

CHAPTER 318A

SECURITIES

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CHAPTER 318A**SECURITIES**

2001-13.

An Act

- (a) *to establish a securities commission;*
- (b) *to make better provision for the regulation of the securities market and the capital market;*
- (c) *to make better provision for the protection of investors; and*
- (d) *to provide for related matters.*

[2nd August, 2001] Commence-
ment.**PRELIMINARY***Citation*

1. This Act may be cited as the *Securities Act*. Shorttitle.

Interpretation

2. (1) In this Act, Definition.

"associate", where used to indicate a relationship with any person,
means

- (a) an issuer of securities which the person beneficially owns or controls, directly or indirectly voting securities entitling the person to more than 10 per cent of the voting rights attached to voting securities of the issuer for the time being outstanding

- (i) under all circumstances; or
- (ii) by reason of the occurrence of an event that is continuing;
- (b) a partner of the person acting on behalf of the partnership of which they are partners;
- (c) a trust or estate in which the person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;
- (d) a spouse or child of the person; and
- (e) any other relative of the person or of his spouse if that relative has the same residence as the person;

"association of securities companies" means an organisation of members comprising securities companies that

- (a) supervises its members to ensure compliance with this Act;
- (b) regulates the conduct of its members or of any other person in the securities market; or
- (c) regulates the entry of any person into, or the prices for services in, the securities market;

Cap. 308. "Barbados Stock Exchange", means the Barbados Stock Exchange incorporated under the *Companies Act* and having the powers and rights referred to in section 24;

"beneficial ownership" includes ownership through a trustee, legal representative, agent or other intermediary;

"book entry" or "book entry accounting" means the process of effecting settlement of securities transactions, without the physical transfer of securities, by way of a computerised accounting system;

"broker" means a person engaged in the business of effecting transactions in securities for the account of others;

"call"

- (a) means an option to demand delivery of a specified number or amount of securities at a fixed price within a specified time;
- (b) but does not include an option or right to acquire securities of the issuer, or an affiliate of the issuer, that granted the option or the right to acquire;

"Central Bank" means the Central Bank of Barbados established by the *Central Bank of Barbados Act*;

Cap. 323C.

"clearing agency" means a person that

- (a) acts as an intermediary in paying funds or delivering securities, or both, in connection with sales in securities; and
 - (b) provides facilities for the clearing of trades in securities;
- but does not include a securities company or financial institution acting exclusively in the ordinary course of its customary business unless the Commission prescribes otherwise;

"Commission" means the Securities Commission established by section 3;

"Commissioner" means a member of the Commission;

"control" means the possession, whether directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities or otherwise;

"Court" means the High Court;

"dealer" means a person engaged in the business of buying and selling securities for his own account;

"Depository" means the Barbados Central Securities Depository Inc. a company incorporated under the *Companies Act*;

Cap. 308.

"distribution", where used in relation to trading in securities,

(a) means

- (i) a sale of a security by or on behalf of the issuer of the security that has not been previously issued;
 - (ii) a sale of a previously-issued security purchased from the issuer or an underwriter of the security, other than a security of a reporting issuer that was purchased by a seller less than 180 days before the sale, or such other period as the Commission may prescribe under section 13(e);
 - (iii) a sale of a previously-issued security from the holdings of a person or prescribed group of persons if the aggregate holding of the securities of that class by that person or group
 - (A) enables the person or group to exercise control over the management and policies of the issuer in any manner; or
 - (B) exceeds 20 per cent of the outstanding voting securities of the issuer;
 - (iv) a sale of previously-issued securities from the holdings of a sophisticated purchaser as defined in section 61 or of a prescribed group of persons, if the aggregate number or amount of securities exceeds the number or amount prescribed by the Commission; and
- (b) includes a trade involving a purchase and sale, or repurchase and resale, of a security in the course of, or incidental to, a sale of securities mentioned in paragraph (a)(i) to (iv);

"equity security"

(a) means a security carrying voting rights

- (i) under all circumstances; or

(ii) by reason of the occurrence of an event that is continuing; and

(b) includes a right, other than a call, to acquire such a security;

"expert" means an attorney-at-law, actuary, accountant, valuator or any other person whose profession or reputation gives authority to a statement made by him;

"file" means file with the Commission;

"filing" means the submission of a document or instrument to the Commission pursuant to a requirement of this Act, other than the submission of a document or instrument pursuant to an investigation;

"financial institution" means a company licensed under the *Financial Institutions Act*; Cap. 324A.

"former Act" means the *Securities Exchange Act* repealed by this Act; Cap. 318A.

"former Securities Exchange" means the Securities Exchange of Barbados established by the former Act;

"free capital" means capital which is unencumbered and which is separately held in such form, and only for such purposes, as the Commission may prescribe;

"insider" means

(a) an issuer in respect of its securities;

(b) an affiliate of an issuer;

(c) a director, officer or employee of an issuer;

(d) a person who beneficially owns more than 10 per cent of the equity securities of an issuer or who exercises control or direction over more than 10 per cent of the votes attached to the securities of an issuer;

(e) any person whose relationship to the issuer gives him access to a material confidential fact; and

- (f) a person who is informed of a material confidential fact by a person described in paragraphs (a) to (e) and who has knowledge that the informant is an insider;

"investment adviser" means a person engaging in, or holding himself out as engaging in, the business of advising another with respect to investment in, or the purchase or sale of, securities;

"issuer" means a person that has securities outstanding or issues, or proposes to issue, a security;

"market actor" means a person registered or deemed to be registered under section 46;

"material change", where used in relationship to the affairs of an issuer,

- (a) means a change in the business operations, assets or ownership of the issuer that would reasonably be expected to have a significant effect on the market price or value of the securities of the issuer; and

- (b) includes a decision to implement such a change made by the directors of the issuer;

"material fact", where used in relation to securities issued or proposed to be issued, means

- (a) a fact that significantly affects or could reasonably affect the market price or value of those securities;

- (b) a fact that a reasonable investor takes into account or ought to take into account when making an investment or voting decision;

"Minister" means the Minister responsible for Finance;

"misrepresentation" means

- (a) an untrue statement of a material fact; or

- (b) an omission to state a material fact that is required to be stated or is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it is made;

"offer to the public", in relation to any security, means any offer to the public at large or to any section of the public, whether selected as clients of persons issuing the prospectus or in any other manner by way of advertisement or other form of solicitation;

"order" means, unless a contrary intention appears, an order of the Commission or a self-regulatory organisation;

"participant" means a person for whom a blocked account has been established who receives services from a clearing agency, other than exclusively,

- (a) through another person; or
- (b) as a
 - (i) pledgee;
 - (ii) judgment creditor; or
 - (iii) beneficial owner;

"prescribe" means prescribe by regulations of the Commission;

"public company" means a company any of whose issued securities are or were part of a distribution, or an offer, to the public;

"public information" means information which is disclosed

- (a) in a filing;
- (b) by means of an announcement or notification in a newspaper published daily or other public media; or
- (c) by means of another form of publicity that is likely to bring it to the attention of a reasonable investor, within a reasonable time for it to be generally disseminated to investors or within such time as the Commission may prescribe under section 13(e);

"purchase"

(a) includes

- (i) any purchase or acquisition of a security for valuable consideration, whether the terms of payment are on margin, instalment or otherwise;
- (ii) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing; but

(b) does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a *bona fide* debt;

"put" means an option that gives the holder the right to sell a specified number or amount of securities at a fixed price within a specified time;

"records" means

- (a) accounts, correspondence, memoranda and any other data or information relating to the property or affairs of a person; or
- (b) data or information prepared or maintained in a bound or loose-leaf form or in a photographic film form or entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written or other visual form within a reasonable time;

"registrant" means a person registered under this Act;

"regulation" means a regulation made by the Minister under section 126;

"relative", in relation to a person means

- (a) a spouse or child;

- (b) a parent, grandparent, brother, sister or the spouse of such person;
- (c) a son-in-law or a daughter-in-law; or
- (d) a step-child;

"reporting issuer" means an issuer that has filed a registration statement under section 58 and has not been the subject of an order of the Commission altering its status as a reporting issuer;

"right to acquire a security" means

- (a) a security currently convertible into another security;
- (b) a security carrying a warrant or right to acquire another security; or
- (c) a currently exercisable option, warrant or right to acquire another security or security specified in paragraph (a) or (b);

"sale"

- (a) includes
 - (i) any sale or disposition of a security for valuable consideration, whether the terms of payment are on margin, instalment, or otherwise;
 - (ii) any act, advertisement, conduct or negotiation directly or in directly in furtherance of any of the foregoing; but
- (b) does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a *bona fide* debt;

"Secretary" means the Secretary appointed under section 16;

"securities company"

- (a) means a company that carries on a business of trading in securities in its own interest or on behalf of others; and

- (b) without affecting paragraph (a), includes a company which carries on business as
- (i) a broker;
 - (ii) a dealer;
 - (iii) an underwriter;
 - (iv) an adviser as to the value of securities or as to investing in purchasing or selling securities; or
 - (v) any combination of 2 or more of the persons mentioned in paragraphs (i) to (iv);

"securities register" means a record or records maintained by or on behalf of an issuer, in which the securities issued by it are recorded showing, with respect to each class or series of securities,

- (a) the name and address of each security holder of the issuer;
- (b) the number of securities held by each security holder; and
- (c) the date and particulars of the issue and transfer of each security;

"security"

- (a) means any document evidencing ownership or any interest in the capital or debt, property, profits, earnings or royalties of any enterprise or proposed enterprise; and
- (b) without affecting paragraph (a), includes any
 - (i) bond, debenture, note or other evidence of indebtedness;
 - (ii) share, stock, unit, unit certificate, participation certificate or certificate of share or interest;
 - (iii) instrument commonly known as a security;

-
- (iv) investment contract, that is to say, an investment by a person in a common enterprise with a reasonable expectation of profits derived substantially from the entrepreneurial or managerial effort of other persons;
 - (v) instrument or document constituting evidence of any interest or participation in
 - (A) a profit-sharing agreement;
 - (B) a trust;
 - (C) an oil, natural gas or mining lease, claim or royalty or other mineral right; or
 - (vi) a right to acquire or dispose of anything specified in paragraphs (i) to (v); but
- (c) does not include
- (i) currency;
 - (ii) a cheque, bill of exchange or bank letter of credit;
 - (iii) a certificate or document constituting evidence of any interest in a deposit account with
 - (A) a financial institution;
 - (B) a credit union within the meaning of the *Co-operative Societies Act*;
 - (C) an insurance company;
 - (iv) a contract of insurance issued by an issuer;

Cap. 378A.

"self-regulatory organisation" means a body that has autonomous rule-making and disciplinary powers over its members and includes

- (a) an association of securities companies, a clearing agency, a central securities depository or a stock exchange; and
- (b) the Barbados Stock Exchange;

"senior officer" means

- (a) the chairman or vice-chairman of the Board of Directors, the managing director, the deputy managing director, the president, the vice-president, the secretary, the treasurer, the financial controller, the general manager or the deputy general manager of a company or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office, by whatever name called; and
- (b) each of the 5 highest-paid employees of an issuer, including any individual referred to in paragraph (a);

"settlement" means the completion of a transaction whereby securities and corresponding funds are delivered and credited to an appropriate account;

"stock exchange"

- (a) means a person who maintains or provides
 - (i) physical facilities where persons may meet to execute trades in securities; or
 - (ii) a mechanical, electronic or other system that facilitates execution of trades in securities by matching offers of purchase and sale; and
- (b) includes
 - (i) a clearing agency; and
 - (ii) the Barbados Stock Exchange;

"subsidiary" means an issuer that is owned or controlled by another issuer;

"trade" or "trading" includes

- (a) any sale or purchase of a security;

- (b) any participation as a dealer, trader, broker, underwriter or agent in any transaction in a security;
- (c) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any activity referred to in paragraphs (a) and (b);

"trader" means an individual employed by a broker to participate in any trade in securities;

"underwriter"

- (a) means a person who
 - (i) as principal, agrees to purchase a security for the purpose of a distribution;
 - (ii) as agent, offers for sale or sells a security in connection with a distribution; or
 - (iii) participates directly or indirectly in a distribution referred to in paragraph (a) or (b) for consideration, but
- (b) does not include
 - (i) a person whose interest in the transaction is limited to receiving the usual and customary distribution or sales commission payable by an underwriter or issuer; or
 - (ii) a company that purchases shares of its own issue and resells them;

"voting security" means a security carrying voting rights

- (a) under all circumstances; or
 - (b) by reason of the occurrence of an event that is continuing.
- (2) For the purposes of this Act,

- (a) an issuer is affiliated with another issuer if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and
- (b) if 2 issuers are affiliated with the same body corporate at the same time, they are affiliated with each other.

PART I

THE SECURITIES COMMISSION

Establishment, Functions and Powers

Establishment of the Commission. Schedule.

- 3.** (1) The Securities Commission is established by this Act.
- (2) The *Schedule* has effect with respect to the constitution of the Commission and otherwise in relation thereto.

Functions of the Commission.

- 4.** The functions of the Commission are to
- (a) advise the Minister on all matters relating to the Commission and the securities market;
 - (b) maintain surveillance over the securities market and ensure orderly, fair and equitable dealings in securities;
 - (c) register, authorise or regulate, in accordance with this Act, self-regulatory organisations, securities companies, brokers, dealers, traders, underwriters, issuers and investment advisers, and control and supervise their activities with a view to maintaining proper standards of conduct and professionalism in the securities business;
 - (d) oversee the administration of any contingency fund referred to in section 41;
 - (e) protect the integrity of the securities market against any abuses arising from improper practices;

- (f) create and promote such conditions in the securities market as may seem to it necessary, advisable or appropriate to ensure the orderly growth and development of the capital market;
- (g) protect investors by preventing insider trading, market manipulation and the dissemination of false or misleading information.

5. (1) In exercise of its functions under this Act the Commission may

Powers of
the
Commis-
sion.

- (a) deal with such matters as may be referred to it by any person having an interest and who may be aggrieved
 - (i) by anything done under this Act; or
 - (ii) by the conduct of any person regulated under this Act;
- (b) formulate principles for the guidance of the securities industry;
- (c) establish a minimum capital requirement for appropriate classes of market participants;
- (d) monitor the solvency of registrants and take measures to protect the interest of customers where the solvency of any such registrant is in doubt;
- (e) adopt measures to prevent or minimise any conflict of interests that may arise in the case of brokers or dealers and to supervise the resolution of any such conflict;
- (f) regulate, approve and review take-overs, amalgamations and all forms of business combinations in accordance with this Act or any other enactment, in all cases in which it considers it expedient or appropriate as they relate to public companies;
- (g) approve the contents of prospectuses, offering circulars or any form of solicitation, advertisement or announcement by which securities are offered for sale to the public;

- (h) take action against persons registered under this Act for failing to comply with this Act or regulations made under this Act;
- (i) undertake such other activities as are necessary or expedient for giving full effect to this Act;
- (j) do all such other things as may be necessary or expedient or are incidental or conducive to the discharge of any of its functions and powers under this Act.

(2) Where the Commission takes any disciplinary action against a financial institution or any other institution that falls under the supervision of the Central Bank or an employee of any such institution, the Commission shall forthwith inform the Central Bank of the disciplinary action so taken.

Delegation
of powers.

6. (1) The Commission may, by order, delegate any power or function conferred on it by this Act, except the powers to make by-laws and to hear appeals, to any self-regulatory organisation registered with the Commission under this Act or to any senior officer of the Commission.

(2) A delegation pursuant to subsection (1) does not preclude the exercise by the Commission of any power or function so delegated.

(3) All decisions made, and minutes of all meetings held, by a delegate under subsection (1) shall be recorded in writing.

(4) A delegate shall forthwith notify the Commission of every decision made by him.

(5) The Commission may, on its own motion, review a decision made by a delegate and, where it intends to do so, the Commission shall, within 30 days of the decision, notify the delegate and the person directly affected by the decision of the date, time and venue of the hearing to review the decision.

(6) A person aggrieved by a decision of a delegate may, within 14 days of the decision, apply to the Commission for a review of that decision.

(7) Within 7 days of the receipt of an application under subsection (6), the Commission shall notify the applicant and the delegate of the date, time and venue of the hearing to review the decision.

(8) Pending the review of a decision, the Commission may, on the application *ex parte* of the applicant, grant a stay of the decision under review and shall notify forthwith the delegate of any stay so granted.

(9) Upon reviewing a decision, the Commission may vary or confirm the decision under review or make such other decisions as it considers proper.

7. No action or other proceeding for damages shall be instituted against a Commissioner or an employee or agent of the Commission for an act done in good faith in the performance of a duty or in the exercise of a power under this Act.

Protection
of Commis-
sioners,
employees
or agents.

8. (1) No Commissioner or other person employed or retained by the Commission shall make use, either directly or indirectly, of any confidential information obtained as a result of his relationship with the Commission for his own benefit or advantage.

Confidenti-
ality.

(2) No person specified in subsection (1) shall disclose confidential information obtained as a result of his relationship with the Commission to any person other than

(a) an authorised official of the Government of Barbados; or

(b) the duly authorised representative of the Government of another country,

in connection with the enforcement of this Act or any other law of Barbados.

(3) A person who receives confidential information from a person specified in subsection (1) is subject to the provisions of this section as if he were a person specified in subsection (1).

(4) A person who contravenes subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine of \$50 000 and to imprisonment for 12 months.

Committees. **9.** (1) Subject to subsection (3), where under this Act or any other enactment the Commission is empowered or required to perform any function, the Commission may, by resolution, appoint a committee for the purpose of doing any thing required or deemed expedient or necessary for the purpose of performing such function; and the performance by the committee of any such thing shall be deemed to have been done and performed by the Commission.

(2) Without prejudice to the generality of subsection (1) and subject to subsection (3), where any function which requires an investigation, hearing, adjudication or decision which might lead to the taking of any disciplinary measure against any person or the imposition of any penalty or order for the payment of any money by or to any person, is by this Act assigned to the Commission, such investigation or hearing may be conducted by a committee appointed under this section and shall be as fully, duly and validly conducted as if conducted by the Commission.

(3) A committee appointed under this section shall, upon the completion of the function for which it was appointed, report in writing to the Commission thereon.

Declaration of interest. **10.** (1) A Commissioner who is in any way, whether directly or indirectly, interested in a matter before the Commission shall declare his interest to the Commission.

(2) The Commission, excluding the Commissioner whose interest is being considered, shall determine whether this interest is sufficiently material as to constitute a conflict of interest.

(3) Where the Commission determines that the interest of a Commissioner is such as to constitute a conflict of interest, the Commissioner shall not take part in any deliberations on that matter, and shall not be present during such deliberations.

(4) For the purposes of this section, a Commissioner shall be deemed to have an interest in a matter if he or his spouse or his nominee is a shareholder or partner in, or an officer of, a company or other body of persons having an interest in or being involved in a matter before the Commission.

(5) Any person who fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine of \$10 000, unless he proves that he did not know that he had an interest in the matter which was the subject of consideration at the meeting.

(6) A person convicted of an offence under this section shall be disqualified to sit on the Commission.

11. (1) The Commission shall consult and co-operate with the Central Bank or any other agency that exercises regulatory authority under an enactment over a financial institution, insurance company or other body in order to minimize duplication of effort and to maximize the protection of investors.

Consultation with Central Bank of Barbados and other agencies.

(2) The Commission may co-operate with an agency of a foreign government in connection with the investigation of a contravention of this Act or any similar written law whether the activities in question occurred within or outside Barbados.

(3) The Commission may co-operate in the work of national, regional or international organisations dealing with the regulation of securities markets.

12. (1) The Commission shall, within 4 months after the end of the financial year, send an annual report to the Minister, who shall cause it to be laid in Parliament within 30 days after he receives it or, if Parliament is not then sitting, forthwith upon the resumption of the parliamentary session.

Annual report.

(2) The Commission shall make copies of the annual report available to the public within 14 days after it is laid in Parliament under subsection (1).

Rules.

13. The Commission may make rules

- (a) respecting any matter relating to the organisation, assignment of staff, administration, procedure or practice of the Commission;
- (b) respecting the calling of and conduct of meetings of the Commission;
- (c) respecting procedures for the initiation and holding of hearings by the Commission;
- (d) prescribing the procedure for appeals and review of orders of its delegates and self-regulatory organisations;
- (e) with the approval of the Minister, establishing a code of conduct governing the activities of Commissioners and the officers and employees of the Commission in order to avoid conflicts of interest and other practices that the Commission considers undesirable.

Staff

Appoint-
ment of
General
Manager.

14. The Commission shall appoint a General Manager, who shall hold office on such terms and conditions as the Minister approves.

Appoint-
ment of
experts.

15. (1) The Commission may appoint, on such terms and conditions as the Minister approves, such experts as it considers necessary to assist it in such manner as it determines.

(2) Where the Commission appoints an expert to advise it on the development of specified policies, rules or other regulatory proposals of the Commission or any person concerned in the trade of securities, the expert shall formulate and report his views to the Commission in writing and the Commission may, if it thinks fit, make them available to the public.

16. (1) The Commission may appoint, on such terms and conditions as the Minister approves, a Secretary and such other officers and employees as it considers necessary or appropriate for the efficient performance of its functions.

Appoint-
ment of
other staff.

(2) Notwithstanding subsection (1), no post shall be established, and no remuneration in excess of such amount as the Minister may determine and may notify in writing to the Commission shall be assigned to any post, without the prior approval of the Minister.

(3) The Secretary and every officer and employee of the Commission shall as a condition of his employment undertake in writing, in such form as the Commission prescribes, to keep secret all information received by him in the performance of his duties or because of his connection with the Commission.

17. Where a public officer is seconded from a pensionable office within the meaning of section 2(1) of the *Pensions Act* to perform any service with the Commission, his service shall, unless the Governor-General otherwise decides, count for pension under that Act as if the officer had not been so seconded or transferred.

Preservation
of pension
rights of
seconded
officers.
Cap. 25.

Finances of Commission

- 18.** The funds and resources of the Commission shall comprise
- (a) such moneys as may be appropriated by Parliament for the purpose;
 - (b) all fees and other moneys falling due to the Commission in respect of its operations;
 - (c) all other moneys or property that may in any manner become payable to the Commission.

Funds and
resources of
the
Commis-
sion.

19. For the purpose of carrying out its functions, the Commission may, with the prior approval in writing of the Minister,

Financial
powers.

- (a) charge fees for any service provided;

- (b) charge registration fees; and
- (c) charge fees for transactions effected by a self-regulatory organisation.

Application
of funds.

20. The funds of the Commission shall be applied to the following:

- (a) the payment of remuneration, fees and allowances of the members of the Commission;
- (b) the payment of salaries, fees, allowances, advances, loans, gratuities, pensions and other payments to the staff of the Commission;
- (c) the discharge of capital and operating expenses, including maintenance and insurance of any property of the Commission;
- (d) the defraying of any other expenditure authorised by the Commission in the discharge of its functions and contractual obligations.

Cash
deposits and
payments.

21. (1) All moneys of the Commission accruing from its operations under the Act shall be paid into an account at a bank appointed by the Commission, and such moneys shall as far as practicable be paid into the account daily.

(2) All payments made out of the funds of the Commission shall be made by the person assigned by the Commission pursuant to the rules made under section 13.

Accounts
and audit.

22. (1) The Commission shall keep proper accounts of

- (a) all moneys received and expended by the Commission and shall record the matters in respect of which such moneys have been received and expended; and
- (b) the assets and liabilities of the Commission.

(2) Where assets are held upon any special trust, the receipts and expenditure relating to such trust shall be kept in an account separate and apart from all other receipts and expenditure.

(3) All accounts shall be kept in the principal office of the Commission for a period of 6 years after the last entry therein, and shall be open to inspection by Commissioners and by the auditors.

(4) Within 4 months after the end of each financial year, the Commission shall cause to be prepared in respect of that year, financial statements containing

- (a) an account of the revenue and expenditure of the Commission;
- (b) a balance sheet;
- (c) a report setting out the activities of the Commission; and
- (d) such other accounts as the Commission may require.

(5) Accounts prepared in accordance with this section shall

- (a) be audited by an auditor who is a member in good standing of the Institute of Chartered Accountants of Barbados and who is appointed by the Commission with the approval of the Minister; and
- (b) be signed by the Chairman and not fewer than 2 other Commissioners.

(6) The Secretary shall cause copies of the signed accounts to be sent to every member of the Commission and to the auditor.

(7) The Minister shall cause copies of the signed accounts to be laid before Parliament.

(8) The Minister may at any time request the Commission to provide him with information concerning any aspect of its administration of this Act, and the Commission shall provide the information requested within 14 days.

PART II

THE BARBADOS STOCK EXCHANGE AND THE CENTRAL
SECURITIES DEPOSITORY INC.*The Barbados Stock Exchange*

Transfer and
vesting of
property and
assets.

23. Upon 2nd August, 2001, all the property and assets vested in or held by the former Securities Exchange

- (a) are transferred to and vested in the Barbados Stock Exchange and shall be managed and administered by the Barbados Stock Exchange;
- (b) are, by virtue of this Act and without further assurance, transfer or other formality, to be held by the Barbados Stock Exchange for the same estate and interest and to the same extent and in the same manner as the property and assets were vested in or held by the former Securities Exchange before 2nd August, 2001; and
- (c) all moneys standing immediately before 2nd August, 2001 to the credit of the former Securities Exchange are transferred to and vested in the Barbados Stock Exchange.

Rights,
powers,
privileges,
authorities
and
liabilities.

24. (1) All rights, powers, privileges and authorities that, immediately before 2nd August, 2001 were vested in or exercisable by the former Securities Exchange are, with effect from 2nd August, 2001 vested in and exercisable by the Barbados Stock Exchange.

(2) All liabilities incurred by or on behalf of the former Securities Exchange in respect of its functions under the former Act and subsisting immediately before 2nd August, 2001 have, from 2nd August, 2001, effect as if they had been incurred by the Barbados Stock Exchange.

- (3) Without affecting subsection (1) or (2),

- (a) any contract made by or on behalf of the former Securities Exchange before 2nd August, 2001 shall, upon 2nd August, 2001 be deemed to have been made by or on behalf of the Barbados Stock Exchange and shall be construed with such modifications and adaptations as might be necessary to give effect to this section;
- (b) all civil proceedings begun before 2nd August, 2001 in any court in Barbados by or against the former Securities Exchange may be continued by or against the Barbados Stock Exchange, and process in those proceedings may be amended accordingly.

25. (1) Subject to this Act, the officers and other employees who, immediately before 2nd August, 2001 were members of the staff of the Securities Exchange of Barbados established by the former Act shall, upon 2nd August, 2001 comprise the staff of the Barbados Stock Exchange.

Staff of Exchange and preservation of pension rights.

(2) Where a person referred to in subsection (1) had occupied a pensionable office with the Securities Exchange of Barbados immediately before 2nd August, 2001, his service shall otherwise count for pension under this Act as if the officer had not been so transferred.

26. For the purposes of this Act, the rules and by-laws of the former Securities Exchange shall collectively be the rules of the Barbados Stock Exchange and

Rules of the Barbados Stock Exchange.

- (a) shall be deemed to have been made under this Act; and
- (b) shall be construed, *mutatis mutandis*, for the purpose of giving effect to this Act.

27. The Barbados Stock Exchange is deemed to be duly registered under this Act as a self-regulatory organisation.

Registration of Barbados Stock Exchange.

28. (1) The Central Securities Depository Inc. is deemed to be duly registered under this Act as a self-regulatory organisation.

Establishment of Depository.

- (2) The Central Securities Depository Inc. shall
- (a) act as a custodian for the deposit of physical securities;
 - (b) perform the function of settlement of securities transactions;
 - (c) maintain and operate a computerised book entry security and cash delivery system;
 - (d) maintain fund accounts for members and execute the transactions concerning payments to or from such fund accounts;
 - (e) act as a transfer agent for an issue in respect of a public issue;
 - (f) maintain records of
 - (i) trades of securities for the purpose of settling claims for money and securities;
 - (ii) transfers and pledges of securities for the purpose of permitting securities to be transferred by book entry;
 - (g) hold security certificates deposited with it for the purpose of permitting securities to be transferred by book entry;
 - (h) undertake the delivery or book entry transfer of securities against simultaneous payment in accordance with the instructions of its members;
 - (i) collect and distribute dividends, interest and redemption moneys on securities holdings on behalf of and for the account of members; and
 - (j) function as a nominee for eligible registered securities on behalf of its members.

PART III

SELF-REGULATORY ORGANISATIONS

29. (1) No person shall carry on business as a stock exchange, clearing agency or a securities depository or carry on activities as a member of an association of securities companies unless registered as a self-regulatory organisation under this Act.

Registration of self-regulatory organisation.

(2) Application for registration pursuant to subsection (1) shall be made to the Commission in such form as may be prescribed.

30. A person shall not be registered as a self-regulatory organisation unless that person

Characteristics of self-regulatory organisation.

(a) proposes to engage in the securities business;

(b) is a body corporate;

(c) is incorporated or registered in Barbados; and

(d) has a body of rules, approved by the Commission, for the governance of its members.

31. (1) Within 7 days after receipt of an application for registration as a self-regulatory organisation, the Commission shall publish in a daily newspaper circulating in Barbados, a notice

Processing of applications.

(a) stating the persons who have applied for registration;

(b) stating the date for the determination of the application; and

(c) inviting any person having a legitimate interest in the matter to make an objection in writing in respect of the registration.

(2) Subject to subsections (3) and (4), the Commission shall grant an application for registration.

(3) Subject to subsection (5), the Commission shall refuse an application for registration where

(a) the applicant is not organised in a manner or does not have the capacity and resources that enable it to comply with this Act or to enforce compliance by its members and their employees with its rules; or

(b) the rules of the applicant do not comply with section 32.

(4) The Commission may refuse an application for registration if the applicant or a director or officer of the applicant would be refused registration under Part III.

(5) The Commission may grant provisional registration of an application for registration subject to the compliance of the applicant with any requirement of the Commission that the applicant changes its rules to ensure its fair administration or to make the rules conform to the requirements of, or otherwise further the purposes of, this Act.

(6) In considering whether to grant an application for registration, the Commission shall, in particular, take into account the rules of the applicant that relate to

(a) conditions of entry into the securities market through membership in the applicant or otherwise;

(b) the structure or form of a member or participant;

(c) the quantity or quality of services furnished by a member or participant;

(d) any type of restraint on competition; and

(e) prices, fees or rates charged by members of the applicant for services.

(7) The Commission may, subject to any conditions it may impose, accept a voluntary surrender of a registration.

Obligatory
rules.

32. (1) The rules of an applicant for registration as a self-regulatory organisation shall contain provisions

(a) for the protection of investors and the public interest;

-
- (b) for fostering co-operation and co-ordination among persons who clear, settle, regulate or process information about and facilitate trade in securities;
 - (c) ensuring fair representation of its members in the administration of its affairs;
 - (d) for an equitable allocation of reasonable fees and charges among persons who use its facilities;
 - (e) relating to the disciplining of a member or employee of a member who contravenes its rules or this Act, including provisions for censure, fine, suspension, expulsion, limitation of activities, functions or operations and suspension of or exclusion from employment;
 - (f) specifying the procedure required by section 36 in respect of disciplinary proceedings, denial of membership, exclusion from employment or denial or limitation of access to services furnished by it or its members;
 - (g) addressing customer complaints;
 - (h) determining minimum financial standards;
 - (i) establishing a surveillance programme to ensure that standards are met;
 - (j) establishing proper accounting and auditing programmes and ensuring compliance with such programmes; and
 - (k) establishing record-keeping procedures and procedures for compliance therewith.
- (2) Without prejudice to subsection (1), the rules of an applicant for registration as a securities exchange or association of securities companies shall contain provisions designed
- (a) to prevent deceptive and manipulative acts and practices, to promote fair trading practices and to facilitate an efficient market; and

- (b) to ensure, subject to section 31(3)(a), that a securities company may become a member of the Barbados Stock Exchange or an association.
- (3) The rules of an applicant for registration as a clearing agency shall contain provisions designed
 - (a) to develop and operate a prompt and accurate clearance and settlement system;
 - (b) to provide for book entry clearing and the settlement of transactions in a financially secure environment;
 - (c) to safeguard money and securities in its custody or under its control or for which it is responsible; and
 - (d) to provide, subject to section 36, that a securities company, a financial institution, another clearing agency or a person or class of persons designated by the Commission may become a participant in the clearing agency.
- (4) The rules of an applicant for registration shall not
 - (a) permit unfair discrimination among persons who use its facilities; or
 - (b) restrain competition to an extent not necessary to achieve the objectives specified in subsections (1) to (3).

Procedure
on proposed
amendment
to rules.

33. (1) Where a self-regulatory organisation proposes to amend its rules, it shall file with the Commission a copy of the proposed amendment and a concise statement of its substance and purpose.

(2) Forthwith after receipt of a proposed amendment under subsection (1) the Commission shall, subject to subsection (5), publish in a daily newspaper a notice inviting any interested person to submit written comments on the amendment; and the cost of the publication shall be borne by the self-regulatory organisation.

(3) Subject to subsection (4), the Commission may make an order approving a proposed amendment to the rules of a self-regulatory organisation.

(4) The Commission may make an order refusing a proposed amendment to the rules of a self-regulatory organisation if

- (a) the organisation is not organised in a manner and would not have the capacity and resources to enforce compliance with its rules as amended;
- (b) the amended rules would not comply with section 32; or
- (c) the amended rules would be inconsistent with this Act.

(5) Where the Commission determines that a proposed amendment filed pursuant to subsection (1)

- (a) makes no material substantive change in an existing rule; or
- (b) relates exclusively to the administration of the organisation,

it may approve the amendment without providing an opportunity for a hearing pursuant to section 129.

34. (1) The Commission may make an order requiring a change in the rules of a self-regulatory organisation to ensure its fair administration or to make the rules conform to the requirements of, or otherwise further the purposes of, this Act.

Power of Commission to require change in rules.

(2) Where the Commission proposes to make an order pursuant to subsection (1), it shall publish and send to the organisation a notice that complies with section 129.

35. (1) A self-regulatory organisation shall not require its members to comply with a schedule of commissions or other fees for their services or limit in any way a member's income.

Control of commissions and fees for services.

(2) A self-regulatory organisation shall issue, from time to time, a notice to its members indicating what, in its opinion, is the market price, fee or rate charged for any particular service.

Conditions
for
membership.

36. (1) Subject to subsections (2) and (3), a self-regulatory organisation shall grant an application for membership or for approval as an employee of a member.

(2) A self-regulatory organisation may refuse membership or impose conditions on membership or prohibit or limit access to services furnished by it or its members to a person who

- (a) lacks the financial responsibility or operational capability required by its rules;
- (b) does not meet the criteria for membership specified in its rules;
- (c) does not carry on the type of business that its rules require a member to carry on; or
- (d) contravenes this or another similar Act or a rule of a self-regulatory organisation registered under this or another similar Act,

but it shall not refuse membership or impose conditions on membership to a person who carries on the type of business required by its rules on the basis of the volume of the required business or any other business that the person carries on.

(3) A self-regulatory organisation may prohibit employment by a member or impose conditions on such employment of, a person who lacks the training, experience or competence required by its rules.

(4) A self-regulatory organisation shall, before refusing membership or imposing conditions on such membership or before approving employment by a member and before disciplining a member or an employee of a member, comply with the procedures specified for orders under section 129(1), (4) to (7) and (10)(a) and (b).

(5) A self-regulatory organisation shall publish a decision concerning disciplining a member or an employee of a member unless the Commission directs otherwise.

(6) Subject to subsection (7), a self-regulatory organisation may, without holding a hearing as required by subsection (4)

(a) suspend

(i) a member who has been expelled or is under suspension from; or

(ii) an employee of a member who has been excluded or is under suspension from employment by the member by, another self-regulatory organisation that is registered under this or another similar Act;

(b) suspend a member if the organisation reasonably believes it necessary for the protection of investors, creditors, members or the organisation because of financial or operational difficulties of the member;

(c) suspend a participant who is in default of delivery of money or securities to a registered clearing agency; and

(d) prohibit or limit access to services furnished by it or its members to a person

(i) to whom paragraph (a), (b) or (c) applies;

(ii) who does not meet the criteria for access specified in its rules; or

(iii) where such action is necessary for the protection of investors, creditors, members or the organisation.

(7) Where a self-regulatory organisation acts in accordance with subsection (6), the organisation shall provide an opportunity for a hearing referred to in subsection (4) within 15 days of its decision; and the suspension, prohibition or limitation shall remain in effect until the hearing is completed.

Filing of
copy of
decision
with
Commis-
sion.

37. (1) Where a self-regulatory organisation makes a decision under section 36 refusing membership or imposing conditions on membership or prohibiting employment by a member or imposing conditions on the employment by a member, it shall at once file with the Commission a copy of the decision, the reasons therefor and any other information prescribed by the Commission.

(2) On an appeal or review of a decision made pursuant to section 36(2) or (3), the Commission shall affirm the decision if it finds that

- (a) the decision is in accordance with the rules of the organisation or this Act; or
- (b) any rule or this Act was applied in a manner that furthers the objectives specified in section 32,

but if it does not so find or finds that the decision restrains competition to an extent not necessary to achieve the objectives specified in section 32, it may set aside the decision or require the organisation

- (c) to admit the person affected to membership;
- (d) to permit the person to become an employee of a member;
- (e) to grant the person access to services furnished by it or its members; or
- (f) to take any other action not inconsistent with the objectives specified in section 32.

(3) On an appeal or review of a decision of a self-regulatory organisation disciplining a member or an employee of a member, the Commission may

- (a) affirm or modify the sanction imposed if it finds that the person disciplined contravened the rules of the organisation or this Act; or

(b) set aside the sanction imposed if it does not make a finding referred to in paragraph (a); and remand the matter to the organisation for further proceedings.

(4) On an appeal or review referred to in subsection (3), the Commission may set aside or modify the sanction imposed if it finds that it restrains competition to an extent not necessary to achieve the objectives specified in section 32.

(5) An order made by the Commission under subsection (3) or (4) setting aside or modifying a sanction does not affect the validity of any action taken by the organisation as a result of the sanction before the order was made, unless the action contravened this Act or the rules of the organisation.

38. (1) No self-regulatory organisation shall de-list a security admitted for quotation by it unless it obtains an order from the Commission authorising the de-listing and imposing, for the protection of investors, such conditions, if any as it thinks fit.

De-listing of securities.

(2) The Commission shall not refuse to authorise the de-listing of a security unless the de-listing is in breach of

(a) the rules of the self-regulatory organisation; or

(b) an agreement entered into by the issuer of the security.

39. (1) A self-regulatory organisation shall, subject to the approval of the Commission, appoint an auditor to audit its financial affairs.

Appointment of auditor.

(2) A self-regulatory organisation shall require each of its members to appoint an auditor who shall

(a) examine the member's financial affairs in accordance with the rules of the organisation; and

(b) report the results of the examination to the auditor of the organisation.

(3) An auditor appointed under subsection (1) or (2) shall be a member in good standing of the Institute of Chartered Accountants of Barbados.

(4) The auditor of a self-regulatory organisation shall furnish to the Commission on request a copy of a report received by him under subsection (2).

Keeping and
inspection of
records, etc.

40. (1) A self-regulatory organisation shall

- (a) make and keep such records in such form and for such periods as the Commission may prescribe;
- (b) file with the Commission any prescribed report in the prescribed form; or
- (c) disseminate to the public a report referred to in paragraph (b),

and shall upon request, in writing, furnish the Commission with a copy of, or an extract from, any prescribed record.

(2) The Commission may at any time authorise a person in writing to

- (a) inspect the records of a self-regulatory organisation and to examine the financial affairs of that organisation or any of its members; and
- (b) prepare such financial or other reports as the Commission requires.

(3) A self-regulatory organisation shall

- (a) produce and furnish a person authorised by the Commissioner under subsection (2) with a copy of any record referred to in subsection (1) or any other record that he reasonably requests; and
- (b) answer any question he asks concerning those records.

41. (1) A self-regulatory organisation shall maintain a contingency fund, in the manner prescribed by the Commission, to compensate customers for losses resulting from the insolvency, bankruptcy or default of a member of the organisation or of a registrant who contributes to the fund.

(2) A self-regulatory organisation shall file with the Commission in the manner prescribed every document that relates to the creation, administration and operations of the contingency fund.

(3) Where after consultation with the administrator of the contingency fund and the organisation referred to in subsection (1)

- (a) the Commissioner reasonably believes that the contingency fund does not contain sufficient assets to meet claims which may be made against the fund; and
- (b) the organisation fails to contribute or cause its members to contribute to the fund an increased amount sufficient to maintain the fund's assets at a level that the Commission believes to be reasonably necessary to pay claims against the fund,

the Commission may make an order requiring the organisation to contribute or collect from its members and other registrants who contribute to the fund such amount as is required for the fund to attain the level that the Commission believes necessary to pay the claims.

- (4) The administrator of the contingency fund shall at any time
- (a) permit a person authorised by the Commission in writing to inspect the record and assets of the fund;
 - (b) produce and furnish to that person any document or record that he reasonably requests; and
 - (c) answer any questions he asks concerning those records or assets.

(5) A self-regulatory organisation shall, subject to the approval of the Commission, appoint an auditor to audit the financial affairs of its contingency fund and, as soon as practicable after the end of its financial year, the administrator of the fund shall file with the Commission a report on the operations and financial conditions of the fund in such form and containing such information as the Commission may prescribe.

(6) Moneys held in the contingency fund in accordance with this section shall not be made available for payment of the debts or expenses of the self-regulatory organisation or its members, or be liable to be paid or taken in execution under an order or process of any court.

Sanctions
for Contra-
vention of
rules.

42. (1) Where a self-regulatory organisation

- (a) contravenes its rules or this Act;
- (b) is unable to comply with its rules or this Act;
- (c) fails or is unable to enforce its rules or a provision of this Act that it is required to administer or enforce;
- (d) fails to comply with an order of the Commission under section 34(1) or 41(3);
- (e) fails to observe standards of solvency prescribed by the Commission; or
- (f) finds that any one of its members is guilty of gross negligence or fraud,

the Commission may make an order in accordance with subsection (2).

(2) The order that the Commission may make pursuant to subsection (1) may provide for

- (a) censuring the organisation;
- (b) limiting its activities, functions or operations;

- (c) suspending or revoking its registration; or
- (d) the imposition of a penalty, not exceeding \$500 000.

(3) Where a director, officer or employee of a self-regulatory organisation contravenes the rules of the organisation or this Act, the Commission may make an order censuring him or suspending or removing him from office or employment with the organisation.

43. (1) Subject to subsection (3)

Complaints.

- (a) any person who is aggrieved by an act or dealing by a member of a self-regulatory organisation or by any other registered market actor may lodge a complaint in respect thereof to the Commission in writing addressed to the Chairman;
- (b) the Commission may investigate and adjudicate upon the complaint; and
- (c) section 133 shall have effect in relation to such investigation and adjudication.

(2) The Commission may upon such adjudication make such order as it thinks just, including an order for the payment by the member of the self-regulatory organisation or the registered market actor, as the case may be, of any sum by way of restitution or as compensation for any loss suffered by the complainant.

(3) Subject to subsection (4), where a person aggrieved as mentioned in subsection (1)(a) makes any complaint against a member of a self-regulatory organisation or registered market actor he shall, if the Commission proceeds to an adjudication upon it, be thereafter debarred and precluded from pursuing the complaint or making it the basis of any suit, action or proceeding in any court of law.

(4) A person shall not be debarred or precluded under subsection (3), unless he has, before the Commission proceeds to any hearing of and adjudication upon the complaint, been informed in writing to that effect.

Dispute
between
member
companies.

44. (1) Where a dispute involving transactions in securities arises between members of a self-regulatory organisation, such dispute shall be referred to the Board of the self-regulatory organisation, and the Board shall investigate the dispute, and shall make such order for the resolution of the dispute as it thinks fit.

(2) It shall be the duty of each of the parties to the dispute forthwith to inform the Commission in writing of the existence of the dispute and to deliver or cause to be delivered to the other party or parties to the dispute, within 24 hours of such notice to the Commission, a copy of the notice given to the Commission of the dispute.

(3) Where a member is aggrieved by the decision of the Board under subsection (1), the member may, within 14 days of the receipt of such decision, appeal to the Commission.

(4) Where the Commission adjudicates in a matter referred to it under subsection (3), the decision of the Commission shall be final and no appeal shall be brought in respect thereof.

(5) The Commission may, by any adjudication under this section, order the payment by any party to the dispute of any sum of money, including a sum to cover costs, as the justice of the case may in the opinion of the Commission require.

PART IV

REGISTRATION OF MARKET ACTORS

Registration
required for
membership
or licensing.

45. No self-regulatory organisation registered under this Act may admit to membership or grant a licence to any person who is not registered with the Commission under this Act.

Registration
to carry on
business.

46. (1) Subject to this Act, no person shall carry on business, or hold himself out, as

(a) a broker;

-
- (b) an investment adviser;
 - (c) a dealer in securities;
 - (d) a trader in securities;
 - (e) an underwriter of securities; or
 - (f) a securities company

unless registered as such with the Commission in accordance with this Act and, except in the case of an underwriter or an investment adviser, that person is the holder of a valid licence issued by a self-regulatory organisation.

- (2) Where an applicant
 - (a) has been certified by an institution approved by the Commission;
 - (b) is considered by the Commission to be suitable for registration in the capacity applied for; and
 - (c) pays the prescribed fee,

the Commission shall register the applicant and issue him a certificate of registration in the prescribed form.

(3) The Commission shall not refuse to register an applicant without giving the applicant an opportunity to be heard and, where the Commission refuses to register an applicant, it shall notify the applicant in writing of the reasons for so doing.

(4) The Commission shall maintain a register of all persons registered with the Commission.

- (5) The Commission shall
 - (a) by the 31st March of every year prepare a list of all valid registrants, by class of registration, which shall be published in the *Gazette*; and

(b) permit any person upon payment of the prescribed fee to inspect and to make extracts of any entry in the register referred to in subsection (4).

(6) Notwithstanding section 47 but subject to section 48, persons who immediately before 2nd August, 2001 were licensed as brokers under the former Act are deemed to be registered as brokers under this Act.

(7) Notwithstanding section 51(1) to (4) but subject to section 51(5), persons who immediately before 2nd August, 2001 were licensed as dealers under the former Act are deemed to be registered as traders under this Act.

(8) Notwithstanding section 53(1) and (2) but subject to section 53(3), persons who immediately before 2nd August, 2001 were registered as members of the Securities Exchange are deemed to be registered as securities companies under this Act.

(9) A person who is deemed to be registered under subsection (6), (7) or (8) shall, within 6 months of 2nd August, 2001, comply with the requirements of this Act and upon failure to do so shall cease to be registered, but shall be entitled to apply for registration whenever he is able to meet those requirements.

(10) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$100 000 and to imprisonment for 2 years.

Application
for
registration
as broker.

47. (1) Every application for registration as a broker shall be made to the Commission in the prescribed form and shall be accompanied by such fees as are prescribed.

(2) Every applicant for registration as a broker

(a) shall be of good character;

(b) shall not be an undischarged bankrupt;

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- (c) shall not have interests, direct or indirect, which may conflict with or be likely to affect the conduct and integrity of his business as a broker;
 - (d) shall not be a person who has been suspended from dealing on or expelled from the Stock Exchange or any other securities exchange;
 - (e) shall be a person who
 - (i) has been awarded a degree or professional qualification in economics, banking, law, accountancy, business administration or chartered secretaryship from a university or other educational institution recognised by the Commission; or
 - (ii) has at least 2 years' experience of work as a trader or in some other capacity in which he was actively associated with and involved in the stockbroking activities of a member company or member firm of a securities exchange in any country within the Commonwealth or the United States of America; and
 - (iii) has such other qualification as the Commission may prescribe.

(3) The recognition of the university or other educational institution from which an applicant referred to in this section has obtained any degree or professional qualification is within the discretion of the Commission.

- (4) Where an applicant wishes to be registered as a broker in
 - (a) equity securities only; or
 - (b) equity securities and other securities, or, as the case may be, other securities only,

he shall have such minimum free capital as may be prescribed.

(5) Subsection (4) does not apply to an applicant who is a director or officer of a securities company registered under Part III.

Suspension
or revoca-
tion of
registration
as broker.

48. (1) The Commission may suspend or revoke the registration of a broker

- (a) if he ceases to carry on the business of a broker;
- (b) if he has obtained his registration under this Act or the former Act by the concealment or misrepresentation of any fact which is, in the opinion of the Commission, material to his application for registration or to his suitability to be registered;
- (c) if his registration under this Act or the former Act has been made by mistake, whether the mistake was that of the broker himself or of the Commission or of the Securities Exchange or of any other person;
- (d) if he has defaulted in the payment of any moneys due to a self-regulatory organisation, the Commission or to any other market actor;
- (e) if a levy of execution in respect of him has not been satisfied;
- (f) if he fails to maintain the prescribed level of capitalisation;
- (g) if he is convicted of an offence involving fraud or dishonesty;
- (h) if he contravenes, or fails to comply with, any condition or restriction applicable in respect of his registration or this Act;
- (i) if he fails adequately to supervise or to conduct the activities of any person acting on his instructions or on his behalf; or
- (j) if he ceases to meet a requirement of section 47(2).

(2) Where a broker is charged with an offence involving fraud or dishonesty or where it is alleged that he has defaulted in the payment of moneys due to a self-regulatory organisation or to any other market actor, the Commission may, if it considers that it is in the public interest to do so, suspend the registration of the broker pending the final determination of the charge or allegation.

49. (1) Every application for registration as a dealer in securities shall be made to the Commission in the prescribed form and shall be accompanied by such fees as are prescribed.

Application
for
registration
as dealer.

(2) Every applicant for registration as a dealer

(a) shall, if an individual, be of good character;

(b) shall, if a company, be incorporated under the *Companies Act* or incorporated in any other Member State of the Caribbean Community and be registered under the *Companies Act*;

Cap. 308.

(c) shall not be an undischarged bankrupt;

(d) shall, if a company, not have a receiver or receiver manager appointed in respect of its undertaking;

(e) shall not have interests, direct or indirect, which may conflict with or are likely to affect the conduct and integrity of his business as a dealer in securities;

(f) shall not be a person who has been suspended from dealing on or expelled from the Stock Exchange or any other securities exchange;

(g) shall be an individual who or a company that has in his or its full time employment an individual, who

(i) has been awarded a degree or professional qualification in economics, banking, law, accountancy, business administration or chartered secretaryship from a university or other educational institution recognised by the Commission; or

(ii) has such other qualification as the Commission prescribes.

(3) Where a company is registered as a dealer, the individual described in subsection (2)(g) shall be responsible for the discharge of the company's obligations in relation to its operations as a dealer.

- (4) Where an applicant wishes to be registered as a dealer in
- (a) equity securities only;
 - (b) equity securities and other securities, or, as the case may be, other securities only,

he shall have with respect to such registration

- (i) in the case of a company, such minimum paid up capital;
- (ii) in the case of an individual, such minimum free capital;

as may be prescribed.

(5) For the purposes of this section and section 52 "Caribbean Community" means the Caribbean Community established by the Treaty signed at Chaguaramas on the 4th July, 1973.

Suspension
or revoca-
tion of
registration
as dealer.

50. The Commission may suspend or revoke the registration of a dealer

- (a) if he ceases to carry on the business of a dealer;
- (b) if he has obtained his registration as such by the concealment or misrepresentation of any fact which is in the opinion of the Commission material to his suitability to be registered;
- (c) if the registration has been made by mistake, whether the mistake was that of the dealer himself or of the Commission or of any person in its employ or of any other person;
- (d) if he has defaulted in the payment of any moneys due to a self-regulatory organisation, the Commission or to any other market actor;
- (e) if a levy of execution in respect of him has not been satisfied;
- (f) if he fails to maintain the prescribed level of capitalisation;
- (g) if he is convicted of an offence involving fraud or dishonesty;

- (h) if he contravenes, or fails to comply with, any condition or restriction applicable in respect of his registration or this Act; or
- (i) if he fails adequately to supervise or to conduct the activities of any person acting on his instructions or on his behalf.

51. (1) Every application for registration as a trader in securities shall be made to the Commission in the prescribed form and be accompanied by such fee as may be prescribed.

Application
for
registration
as trader.

(2) Every such application shall be signed jointly by the applicant and by a broker of the securities company under whose direction and supervision it is proposed that the applicant operate as a trader.

(3) Section 47(2)(a) to (d) shall apply to all applications for registration as a trader in securities.

(4) The Commission may decline to register any person as a trader unless it is satisfied that he is a fit and proper person to be registered and may make such inquiries and may require the applicant and the broker who joins with him in making the application to produce such information as it may deem necessary for the purpose.

(5) The Commission may suspend or revoke the registration of a trader

- (a) if his registration under this Act or the former Act was obtained by the concealment or misrepresentation of any fact which in the opinion of the Commission is material to his application for registration or to his suitability to be registered;
- (b) if his registration under this Act or the former Act had been made by mistake, whether the mistake was that of the trader himself or of the Commission or of the Securities Exchange or of any other person;
- (c) if he is convicted of any offence involving fraud or dishonesty; or

- (d) if he fails adequately to supervise or to conduct the activities of any person acting on his instructions or on his behalf.

Application for registration as underwriter or investment adviser.

52. (1) Every application for registration as an underwriter or investment adviser shall be made to the Commission in the prescribed form and shall be accompanied by such fee as shall be prescribed.

(2) An application mentioned in subsection (1) shall contain such information as may be prescribed.

(3) Every applicant for registration as an underwriter or investment adviser shall

(a) if an individual, shall be at least 21 years of age and of good character;

(b) if a company, be incorporated in Barbados or incorporated in any other Member State of the Caribbean Community and registered in Barbados;

(c) not have had a receiving or bankruptcy order made against him which remains undischarged;

(d) either

(i) be a financial institution which is licensed under the *Financial Institutions Act*, to carry on the business of floating and underwriting securities; or

(ii) meet the capital requirements as prescribed by the Commission; and

(e) in the case of an investment adviser other than in a case where the investment adviser is the director or officer of a securities company registered under Part IV, be an individual or a company that has in his or its full time employment an individual, who

Cap. 324A.

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- (i) has been awarded a degree in economics, banking, law, accountancy, business administration or chartered secretaryship from a university or other educational institution recognised by the Commission; and
 - (ii) has such other qualification as the Commission may prescribe.

(4) Where a company is registered as an investment adviser, the individual described in subsection (3)(e) shall be responsible for the discharge of the company's obligations in relation to its operations as investment adviser.

(5) The Commission may suspend or revoke the registration of any underwriter or investment adviser

- (a) if he fails to maintain the prescribed level of capitalisation;
- (b) if his registration was obtained by the concealment or misrepresentation of any fact which, in the opinion of the Commission, is material to his application for registration or to his suitability to be registered;
- (c) if he is registered by mistake however such mistake arose;
- (d) if he is convicted of any offence involving fraud or dishonesty; or
- (e) if he fails adequately to supervise or to conduct the activities of any person acting on his instructions or on his behalf.

(6) Where a person is registered under this Act as an underwriter, then, notwithstanding the *Financial Institutions Act*, that person is not required to obtain a licence under that Act in relation to the business of floating and underwriting securities, unless that person is a company that qualifies for registration as a financial institution under that Act. Cap. 324A.

(7) Subject to subsection (8), the following persons may act as investment advisers without registration under this Act:

- (a) an insurance company registered under the *Insurance Act*; Cap. 310.

- Cap. 324A. (b) a licensee under the *Financial Institutions Act*;
- (c) an attorney-at-law or an accountant;
- (d) a registered broker;
- (e) a registered dealer;
- (f) a publisher of, or writer for, a *bona fide* newspaper, news magazine, or business or financial publication that is distributed only to subscribers to it for value or to purchasers of it,

where such publisher or writer

- (i) gives advice in the capacity of writer or publisher only;
- (ii) discloses in the publication any direct or indirect interest which he has in any of the securities in respect of which he gives advice; and
- (iii) receives no commission or other consideration for giving the advice other than for acting in his capacity as a publisher or writer; or
- (g) a person or class of persons prescribed.

(8) A person is exempted under subsection (7) so long as the performance of the services as an investment adviser is solely incidental to his principal business or occupation as stated in that subsection.

(9) For the purposes of this section, "accountant" means an individual who is a member, in good standing, of the Institute of Chartered Accountants of Barbados.

Application
for
registration
as securities
company.

- 53.** (1) Every application for registration as a securities company shall
- (a) be made to the Commission in the prescribed form;
- (b) clearly indicate the class or classes of business to be undertaken by the company; and

(c) be accompanied by such fees as are prescribed.

(2) Every applicant for registration as a securities company shall

(a) be incorporated or registered under the *Companies Act*; Cap. 308.

(b) not have a receiver or receiver manager appointed in respect of its undertaking;

(c) not have interests direct or indirect which may conflict with or be likely to affect the conduct and integrity of its business as a securities company;

(d) have the prescribed level of capitalisation;

(e) have as a director in its full time employment a person registered as a broker or who holds a degree or professional qualification in economics, banking, law, accountancy, business administration or chartered secretaryship from a university or other educational institution recognised by the Commission, or any other combination of qualifications and experience to the satisfaction of the Commission; and

(f) if it desires to carry on the business of trading in securities on behalf of others, have in its full time employment an individual who is registered as broker.

(3) Where a company is registered as a securities company, an individual described in subsection (2)(e) or, where appropriate, in subsection (2)(f), shall be responsible for the discharge of the obligations of the securities company in relation to each class of business for which it is registered.

(4) The Commission may suspend or revoke the registration of a securities company

(a) if it fails to maintain the prescribed level of capitalisation;

(b) if it defaults in any obligation undertaken in its capacity as a securities company;

(c) if a receiving order is made against it;

- (d) if its registration was obtained by the concealment or misrepresentation of any fact which, in the opinion of the Commission, is material to its application for registration or to its suitability to be registered;
- (e) if it is convicted of any offence involving fraud or dishonesty; or
- (f) if it fails adequately to supervise or to conduct the activities of any person acting on its instructions or on its behalf.

Suspension of registration on prosecution of market actor.

54. Where any registered market actor is prosecuted for breach of this Act, the Commission may suspend the registration of such market actor from the date of the institution of such prosecution or at any time thereafter, but such suspension shall automatically cease upon the dismissal of the charge or the withdrawal thereof or, if there is more than one charge, upon the dismissal or withdrawal of all the charges.

Effect of suspension or revocation of registration.

55. Where the Commission has suspended or revoked the registration of any person that person shall forthwith cease activities in the area of activity for which he was registered, and any licence issued by a self-regulatory organisation or membership in any such organisation shall forthwith become invalid.

Indemnity insurance.

56. Every registrant under this Part, other than a trader or broker acting in the employment of a securities company, shall effect policies of insurance on terms prescribed by the Commission for the purpose of indemnifying such registrant against any liability that may be incurred as a result of any act or omission of the registrant or any of his or its officers or employees.

Contribution to contingency fund.

57. (1) Every registrant under this Part, other than a trader or broker acting in the employment of a securities company, shall participate in and contribute to a contingency fund approved by the Commission and established by

- (a) a self-regulatory organisation; or

(b) a financial institution.

(2) The amount contributed by the registrant to a fund referred to in subsection (1) shall, subject to subsection (3), be the amount required by the self-regulatory organisation or, where the fund is established by a financial institution, the Commission.

(3) The Commission may vary the amount required to be contributed by any participant in a fund under subsection (1) if it considers that it would not be prejudicial to the public interest to do so.

PART V

REGISTRATION OF ISSUERS AND SECURITIES

58. (1) From 2nd August, 2001, all public companies shall become reporting issuers and shall, within 90 days from that date, file with the Commission a registration statement in the prescribed form. Registration statements of issuers.

(2) A person who proposes to issue securities to the public shall register with the Commission as a reporting issuer and file a registration statement in the prescribed form and within the prescribed time.

(3) A reporting issuer shall amend its registration statement annually so that the information contained therein is accurate as at the end of its most recent financial year.

(4) An issuer in its registration statement shall amend any information that is of a type prohibited by a rule or regulation.

(5) An issuer may include in its registration statement any information that is not of a type prohibited by a rule or regulation.

(6) Where a reporting issuer ceases to be a public company, the Commission may on its own motion or on application by the issuer or another interested person make an order declaring, subject to such conditions as it considers appropriate, that the issuer is no longer a reporting issuer.

(7) This section shall not apply to any issuer that is a government entity.

(8) In subsection (7), “government entity” means the Government of Barbados, the Central Bank and any statutory board.

Registration
of securities.

59. (1) Subject to subsection (2), no security shall be offered to the public or listed with any self-regulatory organisation unless the security is registered with the Commission.

(2) A unit issued by a unit trust scheme or a mutual fund in accordance with the terms of a prospectus for which a receipt has been issued by the Commission is deemed to be registered with the Commission.

(3) Any security may be registered with the Commission by filing a registration statement signed by the principal executive officer of the issuer and at least 2 members of the board of directors of the issuer.

(4) Signatures appearing on the registration statements shall be presumed to have been affixed to that statement by authority of the person whose signature is so affixed unless the contrary is proved by the person denying the validity of the signature.

(5) A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered.

(6) At the time of filing a registration statement pursuant to subsection (3), the applicant shall pay to the Commission such fees as may be prescribed by the Commission.

(7) The filing with the Commission of a registration statement or any amendment thereto under this section shall be deemed to have taken place upon receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless accompanied by the amount of the fee required under subsection (6).

(8) The information contained in or filed with any registration statement shall be made available to the public in such manner as may be prescribed.

(9) The effective date of a registration statement shall be determined by the Commission.

(10) Securities which were issued before 2nd August, 2001 by companies that were listed on the Securities Exchange shall be deemed to be registered with the Commission.

60. (1) A reporting issuer shall, within 3 months after the end of its financial year, Annual reports.

(a) file with the Commission a copy of its annual report containing the information prescribed by the Commission and any other information that is not of a type prohibited by a rule or regulation; and

(b) send to each of its security holders such financial statements as the Commission may prescribe.

(2) A reporting issuer shall file such other reports in such form as may be prescribed.

(3) Subject to subsection (4), where a material change occurs in the affairs of a reporting issuer, the reporting issuer shall, not later than 7 days after such change occurs, file with the Commission a statement setting out the changes and issue through a senior officer a press release that discloses the nature and substance of the change.

(4) Subsection (3) shall not apply where

(a) the reporting issuer is of the opinion that the disclosure required by subsection (3) would be unduly detrimental to the interests of the issuer's security holders and forthwith advises the Commission in writing of the change and the reasons why it is of the opinion that there should not be a press release; or

- (b) the material change in the affairs of the reporting issuer consists of a decision to implement a change made by the directors of the issuer, and the directors and senior management of the issuer have no reason to believe that any person with knowledge of the material change has made, or intends to make, use of that knowledge in purchasing or selling securities of the issuer.

PART VI

DISTRIBUTIONS

Interpreta-
tion.

61. (1) For the purposes of this Part, an advertisement offers securities if

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

(2) In this Part,

“distribution”, in relation to any securities, includes an offer to sell securities;

“offer to sell” includes an attempt or offer to dispose of, and a solicitation of an offer to buy, a security;

“registrant”, in relation to any securities, means the person who is registered in accordance with section 58(2) and who issues or is to issue securities to which this Part applies;

“sophisticated purchaser” means

- (a) a person who participates as principal in any trade the consideration for which is no less than \$100 000;

- (b) a person who
- (i) has access to substantially the same information concerning the issuer that is required in a prospectus under section 66(1) and (2);
 - (ii) is able to evaluate a security as an investment on the basis of information provided to him by the seller by virtue of his net worth and advice which may be available to him from an investment adviser who receives no remuneration from the issuer or selling security holder in connection with the distribution; or
- (c) an officer or director of the issuer or his spouse, parent, brother, sister or child.

62. In this Part “block distribution circular” means a prospectus required in connection with a distribution of previously issued securities acquired under a distribution exempted from the prospectus requirements under section 69(2). Block distribution circular.

63. Subject to section 64, no person shall distribute a security unless a prospectus or a block distribution circular has been filed with, and a receipt therefor has been issued by, the Commission. Prospectus required.

64. (1) No person shall offer to sell a security in connection with a distribution unless the offer is made by means of Offers to sell a security.

- (a) a prospectus or block distribution circular for which a receipt has been issued by the Commission; or
- (b) an advertisement
 - (i) identifying the security distributed, a person from whom a document specified in paragraph (a) may be obtained, and a person through whom orders will be executed; and
 - (ii) containing whatever other information the Commission permits or may prescribe.

(2) Notwithstanding subsection (1), a registrant may solicit expressions of interest from prospective purchasers with respect to a proposed distribution if he notifies the Commission in writing that he intends to do so and identifies the issuer and the security proposed to be distributed.

Delivery of
prospectus.

65. (1) No registrant shall sell a security of a class that is the subject of a filing pursuant to section 63 and for which a receipt has been issued by the Commission, within 90 days of the date of the receipt, unless he sends or delivers to the purchaser of the security a prospectus or block distribution circular within 2 working days before the agreement of sale is made.

(2) The Commission may, in respect of reporting issuers, prescribe a shorter period than that specified in subsection (1).

(3) An agreement referred to in subsection (1) is not binding on the purchaser if the registrant receives not later than 2 working days after the purchaser received the prospectus or block distribution circular written notice that the purchaser intends not to be bound by the agreement.

(4) A person who files a prospectus or block distribution circular pursuant to section 63 shall provide copies during the period specified in subsection (1) upon request, and shall furnish to a registrant a reasonable number of copies of it without charge.

(5) For the purposes of this section, the receipt of a prospectus or block distribution circular by a person who acts solely as agent of the purchaser with respect to the purchase of a security referred to in subsection (1) is deemed to be a receipt by the purchaser as of the date on which the agent received the prospectus or block distribution circular.

Contents of
prospectus.

66. (1) A prospectus shall contain such information and comply with such other requirements as may be prescribed.

(2) In addition to the information required to be included in a prospectus by virtue of subsection (1), a prospectus shall contain such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of

- (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
- (b) the rights attaching to those securities,

being information which is within the knowledge of any person responsible for the prospectus or which it would be reasonable for him to obtain by making enquiries.

(3) In determining what information is required to be included in a prospectus by virtue of this section, regard shall be had also

- (a) to the nature of the securities and the issuer of the securities;
- (b) to the nature of the persons likely to consider their acquisition;
- (c) to the fact that certain matters may reasonably be expected to be within the knowledge of professional advisers of any kind whom those persons considering acquisition may reasonably be expected to consult; and
- (d) to any information available to investors or their professional advisers by virtue of any written law or by virtue of requirements imposed by the Commission.

67. (1) Where a prospectus has been filed under section 63 in respect of any proposed distribution or any offer of securities and at any time during which an agreement in respect of those securities can be entered into in pursuance of that offer

Supplemen-
tary
prospectus.

- (a) there is a material change affecting any matter contained in the prospectus, the inclusion of information in respect of which is required by virtue of section 66(1) and (2); or

(b) a material fact occurs thereby necessitating the inclusion of information in respect of the occurrence that would have been required if it had occurred when the prospectus was prepared,

then the person who delivered the prospectus for registration to the Commission shall deliver to it for registration a supplementary prospectus containing particulars of that material change or fact, as the case may be.

(2) Where the person who delivered the prospectus for registration is not aware of the material change or fact in question he shall not be under any duty to comply with subsection (1) unless he is notified of it by a person responsible for the prospectus; but any person responsible for the prospectus who is aware of that material change or fact shall be under a duty to give him notice of it.

(3) Section 65(1) applies also as respects matters contained in a supplementary prospectus filed under this Part in respect of the securities in question.

Expert's
consent

68. (1) A prospectus that invites subscription for, or the purchase of, securities of an issuer, and that includes a statement purporting to be made by an expert, shall not be issued unless

(a) that expert has given, and has not before delivery of a copy of the prospectus withdrawn, his written consent to the inclusion of the statement in the form and context in which it is included in the prospectus; and

(b) there appears in the prospectus a statement that the expert has given and has not withdrawn his consent.

(2) A person is not to be deemed to have authorised or caused the issue of a prospectus by reason only of his having given the consent required by paragraph (a) of subsection (1) to the inclusion in the prospectus of a statement purporting to be made by him as an expert.

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- 69.** (1) Sections 63 to 65 do not apply to a distribution Exemptions.
- (a) by an issuer where the purchaser is an issuer acting as principal;
 - (b) where the purchaser is an underwriter of the security being distributed;
 - (c) by an issuer of a security that is distributed to holders of its securities as a dividend;
 - (d) by an issuer of a security to holders of its securities as incidental to a reorganisation or winding up or to a distribution of its assets for the purpose of winding up its affairs;
 - (e) by an issuer of a security pursuant to the exercise of a right to acquire the security, which right was previously granted by the issuer, if no commission or other remuneration is paid or given in respect of the distribution except for administrative or professional services or for services, other than the solicitation of investors, performed by a registrant;
 - (f) by an issuer of a right, transferable or otherwise, granted by it to holders of its securities to purchase additional securities of its own issue, and of securities pursuant to the exercise of such a right
 - (i) if the issuer files with the Commission a notice in the prescribed form that is to be sent to its security holders; and
 - (ii) the Commission does not inform the issuer in writing within 10 days of the filing that it objects to the offer; or
 - (iii) the issuer files with the Commission and sends to its security holders information relating to the securities that is satisfactory to the Commission;
 - (g) by an offeror pursuant to a take-over bid;

- (h) by or for the issuer or owner by means of an isolated sale that is not made in the course of continued or successive sales of the same security;
 - (i) by an issuer of securities of its own or an associate's issue to its employees, if
 - (i) the employees are not induced to purchase the securities by expectation of employment or continued employment with the issuer; and
 - (ii) no commission or other remuneration is paid or given in respect of the distribution except for professional services or for services other than the solicitation of employees, performed by an issuer;
 - (j) where the Commission makes an order declaring that the cost of providing a prospectus outweighs the resulting protection to investors, but in such circumstances the Commission may make the order subject to any conditions it considers appropriate including conditions determining the standards of civil liability applicable to the offer;
 - (k) issued or guaranteed by the Government or by a statutory board in Barbados;
 - (l) by a person, declared an exempt purchaser by order of the Commission, who purchases as principal or as trustee for accounts fully managed by it; or
 - (m) in such other circumstances as the Commission may prescribe.
- (2) Sections 63 to 65 do not apply to a distribution to fewer than 50 purchasers each of whom is a sophisticated purchaser if
- (a) the distribution is previously notified in writing to the Commission and is not accompanied by an advertisement other than an announcement, as prescribed by the Commission, of its completion; and

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- (b) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services performed by an issuer.
- (3) Sections 63 to 65 do not apply to a limited offering.
- (4) For the purposes of this section “limited offering” means a sale within such time as may be prescribed by the Commission to not more than 35 purchasers of the securities distributed where
- (a) the issuer or selling security holder obtains an agreement from each purchaser that is filed with the Commission under which each purchaser agrees to file or cause to be filed with the Commission a prospectus with respect to the securities if a sale of the securities purchased by him results in there being more than 35 owners of the distributed securities within one year of the completion of the distribution or such other time as the Commission prescribes; and
- (b) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services other than the solicitation of investors by an issuer.
- (5) For the purposes of this Act, a person who purchases a security by way of a limited offering from a person whom he knows to have acquired the security in a trade referred to in this section is in the same position as his seller for the remainder of the period specified in the definition of a limited offering with regard to the security.
- (6) The Commission may, by proceedings in the Court, seek an order against any issuer who has entered into an agreement referred to in subsection (4)(a), and upon proof of the filing of such agreement with the Commission shall be entitled to an order accordingly.
- (7) The Commission may prescribe
- (a) further conditions for a limited offering;

- (b) that such statement as it thinks fit shall be printed on a certificate for a security sold pursuant to this section; and
 - (c) that a person who makes a limited offering and a purchaser of a security of such an offering shall file such report as it thinks fit.
- (8) Sections 63 to 65 do not apply to a trading transaction.
- (9) Sections 63 to 65 apply to a distribution by an issuer of a security that is exchanged by or for the account of the issuer with another issuer or the security holders of another issuer pursuant to
- (a) a statutory amalgamation or arrangement; or
 - (b) a statutory procedure by which one issuer takes title to the assets of another issuer that loses its existence by operation of law or by which the existing issuers merge into a new issuer.
- (10) For the purposes of this section “trading transaction” means a distribution of a security of a reporting issuer executed through a registrant where
- (a) the issuer has been registered under Part V for at least one year, or such other period as the Commission may prescribe, immediately preceding the distribution and the issuer has complied with the filing requirements of this Act;
 - (b) no selling or promotional expenses are incurred in connection with the distribution except for services customarily performed by a registrant in connection with a trade in the market; and
 - (c) the sales by or on behalf of the issuer or selling security holder do not during a prescribed period exceed
 - (i) an amount in dollars;
 - (ii) a percentage of trading volume;
 - (iii) a percentage of outstanding securities of the class; or

- (iv) any combination of the limits referred to in sub-paragraphs (i) to (iii),

prescribed by the Commission.

(11) Where trades made pursuant to this section result in an increase in the trading activity of securities of an issuer, the Commission may make an order

- (a) requiring the issuer to file and disseminate such information as it believes necessary for the protection of investors; and
- (b) reducing the number of securities of the issuer that may be distributed in trading transactions during the period referred to in subsection (10)(c).

(12) A person who sells a security pursuant to an exemption under this section shall file a report in the prescribed form with the Commission within 10 days of the completion of the sale.

70. (1) Subject to subsections (2), (3) and (5), the Commission shall issue a receipt for a prospectus within a reasonable time after the date of the original filing of a prospectus filed pursuant to section 63 or 71(1). Receipt for prospectus.

- (2) The Commission may refuse to issue a receipt for a prospectus
 - (a) if the prospectus
 - (i) contains a misrepresentation;
 - (ii) fails to disclose any material fact which may be required under this Part;
 - (b) if the distribution in connection with which it is filed is deceptive;
 - (c) if an unconscionable consideration has been or is intended to be given for promotional purposes or for the acquisition of the security;

- (d) if the past conduct of the issuer or of a person who exercises or is reasonably considered by the Commission as likely to exercise influence over its management or policies suggests to the Commission that the business of the issuer is likely to be conducted in a manner that is not honest or financially responsible or that may be unfair to holders of its securities;
 - (e) if the proceeds that the issuer will receive from the distribution, together with its other resources, are not sufficient to accomplish the purpose of the distribution stated in the prospectus;
 - (f) if an expert who has prepared or certified a part of the prospectus or report used in connection with it is not acceptable to the Commission; or
 - (g) if the Commission considers that the distribution would be prejudicial to the public interest.
- (3) The Commission may refuse to issue a receipt for a block distribution circular in the circumstances specified in paragraphs (a) to (e) or (g) of subsection (2).
- (4) The Commission shall not refuse to issue a receipt for a prospectus without giving the person who filed the prospectus an opportunity to be heard.
- (5) The Commission may impose on a distribution in connection with which it issues a receipt for a prospectus any condition which in the opinion of the Commission is necessary for the protection of investors including, without limiting the generality of the foregoing,
- (a) a condition that outstanding securities of the issuer be held in escrow upon such terms as the Commission may specify;
 - (b) a condition that the proceeds of a distribution which is payable to the issuer may be held in trust until such amount as may be specified is received for the issuer; and

- (c) a condition that no sales pursuant to the distribution may be completed before such time as may be specified by the Commission.

71. (1) Where a distribution of securities does not commence within 90 days of the date on which a receipt for the prospectus is issued by the Commission, the distribution shall cease until such time as a new prospectus is filed with a receipt therefor issued by the Commission. Cessation of distribution.

(2) For the purposes of this section, a distribution commences when 25 per cent of the securities proposed to be distributed are sold and paid for.

(3) Subject to subsections (4) and (5), a distribution shall not continue longer than 385 days from the date of the receipt for the prospectus or block distribution circular relating to it unless the Commission issues a new receipt for a current prospectus or block distribution circular, in which case the period runs from the date of the latter receipt.

(4) The Commission may prescribe that the period specified in subsection (3) shall be reduced to not less than 183 days.

(5) Subsection (3) does not apply to a distribution by a unit trust scheme or a mutual fund.

72. Where a material fact that relates to an issuer or to a security being issued occurs while a distribution is in progress, an amendment to the prospectus shall be filed forthwith with the Commission and every prospectus thereafter sent or delivered to any person shall include the amendment. Amendment of prospectus.

73. Notwithstanding the *Stamp Duty Act*, no stamp duty shall be payable in respect of the transfer of any security in accordance with the rules of any self-regulatory organisation. Exemption from stamp duty. Cap. 91.

PART VII

MARKET CONDUCT AND REGULATION

Market
rigging
transactions.

74. No person shall, directly or indirectly, effect a series of transactions in any security on any securities market thereby creating actual or apparent active trading in such security for the purpose of inducing the purchase or sale of such security by others.

Inducement
to purchase
or sell
securities
by dissemi-
nation of
information.

75. No member of a self-regulatory organisation or dealer or person who is selling or offering for sale, or purchasing or offering to purchase, any security in consideration or anticipation of any reward or benefit or otherwise, shall induce a purchase or sale of such security on any securities market by the circulation or dissemination, in the ordinary course of business, of information to the effect that the price of any such security will or is likely to rise or fall because of market operations, by any one or more persons, conducted for the purposes of raising or depressing the price of such security.

Employment
of deceptive
device, etc.

76. No person shall, directly or indirectly, in connection with the purchase or sale of any security,

- (a) employ any device, scheme or artifice with the intention to defraud;
- (b) engage in any act, practice or course of business which operates or would operate as a fraud or deceit on any person;
- (c) make any untrue statement of a material fact or omit to state a material fact with the intention to mislead.

Restrictions
on recom-
mendation.

77. (1) A registrant shall not recommend a trade in a security to a customer unless he has reasonable grounds to believe that the recommendation is suitable for the customer on the basis of

- (a) information furnished by the customer after reasonable inquiry as to his investment objectives, financial situation and needs; and

- (b) any other information known to the registrant.
- (2) Subsection (1) does not apply to a registrant in respect of the
 - (a) execution of an unsolicited order for a customer; or
 - (b) publication of a research report that recommends generally a trade in a security.

78. (1) No registrant or employee of a registrant shall effect trades that are excessive in volume or frequency with or for a customer in respect of whose trading he is in a position to exercise determinative influence by reason of the customer's willingness to accept his recommendations. Excessive trading.

(2) No person who has discretionary authority over or is a trustee for an account of another shall effect trades that are excessive in volume and frequency.

(3) For the purposes of this section, whether trades are excessive in volume or frequency shall be determined on the basis of such factors as the amount of profits or commissions of the registrant, employee or other person in relation to the size of the customer's account, the needs and objectives of the customer as ascertained on reasonable inquiry and the pattern of trading in the account.

79. (1) The Commission may prescribe standards for the conduct of a registrant in relation to a customer to prevent Commission may prescribe standards of conduct for registrants.

- (a) a conflict of interest; or
- (b) any other conduct that would enable a registrant to treat a customer unfairly.

(2) The Commission may prescribe standards for the conduct of a registrant in relation to the custody or lending of any money or the holding of securities for a customer.

Disclosure
of interests
by regis-
trant.

80. A registrant who recommends, in writing, a trade in a specific security shall include with the recommendation a prescribed statement of any direct or indirect financial or other interest held by the registrant in the security or a trade in the security.

Disclosure
of policies
and practice.

81. The Commission may prescribe that a registrant who exercises investment discretion with respect to a customer's account shall make such disclosure as may be prescribed to the customer as to his policies and practices relating to the payment of commissions for trades in securities.

Trusts
accounts.

82. (1) A securities company or a broker who is not acting in the employment of a securities company shall establish and keep in a financial institution in Barbados one or more trust accounts designated as such, into which it shall pay

- (a) all amounts (less any commission and other proper charges) that are received from or on account of any person, other than another broker or securities company, for the purchase of securities not delivered to the broker or securities company within such time as prescribed by the Commission;
- (b) all amounts (less any commission and other proper charges) that are received on account of any person, other than a broker or securities company, from the sale of securities and not paid to that person or as that person directs within such time after receipt of such amounts as may be prescribed by the Commission.

(2) No money shall be withdrawn from a trust account established under subsection (1) except for the purpose of making payment on behalf of or to the person lawfully entitled thereto or for any other purpose duly authorised by law.

(3) Nothing in this section shall be construed as affecting in any way any lawful claim or lien which any person may have against or upon any moneys held in a trust account, or against or upon any moneys received for the purchase of securities, or from the sale of securities, before such moneys are paid into a trust account.

(4) Every director of a securities company or broker that fails to comply with, or contravenes, any of the provisions of this section is guilty of an offence and is liable, on summary conviction, to a fine of \$50 000 and to imprisonment for one year.

83. (1) Where securities of an issuer are registered in the name of, but are not beneficially owned by a registrant or his nominee, the registrant shall send to the beneficial owner of the securities a copy of any document sent to him or his nominee as registered security holder forthwith after receipt thereof, unless the beneficial owner instructs him in writing that the document need not be sent.

Registrant to send documents to beneficial owner.

(2) A person who sends a document to a registered security holder pursuant to this Act shall furnish to a registrant, forthwith upon request, sufficient copies of the document to enable the registrant to comply with subsection (1) and, subject to section 109(6), shall indemnify him for the reasonable costs of doing so.

84. (1) Subject to subsection (2), a registrant who trades in a security with or for a customer shall send him, immediately after the completion of the trade, a written confirmation containing the information prescribed by the Commission.

Confirmation to be sent to customer.

(2) The Commission may prescribe that a registrant who provides a service of a continuous nature may send, instead of a confirmation as referred to in subsection (1), a periodic statement at such times and containing such information as may be prescribed.

85. (1) Every broker shall keep a record of each trade made through his facilities showing the time when it took place and any other information prescribed by the Commission.

Records of transactions.

(2) On the request of a person who produces a written confirmation of a trade executed through his facilities, his broker shall furnish to him

(a) forthwith, if the trade was executed within 30 days of the request; and

- (b) within a reasonable time if the trade was executed more than 30 days before the request,

details of when the trade took place and of any other matter contained in the confirmation of which the broker acquired knowledge in the ordinary course of his business.

Notification
to Commis-
sion.

86. A registrant who has acted as a broker in connection with a trade in a security shall on the request of the Commission disclose to it the name of the person with or through whom the security was traded.

Restriction
on trading at
residence.

87. (1) In this section, "residence" includes a building or part of a building in which the occupant resides permanently or temporarily and any appurtenant premises.

- (2) No person shall

(a) attend at any residence without being invited by an occupant of the residence; or

(b) make an unsolicited telephone call to any residence,

within Barbados for the purpose of trading in a security.

(3) Subsection (2) shall not apply where the person calls at or telephones the residence

(a) of a close personal friend, a business associate or a client with whom or on whose behalf the person calling or telephoning has been in the habit of trading securities; or

(b) of a person who has received a copy of a prospectus filed under this Act and has requested that information respecting a security offered in that prospectus be furnished to him by the person calling or telephoning.

88. (1) The Commission may make an order requiring a registrant to send to it a copy of each advertisement that he proposes to use in connection with a trade in a security at least 7 days before it is used, if the Commission reasonably believes that the registrant's past conduct in connection with such advertisements makes a preview of them by it necessary for the protection of investors.

Control of
advertise-
ments.

(2) The Commission may make an order prohibiting the use of an advertisement sent to it pursuant to subsection (1) or requiring that it be altered before it is used if the Commission is of the view that the advertisement is likely to mislead the public.

(3) In this section "advertisement" includes any material designed to make a sales presentation to a purchaser whether or not it is published or presented to a purchaser but does not include a prospectus, summary prospectus, preliminary prospectus or block distribution circular.

89. A person who places an order with a registrant to sell a security that he does not own or, if acting as agent, that he knows his principal does not own shall, when he places the order, declare that he or his principal, as the case may be, does not own the security.

Seller of
security to
declare non-
ownership.

90. (1) A person who places an order for the sale of a registered security through a registered broker acting on his behalf and who

Declaration
as to short
position.

(a) does not own the security; and

(b) if he is acting as agent knows his principal does not own the security,

shall, at the time of placing the order to sell, declare to the registered broker that he or his principal, as the case may be, does not own the security, and that fact shall be disclosed by the broker in the written confirmation of sale.

(2) Subject to this Act and the regulations and any relevant rules, for the purposes of subsection (1) a security which is not owned by a person includes, but is not limited to, a security that

- (a) has been borrowed by that person;
- (b) is subject to any restriction on its sale; or
- (c) may be acquired by that person on the exercise of a right to acquire the security by purchase, conversion, exchange or any other means.

Standards of conduct for persons trading in unlisted securities.

91. (1) The Commission may prescribe standards for the conduct of a registrant who is not a member of a self-regulatory organisation.

(2) The Commission may prescribe that a registrant shall keep a record of all trades executed by him other than through the facilities of a securities exchange and shall file with it a report of the trades in the prescribed form.

(3) The Commission may prescribe standards governing trading in a security that has been distributed and is not listed on a securities exchange.

Information to be filed with the Commission.

92. (1) The Commission may prescribe that a registrant shall

- (a) file with it such information about a missing, lost, counterfeit or stolen security as may be prescribed;
- (b) submit an inquiry to it for information filed pursuant to paragraph (a) in relation to a security
 - (i) which is in the registrant's custody or control;
 - (ii) for which he is responsible; or
 - (iii) in respect of which he is effecting, clearing or settling a trade.

(2) Information filed with the Commission pursuant to subsection (1)(a) shall be made available forthwith on request to a registrant, financial institution or other prescribed person.

(3) A failure to comply with subsection (1)(b) does not affect a person's status as a *bona fide* purchaser of a security.

93. A registrant shall not use the name of another registrant on letterheads, forms, advertisements or signs, as a correspondent or otherwise, unless he is a partner, officer or agent of, or is authorised in writing by, the other registrant.

Prohibition on use of name of another registrant.

94. A person shall not represent that he or any other person is registered under this Act unless

Representation as to registration.

(a) the representation is true; and

(b) in making the representation, he specifies his or the other person's category of registration under this Act.

95. A person who is not registered shall not, directly or indirectly, hold himself out as being registered.

Holding out by unregistered person.

96. A person shall not represent, orally or in writing, that the Commission or a person authorised by the Commission, has in any way approved the financial standing, fitness or conduct of any registrant or evaluated the merits of any security or issuer.

Approval by Commission not to be advertised.

PART VIII

DEPOSITORY AND CLEARING FACILITIES

97. (1) Notwithstanding

Application of Part.

(a) the provisions of the *Companies Act* relating to the issue or transfer of security certificates; or

Cap. 308.

(b) the provision of any other law,

this Part shall have effect in relation to securities registered with the Depository.

(2) Where a security is issued or transferred by book entry, a certificate issued by the Central Securities Depository Inc. identifying the beneficial owner of the security is sufficient evidence of that fact without recourse to a security certificate.

Definitions. **98.** In this Part

“blocked account” means an account of a participant over which a person other than the participant exercises control pursuant to procedures established under section 102; and the term “to block an account” means to open such an account;

“interested person” means a person who has an interest in a security in an account of a participant in the Depository;

“in writing” includes reproduction in machine readable form;

“pledge” means a contractual interest in a security that is delivered to, retained by or deemed to be in the possession of a creditor to secure payment of a debt or other obligation and includes a mortgage or mortgage and pledge of a security;

“registered owner” means a person who is or is presumed to be shown on the securities register of an issuer as the owner of a security certificate issued by it; and

“security certificate” means an instrument issued by or on behalf of an issuer that is evidence of the ownership of a security.

Registration
of securities
by Depository.

99. (1) Subject to this Part, a security shall be registered by the Depository in the name of the beneficial owner.

(2) No security shall be registered or held by the Depository unless it is assigned

- (a) the Barbados identification number of the beneficial owner;
- (b) in the case of a foreign owner, the national identification number of the beneficial owner; and

(c) in the case of a corporation, the registered name and number of the corporation.

(3) Notwithstanding subsections (1) and (2), on the issue of a security, an issuer may deliver a security certificate directly to the Depository as registered owner of the security if

(a) the issuer has written authorisation in that regard signed by or on behalf of the beneficial owner; and

(b) the delivery of the certificate is evidenced by a written confirmation signed by the Depository and sent at once to the beneficial owner or his agent.

(4) On the issue of a security, an issuer may, instead of delivering a security certificate, issue a security in the name of the beneficial owner to the Depository by means of book entries if

(a) the issuer has written authorisation in that regard signed by or on behalf of the beneficial owner of the security;

(b) the issue is further evidenced by a written confirmation executed by the Depository and sent at once to the beneficial owner of the security or his agent; and

(c) the issue is recorded at once in the securities register of the issuer and the records of the Depository.

(5) A written confirmation referred to in subsection (3)(b) or (4)(b) is, in the absence of evidence to the contrary, proof that the person named in the confirmation is the beneficial owner of the securities described therein at the date of the confirmation.

100. (1) Immediately after receipt of a security certificate from a participant, the Depository shall deliver the certificate to the issuer and request the transfer of the securities evidenced by the certificate to the Depository.

Transfer of securities through the Depository.

(2) Where the Depository presents a security certificate in proper form to an issuer and requests a transfer to it of the securities evidenced by the certificate, the issuer shall, if it has a duty to register the transfer, immediately enter the transfer in its securities register and deliver to the Depository a security certificate representing the securities and showing the Depository as registered owner.

(3) An issuer may, instead of issuing a security certificate under subsection (2), transfer a security to the Depository as the registered owner by means of book entries if

- (a) the issuer has written authorisation signed by or on behalf of the beneficial owner of the security;
- (b) the transfer is further evidenced by a written confirmation executed by the Depository and sent at once to the beneficial owner of the security or his agent; and
- (c) the transfer is recorded at once in the securities register of the issuer and the records of the Depository.

(4) A written confirmation referred to in subsection (3)(b) is, in the absence of evidence to the contrary, proof that the person named in the confirmation is the beneficial owner of the securities described therein.

Transfer by
book entry.

101. On receipt of instructions in writing from a participant and, in the case of a blocked account, from the person who exercises control over it, the Depository shall, in accordance with those instructions, effect a transfer of a security from the participant to another participant by a book entry.

Blocked
accounts.

102. (1) The Depository shall establish a procedure whereby it or an interested person may exercise control over a participant's account in the Depository where

- (a) the interested person is, in relation to a security in the participant's account, a beneficial owner, a pledgee or a judgment creditor of the beneficial owner; or

(b) a security in the participant's account is subject to a lien in favour of its issuer or to a restriction or constraint on its transfer.

(2) Subject to section 111(3), the Depository shall not transfer, deliver or otherwise deal with a security in a blocked account without instructions in writing from the person who exercises control over it.

103. (1) On receipt of instructions in writing from a participant and, in the case of a blocked account, from the person who exercises control over it, the Depository shall in accordance with the instructions effect a transfer by way of pledge of a security from the participant to a pledgee by making an entry in its records to block an account in the name of the participant in favour of the pledgee for the amount of the debt or other obligation or the number of securities pledged. Effecting pledge by book entry.

(2) On receipt of instructions in writing from a pledgee in whose favour a transfer of securities has been effected under subsection (1), stating that he is entitled to realise the securities in the blocked account, the Depository shall in accordance with the instructions realise the securities unless

(a) it knows that the pledgee is not entitled to realise the securities; or

(b) its procedure established pursuant to section 102(1) specifies otherwise.

(3) The Depository is not liable for any loss resulting from compliance with the instructions of a pledgee under subsection (2) unless the Depository knows before the transfer that the pledgee is not entitled to the securities.

104. On receipt of instructions in writing from a participant and a beneficial owner of a security, the Depository may in accordance with the instructions make an entry in its records to block an account in the name of the participant in favour of the beneficial owner or in favour of a person who acts on his behalf. Effecting blocked account by book entry.

Security
subject to
restrictions.

105. (1) The Depository may refuse to open an account in respect of a security that is subject to

- (a) a lien in favour of its issuer; or
- (b) a restriction or constraint on its transfer.

(2) The Depository may, with respect to a security referred to in subsection (1), make an entry in its records to block an account in the name of a participant in favour of the Depository or an interested person.

Blocking
account by
Court order.

106. (1) On the application of a creditor who has a judgment against a beneficial owner of a security held by the Depository, the Court may order the Depository to make an entry in its records to block an account in the name of the beneficial owner or his agent in favour of the judgment creditor for the amount or number of securities mentioned in the order.

(2) On receipt of an order of the Court, or instructions in writing from the Court or an officer thereof stating that a judgment creditor in whose favour an account is blocked under subsection (1) is entitled to realise a security in the blocked account, the Depository shall transfer the security in accordance with the order or instructions.

(3) On the application of a person who in an action or an application under section 113 claims to be entitled to a security held for a beneficial owner in the Depository, the Court may order the Depository to make an entry in its records to block the account in the name of the beneficial owner or his agent in favour of the claimant for the amount or number of securities mentioned in the order.

(4) The Depository is not liable for any loss resulting from compliance with an order or instructions received under subsections (1) to (3).

Limitation
on rights of
participant.

107. A participant has no right to pledge, transfer or otherwise deal with a security held for him by the Depository except through the facilities of the Depository.

108. (1) On the receipt of an application in writing from a participant or beneficial owner, for whom a security is held other than in a blocked account, for withdrawal of that security, the Depository shall within a reasonable time, subject to any proceedings under section 113, obtain and deliver to the participant a security certificate in his name or a name designated by him evidencing the security. Withdrawal of security.

(2) On receipt of instructions in writing from the Depository that is the registered owner of securities to deliver a security certificate to it, the issuer of the security shall immediately deliver the certificate to the Depository in accordance with its instructions.

109. (1) Where the Depository holds a class of securities of an issuer that proposes to close its securities register or fix a record date in respect of the class for the purpose of determining security holders entitled Issuer's duty to request list of participants.

- (a) to receive notice of or to vote at a meeting of security holders;
- (b) to receive payment of a dividend or interest; or
- (c) to participate in a liquidation distribution,

or for any other purpose, the issuer shall give the Depository such notice as may be prescribed of its intention to close its securities register or fix a record date.

(2) The issuer referred to in subsection (1) shall request from the Depository a list of the names of the beneficial owners for whom the Depository holds securities of the class mentioned in that subsection made up as of the date on which it proposes to close its register or fix a record date.

(3) On receipt of a demand in writing from an issuer for a list of the names of beneficial owners for whom it holds securities of a class issued by the issuer, the Depository shall within 7 days provide the issuer with a list setting out

- (a) the names and addresses of; and

(b) the number or amount of securities of the class held for, each such participant made up as of the date specified in the demand.

(4) On receipt of a demand from an issuer under subsection (3) the Depository shall send notice of the demand to each participant that is a securities company.

(5) A participant that receives a notice sent pursuant to subsection (4) and who is an agent or trustee of the beneficial owner may

(a) furnish to the Depository or the issuer a list containing the names and addresses of all beneficial owners for whom the participant holds the securities and the number or amount of securities of the class so held; and

(b) instruct the Depository to furnish the list to the issuer or inform the Depository that it has done so itself.

(6) Where a participant that receives a notice sent pursuant to subsection (4) does not provide the Depository or the issuer with a list of all the beneficial owners for whom it holds securities referred to in the notice, the participant shall at its own expense obtain from the issuer and send to each such beneficial owner, who is not included in the list and who has not instructed it otherwise in writing, any dividend or interest or any document that the issuer wishes to send to its security holders.

(7) Where the Depository receives lists of beneficial owners under subsection (5) it shall, before it furnishes the lists to the issuer, consolidate them into one list in a form that does not permit association of a beneficial owner with a participant and the Depository may charge participants a reasonable fee for the consolidation.

(8) The Depository shall treat as confidential any information it receives under subsection (5) concerning the beneficial ownership of securities.

(9) After receipt of a demand in writing from an issuer that has received a list of participants under subsection (3), the Depository shall provide the issuer with a current list made up as of a date subsequent to the demand showing any change in respect of the securities held for a participant since the date as of which the list under subsection (3) was made up.

(10) An issuer is entitled to obtain free of charge from the Depository in any one calendar year 4 lists of participants under subsection (3) with respect to each class of securities held by the Depository, and the issuer shall pay the Depository a reasonable amount for

- (a) any additional cost attributable to a demand for a list made after the date when the issuer closed its securities register or fixed a record date; or
- (b) any additional list.

(11) An issuer is entitled to presume conclusively that a person named in a list obtained under this section is the owner of the securities of the issuer referred to in the list.

110. (1) After submitting a request in writing to the Depository, a beneficial owner of a security of an issuer and the owner's agent may during the usual business hours examine a list of the records of the Depository that relate to any securities of the issuer held by it and may also make extracts therefrom without charge, and any other person may do so upon payment of a reasonable fee.

Access to
the
Depository's
records.

(2) A list referred to in subsection (1) shall be made up as of a specific date within a reasonable time after submission of the request.

111. (1) Subject to subsection (3), an incorrect entry made in the records of the Depository in connection with a transfer or pledge of a security by reason of the Depository's error has the same effect as a correct entry.

Incorrect
entry by
Depository.

(2) Subject to subsection (3), the Depository is liable to compensate a person who incurs a loss as a result of an incorrect entry made in its records by reason of its error.

(3) Where the Depository by reason of its error makes an incorrect entry in its records transferring a particular class of security to a participant's account, the Depository may, to the extent that there are securities of that class in the account, correct the entry in whole or in part without the participant's consent.

Liability in
extra-
ordinary
circum-
stances.

112. Where the Depository is unable to effect a pledge or transfer of a security on its records because of an extraordinary event beyond the control of the Depository, it is not liable to compensate a person who incurs a loss as a result of a delay in effecting the pledge or transfer to the extent that it proves that it took reasonable corrective action.

Application
to Court to
rectify
records.

113. (1) Where an entry is alleged to have been incorrectly made or retained in or omitted or deleted from the records of the Depository, other than in the circumstance outlined in section 111(3), the Depository or an interested person may apply to the Court for an order that the records be rectified.

(2) On an application under subsection (1), the Court may make any order it thinks fit including, without limiting the generality of the foregoing, an order

- (a) determining who is an interested person and the notice to be given to such a person;
- (b) dispensing with notice to any person;
- (c) determining the right of a party to the proceedings to have his name entered or retained in or deleted or omitted from the records of the Depository;
- (d) directing that the records of the Depository be rectified;

- (e) directing that the Depository make an entry in its records to block an account; or
- (f) compensating any person.

114. (1) The Depository may hold securities for a financial institution that is authorised under the law applicable to financial institutions to deliver or transfer any securities held by the financial institution into the custody of a clearing agency.

Lodging of securities by financial institutions with Depository.

(2) The Commission may prescribe that a corporation incorporated by or under an Act of Parliament may deliver or transfer any securities held by it into the custody of the Depository.

(3) The Commission may make an order approving any aspect of the operating system of the Depository that is not inconsistent with this Part.

PART IX

DEALING BY PERSONS CONNECTED WITH ISSUERS

115. (1) Any reference in this Act to price-sensitive information in relation to any securities of an issuer is a reference to specific unpublished information which, if generally known, might reasonably be expected to affect materially the price or value of the securities.

Meaning of price-sensitive information.

(2) For the purposes of this Act, a person is connected with an issuer only if

- (a) he is a director of that issuer or a related issuer; or
- (b) he occupies a position as
 - (i) an officer (other than a director) or employee of that issuer or a related company; or
 - (ii) a position involving a professional or business relationship between himself (or his employer or a company of which he is a director) and the issuer or a related company

which, in either case, may reasonably be expected to give him access to information which, in relation to securities of either company is price-sensitive information and which it would be reasonable to expect a person in his position not to disclose except for the performance of his functions.

(3) In this section, “related company”, in relation to a company, means a body corporate which is the subsidiary or holding company of that company or the subsidiary of that company’s holding company.

(4) In this Part, “take-over bid” means an offer made by an offeror to shareholders of an offeree company to acquire all the shares of any class of issued shares of the offeree company, and includes every offer by an issuer to repurchase its own shares.

Prohibition
of buying or
selling of
securities by
certain
persons.

116. (1) Subject to section 119, a person who is or at any time in the previous 6 months has been knowingly connected with an issuer shall not buy or sell or participate in any transaction on any securities exchange or other self-regulatory organisation relating to securities of that issuer if he has information which

- (a) he holds by virtue of being connected with the first-mentioned issuer;
- (b) it would be reasonable to expect a person so connected in the position by virtue of which he is so connected not to disclose except for the proper performance of the functions attaching to that position; and
- (c) he knows is price-sensitive information in relation to those securities.

(2) Subject to section 119, an individual who is, or at any time in the preceding 6 months has been knowingly connected with an issuer shall not buy, sell or participate in any transaction on a securities exchange or any other registered self-regulatory organisation in securities of any other issuer if he has information which

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- (a) he holds by virtue of being connected with the first-mentioned issuer;
 - (b) it would be reasonable to expect a person so connected, and in the position by virtue of which he is so connected, not to disclose except for the proper performance of the functions attaching to that position;
 - (c) he knows is price-sensitive information in relation to those securities of that other issuer; and
 - (d) relates to any transaction (actual or contemplated) involving both the first issuer and that other issuer, or involving one of them and the securities of the other, or to the fact that any such transaction is no longer contemplated.
- (3) Subsection (4) shall apply where a person (hereafter in this section referred to as “the recipient”) has information which he knowingly obtained, directly or indirectly, from another person who
- (a) is connected with a particular issuer, or was at anytime in the 6 months preceding the obtaining of the information so connected; and
 - (b) the recipient knows or has cause to believe that, because of the other person's connection and position, it would be reasonable to expect that other person not to disclose the information except for the proper performance of the functions attaching to the position.
- (4) Subject to section 119, the recipient
- (a) shall not buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organisation relating to securities of that issuer if he knows that the information is price-sensitive information in relation to those securities; and

(b) shall not buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organisation relating to securities of any other issuer if he knows that the information is price-sensitive information in relation to any transaction, actual or contemplated, involving the first mentioned issuer and the other issuer, or in relation to the fact that any such transaction is no longer contemplated.

(5) Subject to section 119, where a person is contemplating, or has contemplated, making (whether with or without another person) a take-over bid for an issuer in a particular capacity, that person shall not buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organisation in another capacity if he knows that information that the offer is contemplated, or is no longer contemplated, is price-sensitive information in relation to those securities.

(6) Subject to section 119, where a person knowingly obtained, directly or indirectly, from a person to whom subsection (5) applies information that the offer referred to in that subsection is being contemplated or is no longer contemplated, the first-mentioned person shall not himself buy, sell or participate in any other self-regulatory organisation in securities of that issuer if he knows that the information is price-sensitive information in relation to those securities.

(7) Subject to section 119, a person who is for the time being prohibited by this section from buying, selling or participating in any transaction on any securities exchange or any other self-regulatory organisation in any securities shall not counsel or procure any other person to buy, sell or participate in any transaction in those securities, knowing or having reasonable cause to believe that the other person would buy, sell or participate in a transaction in them within or outside Barbados on any securities exchange or any other self-regulatory organisation.

(8) Subject to section 119, a person who is for the time being prohibited pursuant to this section from buying, selling or participating in any transaction on any securities exchange or any other self-regulatory organisation relating to any securities by reason of his having any price-sensitive information, shall not communicate that information to any other person if he knows or has reasonable cause to believe that that person or some other person will make use of the information for the purpose of buying, selling or participating in any transaction within or outside Barbados on any securities exchange or any other self-regulatory organisation.

117. (1) An issuer may by notice in writing require any member of the issuer within such reasonable time as is specified in the notice

Disclosure
of beneficial
interest in
share
capital.

- (a) to indicate in writing the capacity in which he holds any shares comprised in relevant share capital of the issuer; and
- (b) if he holds them otherwise than as a beneficial owner, to indicate in writing, so far as it lies within his knowledge, the person who has an interest in them (either by name and address or by other particulars sufficient to enable that person to be identified) and the nature of that person's interest.

(2) Where an issuer is informed in pursuance of a notice given to any person under subsection (1), that any other person has an interest in any shares comprised in relevant share capital of the issuer, the issuer may by notice in writing require that other person within such reasonable time as specified in the notice

- (a) to indicate in writing the capacity in which he holds that interest; and
- (b) if he holds it otherwise than as beneficial owner, to indicate in writing, so far as it lies within his knowledge, the person who has an interest in it (either by name and address or by other particulars sufficient to enable him to be identified) and the nature of that person's interest.

(3) Any issuer may by notice in writing require any member of the issuer to indicate in writing, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any shares comprised in the relevant share capital of the issuer held by him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give, so far as it lies within his knowledge, written particulars of the agreement or arrangement and the parties to it.

(4) Where an issuer is informed, in pursuance of a notice given to any person under subsection (3) or this subsection, that any other person is a party to such agreement or arrangement as is mentioned in subsection (3), the issuer may by notice in writing require that other person within such reasonable time as is specified in the notice to give, so far as it lies within his knowledge, written particulars of the agreement or arrangement and the parties to it.

(5) Whenever an issuer receives information from a person in pursuance of a requirement imposed on him under this section it shall inscribe in the prescribed record

- (a) the fact that the requirement was imposed and the date on which it was imposed; and
- (b) the information received in pursuance of the requirement.

(6) For the purposes of this section, the expression “relevant share capital” means issued share capital of a class carrying the right to vote in all circumstances and at all general meetings.

Offences.

118. Any person who commits a breach of any section in this Part, other than section 116, or who, in complying with any other section, makes a statement which he knows to be false, or recklessly makes a statement which is false, or fails to supply any particulars which he is required to supply shall be guilty of an offence and is liable

- (a) on summary conviction to a fine of \$10 000 or to imprisonment for 3 months or to both such fine and imprisonment; and
- (b) on conviction on indictment to a fine of \$20 000 or to imprisonment for 6 months or to both such fine and imprisonment.

119. (1) Section 116, does not prohibit a person by reason of his having any information from

Exceptions
to section
116.

- (a) doing any particular thing otherwise than with a view to the making of a profit or the avoidance of a loss, whether for himself or another person, by the use of that information;
- (b) entering into a transaction in the course of the exercise, in good faith, of his functions as liquidator, receiver or trustee in bankruptcy;
- (c) doing any particular thing if the information
 - (i) was obtained by him in the course of business as a broker or trader in which he was engaged or employed; and
 - (ii) was of a description which it would be reasonable to expect him to obtain in the ordinary course of that business, and he does that thing in good faith in the course of that business; or
- (d) acquiring shares, stocks, unit certificates, participation certificates or certificates of share of interest through
 - (i) employee profit-sharing plans and employee stock-ownership plans established to provide for the ownership of such securities by all permanent employees;
 - (ii) the sale or purchase of such securities by an employee or director not exceeding one half of one per cent of the issued share capital of his employer over a period of one year.

(2) A person is not, by reason only of his having information relating to any particular transaction

- (a) prohibited by section 116(2), (4)(b), (5) or (6) from buying or selling or participating in any transaction on any securities exchange or on any other self-regulatory organisation relating to any securities; or
- (b) prohibited by section 116(7) or (8) from doing any other thing in relation to securities which he is prohibited from buying or selling or causing to be traded on any securities exchange or any other self-regulatory organisation by any of the provisions mentioned in paragraph (a),

if he does that thing in order to facilitate the completion or carrying out of the transaction.

Defence not available.

120. Where a person is charged with an offence under section 116, it shall not be a defence to the charge that the information in respect of which the acquisition has been made came to his knowledge without having been solicited by him or that he made no effort to procure the acquisition of such information.

Application to trustees and personal representatives.

121. (1) Where a person referred to in subsection (2) buys, sells or participates in any transaction in any securities or counsels or procures any other person to buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organisation, he is presumed to have acted with propriety if he acted on the advice of a person who

- (a) appeared to him to be an appropriate person from whom to seek such advice; and
- (b) did not appear to him to be prohibited by section 116 from buying, selling or participating in any transaction on any securities exchange or any self-regulatory organisation respecting those securities.

(2) Subsection (1) applies to a person who is a trustee or personal representative or, where a trustee or personal representative is a body corporate, a person acting on behalf of that trustee or personal representative who, apart from section 119(1)(a), would be prohibited by section 116 from buying, selling or participating in any transaction on any securities exchange or any other self-regulatory organisation, or counselling or procuring any other person to buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organisation.

(3) In subsection (1) “with propriety” means otherwise than with a view to making a profit or the avoidance of a loss, whether for himself or another person, by the use of the information in question.

122. (1) A person who contravenes section 116 is liable Penalties.

(a) on summary conviction to a fine of \$50 000 or to imprisonment for 6 months or to both such fine and imprisonment; and

(b) on conviction on indictment to a fine of \$200 000 or to imprisonment for 2 years or to both such fine and imprisonment.

(2) No transaction is void or voidable by reason only that it was entered into in contravention of section 116.

PART X

CIVIL LIABILITY

123. (1) Subject to this section, each of the following persons is liable for any loss or damage sustained by other persons who, on the faith of a prospectus, subscribe for or purchase any securities and for any loss or damage sustained by those other persons by reason of any untrue statement in the prospectus, or by reason of the wilful non-disclosure in the prospectus of any matter, of which the designated person had knowledge and that he knew to be material, namely:

Persons liable for damage re untrue statement etc. in prospectus.

- (a) a person who is a director of an issuer at the time of the issue of the prospectus;
- (b) a person who authorised 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;
- (c) a person who was involved in the incorporation of the issuer; or
- (d) a person who authorised or caused the issue of the prospectus.

(2) Notwithstanding subsection (1), where the consent of an expert is required to enable the issue of a prospectus and he has given that consent, he is not, by reason only of the consent, liable as a person who has authorised or caused the issue of the prospectus, except in respect of an untrue statement purporting to be made by him as an expert; and the inclusion in the prospectus of a name of a person as a trustee for debenture holders, auditor, banker, attorney-at-law, transfer agent or stockbroker may not, for that reason alone, be taken as an authorisation by that person for the issue of the prospectus.

- (3) No person is liable under subsection (1)
- (a) who, having consented to becoming a director of the issuer, withdrew his consent before the issue of the prospectus and the prospectus was issued without his authority or consent;
 - (b) who, when the prospectus was issued without his knowledge or consent, gave reasonable public notice of that fact forthwith after he became aware of its issuer;
 - (c) who, after the issue of the prospectus and before allotment or sale under it, became aware of an untrue statement in it and withdrew his consent, and gave reasonable public notice of the withdrawal of his consent and the reasons for it; or

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- (d) who, as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, had reasonable ground to believe, and did, up to the time of the allotment or sale of the securities believe, that the statement was true.
- (4) No person is liable under subsection (1) with respect to an untrue statement
- (a) purporting to be a statement made by an expert or to be based on a statement made by an expert, if the untrue statement fairly represented was
- (i) a correct and fair copy of, or extract from, the report or valuation and that person had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe, that the expert making the statement was competent to make it; and
- (ii) that the expert had given his consent as required under section 68 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration nor had, to the person's knowledge, withdrawn that consent before allotment or sale under the prospectus; or
- (b) purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, the untrue statement was a correct and fair copy of, or extract from, the document.
- (5) Subsections (3) and (4) do not apply in the case of a person liable, in respect of an untrue statement purporting to have been made by him as an expert, by reason of his having given a consent required of him by section 68, as a person who has authorised or caused the issue of the prospectus.

(6) A person who, apart from this subsection, would be liable under subsection (1), by reason of his having given a consent required of him by section 68, as a person who has authorised or caused the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, is not liable

- (a) if, having given his consent under that section to the issue of the prospectus, he withdrew his consent in writing before a copy of the prospectus was lodged with the Commission;
- (b) if, after a copy of the prospectus was lodged with the Commission and before allotment or sale under the prospectus, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or
- (c) if he was competent to make the statement and had reasonable grounds to believe, and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true.

(7) When

- (a) a prospectus contains the name of a person as a director of the issuer, or as having agreed to becoming a director, and he has not consented to becoming a director, or has withdrawn his consent before the issue of the prospectus and has not authorised or consented to its issue; or
- (b) the consent of a person is required under section 68 to the issue of a prospectus and he either has not given the consent or has withdrawn it before the issue of the prospectus,

any person who authorised or caused the issue of the prospectus and the directors of the company, other than those directors without whose knowledge or consent the prospectus was issued, are liable to indemnify the person named, or whose consent was so required, against all damages, costs and expenses to which he might be liable by reason of his name having been inserted in the prospectus, or of the inclusion of a statement purporting to be made by him as an expert, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(8) The liability of all persons referred to in subsection (1) is joint and several as among themselves with respect to the same cause of action.

(9) A defendant who is found liable to pay a sum in damages may recover a contribution, of the whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, the Court is satisfied that it would not be just and equitable.

124. (1) A security holder may bring, against an issuer that has allotted securities under a prospectus, an action for the rescission of the allotment and the repayment to him of the whole or part of the issue price that has been paid in respect of the security, if

Action by security holders against issuer.

- (a) the prospectus contained a material statement, promise or forecast that was intentionally false, deceptive or misleading; or
- (b) the prospectus did not contain a statement, report or account required under this Act or the regulations to be contained in it.

(2) In this section “security holder” means a holder of any of the securities allotted under the prospectus, whether the original allottee or a person deriving title under him.

(3) For the purposes of this section

- (a) a prospectus contains a material statement, promise or forecast if the statement, promise or forecast was made in such a manner or context, or in such circumstances, as to be likely to influence a reasonable man in deciding whether to invest in the securities offered for subscription; and
- (b) a statement, report or account is omitted from a prospectus if it is omitted entirely, or if it does not contain all the information required by this Act or the regulations to be given in the statement, report or account.

(4) In an action brought under this section, the plaintiff need not prove that he, or the person to whom the securities he holds were allotted, was in fact influenced by the statement, promise or forecast that he alleges to be intentionally false, deceptive or misleading, or by the omission of any report, statement or account required to be contained in the prospectus.

(5) Notwithstanding any other enactment, no action may be brought under this section more than 2 years after the first issue of the prospectus under which securities were allotted to the plaintiff or the person under whom the plaintiff derives title.

(6) Subject to subsection (9), it is a defence to an action under this section for the issuer to prove that

- (a) the plaintiff was the allottee of the securities in right of which the action was brought and that at the time they were allotted to him he knew that the statement, promise or forecast of which he complains was intentionally false, deceptive or misleading, or that he knew of the omission from the prospectus of the matter of which he complains; or
- (b) the plaintiff has received a dividend or payment of interest, or has voted at a meeting of shareholders or debenture holders since he discovered that the statement, promise or forecast of which he complains was intentionally false, deceptive or misleading, or since he discovered the omission from the prospectus of the matter of which he complains.

(7) An action may not be dismissed if there are several plaintiffs, when the issuer proves that it has a defence under subsection (8) against each of them; and in any case in which the issuer proves that it has a defence against the plaintiff or all the plaintiffs, the Court may, instead of dismissing the action, substitute some other security holder of the same class as plaintiff.

(8) Where an issuer would have a defence under subsection (6) but for the fact that the allottee of the securities in right of which the action is brought has transferred or renounced them, the issuer may bring an action against the allottee for an indemnity against any sum that the Court orders it to pay to the plaintiff in the action.

(9) This section applies to securities allotted pursuant to an underwriting contract as if they had been allotted under the prospectus.

(10) This section applies to securities issued under a prospectus that offers them for subscription in consideration of the transfer or surrender of other securities, whether with or without the payment of cash by or to the issuer, as though the issue price of the securities offered for subscription were the fair value, as ascertained by the Court, of the securities to be transferred or surrendered, plus the amount of cash, if any, to be paid by the issuer.

(11) The right of action for damages conferred by section 123 is in addition to and not in derogation of any other right the purchaser may have.

125. (1) The Commission may apply to a Judge of the Court for leave to bring an action under this Part in the name and on behalf of an issuer and the Judge may grant leave on any terms as to security for costs or otherwise that he considers proper if he is satisfied that

Commission may seek leave to bring action or appear or intervene in an action.

- (a) the Commission has reasonable grounds for believing that a cause of action exists under this Part; and
- (b) the Commission gave reasonable notice to the issuer who refused or failed to commence an action.

(2) The Commission may apply to a Judge in Chambers for leave to bring an action under this Part in the name and on behalf of a security holder and the Judge may grant leave on any terms as to security for cost or otherwise that he considers proper if he is satisfied that

- (a) the Commission has reasonable grounds for believing that a cause of action exists under this Part; and
- (b) the security holder has failed or is unable to commence the action.

(3) The Commission may apply to a Judge in Chambers for leave to appear or intervene in an action under this Part and the Judge may grant leave on such terms as he considers appropriate.

(4) The Commission may publish a summary of the terms of any settlement of an action commenced or intervened in by it in a periodical published by it on a regular basis, or in a daily newspaper.

PART XI

ENFORCEMENT

Regulations

Regulations. **126.** (1) The Minister may, on the recommendation of the Commission, make regulations

- (a) classifying persons, securities, trades, distributions, registration under Part II, III or IV, filings, applications and other matters and prescribing requirements appropriate to each class;
- (b) respecting registration under this Act including but not limited to prescribing conditions to be met by persons registered in each category;

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- (c) prescribing the method of record-keeping and the type and form of records to be kept by each category of person registered under this Act;
 - (d) prescribing the format and contents of filings and applications and the filing of copies of documents filed with any government agency;
 - (e) prescribing the accounting principles and standards used in the preparation of financial statements;
 - (f) requiring examination of and reporting on financial statements by independent accountants;
 - (g) establishing standards of independence for accountants in relation to financial statements;
 - (h) prescribing the form and content of an independent accountant's report;
 - (i) prescribing fees for any filing with or for any other application to the Commission;
 - (j) governing the identification and resolution and any other matter relating to conflicts of interest in respect of Commissioners, the General Manager and other employees of the Commission and other persons engaged by the Commission to act as advisers or to perform duties under this Act;
 - (k) prescribing any matter or thing required by this Act to be prescribed; and
 - (l) respecting any other matter authorised by the Act or required to carry out the purposes of this Act.
- (2) The Minister may, on the recommendation of the Commission, make regulations governing take-overs in respect of public companies.

(3) Regulations made under this section shall be subject to negative resolution of Parliament.

(4) Without prejudice to the generality of subsection (2), regulations made under this section may include

- (a) a prescription of the level of acquisition of voting rights by a person or persons acting in concert beyond which an offer to all shareholders of the relevant shares shall become mandatory and a prescription of the conditions applying to such offers;
- (b) the requirements to be met by the offeror and offeree companies in respect of information to be disclosed to shareholders of both companies;
- (c) the requirements to be met to ensure equitable treatment of shareholders of the same class or cash alternatives in offers or both;
- (d) stipulations regarding the timing of offer procedures and circulation of documentation;
- (e) conditions to be observed in the dealing in shares by the offeror or by persons acting in concert during the offer period and the reporting to the Commission of dealings in the shares of the offeree company during the take-over period;
- (f) a prescription of the minimum period within which an unsuccessful offer may not be renewed; and
- (g) the requirements for the protection of minority interests.

(5) The Commission may establish a committee under section 9 to administer the regulations made under subsection (2) and may make rules for the conduct of the business of that committee.

(6) Regulations may provide that a contravention thereof shall be punishable on summary conviction by a fine of \$10 000 or imprisonment for 2 years.

(7) Notwithstanding subsections (1) and (2), the regulations made under each of those subsections may be made by the Minister without the recommendation of the Commission and for the purposes of this subsection, section 127 shall not apply.

127. (1) The Commission shall publish in the *Gazette*, in a daily newspaper and in any regular periodical published by the Commission at least 60 days before the proposed effective date thereof Publication of proposed regulations.

- (a) a copy of any regulation that it proposes to recommend to the Minister;
- (b) a concise statement of the substance and purpose of the proposed regulation; and
- (c) a reference to the authority under which the regulation is proposed.

(2) After a proposed regulation is published in accordance with subsection (1), the Commission shall afford a reasonable opportunity to interested persons to make representations in writing with respect to the proposed regulations.

(3) The Commission, where it considers it necessary, may convene a hearing for the presentation of oral argument or the submission of evidence orally and may permit cross-examination by interested persons in order to determine an issue of specific fact that is material to its consideration of the proposed regulations.

(4) The Commission is not required to comply with subsections (1) and (2) if

- (a) all persons who will be subject to the regulations are named and the information required by subsection (1)(a) to (c) is sent to each of them;
- (b) the regulations only grant an exemption or relieve a restriction and is not likely to have a substantial impact on the interests of persons other than those who benefit under it;

- (c) the regulations make no material substantive change in any existing regulation; or
 - (d) the Commission for good cause finds that compliance with subsections (1) and (2) is impracticable or unnecessary and publishes the finding and a concise statement of the reasons for it.
- (5) Any person may petition the Commission to recommend the making, amendment or revocation of the regulations.
- (6) The Commission may take into account any recommendation made in accordance with subsection (2), (3) or (5).

Orders of Commission

Power to
make orders. **128.** (1) The Commission may make an order of its own motion or on application by an interested person

- (a) classifying a person, security, trade, distribution, registration under Part II, III or IV, filing, application or other matter and imposing requirements appropriate to the class;
- (b) permitting or requiring in a filing or application the filing of copies of documents filed with another government agency; and
- (c) respecting any other matter authorised by or required to carry out the purposes of this Act.

(2) A declaratory order or an order granting an exemption is effective against all persons, but the Commission shall make an order revoking or modifying such an order when it finds that a determination reflected in it is no longer consistent with the facts.

Appeal and
conduct of
hearings. **129.** (1) A person aggrieved by an order made by the Commission pursuant to section 128 may appeal against that order within 30 days of the date of the order.

(2) Where an appeal is brought in accordance with subsection (1), the Commission shall provide a reasonable opportunity for a hearing to each person directly affected and shall give reasonable notice to each such person and to any interested self-regulatory organisation including

- (a) a statement of the time, place and purpose of the hearing;
- (b) a reference to the authority under which the hearing is to be held;
- (c) a concise statement of the allegations of fact and law; and
- (d) a statement that, if the person fails to attend at the hearing, the Commission may proceed without giving him further notice.

(3) The Commission shall have the power to

- (a) issue a subpoena or other request or summons requiring a person to attend at a hearing, to testify to all matters relating to the subject of the hearing and to produce all records relating to the subject of the hearing that are in his possession or under his control, whether they are located within or outside Barbados; and
- (b) compel a person to give evidence on oath, affirmation or otherwise as it thinks necessary, orally or in writing.

(4) Notwithstanding subsection (2), no person giving evidence before the Commission shall be compellable to incriminate himself, and every such person shall, in respect of any evidence given by him before the Commission, be entitled to all privileges to which a witness giving evidence before the High Court is entitled in respect of evidence given by him before such Court.

(5) A hearing under subsection (1) shall be open to the public unless the Commission directs otherwise in order to protect the interests of the persons affected; but, if all persons directly affected and appearing so request, a hearing shall be open to the public.

(6) A person who is entitled to notice of a hearing under subsection (1) may be represented by counsel and, subject to rules made under section 13, may present evidence and argument and may cross-examine witnesses at the hearing.

(7) A witness at a hearing under subsection (1) may be advised by counsel.

(8) The Commission may admit as evidence at a hearing any oral testimony or documentary exhibit that it considers relevant to the subject matter of the proceedings and may take notice of any fact that may be judicially noticed and of any generally recognised scientific or technical fact, information or opinion within its area of expertise.

(9) The Commission shall make provision for all oral evidence presented at a hearing under subsection (1) to be transcribed.

(10) The Commission shall at the conclusion of the hearing

(a) make a final order in writing and state the findings of fact on which it is based and the reasons for it;

(b) send a copy of the order and reasons to each person entitled to notice under subsection (1) and to each person who appeared at the hearing; and

(c) publish a copy of the order and reasons or a summary thereof in a periodical published by it or in a daily newspaper, but the Commission may omit the name of an affected person from an order so published.

(11) Subsection (1) does not apply to an order that

(a) is made under section 133(1) or 134(1);

(b) is essentially procedural; or

(c) does not adversely affect the rights or interests of any person.

Appeals

130. (1) A person directly affected by a final order made pursuant to authority delegated under section 6, or by an order of a self-regulatory organisation under section 36, may appeal the order to the Commission.

Appeal for
review re:
section 6
or 36.

(2) The Commission may of its own motion review an order made pursuant to authority delegated under section 6 or made by a self-regulatory organisation under section 36 and shall provide a reasonable opportunity for a hearing and give reasonable notice to each person, including a self-regulatory organisation, directly affected by the order.

(3) On an appeal or review under this section the Commission may, subject to section 37, confirm the order or make such orders as it considers appropriate.

(4) An order that is subject to appeal or review under this section takes effect immediately, but the Commission or the person who made the order may grant a stay pending the decision of the Commission.

131. (1) A person directly affected by a final order of the Commission may appeal the order to the Court.

Appeal to
Court of
Appeal
against final
order.

(2) No appeal may be made under this section unless the person affected has taken all reasonable steps available to appeal or obtain review of the order pursuant to section 130.

(3) An order that is subject to appeal under this section takes effect immediately, but the Commission or the Court may grant a stay pending the hearing of the appeal.

(4) The Commission is entitled to appear and be heard on the merits on an appeal under this section or on any other application to the Court relating to the exercise by the Commission of its powers.

(5) On an appeal under this section, the Court may make or may direct the Commission to make any order that the Commission is authorised to make and which the Court considers proper, or it may remand the case to the Commission for further proceedings subject to any conditions which the Court thinks fit.

(6) On an appeal under this section against a cease-trading order under section 136 or an order under section 137, the Court may confirm the order or may, if the order is arbitrary, capricious or an abuse of discretion, revoke it.

Appeal to
Court of
Appeal
against rule.

132. (1) A person affected by a rule of the Commission may appeal to the Court against the application of that rule to him.

(2) A rule that is subject to appeal under this section takes effect at the time specified by the Commission, but the Commission or the Court may grant a stay pending review.

(3) The Commission is entitled to appear and be heard on the merits on an appeal under this section.

(4) On an appeal under this section, the Court may confirm or revoke a rule or may remand the matter to the Commission for further proceedings subject to any conditions that the Court considers proper, but the Court may revoke a rule only if

- (a) it is arbitrary, capricious or an abuse of discretion;
- (b) it is in excess of the Commission's jurisdiction;
- (c) it was made in contravention of section 127; or
- (d) a specific material fact found by the Commission after an evidentiary hearing convened pursuant to section 130 is not supported by the evidence.

(5) For the purposes of this section, an order of the Commission under section 33 or 34 is to be regarded as a rule.

(6) A decision of the Court on an appeal is final.

Investigations

133. (1) The Commission may, by instrument in writing, appoint a person to conduct an investigation to ascertain whether any person has contravened, is contravening or is about to contravene this Act. Investigation of contraventions.

(2) A person appointed by the Commission pursuant to subsection (1) may issue a subpoena or other request or summons requiring a person to attend at a specified time and place, to testify to all matters relating to the subject of an investigation and to produce all records relating to the subject of the investigation that are in his possession or under his control.

(3) A person appointed by the Commission pursuant to subsection (1) may compel a person to give evidence on oath, affirmation or otherwise as he thinks necessary, orally or in writing, and may administer an oath or affirmation at any place.

(4) A person who gives evidence in an investigation under this section may be represented by counsel.

(5) Where a person who is required by the Commission to give evidence or attend a hearing in the course of an investigation fails or refuses to

(a) attend; or

(b) give evidence on oath or affirmation,

the Commission may make an application to the Court to so compel the person.

(6) An investigation under this section shall be held *in camera*.

(7) A person appointed by the Commission pursuant to subsection (1) shall provide the Commission with a full and complete report of the investigation including any transcript of evidence and any material in his possession relating to the investigation.

(8) The Commission may publish a report or other information concerning an investigation under this section, but, if it intends to do so, it shall

- (a) give a person against whom an adverse finding is to be made 14 days' notice of the finding and an opportunity to be heard in person or by counsel; and
- (b) if practicable, give a person who is likely to receive adverse publicity advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.

Conduct of
inquiry re:
proposed
rules.

134. (1) The Commission may conduct an inquiry to aid in the prescription of rules under this Act or to obtain information as a basis for recommending legislation relating to the Act or its subject matter.

(2) The Commission may exercise the powers specified in section 133(2) and (3) in relation to an inquiry under this section.

(3) A person who gives evidence in an inquiry under this section may be represented by counsel.

(4) An inquiry under this section may be conducted in public, but a person who is likely to receive adverse publicity as a result of the inquiry being public shall be afforded, if practicable, a reasonable opportunity to state his position *in camera* for the record in the inquiry.

(5) The Commission may publish a report or other information concerning an inquiry under this section but a person who is likely to receive adverse publicity as a result of such publication shall be afforded, if practicable, advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.

Investigation
of financial
affairs of
registrants
and others.

135. (1) The Commission may at any time, where it is of the view that a registrant may be in breach of this Act, by instrument in writing, appoint a person to examine the records and financial affairs of a registrant and to prepare such financial or other reports as the Commission requires.

(2) Where, upon the application *ex parte* of the Commission, the Court is satisfied that a person other than a registrant may be in breach of this Act, the Court may make an order authorising the Commission to examine the records and financial affairs of that person.

(3) A person appointed by the Commission pursuant to subsection (1) may examine all the records, books of account, securities, cash, bank accounts and other data of the registrant or person whose affairs are to be examined.

(4) No person shall withhold, conceal, destroy or refuse to produce any information or record reasonably required for the purpose of the examination by a person appointed pursuant to subsection (1) or (2).

(5) The Commission shall charge a registrant a prescribed fee for an examination made under this section.

136. (1) Where the Commission considers that

- (a) a security is being traded in connection with a distribution contrary to Part V;
- (b) a prospectus, summary prospectus, preliminary prospectus, block distribution circular or any other document used in connection with a distribution contains a misrepresentation or omits a material fact required to be included;
- (c) any of the circumstances specified in section 70(2) as the basis for a refusal to issue a receipt for a prospectus exists; or
- (d) an issuer, security holder or underwriter fails to provide information, including financial statements relating to the issuer or the distribution that is reasonably requested by the Commission,

Power to
order
cessation of
trading.

the Commission may order that all trading in connection with the distribution shall cease.

(2) The Commission may order, subject to such conditions as it considers appropriate, that trading cease in respect of any security for a period specified by it where the Commission considers that

- (a) a material fact relating to an issuer of a security has not been disclosed and become public;
- (b) trading in a security or any fluctuation in the price of a security requires explanation; or
- (c) it is otherwise in the public interest or necessary for the protection of investors.

(3) Where the Commission considers that it is in the public interest or necessary for the protection of investors, it may make an order prohibiting, subject to such conditions as it considers appropriate, a person who contravenes this Act from trading in securities or from trading a specified security.

(4) The Commission may make an order under subsection (1) or (3) without holding a hearing as required by section 129, but it shall provide an opportunity for such a hearing within 15 days of the making of the order and the order remains in effect until the hearing is completed.

(5) The Commission may make an order under subsection (2) without holding a hearing as required by section 129, but it shall provide an opportunity for such a hearing within 15 days of the making of the order and the order remains in effect until the hearing is completed, unless the order was made pursuant to subsection (2)(a), in which case the Commission may extend it until the material fact is disclosed and becomes public.

(6) The Commission shall forthwith give notice of an order under this section to

- (a) each person named in the order;
- (b) the issuer of a security specified in the order;

- (c) any other person the Commission believes is directly affected by the order; and
- (d) if the order is made pursuant to subsection (1) or (2), every person registered under Part III or IV,

and shall include notice of the order in a regular periodical published by it, or in a daily newspaper.

(7) No person shall trade in contravention of an order made under this section.

137. (1) Where the Commission, after a hearing, considers it to be in the public interest, it may order

Commission may order cessation of contravention of Act, rules or order.

- (a) that a person comply with, or cease contravening, and that the directors and senior officers of the person cause the person to comply with or cease contravening,
 - (i) this Act or the regulations;
 - (ii) an order of the Commission;
 - (iii) a rule, direction, decision or order made under a rule of a self-regulatory organisation;
- (b) that a person resign any position that the person holds as a director or officer of a registered issuer;
- (c) that a registrant or registered issuer
 - (i) is prohibited from disseminating to the public, or authorising the dissemination to the public, of any information or record of any kind described in the order;
 - (ii) is required to disseminate to the public, by the method described in the order, any information or record relating to the affairs of the registrant or issuer that the Commission considers must be disseminated;

(iii) is required to amend, in the manner specified in the order, any information or record of any kind described in the order before disseminating the information or record to the public or authorising its dissemination to the public; or

(d) that a registrant be reprimanded or that person's registration be suspended or revoked.

(2) The Commission shall send written notice of every order made under this section to any person that is directly affected by the order.

Order for
penalty.

138. (1) Where the Commission after a hearing determines that a person has contravened this Act or any rule or an order of the Commission and considers it to be in the public interest to make the order, the Commission may order the person to pay to the Crown a penalty of an amount not exceeding \$50 000.

(2) Where the Commission makes an order under subsection (1) the Commission shall file in the registry of the Court a copy of the order certified by the Chairman of the Commission, and on being filed the order shall have the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Court, unless an appeal has been filed pursuant to section 131.

(3) Every penalty imposed by the Commission in the exercise of its powers under this Act shall be payable into the general revenue and may be recovered by the Crown as a civil debt; and for the purposes of the proof of such debt a certificate under the hand of the Chairman or the General Manager of the Commission shall be receivable in evidence as sufficient proof of such debt.

Orders of Court

Court orders
for
enforcing
compliance.

139. (1) Where the Commission considers that a person has failed to comply with or is contravening this Act or regulation or any rule or an order, the Commission may, in addition to any other powers it may have, apply to the Court for a permanent or temporary injunction directing

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- (a) the person to comply with or to cease contravening this Act, the regulation, rule or the order; and
 - (b) the directors and senior officers of the person to cause the person to comply with or to cease contravening this Act, the regulation, rule or the order.

(2) On application under subsection (1), the Court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order requiring restitution or disgorgement of profits;
- (b) an order restraining the conduct complained of;
- (c) an order requiring compliance with this Act or the regulations, rules or an order;
- (d) an order requiring disclosure of any information;
- (e) an order setting aside a transaction relating to trading in securities; or
- (f) an order requiring the issuance or cancellation of a security or the purchase, disposition or exchange of a security.

(3) An order may be made under this section notwithstanding that a penalty has already been imposed on that person in respect of the same non-compliance or contravention.

140. (1) Where the Commission considers that it is necessary in the public interest or for the protection of investors to prevent

Appoint-
ment of
receiver, etc.

- (a) a person who has contravened this Act or any regulation or rule; or
- (b) a person whose registration under this Act has been suspended or revoked,

from dealing with property under his control or direction, it may apply to the Court, and the Court may appoint a receiver or receiver-manager of the property if it is satisfied that it is in the interests of investors or persons whose property is controlled by that person, creditors or security holders of that person or members of that person to do so.

(2) Where the Commission intends to apply to the Court to appoint a receiver or receiver-manager in respect of the property of a financial institution, the Commission shall, before making the application, consult with the Central Bank with regard to the proposed application.

(3) The Court may make an order under subsection (1) on an *ex parte* application by the Commission for a period not exceeding 15 days.

Cap. 308.

(4) The provisions of Division C of Part II of the *Companies Act* shall apply to a receiver or receiver-manager appointed under this section.

Disqualifi-
cation of
directors.

141. (1) When, on the application of the Commission, the Court is satisfied that an individual is unfit to be concerned in the management of an issuer, the Court may order that that individual shall not, without the prior leave of the Court, be a director of the issuer, or be in any way, directly or indirectly, concerned with the management of the issuer for such period beginning

- (i) with the date of the order; or
- (ii) if the individual is undergoing, or is to undergo a term of imprisonment and the Court so directs, with the date on which he completes that term of imprisonment or is otherwise released from prison;

as may be specified in the order.

(2) In determining whether or not to make an order under subsection (1), the Court shall have regard to all the circumstances that it considers relevant, including any previous convictions of the individual in Barbados or elsewhere for an offence involving fraud or dishonesty or in connection with the promotion, formation or management of any body corporate.

(3) Before making an application under this section in relation to any individual, the Commission shall give that individual not less than 14 days' notice of its intention to make the application.

(4) On the hearing of an application made by the Commission under this section or an application for leave under this section, the Commission and any individual concerned with the application may appear and call attention to any matters that are relevant, and may give evidence, call witnesses and be represented by an attorney-at-law.

Offences

142. (1) A person who

Offences.

- (a) knowingly or recklessly makes a misrepresentation in contravention of this Act or any regulation;
- (b) knowingly or recklessly makes a misrepresentation to any person appointed to conduct an investigation under section 133 or to the Commission in connection with an inquiry under section 134; or
- (c) knowingly or recklessly contravenes section 29, 45, 46, 58, 59 or 63,

is guilty of an indictable offence and is liable to a fine of \$100 000 or to imprisonment for 2 years or to both such fine and imprisonment.

(2) A person who knowingly or recklessly contravenes a provision of this Act or any regulation that is not specified in subsection (1) or an order of the Commission is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for one year or to both such fine and imprisonment.

(3) A person who fails without reasonable excuse to comply with an order of the Commission or to permit entry under section 40(3) or 136(4) is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to imprisonment for 3 months or to both such fine and imprisonment.

(4) A person who fails without reasonable excuse to comply with a subpoena or summons under section 133(2) or (3), 134(2) or 135(4) is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for 3 months or to both such fine and imprisonment.

(5) Reasonable reliance, including reliance on advice of counsel, in good faith upon a statement of the law contained in

- (a) this Act or any regulation;
- (b) a judicial judgment or opinion; or
- (c) an order or official release of the Commission,

is a defence in a proceeding under this section.

Liability of
directors,
etc.

143. (1) Where a person has been convicted of an offence under section 142, any director, officer, or supervisor of the person who knowingly or recklessly authorised, permitted or acquiesced in the offence is also guilty of the offence and liable to the penalty specified for it.

(2) Wherever in this Act it is provided that any act or omission of any person is unlawful or is an offence and no penalty or sanction is specified in respect of that offence, that act or omission shall be punishable on summary conviction by a fine not exceeding \$10 000

and 3 months imprisonment, and when the person accused in respect of such act or omission is an issuer, the issuer shall be liable to such fine.

(3) A person convicted of an offence against this Act or any regulation is liable, after the review and filing of a certificate under this section, for the costs of the investigation of the offence.

(4) The Commission may prepare a certificate setting out the costs of the investigation of an offence, including the time spent by its staff and any fees paid to an expert, investigator or witness.

(5) The Commission may apply to the Registrar of the Supreme Court to review the certificate under the *Rules of the Supreme Court, 1982/51*, 1982 as if the certificate were a bill of costs; and the Registrar shall review the costs and may vary them if he considers them unreasonable or not related to the investigation.

(6) The scales of costs in *Order 62 of the Rules of the Supreme Court, 1982* do not apply to a certificate reviewed under this section.

(7) After review the certificate may be filed in the Court and may be enforced against the person convicted as if it were an order of that Court.

PART XII

REPEAL

144. The *Securities Exchange Act* is repealed.

Repeal of
Cap. 318A.

SCHEDULE

*(Section 3(2))**The Securities Commission*

- Members. 1. The Commission shall be comprised of such number of persons not being less than 3 nor more than 7 as the Minister may from time to time appoint.
- Appointment of members. 2. (1) The members of the Commission shall be appointed by the Minister by instrument in writing from among persons who appear to him to be qualified as having had experience of, and shown capacity in, matters relating to finance, capital markets, commerce or business administration or such other related discipline.
- (2) The members of the Commission shall, subject to the provisions of this Schedule, hold office for such period not exceeding 3 years as the Minister may specify in the instrument of appointment, and each member shall be eligible for reappointment.
- Chairman. 3. (1) The Minister shall appoint one of the members to be Chairman of the Commission.
- (2) In the case of the absence or inability to act of the Chairman, the Minister may appoint any other member to perform the functions of the Chairman.
- Acting appointment. 4. The Minister may appoint any person appearing to him to have the qualifications necessary for appointment under paragraph 2(1) to act temporarily in the place of any member in the case of the absence or inability to act of such member.
- Resignations. 5. (1) The Chairman may at any time resign his office by instrument in writing addressed to the Minister, and such resignation shall take effect as from the date of the receipt by the Minister of the instrument.
- (2) Any member other than the Chairman may at any time resign his office by instrument in writing addressed to the Chairman, who shall forthwith cause it to be forwarded to the Minister; and that member shall cease to hold office as from the date of receipt of the instrument by the Minister.
- Revocation of appointments. 6. The Minister shall terminate the appointment of any member if such member
- (a) fails to carry out any of the functions conferred or imposed on him under this Act;

- (b) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
- (c) becomes bankrupt or compounds with, or suspends payment to, his creditors;
- (d) is convicted and sentenced to a term of imprisonment or to death;
- (e) is convicted of any offence involving dishonesty; or
- (f) is disqualified from membership pursuant to paragraph 13.

7. The appointment, removal or resignation of any member of the Commission shall be notified in the *Gazette*.

Gazetting of appointments.

8. (1) The seal of the Commission shall be kept in the custody of the Chairman or any officer of the Commission authorised by the Commission in that behalf, and shall be affixed to instruments, pursuant to a resolution of the Commission, in the presence of the Chairman or any other member duly authorised and the Secretary.

Seal and execution of documents.

(2) The seal of the Commission shall be authenticated by the signature of the Secretary.

(3) All documents, other than those required by law to be under seal, made by, and all decisions of, the Commission may be signified under the hand of the Chairman or any other member or officer of the Commission authorised to act in that behalf.

9. (1) The Commission shall meet as often as may be necessary or expedient for the transaction of its business; and such meetings shall be held at such places and times and on such days as the Commission may determine.

Procedure and meetings.

(2) The Chairman may at any time call a special meeting of the Commission, and shall call a special meeting to be held within 7 days of a written request for that purpose addressed to him by any 2 members of the Commission.

(3) The Chairman shall preside at meetings of the Commission, and if the Chairman is absent from a meeting the members of the Commission present shall elect one of their number to preside at that meeting.

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- (4) The quorum of the Commission shall be a majority of the membership thereof.
- (5) The decisions of the Commission shall be by a majority of votes; and in addition to an original vote the Chairman, or other member presiding at the meeting, shall have a casting vote in any case in which the voting is equal.
- (6) Subject to the provisions of this Schedule, the Commission may regulate its own proceedings.
- Funds. 10. The funds and resources of the Commission shall consist of
- (a) such sums as may be provided by Parliament annually for the purpose in the Estimates of Revenue and Expenditure; and
- (b) all other sums which may in any manner become payable to the Commission in respect of any matter incidental to its functions.
- Accounts and audit. 11. (1) The Commission shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts in a form, being a form which shall conform with the best commercial standards.
- (2) The accounts of the Commission shall be audited by the Auditor-General or an auditor approved by the Auditor-General.
- Reports and estimates. 12. (1) The Commission shall, in each year and at such time as the Minister shall direct, prepare and forward to the Minister a report of its activities during the preceding financial year, including a statement of its accounts audited in accordance with paragraph 11.
- (2) A copy of the report together with the auditor's report shall be laid on the Table of the House of Assembly and of the Senate.
- (3) The Commission shall, before a date specified by the Minister, submit to the Minister for his approval estimates of revenue and expenditure for the ensuing financial year.
- Disclosure of interest. 13. (1) A member of the Commission who is directly or indirectly interested in any matter which is being dealt with by the Commission
- (a) shall disclose the nature of his interest at a meeting of the Commission; and
- (b) shall not take part in any deliberation or decision of the Commission with respect to that matter.

(2) A person who fails to comply with sub-paragraph (1) is disqualified from membership of the Commission.

14. (1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Commission in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.

Protection of
members.

(2) Where any member of the Commission is exempt from liability by reason only of the provisions of this paragraph, the Commission shall be liable to the extent that it would be if the member were an employee or agent of the Commission.

15. There shall be paid to the Chairman and other members of the Commission such remuneration (whether by way of honorarium, salary or fees), and such other allowances, as the Minister may determine.

Remunera-
tion of
members.

16. The office of Chairman or other member of the Commission shall not be a public office for the purposes of Chapter V of the *Constitution*.

Office of
Chairman or
member of
Commission
not public
office.