and of any change in its location and, if the branch office is permanently closed, of its closure, and any such notice shall be delivered within one month after the opening of the office or of the change or closure, as the case may be.

(3) A branch register shall be kept in the same manner in which the principal register is required by this Act to be kept.

(4) A trustee shall transmit to the office at which its principal register is kept a copy of every entry in its branch register as soon as may be practicable after the entry is made, and shall cause to be kept at that office, duly entered up from time to time, a copy of its branch register, which shall for all purposes of this Act be deemed to be part of the principal register.

(5) A trustee may close a branch register and thereupon all entries in that register shall be transferred to some other branch register or to the principal register.

(6) A person who contravenes Subsection (2), (3) or (4) commits an offence and shall be liable to a fine not exceeding K500,000.00.

255. RIGHTS OF TRUSTEE, EXECUTOR OR ADMINISTRATOR IN RELATION TO A DECEASED UNIT HOLDER.

(1) A trustee, executor or administrator of the estate of any deceased person who was registered or beneficially entitled to be registered as a member of the scheme may become registered as the member in respect of the holdings of the deceased person as trustee, executor or administrator of that estate and shall, in respect of such holdings, be entitled to the same rights as he would have been entitled to if the holdings of the deceased person had remained registered in the name of the deceased person.

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(2) A unit held by a trustee, executor or administrator of a deceased person in respect of a particular trust may, with the consent of the trustee, be marked in the register or branch register in such a way as to identify it as being held in respect of the trust.

(3) Except as provided in this section, no notice of any trust expressed, implied or constructive shall be entered on a register or branch register, and no liability shall be affected by anything done in pursuance of Subsection (1) or (2), or pursuant to any law outside Papua New Guinea which corresponds to the provisions of this section.

256. POWER OF COURT TO MAKE ORDERS.

(1) A Court may make any order which it considers appropriate to protect the interests of existing or prospective members of the scheme.

(2) Where a trustee applies to a Court for any direction in relation to the performance of the trustee's functions or to determine any question in relation to the interests of members, the Court may give any direction or make any declaration or determination in relation to the matter that the Court considers appropriate, including such ancillary or consequential orders as may be necessary.

Division 7. - Members' rights to withdraw from a scheme.

257. MEMBERS' RIGHTS TO WITHDRAW.

(1) The trust deed may make provision for members to withdraw from the scheme, wholly or partly, at any time while the scheme is liquid.

(2) The trust deed may make provision for members to withdraw from the scheme, wholly or partly, in accordance with this part while the scheme is not liquid.

(3) The trustee shall not allow a member to withdraw from the scheme -

- (a) if the scheme is liquid otherwise than in accordance with the trust deed; or
- (b) if the scheme is not liquid otherwise than in accordance with the trust deed and Sections 258 to 261.

(4) A trustee who contravenes Subsection (3) is guilty of an offence and is liable to a fine not exceeding K500,000.00, and every director of the trustee is liable to a fine not exceeding K100,000.00 or imprisonment for a term not exceeding seven years, or both.

(5) A registered scheme is liquid if liquid assets account for at least 80 percent of the value of scheme property.

(6) The following are liquid assets unless it is proved that the trustee cannot reasonably expect to realise them within the period specified in the constitution for satisfying withdrawal requests while the scheme is liquid:

- (a) money in an account or on deposit with a bank; and
- (b) bank accepted bills; and
- (c) marketable securities; and
- (d) property of a prescribed kind.

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(7) Any other property is a liquid asset if the trustee reasonably expects that the property can be realised for its market value within the period specified in the trust deed for satisfying withdrawal requests while the scheme is liquid.

258. NON-LIQUID SCHEMES-OFFERS.

(1) The trustee of a scheme that is not liquid may offer members an opportunity to withdraw, wholly or partly, from the scheme to the extent that particular assets are available and able to be converted to money in time to satisfy withdrawal requests that members may make in response to the offer.

(2) The withdrawal offer shall be in writing and be made -

- (a) if the trustee specifies procedures for making the offer, in accordance with those procedures; or
- (b) otherwise, by giving a copy of the offer to all members of the scheme or to all members of a particular class.

(3) The withdrawal offer shall specify -

- (a) the period during which the offer will remain open (this period must last for at least 21 days after the offer is made); and
- (b) the assets that will be used to satisfy withdrawal requests; and
- (c) the amount of money that is expected to be available when those assets are converted to money; and
- (d) the method for dealing with withdrawal requests if the money available is insufficient to satisfy all requests.

(4) The method specified under Subsection 3(d) shall comply with Section 261.

(5) For joint members, a copy of the withdrawal offer need only be given to the joint member named first in the register of members.

(6) As soon as practicable after making the withdrawal offer, the trustee shall lodge a copy of the offer with the Commission.

259. NON-LIQUID SCHEMES - ONLY ONE WITHDRAWAL OFFER TO BE OPEN AT ANY TIME.

Only one withdrawal offer may be open at any time in relation to a particular interest in a registered scheme that is not liquid.

260. NON-LIQUID SCHEMES - HOW PAYMENTS ARE TO BE MADE.

(1) The trustee of a scheme that is not liquid shall ensure that withdrawal requests made in response to a withdrawal offer are satisfied within 21 days after the offer closes.

(2) No request made under the withdrawal offer may be satisfied while the offer is still open.

(3) If an insufficient amount of money is available from the assets specified in the offer to satisfy all requests, the requests are to be satisfied proportionately in accordance with the formula -

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Amount of money	X	Amount member requests <u>to withdraw</u> Total of all amounts members request to withdraw
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261. NON-LIQUID SCHEMES - TRUSTEE MAY CANCEL WITHDRAWAL OFFER.

- (1) The trustee of a scheme that is not liquid -
 - (a) may cancel a withdrawal offer before it closes if the offer contains a material error; or
 - (b) shall cancel a withdrawal offer before it closes if it is in the best interests of members to do so.
- (2) The cancellation shall be made -
 - (a) if the trust deed specifies procedures for cancelling the withdrawal offer in accordance with those procedures; or
 - (b) otherwise by notice in writing to the members to whom the withdrawal offer was made.
- (3) The trustee shall lodge written notice of the cancellation with the Commission.

Division 8. - Effect of contraventions - civil liability and voidable contracts.

262. CIVIL LIABILITY OF TRUSTEE TO MEMBERS.

- (1) A member of a scheme who suffers loss or damage because of conduct of the trustee that contravenes a provision of this division may recover the amount of the loss or damage by action against the trustee whether or not the trustee has been convicted of an offence, or has had a civil penalty order made against it, in respect of the contravention.
- (2) An action under Subsection (1), shall commence within six years after the cause of action arises.
- (3) This section does not affect any liability that a person has under other provisions of this Act or under other laws.

263. VOIDABLE CONTRACTS WHERE SUBSCRIPTION OFFERS AND INVITATIONS CONTRAVENE THIS ACT.

- (1) Where -
 - (a) a managed investment scheme is being operated in contravention of Section 187(5) and a person (the offeror) offers an interest in the scheme for subscription, or issues an invitation to subscribe for an interest in the scheme; or
 - (b) a person (the offeror) fails to comply with Sections 124 and 125 when offering an interest in a scheme for subscription or issuing an invitation to subscribe for an interest in a registered scheme,

a contract entered into by a person (other than the offeror) to subscribe for the interest as a result of the person accepting the offer, or of the acceptance of an offer made by the person in response to the invitation, is voidable at the option of that person by notice in writing to the offeror.

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(2) Where the person gives a notice under Subsection (1), the obligations of the parties to the contract are suspended -
(a) during the period of 21 days after the notice is given; and
(b) during the period beginning when an application is made under Subsection (4) in relation to the notice and ending when the application, and any appeals arising out of it, have been finally determined or otherwise disposed of.

(3) Subject to subsection (6), the notice takes effect to void the contract -
(a) at the end of 21 days after the notice is given; or
(b) if, within that 21 days, the offer or applies under Subsection (4) at the end of the period when the obligations of the parties are suspended under Subsection (2)(b).

(4) Within 21 days after the notice is given, the offer or may apply to the Court for an order declaring the notice to have had no effect.

(5) The Court may extend the period within which the offer or may apply under Subsection (4), even if the notice has taken effect.

(6) On application under Subsection (4), the Court may declare the notice to have had no effect if it is satisfied that, in all the circumstances, it is just and equitable to make the declaration.

Division 9. - Winding up.

264. WINDING UP REQUIRED BY SCHEME'S TRUST DEED.

The trust deed of a scheme may provide that the scheme is to be wound up -

- (a) at a specified time; or
- (b) in specified circumstances or on the happening of a specified event;

but a provision of the trust deed that purports to provide that the scheme is to be wound up if a particular company ceases to be its trustee is of no effect (including for the purposes of Section 268(1)(a)).

265. WINDING UP AT DIRECTION OF MEMBERS.

Where members of a registered scheme want the scheme to be wound up, they may take action by calling of a members' meeting to consider and vote on a special resolution directing the trustee to wind up the scheme.

266. WINDING UP IF SCHEME'S PURPOSE ACCOMPLISHED OR CANNOT BE ACCOMPLISHED.

- (1) Where the trustee of a registered scheme considers that the purpose of the scheme -
 - (a) has been accomplished; or
 - (b) cannot be accomplished,

it may, in accordance with this section, take steps to wind up the scheme.

- (2) The trustee shall give to the members of the scheme and to the Commission a notice in writing -

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- (a) explaining the proposal to wind up the scheme, including explaining how the scheme's purpose has been accomplished or why that purpose cannot be accomplished; and
- (b) informing the members of their rights to take action under Subdivision 4 of Division 5 for the calling of a members' meeting to consider the proposed winding up of the scheme and to vote on any special resolution members propose about the winding up of the scheme; and
- (c) informing the members that the trustee is permitted to wind up the scheme unless a meeting is called to consider the proposed winding up of the scheme within 28 days of the trustee giving the notice to the members.

(3) Where no meeting is called within 28 days to consider the proposed winding up, the trustee may wind up the scheme.

267. WINDING UP ORDERED BY COURT.

- (1) The Court may, by order, direct the trustee of a registered scheme to wind up the scheme if -
 - (a) the Court thinks it is just and equitable to make the order; or
 - (b) within three months before the application for the order was made, execution or other process was issued on a judgment, decree or order obtained in a court (whether in Papua New Guinea or elsewhere) in favour of a creditor of, and against, the trustee in its capacity as the scheme's trustee and the execution or process has been returned unsatisfied.
- (2) An order based on Subsection (1)(a), may be made on the application of -
 - (a) the trustee; or
 - (b) a director of the trustee; or
 - (c) a member of the scheme; or
 - (d) the Commission.
- (3) An order based on Subsection (1)(b), may be made on the application of a creditor.

268. THE WINDING UP OF THE SCHEME.

- (1) The trustee of a scheme shall ensure that the scheme is wound up in accordance with its trust deed and any orders under Section 169(2) where -
 - (a) the trust deed provides that the scheme is to be wound up at a specified time, in specified circumstances or on the happening of a specified event and that time is reached, those circumstances occur or that event occurs; or
 - (b) the members pass a special resolution directing the trustee to wind up the scheme; or
 - (c) the Court makes an order directing the trustee to wind up the scheme; or
 - (d) the members pass a resolution removing the trustee but do not, at the same meeting, pass a resolution choosing a new trustee that consents to becoming the scheme's trustee.

(2) The trustee of a scheme may wind up the scheme in accordance with its trust deed and any orders under Section 269(2), if the trustee is permitted by Section 266(3) to wind up the scheme.

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(3) Interests shall not be issued in a registered scheme at a time after the trust deed has become obliged to ensure the scheme is wound up, or after the scheme has started to be wound up.

269. OTHER ORDERS ABOUT WINDING UP.

(1) The Court may, by order, appoint a person to take responsibility for ensuring a registered scheme is wound up in accordance with its trust deed and any orders under Subsection (2) if the Court thinks it necessary to do so (including for the reason that the trustee has ceased to exist or is not properly discharging its obligations in relation to the winding up).

(2) The Court may, by order, give directions about how a registered scheme is to be wound up if the Court thinks it necessary to do so (including for the reason that the provisions in the trust deed are inadequate or impracticable).

(3) An order under Subsection (1) or (2), may be made on the application of -

- (a) the trustee; or
- (b) a director of the trustee; or
- (c) a member of the scheme; or
- (d) the Commission.

270. UNCLAIMED MONEY TO BE PAID TO THE COMMISSION.

(1) If, on completion of the winding up of a scheme, the person who has been winding up the scheme has in their possession or under their control any unclaimed or undistributed money or other property that was part of the scheme property, the person shall, as soon as practicable, pay the money or transfer the property to the Commission.

(2) The Commission shall make guidelines on how scheme property under Subsection (1) would be disposed of.

Division 10. - Deregistration.

271. VOLUNTARY DEREGISTRATION.

(1) The trustee of a registered scheme may lodge an application for deregistration of the scheme with the Commission.

(2) The trustee may only apply where -

- (a) the scheme -
 - (i) has 20 or less members (calculated in accordance with Section 187(4) and all the members agree that the scheme should be deregistered; and
 - (ii) is not required to be registered by Section 187(1)(b) or (c); or
- (b) because of Section 187(2), the scheme is not required to be registered and all the members agree that the scheme should be deregistered; or
- (c) the scheme is not a managed investment scheme.

(3) If the Commission is satisfied that the application complies with Subsections (1) and (2), it must give notice of the proposed deregistration -

- (a) in a daily newspaper; and
- (b) in the National Gazette.

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(4) After one month has passed since the publication in the National Gazette, the Commission may deregister the scheme.

(5) The Commission shall give notice of the deregistration to the applicant.

272. Deregistration by the Commission.

- (1) The Commission may decide to deregister a registered scheme where -
- (a) the scheme does not have a trustee that meets the requirements of Section 189; or
 - (b) the scheme does not have a trust deed that meets the requirements of Sections 210, 211 and 212; or
 - (c) the scheme's property is not being -
 - (i) clearly identified as the scheme's property; and
 - (ii) held separately from property of the trustee and property of any other scheme;
 - (d) the following conditions are satisfied
 - (i) the response to a return of particulars given to the trustee is at least six months late; and
 - (ii) no other documents have been lodged by or on behalf of the scheme in the last 18 months; and
 - (iii) the trustee has no reason to believe that the scheme is being operated; or
 - (e) the scheme's review fee in respect of a review date has not been paid in full at least 12 months after the due date for payment; or
 - (f) the scheme has been wound up.

(2) Where the Commission decides to deregister a scheme under this section, it shall give notice of the proposed deregistration -

- (a) to the scheme's trustee; and
- (b) to any other person who is winding up the scheme; and
- (c) to the members or unit holders; and
- (d) in the National Gazette; and
- (e) in one of the daily newspapers.

(3) If the notice is given under Subsection (1)(a), (b), (c), (d) or (e), the notice shall specify the period at the end of which the Commission proposes to deregister the scheme.

(4) The Commission may deregister the scheme -

- (a) if Subsection (1)(a), (b), (c), (d) or (e) applies, at the end of the period set out in the National Gazette; or
- (b) if Subsection (1)(e) or (f) applies, when two months have passed since the publication in the National Gazette and the daily newspaper.

(5) The Commission does not have to give a person notice under Subsection (2) if the Commission does not have the necessary information about the person's address.

(6) The Commission shall give notice of the deregistration to everyone who was notified of the proposed deregistration under Subsection (2)(a), (b) or (c).

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273. REINSTATEMENT.

(1) The Commission may reinstate the registration of a unit trust or managed investment scheme if the Commission is satisfied that the scheme should not have been deregistered or if the defect that led to the scheme being deregistered has been remedied.

(2) The Court may make an order that the Commission reinstate the registration of a unit trust or a managed investment scheme if -

- (a) an application for reinstatement is made to the Court by -
 - (i) a person aggrieved by the deregistration; or
 - (ii) a person who was winding up the scheme,
- (b) the Court is satisfied that it is just that the scheme's registration be reinstated.

(3) The Court may give any directions it thinks just for putting the scheme and other people in the same position, as far as possible, as if the scheme had not been deregistered.

(4) The Commission shall give notice of a reinstatement in the National Gazette and if the Commission exercises its power under Subsection (1) in response to an application by a person, the Commission shall also give notice of the reinstatement to the applicant.

Division 11. - Exemptions and modifications.

274. THE COMMISSION'S POWER TO MAKE EXEMPTION AND MODIFICATION ORDERS.

(1) The Commission may -

- (a) exempt a person from a provision of this part; or
- (b) declare that this part applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

(2) The exemption or declaration may -

- (a) apply to all or specified provisions of this part; and
- (b) apply to all persons, specified persons, or a specified class of persons; and
- (c) relate to all securities, specified securities or a specified class of securities; and
- (d) relate to any other matter generally or as specified.

(3) An exemption may apply unconditionally or subject to specified conditions.

(4) A person to whom a condition specified in an exemption applies shall comply with the condition.

(5) The Court may order the person to comply with the condition in a specified way and only the Commission shall apply to the Court for the order.

(6) The exemption or declaration shall be in writing and the Commission shall publish notice of it in the National Gazette.

275. MODIFICATION BY REGULATIONS.

Regulations made for the purposes of this part may provide the operation of this part or any other provisions of this Act relating to securities in relation to -

- (a) unit trust or a managed investment scheme; or
- (b) all unit trusts or managed investment schemes of a specified class.

PART VI. - TAKE-OVERS AND MERGERS.

Division 1. - General.

276. INTERPRETATION.

- (1) In this division, unless the context otherwise requires -
“acquirer” means -

- (a) a person who acquires or proposes to acquire control in a company whether the acquisition is effected by the person or by an agent; or
- (b) two or more persons who, acting in concert with one another, acquire or propose to acquire control in a company, whether the acquisition is effected by the persons or by an agent;

“Code” means the Papua New Guinea Take-Overs and Mergers Code made in accordance with Section 277;

“company”, in relation to a company being taken over, means a public company whether or not it is listed on any stock exchange and any other entity as may be prescribed in the Code;

“control” means the acquisition or holding of, or entitlement to exercise or control the exercise of, voting shares or voting rights of more than 33 percent, or such other amount as may be prescribed in the Code in a company, howsoever effected;

“dissenting shareholder” includes any shareholder who has not accepted a take-over offer and any shareholder who has failed or refused to transfer shares to an acquirer in accordance with a take-over offer;

“expert” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;

“exempted company” and “reporting company or public company” have the meanings assigned to them in Section 171(1) of the *Companies Act 1997* as amended from time to time;

“offeree” means a company whose voting shares or voting rights are subject to a take-over offer;

“offeror” means a person who makes or proposes to make a take-over offer;

“officer”, in relation to a corporation, includes -

- (a) a director, secretary, executive officer or employee of the corporation; and
- (b) a receiver and manager appointed under a power contained in any instrument or any part of the undertaking or property of the corporation; and
- (c) a liquidator of the corporation appointed in a voluntary winding up of the corporation, but does not include a receiver who is not also a manager, a receiver and manager appointed by a Court and a liquidator appointed by a Court;

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“related”, in relation to a corporation, means related within the meaning of Section 2(3), of the *Companies Act 1997*, as amended from time to time;

“share” means a share in a company or a unit in an entity that is prescribed in the Code;

“shareholder” means a shareholder in a company or a unit holder in an entity that is prescribed in the Code;

“take-over offer” means an offer made to acquire all or part of the voting shares or voting rights, or any class or classes of voting shares or voting rights, in a company and includes -

- (a) a take-over or merger transaction howsoever effected which has the effect or potential effect of obtaining or consolidating control in the company; and
- (b) a partial offer as defined in the Code; and
- (c) a take-over offer by a parent company for the voting shares or voting rights in its subsidiary; and
- (d) an arrangement or reorganisation that involves the voting shares or voting rights of a listed company;

“voting shares”, in relation to a company, has the meaning assigned to it in Subsection 37 of the *Companies Act 1997*, as amended from time to time.

- (2) For the purposes of this division, a reference to “persons acting in concert” shall be construed as a reference to persons who, pursuant to an agreement, arrangement or understanding, co-operate to -
- (a) acquire jointly or severally voting shares of a company for the purpose of obtaining control of that company; or
 - (b) act jointly or severally for the purpose of exercising control over a company.

- (3) Without prejudice to the generality of Subsection (2), the following persons shall be presumed to be persons acting in concert unless the contrary is established:
- (a) a corporation and its related and associate corporations; and
 - (b) a corporation and any of its directors, or the parent, child, brother or sister of any of its directors, or the spouse of any such director or any such relative, or any related trusts; and
 - (c) a corporation and any superannuation fund established by it; and
 - (d) a person and any investment company, unit trust or other fund whose investments such person manages on a discretionary basis; and
 - (e) a financial adviser and its client which is a corporation, where the financial adviser manages on a discretionary basis the corporation’s funds and has ten per centum or more of the voting shares in that corporation; and
 - (f) a person who owns or controls 20 percent or more of the voting shares of a corporation falling within Paragraph (a), and any parent, child, brother or sister of such person, or the spouse of such person or any such relative, or any related trusts together with one or more persons falling within Paragraph (a); and
 - (g) such other category of persons as may be prescribed in the Code.

- (4) For the purposes of Subsection (2), an agreement, arrangement or understanding means an agreement, arrangement or understanding whether formal or informal, whether written or oral, whether express or implied or whether or not having legal or equitable force.

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(5) For the purposes of Subsection (3)(a), an associated corporation means a corporation in respect of which not less than 20 percent of the voting shares of that corporation are held by another corporation, the first-mentioned corporation thereby being an associate corporation of the other corporation.

Division 2. - Formulation of Take-overs Code.

277. TAKE-OVERS CODE.

(1) The Minister may, prescribe a Code which shall be published in the National Gazette, upon the recommendation of the Securities Commission.

(2) The Minister may, amend any of the provisions of the Code and any amendment thereto shall be published in the National Gazette.

(3) The Code shall contain principles and rules governing the conduct of all persons or parties involved in a take-over offer, merger or compulsory acquisition, including an acquirer, offeror, offeree and their officers and associates.

(4) The Commission shall administer the Code according to the objectives specified in Subsection (5), and may do all such things as may be necessary or expedient to give full effect to the provisions of this division and the Code and without limiting the generality of the foregoing, may -

- (a) issue rulings from time to time, interpreting the Code; and
- (b) issue rulings on the practice and conduct of persons involved in or affected by any take-over offer, merger or compulsory acquisition, or in the course of any take-over, merger or compulsory acquisition; and
- (c) enquire into any matter relating to any take-over offer, merger or compulsory acquisition whether potential or otherwise, and for this purpose, may issue public statements as the Commission thinks fit with respect thereto.

(5) In making any recommendation under Subsections (1) and (2), and in administering the Code and exercising its powers under this Act, the Commission shall take into account the desirability of ensuring that the acquisition of voting shares or control of companies takes place in an efficient, competitive and informed market and, without limiting the generality of the foregoing, shall have regard to the need to ensure -

- (a) that the shareholders and directors of an offeree and the market for the shares that are the subject of the take-over offer -
 - (i) are aware of the identity of the acquirer and offeror; and
 - (ii) have reasonable time in which to consider a take-over offer; and
 - (iii) are supplied with sufficient information necessary to enable them to assess the merits of any take-over offer;
- (b) that, so far as practicable, all shareholders of an offeree have equal opportunities to participate in benefits accruing from the take-over offer, including in the premium payable for control; and
- (c) that fair and equal treatment of all shareholders, in particular, minority shareholders, in relation to the take-over offer, merger or compulsory acquisition would be achieved; and

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(d) in its response to, or making recommendations with respect to any take-over offer, merger or compulsory acquisition, the directors of the offeree and acquirer shall act in good faith to observe the objects, and the manner in which they observe the objects, specified in this subsection, and that minority shareholders are not subject to oppression or disadvantaged by the treatment and conduct of the directors of the offeree or the acquirer.

(6) Notwithstanding the provisions of Subsection (5), the Commission shall issue permanent restraining orders under Section 281(1), if the Commission considers that a take-over, merger, compromise or acquisition is not in the national interest of Papua New Guinea.

278. COMPLIANCE WITH CODE AND RULINGS.

(1) A person who makes a take-over offer shall do so in accordance with the provisions of the Code and any ruling made under Section 277(4).

(2) Subject to Section 279, an acquirer who has obtained control in a company shall make a take-over offer, other than in respect of voting shares of the company or voting rights which at the date of the offer are already held by the acquirer or which the acquirer is entitled to exercise, in accordance with the provisions of the Code and any ruling made under Subsection 277(4).

(3) Subject to Section 279, an acquirer who has obtained control shall not acquire any additional voting shares in that company or voting rights, as the case may be, except in accordance with the provisions of the Code and any ruling made under Section 277(4).

(4) Any person who contravenes Subsection (1), (2) or (3), is guilty of an offence and is liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

279. EXEMPTIONS.

(1) Subject to Section 277(5), the Commission may grant exemption in writing to any particular person or take-over offer or to any particular class, category or description of persons or take-over offers from the provisions of this division, the Code and any ruling made under Section 277(4).

(2) Any exemption granted under Subsection (1), may be subject to any conditions, restrictions or limitations as may be imposed by the Commission.

Division 3. - Enforcement for non-compliance.

280. ACTION BY COMMISSION IN CASES OF NON-COMPLIANCE WITH CODE AND RULINGS.

(1) Notwithstanding the provisions of Section 278(4), where any person who is under an obligation to comply with, observe or give effect to the provisions of this division or the Code, or any ruling made under Section 277(4), contravenes or fails to comply with, observe or give effect to any such provision or ruling, the Commission may take one or more of the following actions -

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- (a) direct the person in breach to comply with, observe or give effect to any such provision of this division, the Code or rulings; and
- (b) impose a penalty, in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding K10,000,000.00; and
- (c) reprimand the person in breach; and
- (d) direct a stock exchange to deprive the person in breach, access to the facilities of the stock exchange; and
- (e) where the person in breach is a listed corporation, direct the stock exchange -
 - (i) to suspend trading in the securities of the corporation; and
 - (ii) to suspend the listing of the corporation; and
 - (iii) to remove from the official list the corporation or the class of securities of the corporation; and
- (f) where the person in breach is a corporation that is not listed, direct any stock exchange to prohibit the listing of any of its securities; and
- (g) direct a stock exchange to prohibit the person in breach from engaging in transactions to be executed through the use of the facilities of the stock exchange; and
- (h) require the person in breach to take such steps as the Commission may direct to remedy the breach or mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.

(2) Notwithstanding the provisions of Subsection (1), the Commission may at any time, where it considers that a person may not be acting or intends to act in compliance with the Take-overs Code, make a restraining order (relating to non compliance of the Take-overs Code) that is expressed to expire with a close of such day as shall be specified in the order, not being a day later than 21 days after the date on which the restraining order is made.

281. RESTRAINING ORDERS.

(1) For the purposes of Section 280(2), the Commission shall issue restraining orders restraining the person from -

- (a) acquiring securities in the company concerned or any interest in or rights relating to such securities; or
- (b) disposing of any securities in the company concerned or any interest in or rights relating to such securities; or
- (c) exercising the right to vote attaching to securities in the company concerned or any other right relating to such securities; or
- (d) taking any action that is or that may reasonably be expected to constitute a contravention of the Take-overs Code; or
- (e) directing the company concerned not to make any payments in respect of any securities; or
- (f) directing the company concerned not to register the transfer or transmission of any securities; or
- (g) directing the company concerned not to issue or allot securities to any person; or
- (h) directing a person to do or refrain from doing a specified act.

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(2) The Commission may revoke, vary or suspend the orders issued under Subsection (1), after it is satisfied that the person at whom the orders were issued complied with, observed or gave effect to the provisions of this division or the Code, or any ruling made under Subsection 277(4).

(3) The Commission shall give a written notice to a person in breach of its intention to take action under Subsection (1) and shall give the person in breach an opportunity to be heard prior to it taking any action under Subsection (1).

(4) The Court may, in a case where the Commission gives a direction under Section 280(1)(a) or (h) on an application by the Commission, make an order directing the person in breach to comply with, observe or give effect to those provisions of the Code or rulings.

(5) For the purposes of Subsection 280(1)(h), in determining whether or not restitution is to be made by a person in breach, the Commission shall have regard to -

- (a) the profits that have accrued to such person in breach; or
- (b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.

(6) Where a person has failed to comply with a penalty imposed by the Commission under Section 280(1)(b), the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Commission.

(7) Without prejudice to any other remedy, where a direction under Section 280(1)(h) had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.

(8) To the extent that any of the amount obtained under Section 280(1)(h) or Subsection (6) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be -

- (a) paid to the Capital Market Compensation Fund maintained under Part IX; or
- (b) retained by the Commission to defray -
 - (i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or
 - (ii) the cost of regulating the capital markets, as the Commission may determine.

(9) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under this Act or any of the provisions of the securities laws against the person in breach.

(10) For the purposes of this section -

"breach" means a failure to comply with, observe or give effect to the provisions of this part or the Code or any ruling made under Section 277(4), in circumstances where there is an obligation to do so;

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"person in breach" means a person who contravenes or fails to comply with, observe or give effect to the provisions of this part or the Code or any ruling made under Section 277(4), in circumstances where the person is under an obligation to do so.

282. PERMANENT COMPLIANCE ORDERS.

For the purposes of Section 278, and notwithstanding, Section 280(2), the Commission shall issue a permanent compliance order for one or more of the following:

- (a) prohibiting or restricting a person from making any statement or distributing any document that is or that may reasonably be expected to constitute a contravention of the Take-overs Code (for the definition of contravention of the Takeovers Code); and
- (b) directing a person to disclose in accordance with the order information for the purpose of securing compliance with the Take-overs Code; and
- (c) directing a person to publish, at the person's own expense, in the manner and at the times specified in the order corrective statements that are specified in, or are to be determined in accordance with, the order; and
- (d) for the purpose of securing compliance with any of those orders, an order directing a person to do or refrain from doing a specified act.

283. COURT MAY MAKE ORDERS UPON APPEAL.

The Court may, on appeal of a person referred to in Section 284, if it is satisfied on reasonable grounds that a person has not acted or is not acting or intends not to act in compliance with the take-overs code, make any one or more of the orders specified in Section 285.

284. PERSONS WHO MAY APPEAL.

- (1) Where the Securities Commission makes an order under Section 280(2), the following persons may, subject to Subsection (2), appeal to the Court under Section 283 -
 - (a) the Securities Commission; and
 - (b) where the company's securities are, or were at any material time, quoted on a stock exchange, that stock exchange; and
 - (c) the company concerned; and
 - (d) a member or securities holder of the company concerned; and
 - (e) a person who was a member or securities holder of the company concerned at the time that the conduct to which the appeal relates occurred; and
 - (f) a person who, at any time within the period of six months before the making of the appeal, has made an offer or offers to acquire securities in the company in accordance with the Take-overs Code; and
 - (g) with the leave of the Court, any other person.

- (2) A person referred to in Paragraph (b), (c), (d), (e) or (f) is not entitled to make an appeal to the Court unless -

- (a) the Securities Commission has consented to the making of the appeal; or
- (b) that person has requested the Securities Commission in writing to make an application to the Court itself and the Securities Commission has not made such an application before the expiration of 10 days after receiving the request.

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(3) The Court may direct on what persons a notice of an application under this section shall be served.

285. ORDERS.

(1) The Court may, on an application under Section 283, make in relation to the company concerned and any securities in the company, any one or more of the following orders:

- (a) an order prohibiting the exercise for such period as the Court thinks fit of any right to vote attaching to any such securities; and
- (b) an order directing the company not to make payment, or to defer making payment for such period as the Court thinks fit, of any sum or sums due from the company in respect of any such securities; and
- (c) an order directing the company not to register the transfer or transmission of all or any of such securities; and
- (d) an order prohibiting the company from issuing or allotting any securities in addition to, or in substitution for, or in replacement of, any existing securities; and
- (e) an order restraining the disposal of all or any such securities or any interest in or rights relating to them; and
- (f) an order directing the disposal of all or any of such securities or any interest in or rights relating to them; and
- (g) an order directing the forfeiture of all or any of such securities; and
- (h) an order vesting any such securities in a person as trustee for sale on such terms and conditions as the Court thinks fit; and
- (i) an order declaring that the exercise of voting or other rights attaching to any such securities is void and of no effect; and
- (j) an order declaring any agreement for the acquisition of any such securities or an interest in or rights relating to them is voidable at the option of the person from whom the securities or the interest or rights were acquired; and
- (k) an order declaring any agreement for the acquisition of any such securities or an interest in or rights relating to them is void and of no effect; and
- (l) an order restraining any person from engaging in conduct in contravention of the Take-overs Code; and
- (m) an order restraining a person from, or doing any act for the purpose of, acquiring any such securities, or any interest in or rights relating, whether directly or indirectly, to any such securities; and
- (n) an order requiring a person to comply with any provision of the Take-overs Code even though the time for doing so may have expired; and
- (o) an order requiring a person specified in the order or the company concerned, as the case may be, to supply information or information of the kind specified in the order to a person or class of persons specified in the order; and
- (p) an order directing any person who has failed to comply with the Take-overs Code to pay compensation to any person who has suffered loss or damage as a result of the failure to comply; and
- (q) where a contract is entered into in contravention of the Take-overs Code, or, as the case may be, a contract contains a provision which, if given effect to, would contravene the Take-overs Code, an order -
 - (i) varying the contract, in such manner as the Court thinks fit; or
 - (ii) cancelling the contract; or

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- (iii) requiring any person who is a party to the contract to make restitution or pay compensation to any other person who is a party to the contract; and
- (r) for the purposes of securing compliance with any of such orders, an order directing a person to do or refrain from doing a specified act.

(2) Any order under Subsection (1), may be made on such terms and conditions as the Court thinks fit.

286. INTERIM ORDERS.

Where an application is made to the Court under Section 283, the Court may make, as an interim order, any order that it is empowered to make under Section 285.

287. COURT MAY HAVE REGARD TO ORDERS AND RECOMMENDATIONS BY SECURITIES COMMISSION.

(1) The Court may, in determining any application under Section 283, have regard to any order made by the Securities Commission under Section 280(2), relating to the matter concerned.

(2) The Court may, in determining whether to make any order under Section 285, and the type of any such order, have regard to any recommendation made by the Securities Commission.

288. ORDERS DIRECTING DISPOSAL OF SECURITIES.

Without limiting Section 285, any order made under Subsection (1)(f) of that section directing the disposal of securities or any interest in or rights relating to securities may require -

- (a) that the securities are, or any interest in them is, disposed of within a time specified by the Court; or
- (b) that neither the securities are, nor any interest in them is, disposed of to any specified person or class of persons; or
- (c) that the securities are, or any interest in them is, disposed of in a manner and on terms specified by the Court; or
- (d) that the proceeds of any disposition are -
 - (i) applied towards the costs of the application; or
 - (ii) paid in such amounts and to such persons as the Court specifies; or
 - (iii) applied or paid partly towards the costs of the application and partly in such amounts and to such person as the Court specifies.

289. REVOCATION, VARIATION AND SUSPENSION OF ORDERS.

Any order under Section 285 or 286 may be revoked or varied or suspended on such terms and conditions as the Court thinks fit.

290. COURT MAY EXCUSE CONTRAVENTION.

(1) The Court may, where it is satisfied that a person has, by any act or omission, failed to comply with any provision of the Take-overs Code, but that the failure ought to be excused, by order, declare that the act or omission was not a failure to comply with the Code and any such order has effect according to its tenor.

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- (2) In considering whether the failure should be excused, the Court may have regard to -
- (a) the inadvertence or mistake on the part of the person concerned; and
 - (b) whether that person was aware of relevant factors or circumstances; and
 - (c) circumstances beyond that person's control; and
 - (d) such other matters as the Court thinks fit.

291. COURT MAY REQUIRE PERSON TO GIVE EVIDENCE OR PRODUCE DOCUMENTS RELATING TO INTERESTS IN SECURITIES.

- (1) The Court may, in any application under Section 283, for the purpose of ascertaining whether any person -

- (a) has or had any direct or indirect interest in or right to any securities in the company concerned; or
- (b) has or had any direct or indirect right to exercise any voting rights attaching to any such securities, order any person to; or
- (c) attend before the Court and be examined on oath or affirmation; or
- (d) produce documents in that person's possession or under that person's control.

- (2) An order under Subsection (1) may be made on the application of any person who is a party to the application under Section 283.

292. PECUNIARY PENALTIES.

- (1) Where the Court is satisfied on the application of the Securities Commission that a person -

- (a) has contravened any of the provisions of this division or the Take-overs Code; or
- (b) has attempted to contravene such a provision; or
- (c) has aided, abetted, counselled, or procured any other person to contravene such a provision; or
- (d) has induced, or attempted to induce, any other person whether by threats or promises or otherwise, to contravene such a provision; or
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision; or
- (f) has conspired with any other person to contravene such a provision, the Court may order the person to pay to the Securities Commission such pecuniary penalty as the Court determines to be appropriate, not exceeding K500,000.00 in the case of a person not being a body corporate, or K5,000,000.00 in the case of a body corporate, in respect of each act or omission.

- (2) In determining an appropriate penalty under this section, the Court shall have regard to all relevant matters, including -

- (a) the nature and extent of the act or omission; and
- (b) the nature and extent of any loss or damage suffered by any person as a result of the act or omission; and
- (c) the circumstances in which the act or omission took place; and
- (d) whether or not the person has previously been found by the Court in proceedings under this division to have engaged in any similar conduct.

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(3) The standard of proof in proceedings under this section shall be the standard of proof applying in civil proceedings.

(4) In any proceedings under this section, the Securities Commission, upon the order of the Court, may obtain discovery and administer interrogatories.

(5) Proceedings under this section may be commenced within three years after the matter giving rise to the contravention arose, or such further period as the Court allows.

293. OFFENCES.

(1) A person shall not act in contravention of any order made by the Securities Commission under Section 281 or 282.

(2) Any individual who contravenes this section is guilty of an offence.

Penalty: A fine not exceeding K1,000,000.00, or imprisonment for a term not exceeding five years, or both.

(3) Where a body corporate contravenes this section, the body corporate is guilty of an offence.

Penalty: A fine not exceeding K10,000,000.00, and every director of the body corporate is liable to a fine not exceeding K1,000,000.00, or imprisonment for a term not exceeding five years, or both.

(4) A person shall not be convicted of an offence against this section where the contravention was in respect of matters which, in the opinion of the Court dealing with the case were immaterial, or was otherwise such as, in the opinion of the Court dealing with the case, the contravention took place without his knowledge and consent.

(5) A director of a body corporate shall not be convicted of an offence against this section in relation to a contravention by the body corporate where, in the opinion of the Court dealing with the case, the contravention took place without his knowledge and consent.

294. FALSE OR MISLEADING DOCUMENTS OR INFORMATION.

(1) Where any document or information is required to be submitted to the Commission under this division or the Code in relation to a take-over offer, merger or compulsory acquisition -

- (a) an acquirer, an offeror or a person making a compulsory acquisition or effecting a merger, its officers or associates; and
- (b) an offeree, its officers or associates; and
- (c) a financial adviser or an expert; and
- (d) any other person, shall not -
 - (i) submit or cause to be submitted any document or information that is false or misleading; or
 - (ii) provide or cause to be provided any document or information from which there is material omission; or
 - (iii) engage in conduct that he knows to be misleading or deceptive or is likely to mislead or deceive.

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(2) It shall be a defence to a prosecution or any proceeding for a contravention of Subsection (1), if it is proved that the defendant, after making enquiries as were reasonable in the circumstances, had reasonable grounds to believe, and did until the time of the provision of the document or information or engaging in the conduct was of the belief that -

- (a) the document or information was true and not misleading; and
- (b) the omission was not material; and
- (c) there was no material omission; and
- (d) the conduct in question was not misleading or deceptive.

(3) A person who contravenes Subsection (1) is guilty of an offence and is liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

Division 4. - Compulsory acquisition.

295. COMPULSORY ACQUISITION.

(1) Subject to Section 297, where a take-over offer by an offeror to acquire all the shares or all the shares in any particular class in an offeree has, within four months after the making of the take-over offer, been accepted by the holders of not less than nine-tenths in the nominal value of those shares or of the shares of that class (excluding shares already held at the date of the take-over offer by the offeror or persons acting in concert), the offeror may, at any time within two months from the date the nine-tenths in the nominal value of those shares have been achieved, give notice in the manner prescribed under the Code to any dissenting shareholder that it desires to acquire his shares together with a copy of a statutory declaration by the offeror that the conditions for the giving of the notice are satisfied.

(2) Where an offeror has given notice to any dissenting shareholder that it desires to acquire his shares pursuant to Subsection (1), the dissenting shareholder shall be entitled to require the offeror, by a demand in writing served on the offeror within one month from the date on which the notice is given, to supply him with a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members and the offeror shall not be entitled or bound to acquire the shares of the dissenting shareholders until 14 days after the posting of the statement of those names and addresses to the dissenting shareholder.

(3) Upon the giving of the notice and statutory declaration under Subsection (1), or where Subsection (2) applies, upon the provisions in Subsection (2), being complied with, the offeror shall in accordance with Subsection (7), acquire those shares on the terms of the take-over offer or, if the take-over offer contained two or more alternative sets of terms, on the terms which were specified in the take-over offer as being applicable to the dissenting shareholders.

(4) A person commits an offence if he -

- (a) sends a copy of a notice or statutory declaration under Subsection (1), which is not in the prescribed manner; or
- (b) makes a statutory declaration pursuant to Subsection (1), or sends a statement pursuant to Subsection (2), knowing that the declaration or the statement, as the case may be, to be false, or without having reasonable grounds for believing it to be true.

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(5) Where a person is charged for an offence under Subsection (4), it is a defence for him to prove that he took reasonable steps for securing compliance with that subsection.

(6) Where, during the period within which a take-over offer can be accepted, the offeror acquires or contracts to acquire any of the shares to which the take-over offer relates, otherwise than by virtue of acceptances of the take-over offer, then if -

- (a) the value of the consideration for which they are acquired or contracted to be acquired ("the acquisition consideration") does not at that time exceed the value of the consideration specified in the terms of the take-over offer; or
- (b) the terms of the take-over offer are subsequently revised so that when the revision is announced the value of the acquisition consideration at the time mentioned in Paragraph (a), no longer exceeds the value of the consideration specified in those terms, the offeror shall be treated, for the purposes of this section, as having acquired or contracted to acquire those shares by virtue of acceptances of the take-over offer but in relation to any other case those shares shall be treated as excluded from those to which the take-over offer relates.

(7) Subject to Section 297, where a notice has been given by the offeror under Subsection (1), the offeror shall, after the expiration of one month after the date on which the notice has been given, or where Subsection (2), applies after 14 days from the date the statement has been posted to the dissenting shareholder -

- (a) send a copy of the notice to the offeree together with an instrument of transfer executed on behalf of all such dissenting shareholders by the offeror; and
- (b) pay, allot or transfer to the offeree the amount or other consideration for the shares to which the notice relates, and the offeree shall thereupon register the offeror as the holder of those shares.

(8) Any sums received by the offeree under this section shall be paid into a separate bank account and any such sums and any other consideration so received shall be held by that offeree in trust for the persons entitled to the shares in respect of which the sum or other consideration was received.

(9) Where any consideration other than cash is held in trust by a company for any person under this section, it may, after the expiration of 10 years from the date on which the consideration is paid, allotted or transferred to it, transfer the same to the Commission.

(10) The Commission shall sell or dispose of any consideration received under Subsection (9) in such manner as it thinks fit and shall deal with the proceeds of the sale or disposal as if it were monies paid to it pursuant to the law relating to unclaimed monies.

296. RIGHT OF MINORITY SHAREHOLDER.

(1) Subject to Section 297, if a take-over offer relates to all the shares or to all shares in any class in an offer and, at any time before the end of the period within which the take-over offer can be accepted -

- (a) the offeror has, by virtue of the acceptances of the take-over offer, acquired some (but not all) of the shares to which the take-over offer relates or shares of any class to which the take-over offer relates; and

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(b) those shares, with or without any other shares or any other shares of that class to which the take-over offer relates, as the case may be, which the offeror or persons acting in concert has acquired amounts to not less than nine-tenths in value of all the shares in the offeree or of that class in the offeree, the holder of any shares or any class of shares to which the take-over offer relates may, by notice to the offeror, require him to acquire those shares, and the offeror shall be bound to acquire those shares on the terms of the take-over offer or such other terms as may be agreed.

(2) Within one month of the time specified in Subsection (1), the offeror shall give any shareholder who has not accepted the take-over offer, notice in the manner prescribed under the Code of the rights that are exercisable by him under Subsection (1), and, if the notice is given before the period mentioned in Subsection (1), it shall state that the take-over offer is still open for acceptance.

(3) A notice under Subsection (2), may specify the period for the exercise of the rights conferred by this section and in that event the rights shall not be exercisable after the end of that period but no such period shall end less than three months after the end of the period within which the take-over offer can be accepted.

(4) Subsection (2), shall not apply if the offeror has given the shareholder a notice in respect of the shares in question under Section 295(1).

(5) A person who contravenes Subsection (2), commits an offence.

Division 5. - Application to Court.

297. APPLICATION TO COURT.

(1) Where a notice is given under Section 295(1), the Court may, on an application made by any dissenting shareholder within one month from the date on which the notice was given -

- (a) order that the offeror shall not be entitled and shall not be bound to acquire those shares; or
- (b) specify terms of acquisition that are different from the terms of the take-over offer.

(2) If an application to the Court is pending at the end of the period mentioned in Section 295(2), that subsection shall not have effect until the application has been disposed of.

(3) When the holder of any shares exercises his rights under Section 296(1), the Court may, on an application made by such holder of shares or the offeror, order that the terms on which the offeror shall acquire the shares shall be as the Court thinks fit.

(4) No order for costs shall be made against a shareholder making an application under Subsection (1) or (3), unless the Court considers that -

- (a) the application was unnecessary, improper or vexatious; or
- (b) there has been unreasonable delay in making the application or unreasonable conduct on the part of the shareholder in conducting the proceeding on the application.

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(5) Subject to Subsection (6), the Court may, on an application made by an offeror who has not obtained acceptances to the extent necessary for entitling him to give notice under Section 296(1), make an order authorising the offeror to give notices under Section 296(1).

(6) The Court may only grant an order under Subsection (5), upon being satisfied that -

- (a) the failure of the offeror to obtain such acceptances was due to the inability of the offeror to trace one or more of the persons holding shares to which the take-over offer relates after having made reasonable enquiries; and
- (b) the shares which the offeror has acquired or contracted to acquire by virtue of acceptances of the take-over offer, together with the shares held by the person mentioned in Paragraph (a), amount to not less than the minimum specified in Section 296(1); and
- (c) the consideration offered is fair and reasonable,

provided that the Court shall not make such an order unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the take-over offer.

PART VII. - MARKET MISCONDUCT AND OTHER PROHIBITED CONDUCT.

298 APPLICATION OF THIS PART.

This part shall apply to -

- (a) in respect of securities -
 - (i) acts and omissions occurring within Papua New Guinea in relation to securities of any body corporate which is formed or is carrying on business or is listed within or outside Papua New Guinea; and
 - (ii) acts and omissions occurring outside Papua New Guinea in relation to securities of any body corporate which is formed or is carrying on business or is listed within Papua New Guinea; and
- (b) in respect of derivatives -
 - (i) acts occurring within Papua New Guinea in relation to derivatives contracts, whether traded within or outside Papua New Guinea; and
 - (ii) acts occurring outside Papua New Guinea in relation to derivatives contracts traded within Papua New Guinea.

Division 1. - Prohibited conduct - securities.

299. FALSE TRADING AND MARKET RIGGING TRANSACTION.

(1) Subject to Section 304, a person shall not create, or cause to be created, or do anything that is calculated to create, a false or misleading appearance of active trading in any securities on a stock market within Papua New Guinea or a false or misleading appearance with respect to the market for, or the price of, any such securities.

(2) A person shall not, by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress, or cause fluctuations in, the market price of any securities.

(3) Without affecting the generality of Subsection (1), a person who -

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

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

(4) In a prosecution of a person for an act referred to in Subsection (3), it is a defence if the defendant establishes that -

- (a) the purpose for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance; and
- (b) he did not act recklessly, whether or not he created a false or misleading appearance, of active trading in securities on a stock market.

(5) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.

(6) In a prosecution for an offence against 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 or purposes for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.

(7) The reference in Subsection (3)(a), to a transaction of sale or purchase of securities includes -

- (a) a reference to the making of an offer to sell or purchase securities; and
- (b) a reference to the making of an invitation, however expressed, which expressly or impliedly invites a person to offer to sell or purchase securities.

300. STOCK MARKET MANIPULATIONS.

(1) A reference in this section to a transaction, in relation to securities of a corporation, includes -

- (a) a reference to the making of an offer to sell or purchase such securities of the corporation; and

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

(2) Subject to Section 304, no person shall effect, take part in, engage in, be concerned in, or carry out, either directly or indirectly, any number of transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of -

- (a) raising; or
- (b) lowering; or
- (c) pegging, fixing, maintaining or stabilising,

the price of securities of the corporation on a stock market in Papua New Guinea, for the purpose which may include the purpose of inducing other persons, whether or not another person is induced, to acquire or dispose of the securities of the corporation or of a related corporation.

301. FALSE OR MISLEADING STATEMENTS.

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

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

302. FRAUDULENTLY INDUCING PERSONS TO DEAL IN SECURITIES.

(1) A person shall not -

- (a) by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive; and
- (b) by any dishonest concealment of material facts; and
- (c) by the reckless making or publishing, dishonestly or otherwise, of any statement, promise or forecast that is misleading, false or deceptive; and
- (d) by recording or storing in, or by means of, any mechanical, electronic or other device, information that he knows to be false or misleading in a material particular, induce or attempt to induce another person to deal in securities.

(2) In a prosecution for an offence under Subsection (1)(d), in relation to the recording or storing of information, it shall be a defence if the defendant establishes that when the information was recorded or stored, he had no reasonable grounds for expecting that the information would be available to any person.

303. USE OF MANIPULATIVE AND DECEPTIVE DEVICES.

A person who directly or indirectly deals with or in connection with the subscription, purchase or sale of any securities shall not -

- (a) use any device, scheme or artifice to defraud; or
- (b) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or
- (c) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading.

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304. PERSON OR TRANSACTION TO WHOM OR WHICH SECTION 299 OR 300 DOES NOT APPLY.

The Head of State may make regulations in respect of any particular class, category or description of persons or any particular class, category or description of transactions, relating to securities, to whom or which Section 299 or Section 300 does not apply.

305. DISSEMINATION OF INFORMATION ABOUT ILLEGAL TRANSACTIONS.

A person shall not circulate or disseminate, or authorise or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a corporation 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 corporation that is related to that corporation, in contravention of Section 299, 300, 301, 302 or 303 if -

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

306. PENALTY FOR OFFENCE UNDER DIVISION 1.

A person who contravenes Section 299, 300, 301, 302, 303 or 304 is guilty of an offence and is liable, on conviction, to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

Division 2. - Insider trading.

307. MEANING OF INFORMATION INSIDER, INSIDE INFORMATION AND ADVISOR.

(1) For the purposes of this division, a person is an information insider of a listed issuer if that person -

- (a) has material information relating to the listed issuer that is not generally available to the market; and
- (b) knows or ought reasonably to know that the information is material information; and
- (c) knows or ought reasonably to know that the information is not generally available to the market.

(2) A listed issuer may be an information insider of itself.

(3) For the purposes of this division, a person is an information insider in relation to quoted derivatives if that person -

- (a) has material information relating to any of the following that is not generally available to the market:
 - (i) the derivatives; and
 - (ii) the underlying; and
 - (iii) the issuer of a securities underlying the derivatives; and
- (b) knows or ought reasonably to know that the information is material information; and

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- (c) knows or ought reasonably to know that the information is not generally available to the market.
- (4) An insider shall not, whether as principal or agent, in respect of any securities to which information in Subsection (1), (2) or (3) relates -
 - (a) acquire or dispose of, or enter into an agreement for or with a view to the acquisition or disposal of such securities; or
 - (b) procure, directly or indirectly, an acquisition or disposal of, or the entering into an agreement for or with a view to the acquisition or disposal of such securities.
- (5) Where trading in the securities to which the information in Subsection (1), (2) or (3) relates is permitted on a stock market of a stock exchange, the insider shall not, directly or indirectly, communicate the information referred to in Subsection (1), (2) or (3) or cause such information to be communicated, to another person, if the insider knows, or ought reasonably to know, that the other person would or would tend to -
 - (a) acquire, dispose of, or enter into an agreement with a view to the acquisition or disposal of, any securities to which the information in Subsection (1), (2) or (3) relates; or
 - (b) procure a third person to acquire, dispose of or enter into an agreement with a view to the acquisition or disposal of, any securities to which the information in Subsection (1), (2) or (3) relates.
- (6) A person who contravenes Subsection (4) or (5) is guilty of an offence and is liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(7) The Head of State may make regulations in respect of any particular class, category or description of persons or any particular class, category or description of transactions, relating to securities, to whom or which this section does not apply.

308. INFORMATION.

For the purposes of this division, "information" includes -

- (a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public; and
- (b) matters relating to the intentions, or likely intentions, of a person; and
- (c) matters relating to negotiations or proposals with respect to -
 - (i) commercial dealings; or
 - (ii) dealing in securities; and
- (d) information relating to the financial performance of a corporation; and
- (e) information that a person proposes to enter into, or has previously entered into one or more transactions or agreements in relation to securities or has prepared or proposes to issue a statement relating to such securities; and
- (f) matters relating to the future.

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309. INFORMATION GENERALLY AVAILABLE.

(1) For the purposes of this division, information is generally available if the information has been made known in a manner that would, or would tend to, bring it to the attention of reasonable persons who invest in securities of a kind whose price or value might be affected by the information, and since it was so made known, a reasonable period for it to be disseminated among, and assimilated by, such persons has elapsed.

(2) The information referred to in Subsection (1), includes information that consists of deductions or conclusions made or drawn from such information.

310. MATERIAL EFFECT ON PRICE OR VALUE OF SECURITIES.

For the purposes of this division, an information that on becoming generally available would or would tend to have a material effect on the price or value of securities, refers to such information which would or would tend to, on becoming generally available, influence reasonable persons who invest in securities in deciding whether or not to acquire or dispose of such securities, or enter into an agreement with a view to acquire or dispose of such securities.

311. TRADING IN SECURITIES.

For the purposes of this division, trading in securities that is ordinarily permitted on the stock market of a stock exchange is to be taken to be permitted on that stock market even though trading in any such securities on that stock market is suspended.

312. REFERENCE TO "PROCURE".

For the purposes of this division and Section 325, but without limiting the meaning of the term "procure" as provided in this section, if a person incites, induces, encourages or directs an act or omission by another person, the first-mentioned person is deemed to procure the act or omission by the other person.

313. PROOF OF CONTRAVENTION OF SECTION 307.

In a prosecution of an offence under Section 307(4) or (5), it is not necessary for the prosecution to prove the non-existence of facts or circumstances which if they existed would, by virtue of Section 314, 315, 316, 317, 318, 319, 320, 321 or 322, or any regulations made under Section 307(7), preclude the act from constituting a contravention of Section 307(4) or (5).

314. SECRECY ARRANGEMENTS BY CORPORATION.

(1) For the purposes of this division, a corporation is deemed to possess any information -

(a) which an officer of the corporation -

- (i) possesses and which came into his possession in the course of his duties as an officer of the corporation; or
- (ii) knows or ought reasonably to have known because he is an officer of the corporation; or

(b) which an officer of the corporation possesses and which came into his possession in the course of his duties as an officer of a related corporation of the first-mentioned corporation where -

- (i) the officer is an insider by reason of being in possession of the information; or

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- (ii) the officer is involved in, the decision, transaction or agreement of the first-mentioned corporation in acquiring or disposing of securities in relation to which the officer is an insider or entering into an agreement to acquire or dispose of such securities, procuring another person to acquire or dispose of such securities or enter into an agreement to do so, or communicating the information in circumstances referred to in Section 307(5); or
- (iii) it is reasonable to expect that the officer would communicate the information to another officer of the first-mentioned corporation acting in his capacity as such, unless it is proved that the information was not in fact so communicated.

(2) In this section, "information" refers to information which a corporation is deemed to possess and where a person in possession of the information, is an insider.

(3) A corporation does not contravene Section 307(4), by entering into the transaction or agreement at any time merely because of information in the possession of the corporation if -

- (a) the decision to enter into the transaction or agreement was taken on behalf of the corporation by a person or persons other than an officer of the corporation in possession of the information; and
- (b) the corporation had in operation at that time arrangements that could reasonably be expected to ensure that -
 - (i) the information was not communicated to a person or one of the persons who was involved in, or made the decision to enter into, or be involved in, the transaction or agreement; or
 - (ii) no advice with respect to the decision to enter into, or be involved in, the transaction or agreement was given to that person by the person in possession of the information; or
 - (iii) the person in possession of the information would not be involved in the decision to enter into or be involved in, the transaction or agreement, or involved in the transaction or agreement; and
- (c) the information was not so communicated, no such advice was given and the person in possession of the information was not involved in the decision to enter into, or be involved in, the transaction or agreement or was not involved in the transaction or agreement.

315. SECRECY AGREEMENTS BY PARTNERSHIPS.

(1) In this section, "information" refers to information which a partnership is deemed to possess and where a partner or an employee of the partnership in possession of that information, is an insider.

(2) For the purposes of this division, a partner of a partnership is deemed to possess any information -

- (a) which another partner possesses and which came into the other partner's possession in his capacity as a partner of the partnership; and
- (b) which an employee of the partnership possesses and which came into the employee's possession in the course of his duties; and

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(c) if a partner or an employee of a partnership knows or ought reasonably to know any matter or thing because the partner or employee is a partner or an employee as such, it is presumed that every partner and employee of the partnership know or ought reasonably to know that matter or thing.

(3) A partner of a partnership does not contravene Section 307(4), by entering into the transaction or agreement referred to in that subsection at any time merely because one or more (but not all) partners, or an employee or employees of the partnership, were in actual possession of information at the time if -

- (a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:
 - (i) a partner who is taken to possess the information merely because another partner, or an employee of the partnership, was in possession of the information; or
 - (ii) an employee of the partnership who was not in possession of the information; or
- (b) the partnership had in operation at that time agreements that could reasonably be expected to ensure that -
 - (i) the information was not communicated to a partner or an employee or one of the partners or employees who was or were involved in, or made the decision with respect to the entering into the transaction or agreement in question; and
 - (ii) no advice with respect to the decision to enter into the transaction or agreement was given to that partner or employee by a partner or an employee in possession of the information; and
 - (iii) the partner or employee in possession of the information would not be involved in the decision to enter into, or be involved in, the transaction or agreement; or
- (c) the information was not communicated, no advice was given and the partner or employee in possession of the information was not involved in the decision to enter into, or be involved in, the transaction or agreement.

(4) A partner of a partnership does not contravene Section 307(4), by entering into the transaction or agreement referred to in that subsection otherwise than on behalf of the partnership merely because the partner is deemed to possess information that is in the possession of another partner or employee of the partnership.

316. UNDERWRITING AND SUB-UNDERWRITING.

- (1) Section 307(4), shall not apply in respect of -
 - (a) the entering into of an underwriting agreement or a sub-underwriting agreement; or
 - (b) the acquisition of securities under an obligation to do so in an agreement referred to in Paragraph (a).
- (2) Section 307(5), shall not apply in respect of the communication of information in relation to securities to a person solely for the purpose of procuring the person -
 - (a) to enter into an underwriting agreement or a sub-underwriting agreement in relation to any such securities; or

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- (b) to acquire any such securities under an obligation to do so in an agreement referred to in Paragraph (a).

317. NON APPLICATION OF SECTION 307 TO TRANSACTIONS CARRIED OUT UNDER EXISTING LAWS.

(1) Section 307, shall not apply to an acquisition or disposal of securities or the communication of information that is carried out under any other written law relating to schemes of arrangement, reconstructions and take-overs relating to corporations.

(2) Section 307(4), shall not apply to a clearing house which acquires or disposes of securities for the purpose of settlement of a market contract or in relation to any proceedings or other action relating to the settlement of a market contract where the acquisition or disposal of securities is effected in accordance with the rules of a clearing house.

(3) Section 307(4), shall not apply to a stock exchange in relation to a sale or purchase of securities where the stock exchange acts on an instruction from an approved clearing house.

318. EXCEPTION FOR CORPORATION WITH KNOWLEDGE OF ITS INTENTION.

(1) A corporation does not contravene Section 307(4), by entering into a transaction or an agreement in relation to securities other than those of the corporation merely because the corporation is aware that it proposes to enter into or has previously entered into one or more transactions or agreements in relation to those securities.

(2) Subject to Subsection (3), a corporation does not contravene Section 307(4), by entering into a transaction or an agreement in relation to securities other than those of the corporation because an officer of the corporation is aware that it proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(3) Subsection (2), shall not apply unless the officer of the corporation became aware of the matter referred to in that subsection in the course of his duties.

(4) Subject to Subsection (5), a person does not contravene Section 307(4), by entering into a transaction or an agreement on behalf of a corporation in relation to securities other than those of the corporation merely because the person is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(5) Subsection (4), shall not apply unless the person became aware of the matters referred to in the course of his duties as an officer of the first-mentioned corporation or in the course of acting as an agent of the first-mentioned corporation.

319. EXCEPTION OF KNOWLEDGE OF INDIVIDUAL'S OWN INTENTIONS OR ACTIVITIES.

An individual does not contravene Section 307(4), by entering into a transaction or an agreement in relation to securities merely because he is aware that he proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

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320. UNSOLICITED TRANSACTION.

(1) A holder of a capital market licence who carries on the business of dealing in securities or its representative does not contravene Section 307(4), by entering into a transaction or an agreement as an agent for another person, being a transaction or an agreement entered into on the stock market of a stock exchange in securities which are quoted for trading on the stock market of that stock exchange if -

- (a) the transaction or agreement is entered into under a specific instruction by the other person which was not solicited by the holder of a capital market licence who carries on the business of dealing in securities or its representative; and
- (b) the holder of a capital market licence who carries on the business of dealing in securities or its representative has not given any advice to the other person in relation to the transaction or agreement or otherwise sought to procure the other person's instructions to enter into the transaction or agreement; and
- (c) the other person is not associated with the holder of a capital market licence who carries on the business of dealing in securities or its representative.

(2) Nothing in this section shall affect the application of Subsection (1), in relation to the principal.

321. EXCEPTION FOR REDEMPTION OF UNITS OF A UNIT TRUST SCHEME UNDER BUY-BACK COVENANT.

Section 307(4), shall not apply in respect of the redemption by a trustee under a trust deed relating to a unit trust scheme in accordance with a buy-back covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets, less any liabilities of the unit trust scheme to which the units of the unit trust scheme relates, and less any reasonable charge for purchasing the units of the unit trust scheme or interest.

322. PARITY OF INFORMATION DEFENCE.

- (1) A person does not contravene Section 307(4), where -
 - (a) the securities which are the subject of the transaction or agreement or the action of procuring a transaction or an agreement are not securities which are permitted on the stock market of a stock exchange; and
 - (b) the Court is satisfied that the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement; and
 - (c) that person acquires or disposes of such securities on such terms and in such circumstances that -
 - (i) he does not obtain any gain or avoid any loss, including an unrealised gain or unrealised avoidance of loss in price or value, of the securities, as the case may be, for himself or any other person by reason of the effect that the information is likely to have when it becomes generally available; and
 - (ii) the purpose of the acquisition or disposal of the securities does not include any purpose of securing a gain or avoiding a loss, as the case may be, for himself or any other person by reason of the effect that the information is likely to have when it becomes generally available.

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(2) In a prosecution for an offence under Section 307(5), where the person communicated information or caused information to be communicated to another person, it shall be a defence -

- (a) if the Court is satisfied that the information came into the possession of the person so communicating the information solely as a result of it being made known in a manner likely to make it generally available pursuant to Section 309; or
- (b) if the Court is satisfied that the other party knew of, or ought reasonably to have known, the information before the information was communicated.

Division 3. - Civil remedies.

323. CIVIL LIABILITY FOR CONTRAVENTION OF VARIOUS SECTIONS.

(1) A person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened Section 203, 299, 300, 301, 302, 303 or 305 may recover the amount of loss or damage by instituting civil proceedings against the other person, whether or not the other person has been charged with an offence in respect of the contravention or, whether or not a contravention has been proved in a prosecution.

(2) This section shall not affect any liability under any other written law in respect of the conduct constituting the contravention.

324. CIVIL ACTION BY COMMISSION.

(1) Where it appears to the Commission that any person has contravened Section 203, 299, 300, 301, 302, 303 or 305, the Commission may institute civil proceedings in the Court against that person, whether or not that person has been charged with an offence in respect of the contravention, or whether or not a contravention has been proved in a prosecution.

(2) For a proceeding instituted by the Commission under Subsection (1) against any person who has contravened Section 203, 299, 300, 301, 302, 303 or 305, the Commission may, if it considers that it is in the public interest to do so, by civil action against such person in contravention -

- (a) recover an amount which shall not exceed three times the gross amount of pecuniary gain made or loss avoided by such person; and
- (b) claim civil penalty in such amount as the Court considers appropriate having regard to the severity or gravity of the contravention, being an amount not exceeding K10,000,000.00.

(3) An amount recovered by the Commission in an action under Subsection (2), shall be applied -

- (a) firstly, to reimburse the Commission for all costs of the investigation and proceedings in respect of the contravention; and
- (b) secondly, to compensate persons who have suffered loss or damage as a result of the contravention.

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(4) Where the Commission considers it to be impracticable to compensate the persons referred to in Subsection (3)(b), in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in Subsection (3)(b).

(5) To the extent that any of the amount obtained in a civil proceeding under Subsection (1) has not been distributed pursuant to Subsection (3)(b), it shall be -

- (a) paid to the Capital Market Compensation Fund maintained under Part IX; or
- (b) retained by the Commission to defray -
 - (i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or
 - (ii) the cost of regulating the capital market, as the Commission may determine.

(6) Civil proceedings under Subsection (2), or Section 323(1), may be commenced at any time within 12 years from -

- (a) the date on which the cause of action accrued; or
- (b) the date on which the Commission or the person who instituted the proceedings, as the case may be, discovered the contravention, whichever is the later.

(7) Any right of action that is conferred under this section shall not affect the right of action that is conferred on a person who has suffered loss or damage referred to in Section 323(1), or under any other law.

325. RECOVERY OF LOSS OR DAMAGES.

(1) A person who suffers loss or damages by reason of, or by relying on, the conduct of another person who has contravened Section 307, may recover the amount of loss or damages by instituting civil proceedings against the other person, whether or not the other person has been charged with an offence in respect of the contravention or, whether or not a contravention has been proved in a prosecution.

(2) In Subsection (1), "loss or damages" includes an unrealised loss or gain, as the case may be, in the price or value of securities of a corporation being the difference between -

- (a) the price or value of securities in a transaction in connection with which the person first-mentioned in Subsection (1), claims to have suffered loss or damages; and
- (b) the price which would have been the likely price of the securities in the transaction, or the value which it is likely that such securities would have had at the time of that transaction, if the contravention had not occurred.

(3) Where an insider acquired or agreed to acquire, or procured another person to acquire or agree to acquire, securities from a person (the "seller") who did not possess the information, in contravention of Section 307(4), the seller may, by civil action against the insider or any other person involved in the contravention, recover, as a loss or damages suffered by the seller, the difference between -

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- (a) the price at which the securities were acquired, or agreed to be acquired, by the insider or the other person, from the seller; and
- (b) the price at which the securities would have been likely to have been acquired at the time of the acquisition or agreement, as the case may be, referred to in Paragraph (a), if the information had been generally available.

(4) Where an insider disposed of or agreed to dispose of, or procured another person to dispose of or agree to dispose of, securities to a person (the "buyer") who did not possess the information, in contravention of Section 307(4), the buyer may, by civil action against the insider or any other person involved in the contravention, recover, as a loss or damages suffered by the buyer, the difference between -

- (a) the price at which the securities were disposed of, or agreed to be disposed of, by the insider or the other person, to the buyer; and
- (b) the price at which they would have been likely to have been disposed of at the time of the disposal or agreement, as the case may be, referred to in Paragraph (a) if the information had been generally available.

(5) Where an insider acquired or agreed to acquire, or procured another person to acquire or agree to acquire, securities, in contravention of Section 307(4), and such securities were permitted to be traded on a stock market of a stock exchange, then, whether or not the insider or any other person involved in the contravention has been charged with an offence in respect of the contravention or whether or not the contravention has been proved in a prosecution, the Commission may, if it considers that it is in the public interest to do so, by civil action against the insider or any other person involved in the contravention -

- (a) recover an amount equal to three times the amount being the difference between the price at which the securities were acquired, or agreed to be acquired, by the insider or the other person, and the price at which they would have been likely to have been acquired at the time of the acquisition or agreement, as the case maybe, if the information had been generally available; and
- (b) claim civil penalty in such amount as the Court considers appropriate having regard to the seriousness of the contravention, being an amount not more than K10,000,000.00.

(6) Where an insider disposed of or agreed to dispose of, or procured another person to dispose of or agree to dispose of, securities, in contravention of Section 307(4), and such securities were permitted to be traded on a stock market of a stock exchange, then, whether or not the insider or any other person involved in the contravention has been charged with an offence in respect of the contravention or whether or not the contravention has been proved in a prosecution, the Commission may, if it considers that it is in the public interest to do so, by civil action against the insider or any other person involved in the contravention -

- (a) recover an amount equal to three times the amount being the difference between the price at which the securities were disposed of, or agreed to be disposed of, by the insider or the other person, and the price at which they would have been likely to have been disposed of at the time of the disposal or agreement, as the case may be, if the information had been generally available; and

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(b) claim civil penalty in such amount as the Court considers appropriate having regard to the seriousness of the contravention, being an amount not more than K10,000,000.00.

(7) An amount recovered or obtained by the Commission in an action pursuant to Subsection (5) or (6), respectively, shall be applied -

- (a) firstly, to reimburse the Commission for all costs of the investigation and proceedings in respect of the contravention; and
- (b) secondly -
 - (i) where it relates to Subsection (5), to compensate the sellers who disposed of securities of the same class on the stock market of the stock exchange when information was not generally available between the time when the first contravention of Section 307(4), occurred and the time when information became generally available; and
 - (ii) where it relates to Subsection (6), to compensate the buyers who acquired securities of the same class on the stock market of the stock exchange when the information was not generally available between the time when the first contravention of Section 307(4), occurred and the time when the information became generally available.

(8) Where the Commission considers it to be impracticable to compensate the persons referred to in Subsection (7)(b), in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in Subsection (7)(b).

(9) To the extent that any of the amount recovered or obtained in a civil action under Subsection (5) or (6) has not been distributed pursuant to Subsection (7), it shall be -

- (a) paid to the Capital Market Compensation Fund maintained under Part IX; or
- (b) retained by the Commission to defray -
 - (i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or
 - (ii) the cost of regulating the capital market, as the Commission may determine.

(10) Civil proceedings under this section may be commenced at any time within 12 years from -

- (a) the date on which the cause of action accrued; or
- (b) the date on which the Commission or the person who instituted the proceedings, as the case may be, discovered the contravention, whichever is the later.

(11) Any right of action that is conferred under this section shall not affect the right of action that is conferred on a person who has suffered loss or damage referred to in Subsection (1) or under any other law.

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Division 4. - Prohibited conduct - derivatives.

326. FALSE TRADING.

A person shall not create or cause to be created or do anything that is calculated to create a false or misleading appearance of active trading in derivatives on a derivatives market or a false or misleading appearance with respect to the market for, or the price of trading in, derivatives on the derivatives market.

327. BUCKETING.

A person shall not execute, or hold himself out as having executed, an order for the purchase or sale of a derivative on a derivative market without having effected a *bona fide* purchase or sale of the derivative in accordance with the rules and practices of the derivatives market.

328. DISSEMINATION OF INFORMATION ABOUT FALSE TRADING.

A person shall not circulate, disseminate or authorise, or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of trading in a derivative or a class of derivative will, or is likely to, rise or fall because of the market operations of one or more persons, which operations, to his knowledge, are conducted in contravention of Section 326.

329. MANIPULATION OF PRICE OF DERIVATIVES AND CORNERING.

A person shall not directly or indirectly -

- (a) manipulate or attempt to manipulate the price of derivatives that may be dealt in on a derivatives market, or of any underlying instrument which is the subject of such derivatives; or
- (b) corner, or attempt to corner, any underlying instrument which is the subject of a derivative.

330. EMPLOYMENT OF DEVICES TO DEFRAUD.

A person shall not directly or indirectly, in connection with any transaction with any other person involving trading in derivatives -

- (a) employ any device, scheme or artifice to defraud that other person; or
- (b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, of that other person; or
- (c) make any false statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

331. FALSE OR MISLEADING STATEMENTS.

A person shall not directly or indirectly, for the purposes of inducing the entering into a derivatives contract, make -

- (a) any statement which, at the time and in the light of the circumstances in which it is made, is false, misleading or deceptive with respect to any material fact; or
- (b) any statement which, by reason of the omission of a material fact, is rendered false or misleading.

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332. PROHIBITION OF ABUSE OF INFORMATION OBTAINED IN OFFICIAL CAPACITY.

A person who, in relation to trading in derivatives, has any information which if generally known might reasonably be expected to affect materially the price of the subject matter of such trading and which -

- (a) he holds by virtue of his official capacity or former official capacity; and
- (b) it would be reasonable to expect a person in his official capacity or former official capacity not to disclose except for the proper performance of the functions attached to that official capacity; and
- (c) he knows is unpublished price-sensitive information in relation to an underlying instrument which is the subject of a futures contract or in relation to the trading in a derivatives, shall not make improper use of such information to gain, directly or indirectly, an advantage for himself or for any other person.

333. PENALTIES FOR OFFENCE UNDER DIVISION 4.

Any person who contravenes any of the provisions of this division commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term of ten years, or both.

Division 5. - Civil remedies.

334. CIVIL LIABILITY FOR CONTRAVENTION OF VARIOUS SECTIONS.

(1) A person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened Section 326, 327, 328, 329, 330, 331 or 332, may recover the amount of loss or damage by instituting civil proceedings against the other person, whether or not the other person has been charged with an offence in respect of the contravention or, whether or not a contravention has been proved in a prosecution.

(2) This section shall not affect any liability under any other written law in respect of the conduct constituting the contravention.

335. CIVIL ACTION BY COMMISSION.

(1) Where it appears to the Commission that any person has contravened Section 326, 327, 328, 329, 330, 331 or 332, the Commission may institute civil proceedings in the Court against that person, whether or not such person has been charged with an offence in respect of the contravention or, whether or not a contravention has been proved in a prosecution, the Commission may, if it considers that it is in the public interest to do so, by civil action against such person in contravention -

- (a) recover an amount which shall not exceed three times the gross amount of pecuniary gain made or loss avoided by such person; and
- (b) claim civil penalty in such amount as the Court considers appropriate having regard to the seriousness of the contravention, being an amount not more than K10,000,000.00.

(2) An amount recovered by the Commission in an action pursuant to this section shall be applied -

- (a) firstly, to reimburse the Commission for all costs of the investigations and proceedings in respect of the contravention; and

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(b) secondly, to compensate persons who have suffered loss or damage as a result of the contravention.

(3) Where the Commission considers it to be impracticable to compensate the persons referred to in Subsection (2)(b), in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in Subsection (2)(b).

(4) To the extent that any of the amount obtained in a civil action under Subsection (1) has not been distributed pursuant to Subsection (2)(b), it shall be -

- (a) paid to the fidelity fund maintained under Division 2 of Part IX; or
- (b) retained by the Commission to defray the costs of regulating the capital market, as the Commission may determine.

(5) Civil proceedings under Subsection (1) or Section 334(1) may be commenced at any time within 12 years from -

- (a) the date on which the cause of action accrued; or
- (b) the date on which the Commission or the plaintiff, who instituted the proceedings, as the case may be, discovered the contravention, whichever is the later.

(6) Any right of action that is conferred under this section shall not affect the right of action that is conferred on a person who has suffered loss or damage referred to in Subsection 334(1) or under any other law.

PART VIII. - MANAGEMENT OF SYSTEMIC RISK IN THE CAPITAL MARKET.

336. INTERPRETATION.

For the purposes of this part -

“market participant” includes an investor, affiliate, issuer, intermediary, capital market service provider, stock exchange, derivatives exchange, central depository and clearing facility;

“systemic risk in the capital market” means a situation when one or more of the following events occurs or is likely to occur:

- (a) financial distress in a significant market participant or in a number of market participants; or
- (b) an impairment in the orderly functioning of the capital market; or
- (c) an erosion of public confidence in the integrity of the capital market.

337. INFORMATION FOR PURPOSE OF SYSTEMIC RISK.

(1) The Commission may, notwithstanding any provision under any securities laws, by notice in writing request any person to submit to the Commission any information or document -

- (a) which the Commission considers necessary for the purposes of monitoring, mitigating and managing systemic risks in the capital market; or
- (b) where the Commission receives a request from the Bank of Papua New Guinea pursuant to the *Central Bank Act 2000*.

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(2) For the purposes of Subsection (1), where the person concerned is solely under the supervision or oversight of the Bank of Papua New Guinea, the notice shall be copied to the Bank of Papua New Guinea.

(3) Any person who is required to submit any information or document under this section shall provide such information or document notwithstanding any obligation under any contract, agreement or arrangement whether express or implied to the contrary.

(4) A person who contravenes a notice issued under Subsection (1), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

338. POWER OF COMMISSION TO ISSUE DIRECTIVE FOR SYSTEMIC RISK.

(1) Where the Commission considers it necessary in the interest of monitoring, mitigating or managing systemic risk in the capital market, the Commission may issue a directive in writing requiring any person to take such measures as the Commission may consider necessary.

(2) In exercising its power under Subsection (1), the Commission shall take into consideration the interest of financial stability.

(3) Before issuing a directive under Subsection (1), the Commission shall give the person an opportunity to be heard.

(4) Notwithstanding Subsection (3), the Commission may issue a directive under Subsection (1) without first giving the person an opportunity to be heard if any delay in issuing such directive would aggravate systemic risk in the capital market.

(5) Where a directive is issued pursuant to Subsection (4), the person shall be given an opportunity to be heard after the directive has been issued.

(6) When a person is given an opportunity to be heard under Subsection (3), a directive issued under Subsection (1), may be amended or modified.

(7) Any person who contravenes a directive issued under Subsection (1), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

339. ARRANGEMENTS WITH OTHER SUPERVISORY AUTHORITIES.

(1) Notwithstanding any provision in the securities laws, the Commission may for the purposes of monitoring, mitigating and managing systemic risk in the capital market or contributing towards financial stability -

- (a) provide assistance to any supervisory authority or Government agency responsible for promoting financial stability; and

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- (b) obtain any information or document from, or share any information or document with, any supervisory authority or Government agency responsible for promoting financial stability if the Commission considers it necessary that such information or document be so obtained or shared in managing systemic risk in the capital market or promoting financial stability; and
 - (c) enter into arrangements to co-operate with other supervisory authorities and co-ordinate stability measures with such supervisory authorities.
- (2) Where the Commission shares any information or document under Subsection (1)(b) -
- (a) with any supervisory authority or Government agency responsible for promoting financial stability in Papua New Guinea, such information or document shall not be disclosed to any person except with the written consent of the Commission; and
 - (b) with any supervisory authority outside Papua New Guinea, such supervisory authority shall give an appropriate undertaking for protecting the confidentiality of such information or document and the purposes for which the information or document may be used.
- (3) For the purposes of this section, "supervisory authority" means any authority, body, agency or entity -
- (a) responsible for monitoring, mitigating and managing systemic risk in the capital market or promoting financial stability; or
 - (b) responsible for the supervision or oversight of capital market intermediaries or participants.

PART IX. - COMPENSATION FUND AND FIDELITY FUND.

Division 1. - Compensation Fund.

340. INTERPRETATION.

In this part, unless the context otherwise requires -

"compensation fund" means a compensation fund established and maintained under Section 341;

"fidelity fund" means a fidelity fund established under Section 359;

"derivatives exchange", in relation to a fidelity fund, means the derivatives exchange which established the fidelity fund under Section 359;

"stock exchange", in relation to a compensation fund, means the stock exchange which established the compensation fund under Section 341.

341. ESTABLISHMENT OF COMPENSATION FUND.

(1) A stock exchange shall establish and maintain a compensation fund which shall be administered under this division.

(2) The assets of the compensation fund shall be the property of the stock exchange, which shall be kept separate from all its other properties and such assets shall be held in trust for the purposes set out in the regulations made under this Act.

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- (3) The Head of State may by regulations prescribe -
- (a) in respect of a compensation fund of a stock exchange -
 - (i) the powers of the Commission; and
 - (ii) the powers, obligations and liabilities of the stock exchange; and
 - (iii) the manner in which the compensation fund is to be administered; and
 - (b) the manner in which the stock exchange shall apply its compensation fund; and
 - (c) without prejudice to Section 352, in respect of claims made against a compensation fund of a stock exchange -
 - (i) the persons who are eligible to make claims; and
 - (ii) the circumstances under which claims are to be allowed; and
 - (iii) the procedures and limitations in respect of such claims; and
 - (iv) appeals and the procedures applicable thereto.

342. MONIES CONSTITUTING COMPENSATION FUND.

The compensation fund of a stock exchange shall consist of the following:

- (a) monies paid to the credit of the compensation fund by the stock exchange on the establishment of the compensation fund; and
- (b) monies paid to the stock exchange by participating organisations under this division; and
- (c) the interest and profits from time to time accruing from the investment of the compensation fund; and
- (d) monies paid into the compensation fund by the stock exchange under Section 346(1); and
- (e) monies recovered by or on behalf of the stock exchange in the exercise of a right of action conferred by this division; and
- (f) monies paid by an insurer under a contract of insurance or indemnity entered into by the stock exchange under Section 356; and
- (g) all other monies lawfully paid into the compensation fund.

343. COMPENSATION FUND TO BE KEPT IN SEPARATE ACCOUNT.

(1) All monies forming part of the compensation fund shall, be paid or transferred into a separate trust account by the stock exchange.

(2) A trust account referred to in Subsection (1) may be opened at any licensed institutions.

344. PAYMENTS OUT OF COMPENSATION FUND.

Subject to this division, there shall be paid out of the compensation fund of a stock exchange in such order as the relevant stock exchange thinks proper -

- (a) the amount of all claims, including costs, allowed by the stock exchange or established against the compensation fund under this division; and
- (b) all legal and other expenses incurred in investigating or defending claims made under this division or incurred in relation to the compensation fund or in the exercise by the stock exchange of the rights, powers and authority conferred by this division in relation to the compensation fund; and
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the stock exchange under Section 356; and

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- (d) all expenses incurred in the administration of the compensation fund, including the remuneration and allowances of any persons employed by the stock exchange in relation thereto; and
- (e) all other monies payable out of the compensation fund in accordance with the provisions of this Act.

345. ACCOUNTS OF COMPENSATION FUND.

(1) A stock exchange shall establish and keep proper accounts of the compensation fund and shall, before the 31st of December in each year, cause a balance sheet in respect of such accounts to be made out as at the preceding 30th day of June.

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

(3) The auditor appointed by the stock exchange shall regularly and fully audit the accounts of the compensation fund and shall audit each balance sheet and cause it to be laid before the stock exchange not later than one month after the balance sheet was made out.

346. REQUIREMENT OF RELEVANT STOCK EXCHANGE TO PAY PORTION OF NET INCOME INTO COMPENSATION FUND.

(1) The Commission may, after consultation with a stock exchange, require the stock exchange to pay a portion of its net income into the compensation fund in any financial year.

(2) Where a stock exchange is required to make a payment under Subsection (1), the Commission shall give written notice and the exchange shall comply with the requirement on or before the date specified in the written notice.

347. CONTRIBUTION TO COMPENSATION FUND.

(1) A participating organisation shall, upon being licensed under this Act, pay to the stock exchange the amount of K20,000.00 as contribution to the compensation fund and shall thereafter on or before the 31st of January every year pay to the stock exchange the amount approved by the Commission as annual contribution to the compensation fund.

(2) All contributions made under this section shall not be refundable.

(3) Notwithstanding anything in this section, a stock exchange may, subject to the approval of the Commission, vary the amount and manner of contribution by participating organisations to the compensation fund.

348. PROVISION WHERE COMPENSATION FUND EXCEEDS K50 MILLION.

(1) Subject to consultation with a stock exchange, every participating organisation who has made 50 annual contributions or more into the compensation fund, and which owes no monies to the compensation fund, shall be discharged from further annual contribution in a financial year, where monies in the compensation fund exceed K50 million or such greater sum as determined by the Commission.

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(2) Subject to the approval of the Commission, a participating organisation which has been discharged from further annual contributions under Subsection (1), may be required by the stock exchange to pay annual contributions under Section 347 in accordance with terms and conditions set by the stock exchange, where the monies in its compensation fund is less than K10,000,000.00.

349. LEVY.

(1) A stock exchange may impose a levy as approved by the Commission, on every participating organisation as reasonable compensation, where the compensation fund is not able to satisfy the liabilities that may be owed against the stock exchange.

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

350. POWER TO MAKE ADVANCE PAYMENTS.

(1) A stock exchange may, from time to time from its general funds, give or advance on such terms as the board of the stock exchange thinks fit, any sums of monies to its compensation fund.

(2) Any monies advanced under Subsection (1), may from time to time be repaid from the compensation fund to the general funds of the stock exchange.

351. INVESTMENT.

A stock exchange may invest any monies which forms part of its compensation fund and is not immediately required for any other purpose under this division -

- (a) on fixed deposit with a licensed institution; or
- (b) in securities in which trustees are authorised by law to invest trust funds.

352. APPLICATION OF COMPENSATION FUND.

(1) Subject to this division, if a person (the "person suffering the loss") suffers monetary loss at any particular time because of -

- (a) a defalcation, fraudulent misuse of monies or other property, by a director, officer, employee or representative of a holder of a capital market licence who carries on the business of dealing in securities that is at that time a participating organisation; or
- (b) an insolvency of a participating organisation, and the loss is suffered in respect of monies or other property that was, in connection with the participating organisation's dealing in securities, entrusted to or received by the participating organisation, or by a director, officer, employee or representative of the participating organisation (whether before or after the commencement of this section) for or on behalf of the person suffering the loss or another person, or because the participating organisation was trustee of the monies or other property, the compensation fund of the stock exchange shall be applied for the purpose of compensating the person suffering the loss.

(2) Without prejudice to Subsection (1), the Commission may, after consultation with the stock exchange, by order published in the National Gazette, prescribe any other circumstances for the application of the compensation fund.

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- (3) The amount or the sum of the amounts paid out of the compensation fund of a stock exchange under this division for the purpose of -
- (a) compensating for monetary loss suffered by a person referred to in Subsection (1) or (2), as the case may be; and
 - (b) compensating for monetary loss suffered by such person in respect of a particular participating organisation, shall not be greater than the amount stated in or calculated in accordance with this division and the regulations made under this Act.
- (4) A reference in this section to a defalcation, or to a fraudulent misuse of monies or other property, is a reference to such defalcation or fraudulent misuse wherever and whenever occurring.
- (5) For the purposes of Subsection (1), a participating organisation shall be deemed to be insolvent -
- (a) when the participating organisation is being wound up; or
 - (b) where the stock exchange determines, in accordance with its rules that the participating organisation appears to be unable, or likely to become unable, to meet its obligations in respect of all trades effected on the stock exchange to which the participating organisation is a party.
- (6) If, in any particular case, after taking into account all ascertained or contingent liabilities of a compensation fund, the stock exchange considers that the assets of the compensation fund so permit, the stock exchange may apply out of the compensation fund such sum in excess of the total amount limited by or under this division and the regulations made thereunder as the stock exchange in its absolute discretion thinks fit in or towards the compensation of persons who have suffered monetary loss as provided in Subsection (1) or (2), as the case may be.
- (7) For the purposes of this section, "director" includes a person who has been, but at the time of any defalcation or fraudulent misuse of monies or property in question has ceased to be, a director of a participating organisation if, at the time of the defalcation or fraudulent misuse of monies or property the person claiming compensation has reasonable grounds to believe that the person is a director of a participating organisation.

353. PRODUCTION OF DOCUMENTS.

- (1) A stock exchange may, at any time, require any person to produce any document or deliver statements of evidence necessary to support any claim made or necessary for the purpose of -
- (a) exercising its rights against a participating organisation or the directors thereof or any other person concerned; or
 - (b) enabling criminal proceedings to be taken against any person in respect of a defalcation, or fraudulent misuse of monies or property.

- (2) A claim made under this division by any person who is requested to produce any documents or statements of evidence under Subsection (1), may be disallowed by the stock exchange if the person making the claim fails to deliver such documents or statements.

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354. SUBROGATION OF STOCK EXCHANGE TO RIGHTS AND REMEDIES OF CLAIMANT UPON PAYMENT FROM COMPENSATION FUND.

If a stock exchange makes a payment out of its compensation fund in respect of a claim from compensation under this division -

- (a) the stock exchange is subrogated to the extent of the payment to all the rights and remedies of the claimant in respect of the loss suffered by the claimant; and
- (b) the claimant shall not have any claim or right under any bankruptcy or legal proceeding or otherwise -
 - (i) to receive in respect of the loss any sum out of the assets of the participating organisation concerned; or
 - (ii) if the loss was caused by an act or omission of a director, officer, representative or employee of a participating organisation to receive in respect of the loss, any sum, until the stock exchange has been reimbursed the full amount of the payment made by it out of the compensation fund, including any interest paid.

355. CLAIMS TO BE PAID ONLY FROM COMPENSATION FUND.

No monies or other property belonging to a stock exchange, other than its compensation fund, shall be used for the payment of any claim under this division.

356. POWER TO ENTER INTO CONTRACT OF INSURANCE.

(1) A stock exchange may enter into a contract with a registered insurance business within Papua New Guinea under which the stock exchange shall be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims under this division or any regulations made under this Act.

(2) A contract under Subsection (1), may be entered into in relation to participating organisations generally, or in relation to a particular participating organisation named in the contract, or in relation to participating organisations generally with the exclusion of particular participating organisations named in the contract.

(3) An action shall not lie against a stock exchange or against any member or employee or against any committee or subcommittee of a board of a stock exchange, as the case may be, for injury alleged to have been suffered by any participating organisation by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to the participating organisation.

357. APPLICATION OF INSURANCE MONIES.

A claimant against a compensation fund of a stock exchange shall not have -

- (a) a right of action against a person with whom a contract of insurance or indemnity is made under this division in respect of such a contract; or
- (b) a right or claim with respect to any monies paid by the insurer in accordance with such a contract.

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358. MONIES IN COMPENSATION FUND UPON WINDING UP OF STOCK EXCHANGE.

In the event of a stock exchange being wound up under the *Companies Act 1997*, as amended from time to time, the stock exchange shall, after satisfying all the outstanding liabilities against its compensation fund make available to the liquidator of the exchange the balance of the amount available in the compensation fund which shall form part of the assets of the exchange and shall be available to the liquidator for distribution in accordance with the *Companies Act 1997*.

Division 2. - Fidelity Fund.

359. ESTABLISHMENT OF FIDELITY FUND.

(1) A derivatives exchange shall establish and maintain a fidelity fund which shall be administered under this division.

(2) The assets of the fidelity fund are the property of the derivatives exchange, which the derivatives exchange shall keep separate from all its other properties.

(3) The Head of State may by regulations prescribe -

- (a) in respect of a fidelity fund of a derivatives exchange -
 - (i) the powers of the Commission; and
 - (ii) the powers, obligations and liabilities of the derivatives exchange; and
 - (iii) the manner in which the fidelity fund is to be administered; and
- (b) the manner in which a derivatives exchange shall apply its fidelity fund; and
- (c) without prejudice to Section 367, in respect of claims made against a fidelity fund of a derivatives exchange -
 - (i) the persons who are eligible to make claims; and
 - (ii) the circumstances under which claims are to be allowed; and
 - (iii) the procedures and limitations in respect of such claims; and
 - (iv) appeals and the procedures applicable thereto.

(4) The matters that may be prescribed under Subsection (3)(c) include the satisfaction of claims in relation to any trading or proposed trading in derivatives contracts made against affiliates of the derivatives exchange.

360. MONIES CONSTITUTING FIDELITY FUND.

The fidelity fund of a derivatives exchange shall consist of the following:

- (a) monies paid to the credit of the fund by the derivatives exchange on the establishment of the fund; and
- (b) monies paid to the derivatives exchange under this division by holders of a capital market licence who carry on the business of trading in derivatives contracts; and
- (c) the interest and profits from time to time accruing from the investment of the fidelity fund; and
- (d) monies paid into the fidelity fund by the derivatives exchange; and
- (e) monies recovered by or on behalf of the derivatives exchange in the exercise of a right of action conferred by this division; and

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- (f) monies paid by an insurer under a contract of insurance or indemnity entered into by the derivatives exchange under Section 371; and
- (g) all other monies lawfully paid into the fidelity fund.

361. FIDELITY FUND TO BE KEPT IN SEPARATE ACCOUNT.

(1) All monies forming part of the fidelity fund of a derivatives exchange shall, be paid or transferred into a separate trust account by the derivatives exchange.

(2) A trust account referred to in Subsection (1), may be opened at any licensed institution.

362. PAYMENTS OUT OF FIDELITY FUND.

Subject to this division, there shall be paid out of the fidelity fund of a derivatives exchange in such order as the relevant derivatives exchange thinks proper -

- (a) the amount of all claims, including costs, allowed by the derivatives exchange or established against the fund under this division; and
- (b) all legal and other expenses incurred in investigating or defending claims made under this division or incurred in relation to the fund or in the exercise by the derivatives exchange of the rights, powers and authority conferred by this division in relation to the fidelity fund; and
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the derivatives exchange under Section 371; and
- (d) all expenses incurred in the administration of the fund, including remuneration and allowances of the members of any committee established by the derivatives exchange and of persons employed by the derivatives exchange, in relation to the fidelity fund; and
- (e) all other monies payable out of the fidelity fund in accordance with the provisions of this Act.

363. ACCOUNTS OF FIDELITY FUND.

(1) A derivatives exchange shall establish and keep proper accounts of the fidelity fund and shall, before the 31st day of December in each year, cause a balance sheet in respect of such accounts to be made out as at the preceding 30th day of June.

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

(3) The auditor appointed by the derivatives exchange 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 derivatives exchange not later than one month after the balance sheet was made out.

364. CONTRIBUTIONS TO FIDELITY FUND.

(1) A holder of a capital market licence who carries on the business of trading in derivatives contracts shall, upon being licensed under this Act, pay to the derivatives exchange the amount of K20,000.00 as a contribution to the fidelity fund and shall thereafter on or before the 31st day of January every year pay to the derivatives exchange the amount approved by the Commission as an annual contribution to the fidelity fund.

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(2) All contributions made under this section shall not be refundable.

(3) Notwithstanding anything in this section, the derivatives exchange may, subject to the approval of the Commission, vary the amount and the manner of the contribution by the holders of the capital market licence.

365. POWER TO MAKE ADVANCE PAYMENTS.

(1) A derivatives exchange may, from time to time from its general funds, give or advance on such terms as the derivatives exchange thinks fit, any sum of monies to its fidelity fund.

(2) Any monies advanced under Subsection (1), may from time to time be repaid from the fidelity fund to the general funds of the derivatives exchange.

366. INVESTMENT.

A derivatives exchange may invest any monies which forms part of its fidelity fund and is not immediately required for any other purposes provided by this division -

- (a) on fixed deposit with a licensed institution; or
- (b) in securities in which trustees are authorised by law to invest trust funds.

367. APPLICATION OF FIDELITY FUND.

(1) Subject to this division, if -

- (a) a person suffers monetary loss at a particular time because of a defalcation, or fraudulent misuse of monies or other property, by a director, officer, employee or representative of a holder of a capital market licence who carries on the business of trading in derivatives contracts that is at that time an affiliate of a derivatives exchange or in such other circumstances as may be prescribed under Section 359(3)(c); and
- (b) the loss is suffered in respect of monies or other property that was, in connection with the holder's trading in derivatives contracts, entrusted to or received by the holder or by a director, officer or employee of the holder whether before or after the commencement of this section -
 - (i) for or on behalf of the derivatives person or another person; or
 - (ii) because the holder was trustee of the monies or other property, the fidelity fund of the derivatives exchange shall be applied for the purpose of compensating the person.

(2) The amount or the sum of the amounts paid under this division out of derivatives exchange's fidelity fund for the purpose of -

- (a) compensating for monetary loss suffered by a person; or
- (b) compensating for monetary loss suffered by any person or persons in respect of a particular holder of a capital market licence who carries on the business of trading in derivatives contracts, must not be greater than the applicable amount stated in or calculated in accordance with the derivatives exchange's rules.

(3) For the purposes of Subsection (2), an amount that is paid from a fidelity fund is, to the extent to which that amount is repaid to the fund, to be disregarded.

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(4) A reference in this section to a defalcation, or to a fraudulent misuse of monies or other property, is a reference to a defalcation, or to such a fraudulent misuse, wherever and whenever occurring.

368. PRODUCTION OF DOCUMENTS.

(1) A derivatives exchange may at any time require any person to produce any documents or deliver statements of evidence necessary to support any claim made or necessary for the purpose of -

- (a) exercising its rights against a holder of a capital market licence or the directors thereof or any other person concerned; or
- (b) enabling criminal proceedings to be taken against any person in respect of a defalcation, or fraudulent misuse of monies or property.

(2) A claim under this division by any person who is requested to produce any documents or deliver statements of evidence under Subsection (1), may be disallowed by a derivatives exchange if the person making the claim fails to deliver such.

369. SUBROGATION OF DERIVATIVES EXCHANGE TO RIGHTS AND REMEDIES OF CLAIMANT UPON PAYMENT FROM FIDELITY FUND.

If a derivatives exchange makes a payment out of its fidelity fund in respect of a claim for compensation under this division -

- (a) the derivatives exchange is subrogated to the extent of the payment to all the rights and remedies of the claimant in respect of the loss suffered by the claimant; and
- (b) the claimant shall not have any claim or right under any bankruptcy or legal proceeding or otherwise -
 - (i) to receive in respect of the loss any sum out of the assets of the holder of a capital market licence who carries on the business of trading in derivatives contracts; or
 - (ii) if the loss was caused by an act or omission of a director, officer, employee or representative of a holder of a capital market licence who carries on the business of trading in derivatives contracts, to receive in respect of the loss any sum, until the derivatives exchange has been reimbursed, the full amount of the payment made by it out of the fidelity fund, including any interest paid.

370. CLAIMS TO BE PAID ONLY FROM FIDELITY FUND.

No monies or other property belonging to a derivatives exchange, other than its fidelity fund, shall be used for the payment of any claim under this division.

371. POWER TO ENTER INTO CONTRACT OF INSURANCE.

(1) A derivatives exchange may enter into a contract with a registered insurance business within Papua New Guinea under which the derivatives exchange shall be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims under this division or any regulations made under this Act.

(2) Such a contract may be entered into in relation to affiliates of the derivatives exchange generally, or in relation to a particular affiliate named in the contract, or in relation to affiliates generally with the exclusion of particular affiliates named in the contract.

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(3) An action shall not lie against a derivatives exchange or against any member or employee or against any committee or subcommittee of a board of a derivatives exchange, as the case may be, for injury alleged to have been suffered by any affiliate by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to the affiliate.

372. APPLICATION OF INSURANCE MONIES.

A claimant against a fidelity fund of a derivatives exchange shall not have -

- (a) a right of action against a person with whom a contract of insurance or indemnity is made under this division in respect of such a contract; or
- (b) a right or claim with respect to any monies paid by the insurer in accordance with such a contract.

373. MONIES IN FIDELITY FUND UPON WINDING UP OF DERIVATIVES EXCHANGE.

In the event of a derivatives exchange being wound up under the *Companies Act 1997*, the derivatives exchange shall, after satisfying all the outstanding liabilities against its fidelity fund, make available to the liquidator of the derivatives exchange the balance of the amount available in the fidelity fund which shall form part of the assets of the derivatives exchange and shall be available to the liquidator for distribution in accordance with the *Companies Act 1997*.

PART X. - DISCLOSURE OF INTEREST BY CHIEF EXECUTIVE OFFICERS AND DIRECTORS OF LISTED CORPORATIONS.

Division 1. - The purpose of this part.

374. THE PURPOSE OF THIS PART.

(1) The purposes of this part are to promote good corporate governance, and to deter, and to assist in the monitoring of, insider conduct and market manipulation, by -

- (a) ensuring that information about chief executive officers' and directors' trading activities in listed issuers or corporations is available to participants in the securities markets; and
- (b) enabling the dates of trades to be checked against the dates at which material information became generally available to the market.

Division 2. - Duty of chief executive officers and directors of listed corporations to disclose interest in securities.

375. DUTY OF CHIEF EXECUTIVE OFFICERS AND DIRECTORS OF LISTED CORPORATION TO DISCLOSE INTERESTS IN SECURITIES.

(1) Unless exempted by the Commission in writing, a person who is a chief executive officer or a director of a listed corporation who has an interest in the securities of such listed corporation or any of its associated corporation shall notify the listed corporation in writing within five trading days -

- (a) of the subsistence of his interests at that time; and
- (b) the extent of his interests in the listed corporation or associated corporation of the listed corporation at that time; and

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- (c) of the appointment as the chief executive officer or director of a listed corporation or an associated corporation of the listed corporation.
- (2) A chief executive officer or a director of a listed corporation shall notify the listed corporation immediately in writing of the occurrence, while he is a chief executive officer or a director of the listed corporation, of any of the following events:
- (a) any event in consequence of which he becomes, or ceases to be, interested in securities in the listed corporation or any associated corporation of the listed corporation; and
 - (b) the entering into by him of a contract to purchase or sell any securities in the listed corporation or any associated corporation of the listed corporation in which he has an interest; and
 - (c) the assignment by him to any other person of a right granted to him by the listed corporation to subscribe for securities in the listed corporation; and
 - (d) the grant to him by another corporation, being an associated corporation of the listed corporation, of a right to subscribe for securities in that associated corporation, the exercise of such a right granted to him and the assignment by him to any other person of such a right so granted; and
 - (e) any event in consequence of which a corporation becomes an associated corporation of the listed corporation where immediately after the event he has an interest in the securities of the corporation.

(3) Subsection (2), does not require the notification by a person of the occurrence of an event which comes to his knowledge after he has ceased to be a chief executive officer or director.

(4) The chief executive officer or the board or the corporation shall provide to the Commission such information as notified under Subsection (1) or (2).

(5) This section does not apply to specified derivatives.

(6) For the purpose of this section "chief executive officer" and "director" include a spouse, child or parent of the chief executive officer or director.

376. DISCLOSURE OF INTERESTS AND DEALINGS IN INTERESTS IN RELATION TO SPECIFIED DERIVATIVES.

(1) A chief executive officer or a director of a listed corporation who has an interest in a specified derivative shall disclose that fact, within five trading days of -

- (a) the listing of the listed corporation; or
- (b) the person's appointment as a chief executive officer or a director.

(2) A chief executive officer or a director of a listed corporation who acquires or disposes of an interest in a specified derivative shall disclose that fact, within five trading days of the acquisition or disposal.

(3) In this division, specified derivative, in relation to a chief executive officer or a director of a listed issuer, means -

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- (a) a quoted derivative where the underlying are securities of the listed corporation or a related body corporate; or
- (b) a derivative that is treated as being a quoted security of the listed corporation.

377. PROHIBITED CONDUCT OF DIRECTOR OR OFFICER OF A LISTED CORPORATION.

(1) A director or an officer of a listed corporation or any of its related corporations shall not do or cause anyone to do anything with the intention of causing wrongful loss to the listed corporation or any of its related corporations irrespective of whether the conduct causes actual wrongful loss.

(2) This section is in addition to and not in derogation of any law relating to the duties or liabilities of directors or officers of a listed corporation.

(3) A person who contravenes Subsection (1), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(4) For the purpose of this section -

“director” includes a person who is a director, chief executive officer, chief operating officer, chief financial controller or any other person primarily responsible for the operations or financial management of a company, by whatever name called;

“wrongful loss” means loss of property by unlawful means to which the person losing the property is legally entitled.

378. DISQUALIFICATION OF CHIEF EXECUTIVE OFFICER OR DIRECTOR OF LISTED CORPORATIONS.

(1) A person who intends to apply for leave of the Court to be a director or promoter of a listed corporation, or to be directly or indirectly concerned, or to take part, or engage, in the management of a listed corporation, shall give to the Commission not less than 10 days’ notice of his intention to apply, and the Commission shall be made a party to the proceedings.

(2) On the hearing of any application referred to in Subsection (1), the Commission may -

- (a) oppose the granting of an application; or
- (b) apply to the Court to -
 - (i) disallow the person to be a director or promoter of a listed corporation; or
 - (ii) be directly or indirectly concerned, or to take part, or engage, in the management of the listed corporation, for such longer period exceeding five years as the Court thinks appropriate.

(3) Where it appears to the Commission that by reason of any chief executive officer or director of a listed corporation -

- (a) having been convicted of an offence under a securities law; and
- (b) having had an action taken against him under Section 323, 324, 334, 335 or Section 325(5) or (6) or 445; and

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(c) having been compounded for an offence under Section 462, the chief executive officer or the director is unfit, to be directly or indirectly concerned, or to take part, engage, in the management of the listed corporation, the Commission may apply to the Court to remove from office such chief executive officer or director of the listed corporation or bar such person from becoming a director or chief executive officer of any public company for such period of time as may be determined by the Court.

(4) The Commission may require a chief executive officer or director concerned in an application under Subsection (3), or the listed corporation in which the chief executive officer or director holds office -

- (a) to furnish the Commission with such information with respect to the affairs of the listed corporation; and
- (b) to produce and permit inspection of such books or documents of or relevant to the listed corporation, as the Commission may require for the purpose of determining whether or not to make an application under Subsection (3) and if the chief executive officer or director concerned contravenes any requirement under this section, the Court may, on the application of the Commission, make an order requiring the chief executive officer or director to comply with the requirement within such time as may be specified by the Court.

(5) Where on an application under Subsection (3), the Court is satisfied -

- (a) that a chief executive officer or director of the listed corporation -
 - (i) has been convicted under a securities law; and
 - (ii) has had an action taken against him under Section 423, 424, 334, 335, 325(5) or (6) or 445; and
 - (iii) has been compounded for an offence under Section 462; and
- (b) that his conduct as chief executive officer or director of the listed corporation renders him unfit to be directly or indirectly concerned, or to take part, or engage, in the management of the listed corporation,

the Court may make an order that the chief executive officer or director concerned be removed from office with effect from such date as may be set out in the order, notwithstanding anything contrary in any other law or any limitations contained in the memorandum and articles of association of the listed corporation, and in particular, notwithstanding any limitation therein as to the minimum or maximum number of directors in that listed corporation.

(6) A chief executive officer or director removed from office under Subsection (5), shall cease to hold office from the date set out in the order, and shall not thereafter hold any other office in that listed corporation or in any manner, whether directly or indirectly, be concerned with, or take part, or engage, in any activity, affairs or business of or in relation to that listed corporation.

379. SUBMISSION OF INFORMATION.

- (1) A listed corporation shall cause to be submitted to the Commission -
 - (a) a copy of its audited annual accounts within two weeks from the date of its annual general meeting; and
 - (b) its interim and periodic financial reports immediately after figures are available.

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- (2) A listed corporation shall notify the Commission in writing -
- (a) of any change in the registered or business address of the listed corporation; and
 - (b) if the chief executive officer or any of the directors of the listed corporation ceases to hold office as a chief executive officer or director; and
 - (c) of the names and particulars of any new chief executive officer or director of the listed corporation, within two weeks of the occurrence of such a change or event.

(3) A listed corporation and its directors shall cause to be kept such accounting records and other records as will sufficiently explain the transactions and financial position of the listed corporation and its related corporation and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such a manner as to enable them to be conveniently and properly audited.

(4) A listed corporation shall ensure that the corporation shall retain the records referred to in Subsection (3), for seven years after the completion of the transaction or operation to which they respectively relate.

(5) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding K10,000,000.00.

380. DUTIES OF AUDITOR OF LISTED CORPORATIONS.

(1) If an auditor, in the course of the performance of his duties as an auditor of a listed corporation, is of the professional opinion that there has been a breach or non-performance of any requirement or provision of the securities laws, a breach of any of the rules of the stock exchange or any matter which may adversely affect to a material extent the financial position of the listed corporation, the auditor shall immediately submit a written report on the matter -

- (a) in the case of a breach or non-performance of any requirement or provision of the securities laws, to the Commission; and
- (b) in the case of a breach or non-performance of any of the rules of a stock exchange, to the relevant stock exchange and the Commission; and
- (c) in any other case which adversely affects to a material extent the financial position of the listed corporation, to the relevant stock exchange and the Commission.

(2) An auditor shall not be liable to be sued in any Court for any report submitted by the auditor in good faith and in the intended performance of any duty imposed on the auditor under this section.

(3) The Commission may, at any time during or after an audit, require an auditor of a listed corporation to -

- (a) submit such additional information in relation to his audit as the Commission may specify; and
- (b) enlarge or extend the scope of his audit of the business and affairs of the listed corporation in such manner or to such extent as the Commission may specify; and

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- (c) carry out any specific examination or establish any procedure in any particular case; and
- (d) submit a report on any matter referred to in Paragraphs (a) to (c); and
- (e) submit an interim report on any matter referred to in Paragraphs (a) to (d), and the Commission may specify the time within which any of such requirements shall be complied with by the auditor and may specify the remuneration which the listed corporation shall pay to the auditor in respect thereof.

(4) The auditor shall comply with any requirement of the Commission under Subsection (3), and the listed corporation shall remunerate the auditor in respect of the discharge by him of all or any of the additional duties under this section.

(5) Where the listed corporation has failed to remunerate the auditor as required under Subsection (4), the auditor may sue for and recover the remuneration as a debt due to the auditor.

(6) The listed corporation shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all or any of the additional duties under this section.

381. FALSE OR MISLEADING FINANCIAL STATEMENTS OF A LISTED CORPORATION.

- (1) A person shall not influence, coerce, mislead or authorise any person engaged in -
 - (a) the preparation of the financial statements of a listed corporation or any of its related corporations; or
 - (b) the performance of an audit of the financial statements of a listed corporation or any of its related corporations, to do anything which he knows or ought reasonably to have known may cause the financial statements or audited financial statements to be false or misleading in a material particular.

(2) A person who contravenes Subsection (1), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

382. PROTECTION FOR PERSONS AGAINST RETALIATION FOR REPORTING.

(1) Where a chief executive officer, any officer responsible for preparing or approving financial statements or financial information, an internal auditor or a secretary of a listed corporation by whatever name described, has in the course of the performance of his duties reasonable belief of any matter which may or will constitute a breach or non-performance of any requirement or provision of the securities laws or a breach of any of the rules of a stock exchange or any matter which may adversely affect to a material extent the financial position of the listed corporation and any of the aforementioned persons submits a report on the matter -

- (a) in the case of a breach or non-performance of any requirement or provision of the securities laws, to the Commission; and
- (b) in the case of a breach or non-performance of any of the rules of a stock exchange, to the stock exchange or the Commission; and

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(c) in any other case which adversely affects to a material extent the financial position of the listed corporation, to the stock exchange or the Commission the listed corporation shall not remove, discriminate, demote, suspend or interfere with the lawful employment or livelihood of, the chief executive officer, any officer responsible for preparing or approving financial statements or financial information, internal auditor or secretary, of the listed corporation because of the report submitted by any of such persons.

(2) A chief executive officer, officer responsible for preparing or approving financial statements or financial information, internal auditor or a secretary of a listed corporation shall not be liable to be sued in any Court for any report submitted by such person in good faith and in the intended performance of his duties.

(3) For the purposes of this section, "secretary" means a person who is referred to in Section 169 of the *Companies Act 1997*, as amended from time to time.

Division 3. - Listed corporations to keep register.

383. LISTED CORPORATION SHALL KEEP INTERESTS REGISTER.

(1) A listed corporation shall keep an interests register for disclosures made to it under this part.

(2) The interests register shall be kept at -
(a) the registered office of the listed corporation; or
(b) any other place in Papua New Guinea of which notice is given in accordance with Subsection (3).

(3) If the interests register is not kept at the listed corporation's registered office, or the place at which it is kept is changed, the listed corporation shall give written notice to the Commission of the place at which it is kept within 10 working days after it is first kept elsewhere or is moved.

384. PUBLIC INSPECTION OF INTERESTS REGISTER.

An interests register shall -

(a) be available for inspection, by a person who serves on the listed corporation a written notice of an intention to inspect, at the place at which the register is kept between the hours of 9 am and 5 pm on each working day during the inspection period; and
(b) otherwise be available for inspection in the prescribed manner (if any).

385. COPIES OF DOCUMENTS.

A person may require a copy of, or an extract from, an interests register to be sent to the person -

(a) within 5 working days after the person has made a request in writing for the copy or extract; and
(b) if the person has paid a prescribed fee.

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386. OFFENCES RELATING TO INTERESTS REGISTER.

(1) A listed corporation that contravenes Sections 383(1) to (3) or 384 commits an offence and is liable to a fine not exceeding K1,000,000.00.

(2) If a listed corporation fails to provide a copy of, or an extract from, an interests register in accordance with a request under Section 385, the corporation commits an offence and is liable to a fine not exceeding K1,000,000.00.

PART XI. - DISCLOSURE OF INFORMATION.

Division 1. - Application.

387. APPLICATION OF THIS PART.

(1) This part shall not apply to a licensed institution other than a licensed institution that holds a capital market licence.

(2) Except as may be provided under Subsection (3), this part does not authorise any investigation into the affairs of a customer of a licensed institution other than a licensed institution that holds a capital market licence.

(3) Notwithstanding, Section 40 of the *Securities Commission Act 2015*, the Commission may seek the assistance of the Bank of Papua New Guinea where it appears to the Commission that it is necessary to examine the books of a licensed institution other than a licensed institution that holds a capital market licence, relating to the affairs of a customer of the licensed institution for the purpose of investigating the affairs of the customer.

Division 2. - Disclosure of information.

388. POWER OF COMMISSION TO REQUIRE PRODUCTION OF BOOKS.

(1) The Commission may, at any time, if it considers there is sufficient reason to do so, by writing -

- (a) give a direction to -
 - (i) a stock exchange or derivatives exchange; and
 - (ii) a member of the board of a stock exchange or a derivatives exchange; and
 - (iii) a person who is or has been either alone or together with another person or other persons, a holder of a capital market licence; and
 - (iv) a nominee controlled by a person referred to in Subparagraph (iii) or jointly controlled by two or more persons at least one of whom is a person referred to in that subparagraph; and
 - (v) a person who is or has been an officer or employee of, or an agent, advocate and solicitor, auditor or other person acting in any capacity for or on behalf of, a stock exchange, derivatives exchange or a person referred to in Subparagraph (ii), (iii) or (iv) requiring the production, to the Commission, of such books as are so specified, being books relating to -

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- (A) the business or affairs of a stock exchange or a derivatives exchange; and
 - (B) any dealing in securities or derivatives; and
 - (C) any advice concerning any securities or derivatives or the issuing or publication of a report or analysis concerning any securities or derivatives; and
 - (D) the character or financial position of, or any business carried on by, a person referred to in Subparagraph (iii) or (iv); and
 - (E) an audit of, or any report of an auditor concerning, a dealing in securities or any accounts or records of the holder of a capital market licence; and
- (b) give a direction to any person requiring the production, to the Commission, of any books relating to matters mentioned in Subparagraph (v)(A), (B), (C), (D) or (E) that are in the custody or under the control of that person, provided that the books shall not be required to be produced at such times and at such places as shall interfere with the proper conduct of the normal daily business of that person.

(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 trustee or to a business carried on by a person as a trustee, as the case may be.

(3) Where the Commission requires the production of any books under this section and a person has a lien on the books, the production of the books does not prejudice the lien.

(4) Where the Commission exercises a power under this section to require another person to produce books -

- (a) if the books are produced, the Commission -
 - (i) may take possession of the books and make copies of, or take extracts from, the books; and
 - (ii) may require the other person or any person who was party to the compilation of the books to make a statement providing an explanation of any of the books; and
 - (iii) may retain possession of the books for as long as the Commission may consider necessary; and
 - (iv) shall permit the other person, upon giving a reasonable notice and specifications of the books, to have access to such books which are in the possession of the Commission; and
- (b) if the books are not produced, the Commission may require the other person -
 - (i) to state, to the best of his knowledge and belief, where the books may be found; and
 - (ii) to identify the person who, to the best of his knowledge and belief, last had custody of the books and to state, to the best of his knowledge and belief, where that last-mentioned person may be found.

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(5) A power conferred by this section to make a requirement of a person extends, if the person is a body corporate, including a body corporate that is in the course of being wound up, or was a body corporate, being a body corporate that has been dissolved, to making that requirement of any person who is or has been an officer of the body corporate.

(6) If it appears to a Magistrate, upon written information on oath and after any enquiry he considers necessary, that there is reasonable cause to believe that there are books on particular premises, the production of which has been required by virtue of this section, and which have not been produced in compliance with that requirement, the Magistrate may issue a warrant authorising the Commission or any person named in the warrant, with or without assistance -

- (a) to search the premises, to break open and search any cupboard, drawer, chest, box, package 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 required.

(7) The powers conferred under Subsection (6), are in addition to, and not in derogation of, any other powers conferred by law.

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

389. OFFENCES.

(1) A person who contravenes a requirement made under Section 388, commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(2) A person who furnishes information or makes a statement pursuant to Section 388, that is false or misleading in a material particular, commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(3) A person who obstructs or hinders the Commission or other person in the exercise of any power under Section 388, commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

390. POWER TO SPECIFY FORM AND MANNER OF SUBMISSION.

(1) Where, under any provision of this Act -

- (a) any person is required; and
- (b) power is given to the Commission to require any person,

to submit to the Commission any information, returns or documents, the Commission may specify that such information, returns or documents be submitted in such form or manner and within such period or at such intervals as the Commission may specify.

(2) The information, returns or documents referred to in Subsection (1) may be submitted -

- (a) in writing; and
- (b) by means of a visual recording (whether stills or moving images); and

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- (c) by means of sound recordings; and
- (d) by means of any electronic, magnetic, mechanical or other recording whatsoever, on any substance, material, thing or article.

391. PRIVILEGES.

(1) Where -

- (a) the Commission makes a requirement under Section 388, of a lawyer in respect of a book; and
- (b) the book contains a privileged communication made by or on behalf of or to the lawyer in his capacity as a lawyer; and
- (c) the lawyer refuses to comply with the requirement,

the Commission shall make an application to the Court to have access to the communication.

(2) Where the person to whom or by or on behalf of whom the communication was made or, if the person is a body corporate that is under receivership or is in the course of being wound up, the receiver or the liquidator, as the case may be, agrees to comply with the requirement under Subsection (1), the lawyer shall immediately provide the book or the extract of the communication to the Commission.

(3) A person who contravenes Subsections (1) and (2), is guilty of an offence and is liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

392. DISCLOSURE TO COMMISSION.

(1) The Commission may require a holder of a capital market licence who carries on the business of dealing in securities to disclose to the Commission in relation to any acquisition or disposal of securities, any information including the name of the person from or through whom or on whose behalf the securities were acquired or to or through whom or on whose behalf the securities were disposed of, and the nature of the instructions given to such holder in respect of the acquisition or disposal.

(2) The Commission may require a holder of a capital market licence who carries on the business of trading in derivatives to disclose to the Commission in relation to any derivatives, any information including the name of the person from or through whom or on whose behalf the derivatives was traded, and the nature of the instructions given to such holder.

(3) The Commission may require a person who has acquired or disposed of securities or derivatives to disclose to the Commission, whether he acquired or disposed of those securities or derivatives, as the case may be, as trustee for, or for or on behalf of, another person and, if he acquired or disposed of those securities or derivatives as trustee for, or for or on behalf of, another person, to disclose the name of that other person and the nature of any instructions given to the first-mentioned person in respect of the acquisition or disposal.

(4) The Commission may require -

- (a) a stock exchange to disclose to the Commission, in relation to an acquisition or disposal of securities on the stock market of that stock exchange, the names of the participating organisations who acted in the acquisition or disposal; or

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- (b) a derivatives exchange to disclose to the Commission, in relation to trading in derivatives on the derivatives exchange, the names of the affiliates who carried out the trading.

(5) A person who contravenes a requirement of the Commission under this section commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

393. DISCLOSURE OF INFORMATION RELATING TO DEALING IN SECURITIES OR TRADING IN DERIVATIVES.

(1) The Commission may require a person to disclose to the Commission, in relation to any dealing in securities or trading in derivatives whether or not the dealing or trading was carried out on another person's behalf -

- (a) the name of, and particulars sufficient to identify the person from whom, through whom or on whose behalf the securities or derivatives were dealt with, as the case may be; and
- (b) the nature of the advice or instructions given to that person in relation to the dealing in securities or trading in derivatives; and
- (c) the particulars of the dealing in securities, including -
 - (i) particulars of the securities that were dealt with; and
 - (ii) particulars of consideration given or received for the dealing in securities or any other transaction related to the dealing in securities; and
- (d) the particulars of the trading in derivatives, including -
 - (i) particulars of the derivatives that were dealt with; and
 - (ii) particulars of consideration given or received for the trading in derivatives or any other transaction related to the trading in derivatives; and
- (e) any other information in the possession of the person as the Commission may specify as it thinks expedient for the due administration of this Act.

(2) A person who contravenes a requirement of the Commission under Subsection (1), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

PART XII. - DISCLOSURE OF SUBSTANTIAL SECURITIES HOLDING.

Division 1. - Purposes of this part.

394. PURPOSES OF PART.

The purposes of this part is to promote an informed market, deter insider conduct, market manipulation and secret dealings in potential take-over bids, by ensuring that participants in securities markets have access to information concerning the identity and trading activities of persons who are, or may at any time be, entitled to control or influence the exercise of significant voting rights in a listed corporation.

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Division 2. - Substantial securities holder.

395. MEANING OF SUBSTANTIAL SECURITIES HOLDER, SUBSTANTIAL HOLDING PERCENTAGE.

(1) A person is a substantial securities holder in a listed corporation for the purposes of this Act if that person has a substantial securities holding interest in that listed corporation.

(2) A person has a substantial holding in a listed corporation for the purposes of this Act if the person has a relevant interest in the security that comprises 5 percent or more of a class of voting securities of the listed corporation.

(3) A person has a separate substantial holding for the purposes of this Act for each class in respect of which the person has a substantial holding under Subsection (2).

(4) The percentage of securities that a person has in a class, for the purposes of this division, is calculated as follows:

$$\frac{(\text{number held total})}{\text{total}} \times 100$$

where -

number held is the number of securities, in that class, in which the person has a relevant interest
total is the total number of securities in that class.

396. PERSON MAY BE TREATED AS HOLDING SECURITIES WHERE PERSON HAS RELEVANT INTEREST IN CERTAIN DERIVATIVES.

(1) This section applies in relation to a derivative if the underlying of the derivative is a security of a listed corporation.

(2) For the purposes of this part, if a person has a relevant interest in the derivative, the person shall be treated as having a relevant interest in a number of the underlying securities that is determined in the prescribed manner.

(3) The number of securities in which a person is treated as having a relevant interest under Subsection (2), is in addition to any other relevant interest that the person has in securities of that class.

397. PERSONS SHALL DISCLOSE IF BEGIN TO HAVE SUBSTANTIAL HOLDING.

(1) A person who begins to have a substantial holding (or another substantial holding for another class) in a listed corporation shall disclose that fact in accordance with Sections 402 and 403.

(2) The disclosure must be given as soon as the person knows, or ought reasonably to know, that the person has the substantial holding.

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398. SUBSTANTIAL SECURITIES HOLDERS SHALL DISCLOSE IF SUBSEQUENT MOVEMENT OF ONE PERCENT OR MORE IN HOLDINGS.

(1) A substantial security holder in a listed corporation shall disclose, in accordance with Sections 402 and 403, any movement of one percent or more in the substantial holding.

- (2) There is a movement of one percent or more in a substantial holding if -
- (a) there is a change in the number of securities held by the substantial securities holder (where number held has the same meaning as in Section 395(4)); and
 - (b) the percentage worked out using the formula in Section 395(4) increases or decreases by one or more percentage points from the percentage last disclosed under this part in relation to the substantial holding.

(3) The disclosure shall be given as soon as the person knows, or ought reasonably to know that, that movement has occurred.

399. SUBSTANTIAL SECURITIES HOLDERS SHALL DISCLOSE IF SUBSEQUENT CHANGES IN NATURE OF RELEVANT INTERESTS.

(1) A substantial securities holder in a listed corporation shall disclose, in accordance with Sections 402 and 403, any change in the nature of any relevant interest in the substantial holding.

(2) The disclosure shall be given as soon as the person knows, or ought reasonably to know, of the change.

400. PERSONS SHALL DISCLOSE IF CEASE TO HAVE SUBSTANTIAL HOLDING.

(1) A person who ceases to have a substantial holding (or any of the person's substantial holdings) in a listed corporation shall disclose that fact in accordance with Sections 402 and 403.

(2) The disclosure shall be given as soon as the person knows, or ought reasonably to know, that the person has ceased to have a substantial holding.

401. LISTED CORPORATION SHALL DISCLOSE TO THE COMMISSION.

(1) A listed corporation shall notify information in accordance with the continuous disclosure provisions of this Act if -

- (a) the corporation is a party to a listing agreement with an exchange; and
- (b) the corporation has information that those continuous disclosure provisions require it to notify; and
- (c) the information is material information that is not generally available to the market.

(2) Subsection (1), does not affect or limit the situations in which an action can be taken (other than under this Act) for a failure to comply with provisions of this Act, regulation and any other securities laws, as the case may be.

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402. REQUIRED DISCLOSURE.

(1) A person shall disclose the matters required to be disclosed under any of Section 397, 398, 399, 400 or 407 to -

- (a) the listed corporation; and
- (b) every operator of a licensed market by which the securities of the listed corporation are quoted; and
- (c) the Securities Commission.

(2) The person shall also disclose, in the prescribed manner, any further matters relating to those matters, the relevant event, or the substantial holding that are required by the regulations.

(3) The disclosure shall also be accompanied by, or have annexed, any prescribed information.

403. FORM AND METHOD OF DISCLOSURE.

A person shall disclose in the prescribed manner.

404. LISTED CORPORATION SHALL GIVE ACKNOWLEDGEMENT OF DISCLOSURE.

Every listed corporation shall, at the request of a person by whom disclosure is given to it under this division, give to the person an acknowledgement of the disclosure in the prescribed manner.

405. HOW TO ASCERTAIN TOTAL SECURITIES IN CLASS FOR PURPOSES OF DISCLOSURE.

(1) For the purposes of this division a person may assume that the total number of securities of a listed corporation in a class most recently published by the following methods is correct -

- (a) in a document published by a listed corporation and distributed to the holders of that class of securities; or
- (b) on an internet site maintained by the relevant licensed market operator.

(2) Subsection (1) does not apply if that person knows that, that number is not correct.

406. EXEMPTION FOR DISCLOSING RELEVANT INTEREST IN CERTAIN CASES.

(1) For the purposes of this part a person may be exempted from having a relevant interest in a voting security where -

- (a) the ordinary business of the person who has the relevant interest consists of, or includes, the lending of money or the provision of financial services, or both, and that person -
 - (i) has the relevant interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of that person; and

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- (ii) has been designated by the Commission, by notice in the National Gazette, as a person to whom this paragraph applies or is a member of a class of persons designated by the Commission, by notice in the National Gazette, as a class of persons to which this paragraph applies, as the case may be, and that designation has not been revoked by the Commission; or
- (b) that person has the relevant interest by reason only of acting for another person to acquire or dispose of that share on behalf of the other person in the ordinary course of business of a stockbroker and that person -
 - (i) is a holder of a capital market licence; or
 - (ii) has been designated by the Commission, by notice in the National Gazette, as a person to whom this paragraph applies and that designation has not been revoked by the Commission; or
- (c) that person has the relevant interest by reason only that he has been authorised by resolution of the directors or other governing body of a body corporate to act as its representative at a particular meeting of members or class of members, of a listed corporation, and a copy of the resolution is deposited with the listed corporation not less than 48 hours before the meeting; or
- (d) that person has the relevant interest solely by reason of being appointed as a proxy to vote at a particular meeting of members, or of a class of members, of the listed company and the instrument of that person's appointment is deposited with the listed company not less than 48 hours before the meeting; or
- (e) that person -
 - (i) is a trustee corporation or a nominee corporation; and
 - (ii) has the relevant interest by reason only of acting for another person in the ordinary course of business of that trustee corporation or nominee corporation; and
 - (iii) has been designated by the Commission, by notice in the National Gazette, as a person to whom this paragraph applies and that designation has not been revoked by the Commission; and
- (f) that person has the relevant interest by reason only that the person is a bare trustee of a trust to which the voting share is subject.

(2) For the purposes of Subsection (1)(f) a trustee may be a bare trustee notwithstanding that he is entitled as a trustee to be remunerated out of the income or property of the trust.

(3) For the purposes of Subsection (1), the Commission shall grant exemption to a person upon an application in writing by the person.

Division 3. - Tracing and disclosure of interests in listed corporations.

407. TRACING AND DISCLOSURE OF INTERESTS IN LISTED CORPORATIONS.

(1) The Commission may, by written notice given after having regard to the purpose of this part in Section 394, require a person to disclose all (or any class of) -

- (a) relevant interests that the person has in securities of a listed corporation; or

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(b) powers that the person has or may at any time have to acquire a relevant interest in securities of a listed corporation.

(2) Subsection (1) applies regardless of whether the securities referred to in Subsection (1)(a) and (b) are voting securities or not, are quoted or non-quoted, or are issued or yet to be issued.

(3) The person shall disclose the information required under Subsection (1) in accordance with Sections 402 and 403 as soon as practicable after the person receives the notice.

(4) Section 414, 415, 416 or 417 apply in determining whether or not a person has the power referred to in Subsection (1)(b) (and for this purpose every reference in those sections to a relevant interest must be read as including a reference to a power to acquire a relevant interest).

408. REQUIREMENT BY LISTED CORPORATIONS OF DISCLOSURE OF RELEVANT INTERESTS.

(1) The purpose of this section is to enable a listed corporation to ascertain who has a relevant interest in securities of the listed corporation and the nature of that interest (regardless of whether those persons are substantial securities holders).

(2) A listed corporation may, by written notice, require a relevant person to disclose -
(a) the name and address of every person who has a relevant interest in the securities of the listed corporation and the nature of that interest; and
(b) to the extent that that relevant person is unable to supply any of that information in relation to a person having a relevant interest in those securities, other particulars that will, or are likely to, assist in identifying that person and the nature of the interest.

(3) The relevant person shall disclose the information required under Subsection (2), in writing to the listed corporation as soon as practicable after the person receives the notice.

(4) In this section, relevant person, in relation to a listed corporation means a person that -
(a) is registered as the holder of securities of the listed corporation; or
(b) was named in a previous disclosure under this section as having a relevant interest in securities of the listed corporation.

409. LISTED CORPORATION MAY REQUIRE PERSON WHO HAS RELEVANT INTEREST TO DISCLOSE INFORMATION TO IT.

(1) A listed corporation may, by written notice, require a person who the listed corporation believes has, or may have, a relevant interest in the securities of the listed corporation to disclose the information the listed corporation specifies for the purpose of assisting the listed corporation to ascertain who is, or may be, a substantial securities holder in the listed corporation.

(2) The relevant interest holder shall disclose the information required under Subsection (1) in writing to the listed corporation as soon as practicable after the holder receives the notice.

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410. FORM AND METHOD OF NOTICE REQUIRING DISCLOSURE.

The notice requiring disclosure under Section 407, 408 or 409 shall be given in the prescribed manner (if any).

411. LISTED CORPORATIONS SHALL MAKE AVAILABLE INFORMATION ON SUBSTANTIAL HOLDINGS.

(1) A listed corporation shall, in accordance with this section, make available the following information:

- (a) the names of all persons who, according to the corporation's records and disclosures made under Section 402(1)(b), are substantial securities holders in the listed corporation as at each balance date; and
- (b) the number and class of securities of the listed corporation that, according to the corporation's records and disclosures made under Section 402(1)(b), form part of each substantial holding in the listed corporation as at each balance date; and
- (c) the total number of securities in each of those classes as at each balance date.

(2) The information must be made available -

- (a) for listed corporations that are required to prepare an annual report under the *Companies Act 1997* or any other enactment, in the annual report for the period ending on the balance date; and
- (b) for every other listed corporation, in a notice sent to every holder of its securities not later than three months after the balance date.

(3) A listed corporation that contravenes this section commits an offence and is liable to a fine not exceeding K10,000,000.00.

412. LISTED CORPORATION NOT LIABLE FOR FALSE OR MISLEADING INFORMATION.

A listed corporation shall not be liable for any false or misleading information made available under Section 411 if the information was derived by the corporation under this division and the issuer did not know that the information was false or misleading.

413. NOTHING UNDER PART XIII TO AFFECT LISTED CORPORATION OR CONSTITUTE NOTICE OF TRUST.

(1) Nothing in, or done under, Part XIII -

- (a) affects the listing of a corporation; or
- (b) limits Section 72, 73 or 74 of the *Companies Act 1997*.

(2) A listed issuer is not, because of anything done for the purposes of this part, affected with notice of, or put on inquiry as to, the rights of any person in relation to any securities.

Division 4. - Relevant interests.

414. RELEVANT INTERESTS IN CAPITAL MARKET PRODUCT (BASIC RULE).

(1) In this Act, a person has a relevant interest in a capital market product if the person -

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- (a) is a registered holder of the product; or
- (b) is a beneficial owner of the product; or
- (c) has the power to exercise, or to control the exercise of, a right to vote attached to the product; or
- (d) has the power to acquire or dispose of, or to control the acquisition or disposal of, the product.

(2) Subsection (1), applies regardless of whether the power or control is express or implied, direct or indirect, legally enforceable or not, related to a particular capital market product or not, exercisable presently or in the future, or exercisable alone or jointly with another person or persons (but a power to cast merely one of many votes is not, in itself, a joint power of this kind).

(3) Subsection (1), applies regardless of whether or not the power or control is or can be made subject to restraint or restriction or is exercisable only on the fulfillment of a condition.

(4) If two or more persons can jointly exercise a power, each of those persons is taken to have the power.

415. EXTENSION OF BASIC RULE TO POWERS OR CONTROLS.

(1) A person has a power or control referred to in Section 414, if the power or control is, or may at any time be, exercised under, by virtue of, by means of, or as a result of a revocation or breach of, a trust or an agreement (or any combination of them).

(2) Subsection (1), applies regardless of whether or not the trust or agreement is legally enforceable or whether or not the person is a party to it.

416. EXTENSION OF BASIC RULE TO INTERESTS HELD BY OTHER PERSONS UNDER CONTROL OR ACTING JOINTLY.

A person (A) has a relevant interest in a capital product that another person (B) has if -

- (a) B or B's directors are accustomed or under an obligation (whether legally enforceable or not) to act in accordance with A's directions, instructions, or wishes in relation to a power or control referred to in Section 414; or
- (b) A has the power to exercise, or control the exercise of, the right to vote attached to 20 percent or more of the voting products of B; or
- (c) A has the power to acquire or dispose of, or to control the acquisition or disposal of, 20 percent or more of the voting products of B; or
- (d) A and B are related bodies corporate; or
- (e) A and B have an agreement to act in concert in relation to a power or control referred to in Section 414.

417. SITUATIONS NOT GIVING RISE TO RELEVANT INTERESTS.

(1) A person (A) does not have a relevant interest in a capital market product under Section 414, 415 or 416 where -

- (a) the ordinary business of A consists of, or includes, the lending of money or the provision of financial services, or both, and A has the relevant interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of A; or

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- (b) A is authorised to undertake trading activities on a licensed market and A acts for another person to acquire or dispose of the product on behalf of that person in the ordinary course of A's business of carrying out those trading activities; or
- (c) A has been authorised by resolution of the directors of a body corporate to act as its representative at a particular meeting of product holders, or a class of product holders, of a listed issuer, and a copy of the resolution is deposited with the listed issuer before the meeting; or
- (d) A is appointed as a proxy to vote at a particular meeting of product holders, or of a class of product holders, of the listed issuer and the instrument of A's appointment is deposited with the listed issuer before the meeting; or
- (e) A is a bare trustee of a trust to which the product is subject; or
- (f) A is a director of a body corporate and the body corporate has a relevant interest in the product; or
- (g) A is a product holder of a body corporate and the body corporate's constitution gives the product holder pre-emptive rights on the transfer of the product, if all product holders of the products have pre-emptive rights on the same terms.

(2) Subsection (1)(a) to (g) do not apply to a person if the person is currently declared by the Commission, by notice under Section 34 of the *Securities Commission Act 2015*, to be a person that is not exempt under any of those paragraphs.

(3) For the purposes of Subsection (1)(e), a trustee may be a bare trustee even if he or she is entitled as a trustee to be remunerated out of the income or property.

PART XIII. - SELF-REGULATORY ORGANISATIONS.

418. INTERPRETATION.

For the purposes of this part, "chief executive", "director" and "officer" includes any person occupying the position or performing the functions of chief executive, director and officer by whatever name called and "chief executive", "director" and "officer" shall have the meaning as in Section 2(1).

419. RECOGNITION OF A SELF-REGULATORY ORGANISATION.

(1) The Commission may, where it thinks appropriate in the public interest or for the protection of investors by notice published in the National Gazette, declare a person to be a recognised self-regulatory organisation, subject to such terms and conditions as the Commission thinks fit, if it is satisfied that -

- (a) the person in discharging its obligation under Section 420, will not act contrary to the public interest and in particular the interest of investors; and
- (b) the person shall be able to take appropriate action against its members and any person to whom the rules apply to; and
- (c) the person has sufficient financial, human and other resources to carry out its functions; and
- (d) the person is fit and proper and satisfies the criteria or standards referred to in Section 40, or any rules of the stock exchange or a derivatives exchange, as a case may be; and

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- (e) the person is managed by officers who are fit and proper and who satisfy the criteria or standards referred to in Section 41, or any rules of the stock exchange or derivatives exchange or any applicable guidelines, as the case may be; and
- (f) the person has competent personnel for the carrying out of its functions; and
- (g) the rules of the person make satisfactory provision -
 - (i) to promote investor protection; and
 - (ii) to promote fair treatment of its members and any person who applies for membership; and
 - (iii) to exclude a person who is not fit and proper from being its member or being appointed as its chief executive, director or officer; and
 - (iv) to promote proper regulation and supervision of its members; and
 - (v) to promote appropriate standards of conduct of its members; and
 - (vi) to manage any conflict of interest that may arise between its interest and the interest referred to in Section 420(1); and
 - (vii) to ensure that there is a fair representation of members in its governing body; and
 - (viii) to ensure that its members and officers duly comply with the securities laws, regulations and guidelines issued by the Commission and where relevant, the rules of the stock exchange, derivatives exchange, clearing house or central depository; and
 - (ix) to prevent the usage of any information by its members or officers that may result in such member or officer making an unfair gain; and
 - (x) for the expulsion, suspension, disciplining or sanctioning of a member in the event a member contravenes the securities laws, regulations and guidelines issued by the Commission and where relevant, the rules of the stock exchange, derivatives exchange, or clearing house or central depository; and
 - (xi) to allow an aggrieved member to appeal against any decision of the recognised self-regulatory organisation.

(2) The Commission may, in declaring a person to be a recognised self-regulatory organisation, require such person to provide any information to the Commission as the Commission considers necessary.

- (3) A person who -
- (a) with intent to deceive, makes or furnishes; or
 - (b) knowingly authorises or permits the making or furnishing of, any false or misleading statement or report with respect to the information submitted to the Commission referred to in Subsection (2), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

420. DUTIES OF A RECOGNISED SELF-REGULATORY ORGANISATION.

(1) A recognised self-regulatory organisation shall ensure that in exercising any of its powers or in carrying out any of its functions, such power or function shall be exercised or carried out in the public interest having particular regard to the need for the protection of investors.

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(2) A recognised self-regulatory organisation shall immediately notify the Commission if it becomes aware of -

- (a) any matter which adversely affects or is likely to adversely affect the interests of investors; and
- (b) any contravention by its members of any securities laws.

(3) Without prejudice to Subsection (2), where a recognised self-regulatory organisation expels, or suspends any member, or otherwise disciplines any of its members, it shall, within seven days, give to the Commission in writing the following particulars:

- (a) the name of the member; and
- (b) the reason for and the nature of the action taken; and
- (c) the amount of the fine; and
- (d) the period of suspension, if any; and
- (e) any other disciplinary action taken.

(4) A recognised self-regulatory organisation shall not make a decision under its rules that adversely affects the rights of a person unless the recognised self-regulatory organisation has given the affected person an opportunity to make representations to the recognised self-regulatory organisation about the matter.

(5) Notwithstanding the provisions of Subsection (4), where the recognised self-regulatory organisation considers that any delay in making the decision is likely to prejudice public interest or necessary for the protection of investors, the recognised self-regulatory organisation may make a decision without giving an opportunity to be heard.

(6) A person who is not satisfied with the decision of the self-regulatory organisation under Subsection (5), may appeal to the Commission.

(7) The Commission shall consider the appeal and -

- (a) confirm the decision of the self-regulatory organisation; or
- (b) uphold the appeal and direct the self-regulatory organisation to give the person an opportunity to be heard on the issue.

(8) Where the self-regulatory organisation fails to give effect to the decision of the Commission under Subsection (7)(b), the self-regulatory organisation commits an offence and is liable to a fine not exceeding K5,000,000.00.

421. RULES OF A RECOGNISED SELF-REGULATORY ORGANISATION.

(1) Any amendments to the rules of a recognised self-regulatory organisation shall not have effect unless it has been approved by the Commission under Subsection (4).

(2) Where a recognised self-regulatory organisation proposes to make any amendment to its rules, the recognised self-regulatory organisation shall submit to the Commission -

- (a) the text of the proposed amendment; and
- (b) an explanation of the purpose of the proposed amendment.

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(3) The Commission shall, within six weeks after the receipt of any proposed amendment under Subsection (2), give notice in writing to the recognised self-regulatory organisation that it approves or disapproves of the proposed amendment or any part of the proposed amendment, as the case may be.

(4) The Commission may, by notice in writing, declare any class of rules of a recognised self-regulatory organisation to be a class of rules whose amendments do not require the approval of the Commission under Subsection (3), and accordingly, any amendment to the rules of the recognised self-regulatory organisation that belongs to that class shall, subject to Subsections (5) and (6), have effect notwithstanding that they have not been so approved under Subsection (3).

(5) Where the Commission is of the opinion that any amendment to the rules of a recognised self-regulatory organisation made under Subsection (4), does not fall within the class of rules declared by the Commission under that subsection as not requiring its approval, the Commission may, after consultation with the recognised self-regulatory organisation, require the recognised self-regulatory organisation to submit such amendment for its approval under Subsection (3).

(6) Notwithstanding the provisions of this section, the Commission may, from time to time, after consultation with the recognised self-regulatory organisation, by written notice require the recognised self-regulatory organisation to amend or supplement any of its rules in such manner and within such period as may be specified in the notice.

(7) A recognised self-regulatory organisation which contravenes Subsection (2), or which contravenes a requirement made under Subsection (5), or a written notice made under Subsection (6), commits an offence.

422. APPOINTMENT OF DIRECTORS OF A RECOGNISED SELF-REGULATORY ORGANISATION.

(1) No appointment, election or nomination of a director or chief executive officer of a recognised self-regulatory organisation shall be made without the prior approval of the Commission.

(2) The self-regulatory organisation shall submit to the Commission the lists of nominees of a director or a chief executive officer for its consideration.

(3) The Commission shall conduct independent due diligence on the proposed director or chief executive officer provided under Subsection (2).

(4) The Commission shall after the conduct of due diligence confirm or refuse the appointment of the chief executive officer or the director or directors under Subsection (1).

(5) The recognised self-regulatory organisation shall ensure that at least one-third of the number of directors on its board shall be public interest directors in accordance with such criteria as may be specified by the Commission.

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423. POWERS TO ISSUE DIRECTIONS TO A RECOGNISED SELF-REGULATORY ORGANISATION.

- (1) Where the Commission is satisfied that -
- (a) a conflict exists or may come into existence between the interest of a recognised self-regulatory organisation or its members and the interest of the proper performance of the functions or duties conferred by this Act, its rules or any guidelines issued by the Commission pursuant to Section 466; and
 - (b) such a conflict of interest has occurred or has existed in circumstances that make it likely that the conflict of interest will continue or be repeated; and
 - (c) the recognised self-regulatory organisation has failed to carry out its functions or discharge its duties under Section 420(1), or its rules or any guidelines issued by the Commission pursuant to Section 466,

the Commission may serve a written notice on the recognised self-regulatory organisation stating the reasons in support of the notice and direct the recognised self-regulatory organisation to take such steps as are specified in the notice, including steps in relation to any of its affairs, business or property for the purposes of managing the conflict of interest or the matters occasioning the conflict of interest and the satisfactory carrying out of its functions and satisfactory discharge of its duties.

(2) A notice served under Subsection (1), shall take effect immediately.

(3) A recognised self-regulatory organisation that has been served with a notice under Subsection (1) shall not, without reasonable excuse, fail to comply with the notice.

(4) A recognised self-regulatory organisation that has been served with a notice under Subsection (1), may appeal to the Court against the notice, not later than 14 days, after the date of service of the notice.

(5) Notwithstanding the appeal under Subsection (4), the decisions of the Commission take immediate effect.

(6) Without limiting the generality of Subsection (1), the Commission may issue any other direction to a recognised self-regulatory organisation where the Commission thinks it is necessary in the public interest or for the protection of investors.

424. WITHDRAWAL OF RECOGNITION.

- (1) The Commission may withdraw a recognition given under Section 419(1), where -
- (a) the recognised self-regulatory organisation has failed to commence operations within six months from the date published in the National Gazette under Section 419(1); and
 - (b) the Commission is not satisfied that the recognised self-regulatory organisation is properly performing or is able to perform the functions or duties under its rules or any guidelines issued by the Commission pursuant to Section 466; and
 - (c) the recognised self-regulatory organisation has breached any term and condition imposed under Section 419(1); and

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- (d) the recognised self-regulatory organisation is in breach of any provisions of the securities laws or any guidelines issued pursuant to Section 466 or has failed to comply with any direction by the Commission and where relevant, the rules of the stock exchange, derivatives exchange clearing house or central depository; and
- (e) the recognised self-regulatory organisation is being wound up or otherwise dissolved; and
- (f) a judgment debt against the recognised self-regulatory organisation has not been satisfied in whole or in part; and
- (g) a receiver, a receiver and manager, or equivalent person has been appointed, in relation to or any property of the recognised self-regulatory organisation; and
- (h) the recognised self-regulatory organisation -
 - (i) on its own accord has applied to the Commission to cease operating as a recognised self-regulatory organisation; or
 - (ii) has been determined by the Commission to have ceased operating as a recognised self-regulatory organisation; or
- (i) any information provided for the purposes of Section 419, was false or misleading in a material particular; or
- (j) the recognised self-regulatory organisation has contravened any direction of the Commission issued under Section 423.

(2) A recognition given under Section 419(1), shall not be withdrawn unless the Commission has notified the recognised self-regulatory organisation of its intention and the reasons for the Commission's action.

(3) The self-regulatory organisation shall, within 14 days respond to the notice under Subsection (2).

(4) The Commission shall, within 14 days consider the submissions of the self-regulatory organisation and inform the self-regulatory organisation of its decision.

(5) A self-regulatory organisation may, within 14 days appeal to the Court against any decision of the Commission to withdraw the recognition.

425. PROTECTION FOR A RECOGNISED SELF-REGULATORY ORGANISATION.

A recognised self-regulatory organisation, an officer or employee of a recognised self-regulatory organisation or a member of a committee of a recognised self-regulatory organisation shall not be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by them in the performance in good faith of their powers, functions and duties in connection with the regulatory or supervisory functions of the recognised self-regulatory organisation.

426. ACCOUNTS AND REPORTS IN RESPECT OF A RECOGNISED SELF-REGULATORY ORGANISATION.

(1) The provisions of Subdivision 6 of Division 4 of Part III shall apply to the appointment, removal and resignation of an auditor and the audit of a recognised self-regulatory organisation's accounts.

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(2) Within three months after the end of each financial year, a recognised self-regulatory organisation shall submit to the Commission a report on the extent to which it has complied with the terms and conditions imposed under Section 419(1), the requirements imposed on it under this Part and its rules or any guidelines issued by the Commission pursuant to Section 466.

(3) The Commission shall forthwith send a copy of the report referred under Subsection (2), to the Minister.

(4) Upon receipt of the report under Subsection (2), the Commission may at any time if it deems it necessary to do so -

- (a) conduct an audit on the recognised self-regulatory organisation; and
- (b) appoint any independent person to assist the Commission in an audit; and
- (c) charge the costs of carrying out such audit to the recognised self-regulatory organisation.

(5) The Commission shall as soon as practicable submit to the Minister a copy of the report of the audit conducted by the Commission under Subsection (4).

427. PROVISION OF ASSISTANCE TO COMMISSION.

(1) A recognised self-regulatory organisation shall provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires including the furnishing of such returns, and the provision of such information relating to the operations of the recognised self-regulatory organisation or any other information as the Commission or such person may require for the proper administration of the securities laws.

(2) A person who refuses or fails, without lawful excuse, to assist the Commission or a person acting on behalf of, or authorised by, the Commission, in accordance with Subsection (1), commits an offence and shall be liable to a fine not exceeding K5,000,000.00 or imprisonment for a term not exceeding seven years, or both.

PART XIV. - CAPITAL MARKET DEVELOPMENT FUND.

Division 1. - Establishment of Capital Market Development Fund.

428. ESTABLISHMENT OF CAPITAL MARKET DEVELOPMENT FUND.

(1) There shall be established a fund to be called the Capital Market Development Fund, referred to in this Part as "the Fund".

(2) The Fund shall be administered by the Capital Market Development Fund Board, referred to in this Part as the "Board", who shall act as trustees for the Fund.

(3) The Commission shall be responsible to assist the Board in the day to day administration and management of the affairs of the Fund.

429. ASSETS CONSTITUTING FUND.

The Fund shall consist of -

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- (a) such amount derived from levy on trades on the stock exchange; and
- (b) a certain percentage from all fees paid to the Commission for application of a capital market licence; and
- (c) such sums as may be provided from time to time for the purposes of this part by Parliament; and
- (d) all donations and gifts accepted by the Board for the Fund; and
- (e) all interest, dividend and other income derived from the investment of the monies of the Fund; and
- (f) all other sums or property which may in any manner become payable to or vested in the Fund.

Division 2. - Objectives of the Fund.

430. OBJECTIVES OF THE FUND.

- (1) The objectives for which monies of the Fund may be applied are as follows:
 - (a) the promotion of the capital market within Papua New Guinea to be an efficient, innovative and internationally competitive market; and
 - (b) the development and upgrading of skills and expertise required by the capital market in Papua New Guinea; and
 - (c) the development of self regulation by professional associations and market bodies in the securities industry; and
 - (d) the development and support of high quality research and development programmes and projects relating to the capital market in Papua New Guinea.
- (2) The Fund shall be expended for the purposes of -
 - (a) meeting all payments required to be made by the Fund consistent with its objects; and
 - (b) paying any expenses lawfully incurred by the Fund including fees and costs, and the remuneration of persons employed or engaged by the Board for the administration of the Fund; and
 - (c) paying any other expenses, costs or expenditure properly incurred or accepted by the Board, for purposes of its powers and carrying out of its duties; and
 - (d) generally paying any expenses for carrying into effect the provisions of this part and in connection with the administration of the Fund.

Division 3. - Board of the Fund.

431. MEMBERSHIP OF THE BOARD.

- (1) There shall be a Board of the Capital Market Development Fund.
- (2) The members of the Board shall be appointed by the Minister and the Board shall consist of -
 - (a) the Chairman of the Commission, as an *ex-officio* member, who shall be the Chairman; and
 - (b) a member of the Commission, *ex-officio*; and
 - (c) a senior representative of a stock exchange; and
 - (d) four other members who possess knowledge and experience in finance, business, law or other relevant experience; and

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(e) two members representing the University of Papua New Guinea Law School and Business School.

(3) Where the Chairman of the Board is absent or unable to act due to illness or any other cause, the member of the Commission shall act in his place as the Chairman of the Board.

(4) Subject to the provisions of *Boards (Fees and Allowances) Act 1955*, as amended from time to time, members of the Board may not be entitled to any remuneration but may be paid such honorarium and travelling and subsistence allowances as the Minister may determine.

(5) The Board shall have such powers and shall perform such duties as are given or imposed by this Act and may by instrument in writing delegate to any person all or any of such powers and duties.

432. TENURE OF OFFICE.

(1) Subject to Subsection (2), a member of the Board, other than the *ex-officio* members referred to in Section 431(1), shall hold office for a term not exceeding three years and shall be eligible for reappointment.

(2) In the case of the Chairman of the Commission and the member of the Commission, their tenure of office as members of the Board shall be the tenure of their appointments as Chairman of the Commission and member of the Commission respectively under the *Securities Commission Act 2015*.

433. RESIGNATION AND REVOCATION OF APPOINTMENT.

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

(2) The Minister may at any time revoke the appointment of a member of the Board if he thinks fit.

434. VACATION OF OFFICE.

The office of a member of the Board shall be vacated if -

- (a) he dies; and
- (b) he has been convicted of any offence involving fraud or dishonesty; and
- (c) he becomes bankrupt; and
- (d) he is of unsound mind or is otherwise incapable of discharging his duties; and
- (e) he is absent from three consecutive meetings of the Board except on leave granted by the Minister; and
- (f) he is guilty of serious misconduct in relation to his duties under this Act.

435. QUORUM AND PROCEDURES OF MEETINGS.

(1) The Board shall meet as often as may be necessary for the performance of its functions or duties under this part.

(2) Four members of the Board shall constitute a quorum at any meeting of the Board.

(3) Subject to this part, the Board shall determine its own procedures.

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

(5) Subject to Section 436, if on any question to be determined, there is an equality of votes, the Chairman of the Board shall have the casting vote in addition to his original vote.

436. DISCLOSURE OF INTEREST.

(1) A member of the Board who directly or indirectly has by himself, his spouse or children, any interest in any matter under discussion by the Board shall disclose to the Board the existence of such interest and nature thereof.

(2) A disclosure made under Subsection (1), shall be recorded in the minutes of the Board, and after the disclosure -

- (a) the member shall not take part nor be present in any deliberation or decision of the Board; and
- (b) the member shall be disregarded for the purpose of constituting a quorum of the Board relating to the matter; and
- (c) no act or proceedings of the Board shall be invalidated on the ground that any member of the Board has contravened the provisions of this section.

(3) Where the Chairman of the Board absence himself due to a conflict of interest and the members are not able to make a decision, the person presiding the meeting has a casting vote.

437. CONSERVATION OF THE FUND.

(1) It shall be the duty of the Board to conserve the Fund consistent with the provisions of this part or any regulations made under this part.

(2) The Board may invest the monies of the Fund in such manner as the Board may see fit.

(3) Without affecting the generality of Section 431, the Board may, by written instrument, delegate all or any of its powers and functions under Subsection (2) to any employee or person as it may appoint.

(4) The Board may pay to any person appointed under Subsection (3), a fee for any service rendered in exercise of any power and function delegated to that person under that subsection.

438. FINANCIAL YEAR.

For the purposes of this part, the financial year of the Fund shall commence on 1st January and end on 31st December of each year.

439. ACCOUNTS AND AUDIT.

(1) The Board shall keep or cause to be kept proper accounts and other records in respect of the operation of the Fund and shall prepare statements of accounts in respect of each financial year.

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(2) The Board shall, not later than three months after the end of each financial year, cause the accounts of the Fund to be audited by an auditor appointed by the Board.

(3) At the end of each financial year and as soon as the accounts of the Fund have been audited, the Board shall cause a copy of the statement of accounts to be submitted to the Commission, together with a report dealing with the investments of the Fund the preceding financial year.

440. POWER OF MINISTER IN RELATION TO THE BOARD.

(1) The Minister may give the Board such directions of a general nature that are consistent with the provisions of this part that relate to the exercise and performance of its functions and the Board shall give effect to such directions.

(2) Any directions issued by the Minister shall be related to giving effect to the objectives of the establishment of the Fund.

(3) The Minister shall not issue any direction under Subsection (1), on the disbursement of the monies of the fund.

441. DISSOLUTION OF THE FUND.

(1) Where the Minister is satisfied that there are insufficient funds standing to the credit of the Fund to adequately fulfil the objectives referred to in Section 430, he may, by notification in the National Gazette, dissolve the Fund and transfer such assets and monies as may remain to the credit of the Fund to such other fund that has similar objectives to the Fund.

(2) In the event the Fund is dissolved under Subsection (1), and there is no other fund that satisfies the provisions of Subsection (1), with regards to its objectives, the assets and funds that remain to the credit of the Fund shall be transferred to the Commission.

442. POWER TO MAKE REGULATIONS.

The Head of State may make such regulations not inconsistent with this Act prescribing all matters that by this Act are permitted or required to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act and generally for achieving the purposes of this Act.

PART XV. - ADMINISTRATIVE AND CIVIL ACTIONS.

443. POWERS OF COMMISSION TO TAKE ACTION.

(1) Where any person -

- (a) contravenes the provisions of this Act other than the provisions of Part VI or any securities laws; or
- (b) fails to comply with, observe, enforce or give effect to -
 - (i) the rules of a stock exchange, a clearing house or central depository; or
 - (ii) any written notice, guidelines issued or condition imposed, by the Commission; or

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- (iii) any rule of a recognised self-regulatory organisation, in circumstances where the person is under an obligation to comply with, observe, enforce or give effect to such rules, written notice, guidelines or conditions, that person has committed a breach.

(2) Without limiting the generality of Subsection (1)(b), the following persons shall be deemed to be under an obligation to comply with, observe, enforce or give effect to the rules of a stock exchange, a clearing house, central depository or recognised self-regulatory organisation, to the extent to which such rules purport to apply in relation to those persons -

- (a) a stock exchange; and
- (b) a central depository; and
- (c) a clearing house; and
- (d) a participant; and
- (e) a participating organisation; and
- (f) a depository participant; and
- (g) a corporation that has submitted a proposal under Part IV or who has been admitted to the official list of a stock exchange and has not been removed from that official list and a person associated with such corporation; and
- (h) a recognised self-regulatory organisation; and
- (i) a person to whom the rules of a stock exchange, an approved clearing house, a central depository or a recognised self-regulatory organisation, as the case may be, apply; and
- (j) the directors or officers of the persons referred to in Paragraphs (a) to (h); and
- (k) the advisers of a corporation referred to in Paragraph (h) in relation to any corporate proposal or transaction; and
- (l) the issuer and each director of the issuer at the time of the issue of the prospectus; and
- (m) a person who consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time; and
- (n) a promoter in respect to the preparation of a prospectus; and
- (o) a person named in the prospectus with his consent, as having made a statement that is included in the prospectus; and
- (p) a person named in the prospectus with his consent, as a stockbroker, or underwriter; and
- (q) a trustee approved by the Commission under Section 156; and
- (r) a trustee referred to under Section 189; and
- (s) any other person on whom an obligation under any guideline issued by the Commission has been imposed.

(3) If a person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that person, the Commission may take any one or more of the following actions:

- (a) direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notice, condition or guideline; and
- (b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding K5,000,000.00; and
- (c) reprimand the person in breach; and

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- (d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach; and
- (e) in the case of a breach of Part IV or VI, or the guidelines issued pursuant to Part IV or VI, refuse to accept or consider any submission under Part IV or VI; and
- (f) in the case of a promoter or a director of a corporation, in addition to the actions that may be taken under Paragraphs (a) to (e) above, the following actions may be taken by the Commission -
 - (i) impose a moratorium on, or prohibit any trading of or any dealing in, the corporation's securities or in any other securities which the Commission thinks fit by the promoter or director or any persons connected with the promoter or director; or
 - (ii) issue a public statement to the effect that, in the Commission's opinion, the retention of office by the director is prejudicial to the public interest.

(4) The Commission shall not take any action under Subsection (3), without giving the person in breach an opportunity to be heard.

(5) For the purposes of Subsection (3)(d), in determining whether or not restitution is to be made by a person in breach, the Commission shall have regard to -

- (a) the profits that have accrued to such person in breach; or
- (b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.

(6) Nothing in this section shall preclude -

- (a) the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against the person in breach; and
- (b) the stock exchange, the clearing house or central depository, as the case may be, from taking any action under the relevant rules.

(7) Where a person has failed to pay a penalty imposed by the Commission under subsection (3)(b), the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Commission.

(8) Without prejudice to any other remedy, where a direction under Subsection (3)(d) had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.

(9) To the extent that any of the amount obtained under Subsection (3)(d) or Subsection (8) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be -

- (a) paid to the Capital Market Development Fund maintained under Part XIV; or
- (b) retained by the Commission to defray -
 - (i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or

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- (ii) the cost of regulating the capital market, as the Commission, may determine.

444. POWER OF COMMISSION TO TAKE ACTION AGAINST A DERIVATIVES EXCHANGE OR APPROVED CLEARING HOUSE.

(1) Where any person -

- (a) contravenes the provisions of this Act other than the provisions of Part IV or VI or any securities laws; or
- (b) fails to comply with, observe, enforce or give effect to -
 - (i) the rules of a derivatives exchange or approved clearing house; and
 - (ii) any written notice, guidelines issued or condition imposed, by the Commission; or
 - (iii) any rule of a recognised self-regulatory organisation, in circumstances where the person is under an obligation to comply with, observe, enforce or give effect to such rules, written notice, guidelines or conditions,

that person has committed a breach.

(2) Without limiting the generality of Subsection (1)(b), the following persons shall be deemed to be under an obligation to comply with, observe, enforce or give effect to the rules of a derivatives exchange or clearing house or recognised self-regulatory organisation to the extent to which such rules purport to apply in relation to those persons:

- (a) a derivatives exchange; and
- (b) a clearing house; and
- (c) an affiliate; and
- (d) a recognised self-regulatory organisation; and
- (e) a person to whom the rules of a derivatives exchange, a clearing house or recognised self-regulatory organisation, as the case may be, apply; and
- (f) the directors or officers of the persons referred to in Paragraphs (a) to (c); and
- (g) any other person on whom an obligation under any guideline issued by the Commission has been imposed in respect of trading, investment advise or fund management in respect of derivatives.

(3) If a person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that person, the Commission may take any one or more of the following actions -

- (a) direct the derivatives exchange -
 - (i) to suspend trading on the derivatives market in a particular class of derivatives; and
 - (ii) to limit transactions on the derivatives market to the closing out of derivatives; and
 - (iii) to defer for a stated period the completion date for all derivatives or for a particular class of derivatives entered into on the derivatives market; and
 - (iv) to cause a particular derivatives entered into on the derivatives market or each derivatives included in a particular class of derivatives so entered into, to be -

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- (A) closed out immediately as the result of the matching up of the derivatives with a derivative of the same kind whose price or value is equal to a price or value determined by the derivatives exchange; or
- (B) invoiced back to a stated date at a price or value determined by the derivatives exchange; and
- (v) to require a derivatives contract entered into on the derivatives market or each derivatives contract included in a particular class of derivatives so entered into, to be discharged by -
 - (A) the tendering of a merchantable lot of an instrument determined by the derivatives exchange, that is of a quality or standard determined by the derivatives exchange, that is different from the quality or standard of the instrument stated in the derivatives contract; and
 - (B) the tendering of a price adjusted by an amount determined by the derivatives exchange that is appropriate having regard to the quality or standard of the instrument referred to in Subparagraph (A); and
- (vi) to require any affiliates of the derivatives exchange to act in a particular manner in relation to trading in derivatives on the derivatives market of that derivatives exchange or in relation to trading in a particular class of derivatives contracts; and
- (b) direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notice, condition or guideline; and
- (c) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding K5,000,000.00; and
- (d) reprimand the person in breach; and
- (e) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.

(4) The Commission shall not take any action under Subsection (3) without giving the person in breach an opportunity to be heard.

(5) For the purpose of Subsection (3)(e), in determining whether or not restitution is to be made by a derivatives exchange, a clearing house, director, officer or affiliate concerned, or any other person concerned, the Commission shall have regard to -

- (a) the profits that have accrued to such derivatives exchange, clearing house, director, officer or affiliate concerned or any other person concerned; or
- (b) whether any person has suffered loss or been otherwise adversely affected as a result of the breach.

(6) Where the Commission takes an action under Subsection (3) against any person under the rules of the derivatives exchange, a clearing house or a central depository, the Commission shall serve a written notice on the derivatives exchange, the clearing house or the central depository, as the case may be, of the grounds and the proposed action to be taken by the Commission.

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(7) Nothing in this section shall preclude -

- (a) the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against the person in breach; and
- (b) the derivatives exchange or clearing house, as the case may be, from taking any action under its rules.

(8) Where a person has failed to pay a penalty imposed by the Commission under Subsection (3)(c), the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Commission.

(9) Without prejudice to any other remedy, where a direction under Subsection (3)(e) had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.

(10) To the extent that any of the amount obtained under Subsection (3)(e), or Subsection (9) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be -

- (a) paid to the Capital Market Development Fund maintained under Part XIV; or
- (b) retained by the Commission to defray -
 - (i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or
 - (ii) the cost of regulating the capital market, as the Commission, may determine.

445. POWERS CONCERNING COMPLIANCE WITH CONDITIONS OF LICENCE.

(1) Where any licensed person -

- (a) contravenes or fails to comply with, observe, enforce or give effect to any requirement or provision of this Act, any securities laws, written notice, guidelines, any condition of, or restriction on, a licence granted under or pursuant to this Act; or
- (b) performs or omits to perform any act in respect of any business carried on by the licensed person pursuant to a licence granted under or pursuant to this Act, that is likely to -
 - (i) jeopardise the interests of the clients of the licensed person; or
 - (ii) be prejudicial to the public interest, that licensed person has committed a breach.

(2) If a licensed person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that licensed person, the Commission may take any one or more of the following actions:

- (a) direct the person in breach to comply with, observe, enforce or give effect to any requirement or provision of this Act, any securities laws, any guidelines, written notice, any condition of, or restriction on, a licence granted under or pursuant to this Act, as the case may be; and
- (b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but which in any event shall not exceed K10,000,000.00; and

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- (c) reprimand the person in breach; and
- (d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.

(3) The Commission shall not take any action under Subsection (2) without giving the person in breach an opportunity to be heard.

(4) For the purposes of Subsection (2)(d), in the determination of whether restitution is to be made by a person in breach, the Commission shall have regard to -

- (a) the profits that have accrued to such person in breach; or
- (b) whether any person has suffered loss or been otherwise adversely affected as a result of the breach.

(5) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against the person in breach.

(6) Where a person has failed to pay a penalty imposed by the Commission under Subsection (2)(b), the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Commission.

(7) Without prejudice to any other remedy, where a direction under Subsection (2)(d) had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.

(8) To the extent that any of the amount obtained under Subsection (2)(d) or Subsection (7) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be -

- (a) paid to the Capital Market Development Fund maintained under Part XIV; or
- (b) retained by the Commission to defray -
 - (i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or
 - (ii) the cost of regulating the capital market, as the Commission, may determine.

446. CIVIL LIABILITY OF PERSON IN CONTRAVENTION OF THE SECURITIES LAWS.

(1) A person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part IV, Part VI or any regulations made under this Act may recover the amount of the loss or damage by instituting civil proceedings against the other person whether or not that other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.

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(2) Notwithstanding the provisions of any written law relating to limitation of time, an action under Subsection (1), may begin at any time within six years from the date on which the cause of action accrued or the date on which the person referred to in Subsection (1), became aware of the contravention, whichever is the later.

447. COMMISSION MAY RECOVER LOSS OR DAMAGE.

(1) The Commission may, if it considers that it is in the public interest to do so, recover on behalf of a person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part IV, Part VI or any regulations made under this Act, the amount of the loss or damage by instituting civil proceedings against the other person whether or not that other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.

(2) Notwithstanding the provisions of any written law relating to limitation of time, an action under Subsection (1), may begin at any time within six years from the date on which the cause of action accrued or the date on which the Commission became aware of the contravention, whichever is the later.

(3) Any loss or damage recovered by the Commission under Subsection (1), shall be applied -

- (a) firstly, to reimburse the Commission for all costs of the investigation and proceedings in respect of the contravention; and
- (b) secondly, to compensate persons who suffer loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part IX or any regulations made under this Act.

(4) If the Commission considers it impracticable to compensate the persons referred to in Subsection (3)(b), in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in Subsection (3)(b).

(5) To the extent that any of the amount recovered or obtained in a civil action under Subsection (1), has not been distributed pursuant to Subsection (3), it shall -

- (a) be retained by the Commission as part of the Capital Market Development Fund maintained under Part XIV; or
- (b) be retained by the Commission to defray the costs of regulating the capital market, as the Commission, may determine.

(6) Any right of action that is conferred under this Section is in addition to any right that such person has under any other law.

448. REFERENCE TO CONDUCT.

(1) A reference to engaging in conduct is a reference to the doing or refusing to do any act, including the making of an agreement or the giving of effect to a provision of an agreement.

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(2) Where, in a proceeding under Part IV in respect of conduct engaged in by an issuer, it is necessary to establish the state of mind of the issuer, it shall be sufficient to show that a director, employee or agent of the issuer, being a director, employee or agent by whom the conduct was engaged in within the scope of the director's, employee's or agent's actual or apparent authority, had that state of mind.

(3) Conduct engaged in on behalf of an issuer -

- (a) by a director, employee or agent of the issuer within the scope of the director's, employee's or agent's actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the issuer, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent,

shall be deemed to have been engaged in by the issuer.

(4) Where, in a proceeding under Part IV in respect of conduct engaged in by a person other than an issuer, it is necessary to establish the state of mind of the person, it shall be sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

(5) Conduct engaged in on behalf of a person other than an issuer -

- (a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of a person other than the issuer (the first-mentioned person), where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

shall be deemed to have been engaged in also by the first-mentioned person.

449. POWER OF COURT TO MAKE CERTAIN ORDERS.

(1) Where -

- (a) on an application by the Commission, it appears to the Court that -
 - (i) there is reasonable likelihood that any person will contravene a relevant requirement; and
 - (ii) any person has contravened a relevant requirement; and
 - (iii) any person has contravened a relevant requirement and that there are steps which could be taken to remedy the contravention or to mitigate the effect of such contravention, including making restitution to any other person aggrieved by such contravention, whether or not that person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution; and
- (b) on an application by the Commission, it appears to the Court that any person has failed or is failing to comply with any direction issued by the Commission under Section 443, 444 or 445; and

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- (c) on an application by a stock exchange or derivatives exchange or a clearing house as the case may be, it appears to the Court that -
 - (i) any person has contravened a relevant requirement; or
 - (ii) any person has contravened a relevant requirement and that there are steps which could be taken for remedying the contravention or mitigating the effect of such contravention; or
 - (d) on an application by any person aggrieved by an alleged contravention by another person of a relevant requirement, it appears to the Court that -
 - (i) the other person has contravened the relevant requirement; and
 - (ii) the applicant is aggrieved by the contravention,
- the Court may, without prejudice to any order it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders:
- (e) an order restraining or requiring the cessation of the contravention; and
 - (f) an order restraining a person from dealing in securities or trading in derivatives in respect of any class of securities or derivatives mentioned in the order; and
 - (g) an order declaring a derivatives to be void or voidable; and
 - (h) an order restraining the person from acquiring, disposing of or otherwise dealing with, assets which the Court is satisfied such person is reasonably likely to dispose of or otherwise deal with; and
 - (i) an order directing a person to dispose of any securities that are specified in the order; and
 - (j) an order restraining the exercise of any voting or other rights attached to any securities that are specified in the order; and
 - (k) an order restraining a person from making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase, or allotting any securities that are specified in the order; and
 - (l) an order appointing a receiver of the property of a holder of a capital market licence or the property that is held by such holder for or on behalf of another person whether on trust or otherwise; and
 - (m) an order vesting securities or such other property that is specified in the order to the Commission or a trustee appointed by the Court; and
 - (n) where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do any act or thing that he is required to do under a relevant requirement, an order requiring such person to do such act or thing; and
 - (o) in a case of a contravention by a person of the rules of a stock exchange, a derivatives exchange, a clearing house, an order giving directions concerning compliance with or enforcement of those rules to -
 - (i) the person; and
 - (ii) if the person is a body corporate, the directors of the body corporate; and
 - (p) in a case where the person is a chief executive or director, an order removing him from office or that he be barred from becoming a chief executive, director or be involved in the management directly or indirectly, of any other public company for such period of time as may be determined by the Court; and

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- (q) an order requiring that person, or any other person who appears to have been knowingly involved in the contravention, to take such steps as the Court may direct to remedy it or to mitigate its effect including making restitution to any other person aggrieved by such contravention; and
- (r) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; and
- (s) where a person has refused or failed or is refusing or failing to comply with any direction issued by the Commission under Section 443, 444 or 445, an order directing such person to comply with such direction that is issued by the Commission; and
- (t) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.

(2) If an application is made to a Court for an order under Subsection (1), the Court may, if in its opinion it is desirable to do so, before considering the application, make an interim order of the kind applied for and such order shall be expressed to have effect pending the determination of the application.

(3) 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.

(4) Where an application is made to the Court for an order under Subsection (1)(n), the Court may grant the order -

- (a) where the Court is satisfied that the person has refused or failed to do the required act or thing, whether or not it appears to the Court that the person intends to again refuse or fail, or continue to refuse or fail, to do the required act or thing; or
- (b) where it appears to the Court that in the event that such an order is not granted it is likely that the person will refuse or fail to do the required act or thing, whether or not the person has previously refused or failed to do the act or thing and whether or not there is any imminent risk of damage to any person if the person required to do such act or thing refuses or fails to do so.

(5) Where an application for an order under Subsection (1), is made by the Commission or any person duly authorised by the Commission or a stock exchange, a derivatives exchange or a clearing house, the Court shall not, as a condition of the grant of the order, require any undertaking as to damages to be given by or on behalf of the Commission, stock exchange, derivatives exchange or a clearing house.

(6) A person appointed by order of the Court under Subsection (1), as a receiver of the property of a holder of a capital market licence -

- (a) may require the holder to deliver to the receiver any property of which he has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required; and
- (b) may acquire and take possession of any property of which he has been appointed receiver; and

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- (c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the holder might lawfully have dealt with the property; and
- (d) has such other powers in respect of the property as the Court specifies in the order.

(7) In Subsection (1)(l) and Subsection (6), "property", in relation to a holder of a capital market licence includes monies, securities, or other property and documents of title to securities or other property entrusted to or received on behalf of any other person by the holder of a capital market licence or another person in the course of or in connection with the business of the holder.

- (8) The Commission or a trustee appointed by an order of the Court under Subsection (1)(m) -
 - (a) may require any person to deliver to the Commission or trustee any securities or such other property specified in the order or to give to the Commission or trustee all information concerning the securities that may reasonably be required; and
 - (b) may acquire and take possession of the securities or such other property; and
 - (c) may deal with the securities or such other property in any manner as it thinks fit; and
 - (d) shall have such other powers in respect of the securities or such other property as may be specified by the Court in the order.

(9) The proceeds of the dealing in or disposal of securities or derivatives under Subsection (1)(m) shall be paid into the Court, and any person claiming to be beneficially entitled to the whole or any part of such proceeds may, within 30 days of such payment into the Court, apply to the Court for payment out of the proceeds to him.

- (10) A person who contravenes -
 - (a) an order under Subsection (1), that is applicable to him; and
 - (b) a requirement of a receiver appointed by order of the Court under Subsection (1); and
 - (c) a requirement of the Commission or trustee appointed by order of the Court under Subsection (1)(m) commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(11) Subsection (10), does not affect the powers of the Court in relation to the punishment of contempt of the Court.

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

- (13) For the purposes of this section, "relevant requirement" -
 - (a) in relation to an application by the Commission under this section, means a requirement -
 - (i) which is imposed by or under this Act or any securities laws; and

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- (ii) which is imposed as a condition or restriction of any approval or licence that is given or issued under or pursuant to this Act or any securities laws; and
 - (iii) which is imposed by or under the rules of a stock exchange, a derivatives exchange or a clearing house; and
 - (iv) which is imposed by or under any other law and the contravention of which constitutes an offence which the Commission has the power to prosecute with the consent in writing of the Public Prosecutor; and
- (b) in relation to an application by a stock exchange or a derivatives exchange or a clearing house, means a requirement which is imposed by or under the rules of the stock exchange, a derivatives exchange or a clearing house, as the case may be; and
- (c) in relation to an application by the aggrieved person, means a requirement -
- (i) which is imposed by or under this Act; and
 - (ii) which is imposed as a condition or restriction of any approval or licence that is given or issued under or pursuant to this Act or any securities laws; or
 - (iii) which is imposed by or under the rules of a stock exchange, a derivatives exchange or a clearing house.

(14) An application made pursuant to this section shall not prejudice any other action that may be taken by the Commission, stock exchange, derivatives exchange, a clearing house or aggrieved person, as the case may be, under any securities laws or any other law or rules.

450. APPLICATION FOR WINDING UP.

(1) Notwithstanding the provisions of the *Companies Act 1997*, as amended from time to time, if a person referred to in Section 449(1) is a company, whether or not the company is being wound up voluntarily, the person may be wound up under an order of the Court on the petition of the Commission, a stock exchange, a derivatives exchange or a clearing house, in accordance with the provisions of the *Companies Act 1997*.

(2) The Court may order the winding up on a petition made under Subsection (1), if the person referred to in Section 449(1) -

- (a) has held a licence under this Act, and that licence has been revoked or surrendered; or
- (b) has contravened any rules of the stock exchange, a derivatives exchange or the clearing house or has contravened a provision of a securities law, whether or not that person has been charged with an offence in respect of the contravention, or whether or not the contravention has been proved in a prosecution.

PART XVI. - GENERAL.

451. PROHIBITION OF USE OF CERTAIN TITLES.

(1) A person who is not a participating organisation or an affiliate shall not take or use or by inference adopt the name, title or description of "participating organisation" or "affiliate", or take or use or have attached to or exhibited at any place, any name, title or description implying or tending to create the belief that such person is a participating organisation or an affiliate.

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(2) Unless the Commission otherwise permits, a person who is not, a stock exchange or a derivatives exchange shall not take or use or by inference adopt the name, title or description of, "stock exchange", "stock market", or "derivatives exchange", or "derivatives market", or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is a stock exchange.

(3) A person who is not a holder of a capital market licence or a capital market representative's licence shall not take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is licensed to carry on a business or performs any function in relation to any regulated activity as specified in Schedule 1.

452. COPY OF BOOK AS *PRIMA FACIE* EVIDENCE.

(1) A copy of the books kept or maintained by a stock exchange, a clearing house, a central depository or holder of a capital market licence shall in all legal proceedings be received as *prima facie* evidence of such books and of the matters, transactions and accounts recorded in such books.

(2) A copy of the books referred to under Subsection (1), shall not be received in evidence under this Act unless it is first proved that the said matters, transactions and accounts are recorded in the books in the ordinary course of business and are in the custody or control of the stock exchange, a derivatives exchange, a clearing house, a central depository or a holder of a capital market licence.

(3) Such proof as required under Subsection (2), may be given orally or by an affidavit by a person who either before or after such matters, transactions and accounts are recorded in the books, is responsible for the management, custody or control of the books.

(4) The affidavit under Subsection (3), shall be sworn before any Commissioner of Oaths.

(5) A copy of the books referred to in Subsection (1), shall not be received in evidence under this Act unless it is proved that the person referred to in Subsection (3), has examined the copy with the original books.

(6) Such proof as required under Subsection (5), shall be given by a person who has examined the copy with the original books and may be given either orally or by an affidavit sworn before a Commissioner for Oaths.

(7) Notwithstanding the provisions of Subsections (5) and (6), where the original books cannot be found or are lost, it shall be sufficient for the person referred to in Subsection (3) to state orally or in an affidavit given under this section that he had made reasonable efforts to locate the original books and thereafter the copy of the books shall be admissible as *prima facie* evidence of such matters, transactions and accounts recorded in the books, in any legal proceedings.

453. APPLICATION BY AGGRIEVED PERSON FOR REVIEW.

The Commission may review its own decision under this Act upon an application made by any person who is aggrieved by such decision.

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454. TIME FOR APPLICATION FOR REVIEW.

An application to the Commission to review its own decision shall be made within 30 days after the aggrieved person is notified of such decision.

455. DECISION OF MINISTER TO BE FINAL.

Except as otherwise provided in this Act, any decision made by the Minister under this Act, whether an original decision by him or a decision on appeal to him from a decision of the Commission, as the case may be, shall be final.

456. OFFENCES BY BODIES OF PERSONS AND BY EMPLOYEES AND AGENTS.

(1) Where an offence against this Act or any regulation made under this Act has been committed by a body corporate, and any person who, at the time of the commission of the offence, was a director, a chief executive officer, an officer or a representative of the body corporate or was purporting to act in such capacity, is deemed to have committed that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where a person who is an employee of another person contravenes any provision of this Act, the person for or on behalf of whom the employee is acting shall be deemed to have contravened such provision.

(3) Without prejudice to the generality of Subsection (2), where any representative of the holder of a capital market licence contravenes any provision of this Act, such holder shall be deemed to have contravened such provision.

(4) For the purposes of this section, a director of a corporation includes -

- (a) a person occupying or acting in the position of director of the corporation, by whatever name called, and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) a person in accordance with whose directions or instructions the directors of the corporation are accustomed to act; and
- (c) if the corporation is incorporated outside Papua New Guinea -
 - (i) a member of the corporation's board; and
 - (ii) a person occupying or acting in the position of director of the corporation's board, by whatever name called, and whether or not validly appointed to occupy or duly authorised to act in the position; and
 - (iii) a person in accordance with whose directions or instructions the members of the corporation's board are accustomed to act.

457. FALSIFICATION OF RECORDS.

(1) A person shall not, in any books in relation to the business of a stock exchange, derivatives exchange, a clearing house, a holder of a capital market licence or a listed corporation or any of its related corporations whether or not kept under this Act or the regulations made under this Act -

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- (a) in any manner enter, record or store, or cause to be entered, recorded or stored, any matter that is false or misleading in any material particular; and
- (b) in any manner falsify or cause to be falsified, any matter that -
 - (i) is entered, recorded or stored; and
 - (ii) has been prepared for the purpose of being entered, recorded or stored; and
 - (iii) has been prepared for use in compiling other matters to be entered, recorded or stored; and
- (c) fail to enter, record or store any matter with intent to falsify the records or any part of the records intended to be compiled from that matter.

(2) Any person who contravenes Subsection (1), commits an offence and shall be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

458. FALSE REPORTS TO COMMISSION, EXCHANGE OR APPROVED CLEARING HOUSE.

A person who -

- (a) with intent to deceive, makes or furnishes; or
- (b) knowingly authorises or permits the making or furnishing of, any false or misleading statement or report to the Commission, a stock exchange, or a derivatives exchange or a clearing house relating to -
 - (i) dealings in securities; and
 - (ii) the affairs of a listed corporation; and
 - (iii) any matter or thing required by the Commission for the due administration of this Act; and
 - (iv) the enforcement of the rules of a stock exchange, a derivatives market or a clearing house,

is guilty of an offence and is liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

459. ATTEMPTS, ABETMENTS AND CONSPIRACIES.

(1) A person who -

- (a) attempts to commit any offence under this Act; and
- (b) does any act in furtherance of the Commission of any offence under this Act; and
- (c) abets or is engaged in a criminal conspiracy to commit any offence under this Act, whether or not the offence is committed in consequence thereof, commits such offence and shall, on conviction, shall be liable to the penalty provided for such offence.

460. DESTRUCTION, CONCEALMENT, MUTILATION AND ALTERATION OF RECORDS.

A person who -

- (a) destroys, conceals, mutilates or alters; and
- (b) sends or attempts to send or conspires with any other person to remove from its premises or send out of Papua New Guinea, any books, record or account

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required to be kept or maintained under the securities laws, any guidelines issued under the securities laws or rules of the stock exchange, or derivatives exchange, or a clearing house with intent to defraud any person, or to prevent, delay or obstruct the carrying out or the exercise of any power under the securities laws,

is guilty of an offence and is liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

461. GENERAL PENALTY.

(1) A person who contravenes any requirement or provision of this Act, commits an offence under this Act and, where no penalty is expressly provided, shall, be liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(2) In the case of a continuing offence, the offender, in addition to the penalties under Subsection (1), shall be liable to a fine not exceeding K5,000.00 for every day or part of a day during which the offence continues after conviction.

462. COMPOUNDING OF OFFENCES.

(1) The Chairman of the Commission may, compound any offence committed by any person under this Act or any regulations made under this Act, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding the maximum fine (including the daily fine in the case of a continuing offence, if any) for that offence.

(2) Upon receipt of the payment under Subsection (1), no further proceedings shall be taken against such person in respect of such offence and where possession has been taken of any books or any other thing, such books or things may be released subject to such conditions as may be imposed in accordance with the conditions of the compound.

(3) All amounts received by the Commission under this section shall be paid into and form part of the fund of the Commission pursuant to Section 43 of the *Securities Commission Act 2015*.

463. CONVICTED PERSONS LIABLE TO PAY COMPENSATION.

A person who is convicted of an offence under Part IV, V or VI is liable to pay such compensation as may be determined by the Court to any person who has suffered loss or damage as a result of the offence committed by the convicted person.

464. CONDUCT OF PROSECUTION.

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

(2) Any officer authorised in writing by the Public Prosecutor, may prosecute any case in respect of any offence committed under this Act.

465. INDEMNITY.

No civil liability shall be incurred by -

(a) a stock exchange, a clearing house or a central depository; and

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- (b) any person acting on behalf of a stock exchange, a clearing house or a central depository, including -
- (i) any member of the board of a stock exchange, a clearing house or a central depository or any member of any committee established by any such board; and
 - (ii) any officer of a stock exchange, derivatives exchange, a clearing house or a central depository; and
 - (iii) any agent of, or any person acting under the direction of a stock exchange, a derivatives exchange, a house or a central depository, for, on account of, or in respect of anything done, any statement made or omitted to be done or made, in connection with the discharge or performance or purported discharge or performance of any duties under the securities laws or the rules of a stock exchange, a derivatives exchange, a clearing house or a central depository or in the exercise or intended exercise of any power under the securities laws or such rules, where such act, statement or omission was done in good faith.

466. GUIDELINES AND PRACTICE NOTES OF COMMISSION.

(1) The Commission may, not inconsistent with this Act, generally in respect of this Act or in respect of any particular provision of this Act, issue such guidelines and practice notes, as the Commission considers desirable.

(2) The Commission may revoke, vary, revise or amend the whole or any part of any, guidelines and practice notes issued under this section.

(3) Subject to this Act or unless the contrary intention is expressly stated, a person to whom the guidelines or practice notes referred to in Subsection (1) apply, shall give effect to such guidelines or practice notes within such period as may be specified by the Commission.

(4) Where a person referred to in Subsection (3) contravenes or fails to give effect to any guidelines or practice notes issued by the Commission, the Commission may take any one or more of the actions set out in Section 443, 444 or 445 as it thinks fit.

467. POWER TO MAKE REGULATIONS.

(1) The Head of State, acting on advice, may make such regulations not inconsistent with this Act, prescribing all matters that by this Act are permitted or required to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act.

(2) Without prejudice to the generality of Subsection (1), regulations made under this section may provide for -

- (a) forms for the purposes of this Act; and
- (b) fees to be paid for the purposes of this Act; and
- (c) the regulation of the purchase and sales of capital market products; and
- (d) the standards with respect to the qualification, experience and training of licensed person and directors of public listed corporations; and
- (e) the conduct of business on a stock exchange, derivatives exchange, or approved clearing house; and

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- (f) the exemption of any specified person or any person who is a member of a specified class of persons from any of the provisions of this Act, subject to terms and conditions.

468. POWER TO ENTER INTO ARRANGEMENTS.

The Commission may enter into arrangements with the Bank of Papua New Guinea to co-ordinate the regulation of markets for over-the-counter markets and financial instruments in the money market.

469. SETTLEMENT OF DISPUTES.

To promote and maintain a fair, efficient and orderly capital market -

- (a) the rules of a stock exchange, a derivatives exchange, central depository or a clearing house; and
- (b) regulations made under Section 467, may make provisions for the settlement of dispute -
 - (i) between the holders of a capital market licence who carries on the business of dealing in securities; and
 - (ii) between a participating organisation and a stock exchange; and
 - (iii) between an affiliate and a derivatives exchange; and
 - (iv) between a participant and a clearing house; and
 - (vi) between an affiliate and a clearing house; and
 - (vii) between a holder of a capital market licence and its clients; and
 - (viii) between persons involved in a capital market transaction.

470. POWER TO AMEND SCHEDULES.

(1) The Commission may, from time to time by order published in the National Gazette, vary, delete, add to, substitute for, or otherwise amend any of the Schedules in this Act and upon such publication, such Schedule as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.

(2) The Commission in varying, deleting or substituting any of the schedules referred to in Subsection (1), may impose such terms and conditions as the Commission thinks necessary.

(3) In making the order under Subsection (1), the Commission shall have regard to the interests of the public.

SCHEDULE 1.

EXEMPT STOCK MARKET OR EXEMPT DERIVATIVES MARKET.

Sec. 8(1).

(1) Such system which facilitates the transferring, clearing and settlement of funds and unlisted debt securities.

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(2) Such system which facilitates dealing in securities, including the auction of or direct buying, selling, issuance, borrowing, lending and exchange of unlisted debt securities.

(3) Such system which provides information to any person relating to the money market or to the tender, issue, trading and offer or bid prices of debt securities or any other related information relating to unlisted debt securities.

(4) Such system for the central handling of debt securities deposited with the Bank of Papua New Guinea by means of entries in debt securities accounts without physical delivery of certificates.

(5) Such system for the carrying out of any other activity related to any of the systems in Paragraphs 1 to 4.

(6) Such system for the dissemination of information relating to Paragraphs 1 to 5.

SCHEDULE 2.

REGULATED ACTIVITIES.

Sec. 2(1) and 34(1).

PART I. - TYPES OF REGULATED ACTIVITIES.

1. Dealing in securities.
2. Trading in derivatives.
3. Fund management.
4. Advising on corporate finance.
5. Investment advice.
6. Financial planning.

PART II. - INTERPRETATION OF REGULATED ACTIVITIES.

(1) "Dealing in securities" means, whether as principal or agent -

- (a) acquiring, disposing of, subscribing for or underwriting securities; or
- (b) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into -
 - (i) any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or
 - (ii) any agreement, other than a derivative, the purpose or avowed purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities.

(2) "Trading in derivatives" means, whether as principal or agent, making or offering to make with any person, or inducing or attempting to induce any person, or soliciting or accepting any order for, or otherwise -

- (a) entering into, or taking an assignment of, the derivatives, whether or not on another person's behalf; and

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- (b) taking or causing to be taken, action that closes out the derivatives, whether or not on another person's behalf; or
- (c) in relation to a derivative that is an eligible exchange-traded option, a derivatives option or an agreement prescribed to be a derivatives -
 - (i) exercising any option or right under the derivatives; or
 - (ii) allowing any option or right under the derivatives to lapse, whether or not on another person's behalf.

(3) "Fund management" means undertaking on behalf of any other person or persons, whether on a discretionary authority granted by such person or persons or otherwise, the management of a portfolio of securities or derivatives.

- (4) "Advising on corporate finance" means giving advice concerning -
- (a) compliance with or in respect of Parts IV, V and VI, any regulation made under Section 467 and any guidelines issued under Section 466 relating to any matter provided under Parts IV, V and VI, or relating to the raising of funds by any corporation; and
 - (b) compliance with the listing requirements of the stock exchange in relation to the raising of funds or related party transactions; and
 - (c) arrangement or restructuring of a listed corporation or a subsidiary of the listed corporation of its assets or liabilities.

(5) "Investment advice" means carrying on a business of advising others concerning securities or derivatives contracts or as part of a business, issues or promulgates analyses or reports concerning securities or derivatives.

(6) "Financial planning" means analysing the financial circumstances of another person and providing a plan to meet that other person's financial needs and objectives, including any investment plan in securities, whether or not a fee is charged in relation thereto.

SCHEDULE 3.

SPECIFIED PERSONS.

Sec. 34(2).

- (1) Any lawyer as defined under the *Lawyers Act 1986*, in practice whose carrying on of the regulated activity of advising on corporate finance or financial planning is solely incidental to the practice of his profession.
- (2) Any accountant who is a member of the institute established under the *Accountants Act 1996*, in practice whose carrying on of the regulated activity of advising on corporate finance or financial planning is solely incidental to the practice of his profession.
- (3) A valuer as defined under the *Valuation Act 1967*, whose valuation in respect of assets for the purposes of advising on corporate finance is solely incidental to his practice as a valuer.

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- (4) Any person who is a proprietor of a newspaper and a holder of a permit whose carrying on the regulated activity of investment advice through the newspaper where -
- (a) insofar as the newspaper is distributed generally to the public, it is distributed only to subscribers for, and purchasers of, the newspaper for value; and
 - (b) the advice is given or the analyses or reports are issued or promulgated only through that newspaper; and
 - (c) that person receives no commission or other consideration 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 the conduct of that person's business as a newspaper proprietor.

(5) Any person who is carrying on the regulated activity of investment advice through the provision of information service where -

- (a) insofar as the information service is distributed generally to the public, it is distributed only to subscribers for, and purchasers of, the information service for value; and
- (b) the advice is given or the analyses or reports are issued or promulgated only through that information service; and
- (c) that person receives no commission or other consideration 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 the conduct of that person's business as an information service proprietor.

(6) Any corporation whose carrying on of the regulated activity of fund management is solely for the benefit of its related corporation.

(7) Any corporation whose carrying on of the regulated activity of investment advice is solely for the benefit of its related corporation.

(8) Any corporation whose carrying on the regulated activity of advising on corporate finance solely for the benefit of any of its related corporations and where the related corporation is a listed corporation, such advice is not circulated to the shareholders of the related corporation or otherwise made known to the public.

(9) Any person who carries on the regulated activity of dealing in securities for his own account or for his related corporation through a holder of a capital market licence who carries on the business of dealing in securities.

(10) Any person who carries on the regulated activity of dealing in securities for -

- (a) his own account or for his related corporation through a holder of a capital market licence who carries on the business of dealing in securities; and
- (b) his own account or for his customer's account through a licensed bank for the purposes of lending of securities under any guidelines issued by the Commission under Section 466; and

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(c) his own account or for his related corporation, where the securities are not listed on a stock exchange.

(11) Any person who trades in derivatives -

- (a) on the person's own account; and
- (b) where such person is a non-resident of Papua New Guinea acting as principal or agent through the holder of a capital market licence who carries on the business of trading in derivatives.

(12) An affiliate who trades in derivatives or enters into a transaction in relation to a derivatives solely on its own account and who complies with the provisions of the rules of the derivatives exchange.

(13) A holder of a capital market licence who carries on the business of trading in derivatives whose dealing in securities -

- (a) relates to securities which is also a derivative; and
- (b) is the direct consequence of trading in a derivative; and
- (c) is in connection with the delivery of a security, within a class of securities which is the subject of a class of derivatives, pursuant to -
 - (i) in the case of an eligible exchange-traded option, the exercise of the option; and
 - (ii) in the case of an eligible delivery agreement, the agreement itself; and
- (d) is in connection with the transfer of securities as collateral or security, or in realisation of any collateral or security, for obligation under a derivatives contract.

(14) Any public statutory corporation constituted under any written law who carries on the regulated activity of dealing in securities or fund management.

(15) Any stock exchange where its dealing in securities is solely incidental to it operating a stock market of a stock exchange.

(16) A derivatives exchange where the trading in derivatives is solely incidental to it operating a derivatives market of a derivatives exchange.

(17) An approved clearing house or exchange holding company whose dealing in securities or trading in derivatives, as the case may be, is solely incidental to it providing clearing facilities in respect of securities or derivatives, as the case may be.

(18) A receiver, receiver and manager, or liquidator or any other person appointed by a Court whose carrying on a regulated activity is solely incidental to his duties as a receiver, receiver and manager, liquidator or any Court appointed person, as the case may be.

(19) A trustee or other person whose carrying on a regulated activity is solely incidental to its administering a compromise or arrangement between a body corporate and any other person or persons.

PART II.

Column 1.	Column 2.	Column 3.
Items.	Activities.	Category of Registered Persons.
1.	<ul style="list-style-type: none"> (a) Dealing in securities in relation to the investment made by the venture capital corporations and venture capital management corporations. (b) Acting or offering to act as investment managers or co-investment manager of a venture capital fund, including the provision of investment advice incidental to its fund management. 	Any venture capital corporation and venture capital management corporation that is registered under the Commission's guidelines for the registration of Venture Capital Corporations and Venture Capital Management Corporations.
2.	Investment advice in relation to the provision of ratings for debentures.	A credit rating agency that is registered with the Commission under the Commission's Guidelines on Registration of Credit Rating Agencies.
3.	Investment Advice in relation to pricing of debentures.	A bond pricing agency registered with the Commission under the Commission's Guidelines on the Registration of Bond Pricing Agencies.

SCHEDULE 5.

PROPOSALS NOT REQUIRING APPROVAL.

Sec. 116(6).

(1) Categories of transactions not subject to the requirements of Section 116(6).

(2) The issuance of securities by or guaranteed by the National Government, a Provincial or Municipal Government or the Bank of Papua New Guinea.

(3) Securities of a private company other than debentures.

(4) Bonus issues of securities of a corporation.

(5) All trades in securities effected in the money market.

(6) Making available or creation of, or issuance or execution of -

(a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services; and

(b) cheques or other bills of exchange, a banker's draft or a letter of credit; and

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(c) a banknote, a statement showing a balance in a current, deposit or savings account, or (by reason of any financial obligation contained in it) a charge or other disposition of property, or an insurance policy.

(7) All trades in securities effected on a stock market of a stock exchange which is approved by the Commission pursuant to Section 9(2) or such other exchange outside Papua New Guinea which is recognised under the rules of the stock exchange.

(8) An offer or invitation to enter into an underwriting agreement or is made or issued to an underwriter under such an underwriting agreement.

(9) An issue or allotment of securities to an underwriter under an underwriting agreement.

(10) An offer or invitation with respect to securities of a corporation which is not listed made to existing members or debenture holders of such corporation by means of a rights issue and is not an offer to which Section 133 applies.

(11) Issuance or allotment of securities by a corporation pursuant to the exercise of a warrant, convertible note, option or transferable subscription right, in respect of which the Commission has given its prior approval under Section 118(3) and the subsequent listing of such securities.

(12) An offer or invitation with respect to the existing securities of an unlisted corporation made to existing holders of those securities or made to a person falling within Paragraph 9 of Schedule 6.

(13) The making available of, offering for subscription or purchase of, or making an invitation to subscribe for or purchase, securities of a corporation pursuant to an employee share or employee share option scheme.

(14) The listing of securities that are issued by way of bonus issue.

(15) The issuance of notes pursuant to a notes issuance facility or revolving underwriting facility as may be specified by the Commission.

(16) All trades in foreign currency denominated debentures effected in a manner as may be specified by the Commission.

(17) An offer or invitation in respect of securities of a foreign corporation whose securities or any class of securities having gained admission on such other exchange outside Papua New Guinea which is recognised under the rules of a stock exchange, made to existing members or debenture holders of such foreign corporation by means of a rights issue.

(18) Subdivision or consolidation of shares of a corporation where such subdivision or consolidation has been approved at the general meeting of the corporation and in the case of a listed corporation, in accordance with the rules of the stock exchange.

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(19) The issuance of additional securities pursuant to an entitlement in respect of a warrant, option or right that has been approved by the Commission under Subsection 118(3) and without consideration.

(20) The issuance of debentures by a corporation to its related corporation where such debentures shall include a term that prohibits the transfer of such debentures to any other person.

SCHEDULE 6.

EXCLUDED OFFERS OR EXCLUDED INVITATIONS.

Sec. 125.

1. EXCLUDED OFFERS OR EXCLUDED INVITATIONS.

(1) An offer or invitation to enter into an underwriting or sub-underwriting agreement or an offer or invitation made to an underwriter under such an agreement.

(2) With respect to the securities of a corporation which are not listed, an offer or invitation made to existing members or debenture holders of such corporation by means of a rights issue and is not an offer to which Section 133 applies.

(3) An offer or invitation made to a unit trust scheme or prescribed investment scheme.

(4) An offer or invitation made to a holder of a capital market license who carries on the business of dealing in securities.

(5) An offer or invitation made exclusively to persons outside Papua New Guinea.

(6) An offer or invitation made to a closed end fund approved by the Commission.

(7) An offer or invitation made to a holder of a capital market licence who carries on the business of fund management.

(8) An offer or invitation made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than K250,000.00 or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise.

(9) An offer or invitation made with respect to any sale of a unit in a unit trust scheme or a prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realisation of assets.

(10) All trades in securities effected on a stock market of a stock exchange which is approved by the Commission pursuant to Section 9(2) or such other exchange outside Papua New Guinea which is recognised under the rules of the stock exchange.

(11) An offer or invitation of securities made or guaranteed by the National Government or any Provincial or Municipal Government or the Bank of Papua New Guinea.

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- (12) An offer or invitation in respect of securities of a private company.
- (13) An offer or invitation pursuant to a take-over offer which complies with the relevant law applicable to such offers.
- (14) All trades in securities effected in the money market.
- (15) An offer or invitation made to employees or directors of a corporation or its related corporation pursuant to an employee share or employee share option scheme.
- (16) An offer or invitation made to any creditor or holder of securities of a company undergoing a scheme of arrangement or compromise under Section 242 of the *Companies Act 1997*.
- (17) An offer or invitation made to a licensed institution as defined in the *Banks and Financial Institutions Act 2000*.
- (18) An offer or invitation made to an insurance company registered under the *Insurance Act 1996*.
- (19) An offer or invitation made to a statutory body established by an Act of Parliament or an enactment of any State.
- (20) An offer or invitation in respect of securities of a corporation made to existing members of a company.
- (21) An offer or invitation in respect of securities of a foreign corporation whose securities or any class of securities having gained admission on such other exchange outside Papua New Guinea which is recognised under the rules of a stock exchange, made to existing members or debenture holders of such foreign corporation by means of a rights issue provided that such offer or invitation has been accompanied by a prospectus or disclosure document approved by the foreign supervisory authority of such foreign corporation.

2. NON-APPLICATION.

Excluded offers or excluded invitations to which Sections 128, 129, 130, 131, 132, 133, 134, 135, 136, 137 and 140 shall not apply.

SCHEDULE 7.

EXCLUDED ISSUES.

Sec. 126.

1. EXCLUDED ISSUES.

(1) An issue made to an underwriter under an underwriting or sub-underwriting agreement.

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(2) An issue in respect of securities of a corporation which are not listed made to existing members or debenture holders of such corporation by means of a rights issue and is not an issue or allotment to which Section 133 applies.

(3) An issue made to a unit trust scheme or managed investment scheme.

(4) An issue made to a holder of a capital market licence who carries on the business of dealing in securities.

(5) An issue made exclusively to persons outside Papua New Guinea.

(6) An issue made to a closed end fund approved by the Commission.

(7) An issue made to a holder of a capital market licence who carries on the business of fund management.

(8) An issue made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than K250,000.00 kina or its equivalent in foreign currencies for each transaction, whether such amount is paid for in cash or otherwise.

(9) An issue made with respect to any sale of a unit in a unit trust scheme or a prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realisation of assets.

(10) All trades in securities effected on a stock market of a stock exchange which is approved by the Commission pursuant to Section 9(2) or such other exchange outside Papua New Guinea which is recognised under the rules of the stock exchange.

(11) An issue of securities made or guaranteed by the State or the Bank of Papua New Guinea.

(12) An issue in respect of securities of a private company.

(13) An issue in respect of securities which are acquired pursuant to a take-over offer which complies with the relevant law applicable to such offers.

(14) All trades in securities effected in the money market.

(15) An issue in respect of securities which are acquired by employees or directors of a corporation or its related corporation pursuant to an employee share or employee share option scheme.

(16) An issue made to any creditor or holder of securities of a company undergoing a scheme of arrangement or compromise under Section 176 of the *Companies Act 1997*.

(17) An issue made to a licensed institution as defined in the *Banks and Financial Institutions Act 2000*.

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- (18) An issue made to an insurance company registered under the *Insurance Act 1995*.
- (19) An issue made to a statutory body established by an Act of Parliament or an enactment of any State.
- (20) An issue of securities by a corporation pursuant to the exercise of an option, a warrant or a transferable subscription right, in respect of which a prospectus has been registered under this Act or in respect of which the securities to which the option, warrant or transferable subscription right converts into are listed securities.
- (21) An issue of shares by a corporation pursuant to a provision contained in a convertible note, whether the note was issued by that corporation or by another corporation, in respect of which a prospectus has been registered under this Act or in respect of which the securities to which the option, warrant or transferable subscription right converts into are listed securities.
- (22) An issue in respect of shares or units in a unit trust scheme or prescribed investment scheme which are issued in satisfaction of dividends payable by the issuer to the holders of existing shares or units that were issued pursuant to a prospectus.
- (23) A bonus issue of securities made by a corporation.
- (24) An issue in respect of securities of a foreign corporation whose securities or any class of securities having gained admission on such other exchange outside Papua New Guinea which is recognised under the rules of a stock exchange, made to existing members or debenture holders of such foreign corporation by means of a rights issue.
- (25) An issue of securities of a foreign corporation whose securities or any class of securities having gained admission on such other exchange outside Papua New Guinea which is recognised under the rules of a stock exchange, made to existing members or debenture holders of such foreign corporation by means of a rights issue provided that such issue has been accompanied by a prospectus or disclosure document approved by the foreign supervisory authority of such foreign corporation.

2. NON-APPLICATION.

Excluded issues to which Sections 128, 129, 130, 131, 132, 133, 134, 135, 136, 137 and 140 shall not apply.

SCHEDULE 8.

DEBENTURES ISSUES.

Sec. 153(1).

(1) Issues of, offers for subscription or purchase of, or invitations to subscribe for or purchase, debentures to which Subdivision 1 of Division 4 of Part IV shall not apply.

(2) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by the State or a Provincial government or a municipal government or any statutory body.

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(3) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures guaranteed by the State or the Bank of Papua New Guinea.

(4) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by members of the issuer.

(5) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by a single holder of those debentures.

(6) All trades in debentures effected on a stock market of a stock exchange which is approved by the Commission pursuant to Section 9(2).

(7) All trades in debentures effected in the money market.

(8) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made pursuant to a scheme of arrangement or compromise under Section 242 of the *Companies Act 1997*.

(9) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made exclusively to persons outside Papua New Guinea.

(10) An issue, offer or invitation made in relation to a foreign currency denominated debenture to -

- (a) an underwriter under an underwriting or initial purchase agreement; and
- (b) a unit trust scheme or prescribed investment scheme; and
- (c) a holder of a capital market licence who carries on the business of dealing in securities; and
- (d) a closed end fund approved by the Commission; and
- (e) a holder of a capital market licence who carries on the business of fund management; and
- (f) a corporation with total net assets exceeding K10,000,000.00 or its equivalent in foreign currencies based on the last audited accounts.

(11) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by a multilateral development bank, a multilateral financial institution, a foreign sovereign or a corporation guaranteed or controlled by a foreign sovereign, with a credit rating of AAA or its equivalent, assigned by a credit rating agency.

SCHEDULE 9.

DEBENTURES ISSUES.

Sec. 153(2).

(1) Issue of, offers for subscription or purchase of, or invitations to subscribe for or purchase, debentures to which Sections 159, 162, 164, 165, 167, 168, 171, 174 and 176(4) shall not apply.

(2) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a unit trust scheme or prescribed investment scheme.

(3) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a holder of a capital market licence who carries on the business of dealing in securities.

(4) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a closed end fund approved by the Commission.

(5) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a holder of a capital market licence who carries on the business of fund management.

(6) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than K250,000.00 or its equivalent in foreign currencies for each transaction, whether such amount is paid for in cash or otherwise.

(7) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an individual whose total net personal assets exceed K3,000,000.00 or its equivalent in foreign currencies.

(8) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a corporation with total net assets exceeding K10,000,000.00 or its equivalent in foreign currencies based on the last audited accounts.

(9) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures of a private company.

(10) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a licensed institution as defined in the *Banks and Financial Institutions Act 2000*.

(11) An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an insurance company registered under the *Insurance Act 1995*.

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SCHEDULE 10.

POWER TO MAKE REGULATIONS.

Sec. 467.

Pursuant to Section 467, the Head of State, may make the following regulations.

(1) To provide for the remuneration of an auditor appointed under this Act, and for the costs of an audit carried out under this Act.

(2) To prescribe any forms for the purposes of this Act.

(3) To provide for the licensing of persons who carry out regulated activities and their representatives and matters incidental thereto.

(4) To prescribe the activities of, and the standards to be maintained by, licensed persons including the manner, method and place of soliciting business and the conduct of such solicitation.

(5) To prescribe the standards with respect to the qualifications, experience and training of licensed persons.

(6) To provide for the control of the form, contents and distribution of written, printed or visual material or advertisements that may be distributed or used by a person in respect of -

- (a) offering services by a holder of a capital market licence; or
- (b) offering securities or derivatives for subscription, purchase or sale.

(7) To specify requirements applicable to the holder of a capital market licence in relation to securities financing.

(8) To specify terms and conditions to be included in clients' contracts and provide that the terms and conditions are, unless the Commission in relation to any particular term or condition otherwise directs, to be deemed to be of the essence of the clients' contracts in which they are included, whether or not a different intention appears in the provisions of the clients' contracts.

(9) To specify information that a holder of a capital market licence is to provide to its client on entering into a client's contract with the client, and thereafter from time to time on request by the client.

(10) To require the licensed person, to ascertain, in relation to each client, specified matters relating to his identity and his financial situation, investment experience and investment objectives relevant to the services to be provided and prescribe the steps to be taken for this purpose.

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(11) To require the licensed person, when providing information or advice concerning any securities or derivatives contracts to a client, to ensure the suitability of the information or advice to be provided to the client and prescribe the steps to be taken for this purpose.

(12) To require the licensed person, to disclose to a client the financial risks in relation to any securities or derivatives contracts that the licensed person recommends to the client and prescribe the steps to be taken for this purpose.

(13) To require the licensed person, to disclose to a client any commission or advantage such licensed person receives or is to receive from a third party in connection with any securities or derivatives which the licensed person recommends to the client and prescribe the steps to be taken for this purpose.

(14) To require the licensed person to take steps to avoid cases of conflict between any of its interests and those of a client and specify the steps to be taken in the event of a potential or actual case of conflict.

(15) To specify the circumstances in which the holder of a capital market licence may receive any property or service from another holder of a capital market licence in consideration of directing business to that other holder.

(16) To specify the circumstances in, and the condition and restrictions under, which a representative of a holder of a capital market licence is permitted to deal or trade for his own account in securities or derivatives.

(17) To provide for any other matter relating to the practices and standards of conduct of the licensed person in carrying on business in any regulated activity.

(18) To regulate the conduct of business on a stock exchange, derivatives exchange or approved clearing house.

(19) To prescribe the minimum financial requirements in respect of the business of a holder of a capital market licence.

(20) To prescribe the form and contents of a contract note.

(21) To prohibit the use of any manipulative or deceptive devices and contrivances in connection with the purchase or sale of securities or futures contracts.

(22) To prescribe the particulars to be recorded in, or in respect of, the accounting records kept by a holder of a capital market licence under this Act.

(23) To prescribe the particulars to be recorded in the profit and loss accounts and balance-sheets and the information to be contained in auditor's reports required to be lodged under this Act on the annual accounts of a holder of a capital market licence.

(24) To regulate the purchase or sale of securities or derivatives contracts, directly or indirectly, for the personal account of licensed persons and financial journalists.

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(25) To provide for the disclosure by a licensed person of any material interest that such person may have in a proposed transaction relating to dealing in securities or trading in derivatives contracts.

(26) To provide for the operation or administration of trust accounts.

(27) To provide for matters relating to the listing of securities on the stock exchange and in particular -

- (a) to require that the requirements be met before securities may be listed on the stock exchange; and
- (b) to provide the procedure for dealing with applications for the listing of securities on the stock exchange; and
- (c) to provide for the cancellation of the listing of any specified securities on the stock exchange if the Commission's requirements for listing, or the requirements of the undertaking referred to in Paragraph (f), are not complied with, or where the Commission considers that such action is necessary to maintain an orderly market in Papua New Guinea; and
- (d) to provide the conditions subject to which, and the circumstances in which, the stock exchange shall suspend dealings in securities; and
- (e) to provide the procedure for, and the method of allotment of, any securities arising out of an offer for sale in respect of those securities; and
- (f) to require a corporation whose securities are listed or accepted for listing on the stock exchange to enter into such undertaking as may be required by the rules of the stock exchange, to provide such information at such times as may be specified, and to carry out such duties in relation to its securities as may be imposed in the undertaking.

(28) To provide for the supply to the Commission of such information under Part XI of this Act.

(29) To provide for the authorisation of any person who maintains within Papua New Guinea a register of members of a corporation whose securities are listed on the stock exchange and the requirements to which such person shall comply with.

(30) To provide for the borrowing in the ordinary course of business by a holder of a capital market licence who carries on the business of dealing in securities as the Commission may consider necessary or appropriate in the public interest or for the protection of investors.

(31) To provide for returns or information or otherwise, to be supplied by a stock exchange, derivatives exchange, approved clearing house, licensed persons or corporations whose securities are listed on a stock exchange or directors or officers thereof, to the Commission.

(32) To provide for the operation or administration of, or any other matter whatsoever relating to, the compensation fund or fidelity fund.

(33) To provide for all matters relating to the lending and borrowing of securities and the persons involved in such lending and borrowing.

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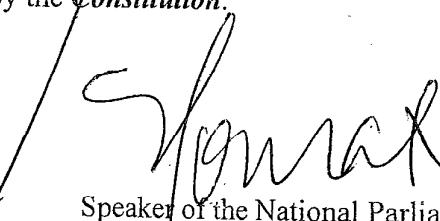
- (34) To require a corporation which has any of its securities quoted on a stock market of a stock exchange to comply with such accounting standards or to disclose such information as the Commission thinks necessary.
- (35) To prescribe the fees to be paid in respect of any matter or thing required for the purposes of this Act.
- (36) To provide for all matters relating to proposals referred to in Section 118(3).
- (37) To provide for all matters relating to the settlement of disputes involving securities, derivatives or involving clients of a holder of a capital market licence.
- (38) To provide for the procedure and manner of registration or lodgments of any instrument or document required to be registered or lodged with the Commission.
- (39) To prescribe the principles and rules governing the conduct of all persons or parties involved in a take-over offer, merger or compulsory acquisition.
- (40) To prescribe the standards and conduct of trustees approved under Parts IV and V and registered persons other than registered persons specified in Part I of Schedule 4.

I hereby certify that the above is a fair print of the *Capital Market Act 2015* which has been made by the National Parliament.


Acting Clerk of the National Parliament.

06 DEC 2017

I hereby certify that the *Capital Market Act 2015* was made by the National Parliament on 27 October 2015, by an absolute majority as required by the *Constitution*.


Speaker of the National Parliament.

06 DEC 2017