

# STOCK EXCHANGE ACT 1988

Act 38 of 1988 - 12 August 1989

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To regulate Stock Exchange operations in Mauritius  
**PART I - THE STOCK EXCHANGE COMMISSION**

**1 Short title**

This Act may be cited as the Stock Exchange Act 1988.

**2 Interpretation**

In this Act -

“ Advertisement” means any form of communication which is to be or has been distributed to any person by any means and which is authorised or initiated by or on behalf of the issuer or prepared with the co-operation or by arrangement with the issuer, and

- (i) which contains or refers to an offer of securities to the public for subscription; or
- (ii) which is reasonably likely to induce persons to subscribe for securities of the issuer, being securities to which that communication relates and which have been or are to be offered to the public for subscription.

Whether or not consideration is to be or has been paid for the distribution of that communication;

“Board” means the Board referred to in the Financial Services Development Act 2001;

“Board of Directors” means the Board of Directors referred to in section 14(2);

"Clearing House" means the clearing service established under the Securities (Central Depository, Clearing and Settlement) Act 1996.

“Commission” means the Financial Services Commission established under the Financial Services Development Act 2001;

"Companies Act" means the Companies Act 1984:

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

- (a) any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or
- (b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the price of securities;

"dealer" means a stockbroking company;

"dealer's authorised clerk "means a person appointed and approved to act as such under section 27A;

"dealer's representative"-

- (a) means a person, by whatever name described, who is in the direct employment of, or acting for or by arrangement with, a stockbroking company, and who performs for that stockbroking company any of the functions of a stockbroking company (other than work ordinarily performed by accountants, clerks or cashiers) whether his remuneration is by way of salary, wages, commission or otherwise; and
- (b) includes any director or officer of a body corporate who performs for the body corporate any of those functions;
- (c) does not include a dealer's authorised clerk;

“debenture” has the same meaning as in the Companies Act 2001;

"Fund" means the Compensation Fund established by section 40;

"investment club" means an association of not less than 5 individuals formed for the purposes of pooling and investing their funds in securities traded on the Stock Exchange or, with the approval of the Commission, in other securities;

“investment contract” means any contract, scheme or arrangement that, in substance and irrespective of its form, involves the investment of money in or under such circumstances that the investor acquires or may acquire any right or interest in respect of property, whether in Mauritius or elsewhere, that under or in accordance with the terms of the investment will, or may at the option of the investor, be used or employed in common with any other right or interest in respect of property, whether in Mauritius or elsewhere, acquired in or under like circumstances;

"investment institution "means -

- (a) an investment trust company or any other similar institution which is engaged primarily or proposes to engage primarily in the business of investing, reinvesting, owning, holding, issuing or trading in securities;
- (b) an authorised mutual fund as defined under the Companies Act 1984;
- (c) a unit trust authorised under the Unit Trust Act 1989;

"issuer" means a person who issues any security;

“Listing Committee” means the Committee referred to in Section 28A;

“Listing Rules” means the listing rules made by the Stock Exchange Company pursuant to section 21(3); [Added 10/98]

"member" or "member company" means a company which is a member of the Stock Exchange Company;

"Minister" means the Minister to whom the subject of finance is assigned;

"non-citizen" has the same meaning as in the Non-citizens (Property Restriction) Act;

“offer” has the same meaning as in the Companies Act 2001;

"Officer" has the same meaning as in the Companies Act 1984;

"Official List" means the Official List specified in section 28;

“participatory interest” –

(a) means any right to participate or any interest –

- (i) in any profits, assets, earnings, royalties or realisation of any financial or business undertaking or scheme whether in Mauritius or elsewhere;
- (ii) in any common enterprise, whether in Mauritius or elsewhere, in relation to which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party; or
- (iii) in any investment contract,

whether or not the right or interest is enforceable, whether the right or interest is actual, prospective or contingent, whether or not the right or interest is evidenced by

a formal document and whether or not the right or interest relates to a physical asset;  
but

(b) does not include –

- (i) a contract of insurance other than an insurance policy traded on the secondary market;
- (ii) an interest arising out of a partnership agreement unless the agreement or proposed agreement relates to an undertaking, scheme, enterprise or investment contract promoted by, or on behalf of, a person whose ordinary business includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement;
- (iii) a cheque, order for the payment of money, bill of exchange or promissory note;
- (iv) a document issued or executed by a bank or deposit-taking non-bank financial institution licensed or authorised under the Banking Act 1988 in the ordinary course of its banking or deposit-taking business, being a document that acknowledges indebtedness of the bank or deposit-taking non-bank financial institution arising in the ordinary course of that business;
- (v) a foreign exchange contract under the Foreign Exchange dealers Act 1995;  
or
- (vi) any interest in land for which a separate title can be issued under any enactment;

"qualified auditor" has the same meaning as in the Companies Act 1984;

"securities" means –

- (a) shares in, or debentures of, a company or other body corporate or of an unincorporated body;
- (b) debentures, stocks, bonds or treasury bills issued or proposed to be issued by any Government;
- (c) any right or option in respect of any securities referred to in paragraphs (a) and (b);
- (d) any futures contract other than a foreign exchange contract under the Foreign exchange Dealers act 1995;
- (e) rights or interests, whether described as units or otherwise, under any unit trust scheme under the Unit Trust act 1989;
- (f) participatory interests; or
- (g) any other instruments which the Minister may prescribe in regulations made under this Act to be securities for the purposes of this act;

"Stock Exchange" means the Stock Exchange established by section 14;

"Stock Exchange Company" means the Stock Exchange Company specified in section 15;

"stockbroker" means a person licensed as such under section 23;

"stockbroking company" means a company licensed as such under section 24. [Amended 23/92; 25/93]

[Amd. 13/01]

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## **PART I - THE STOCK EXCHANGE COMMISSION**

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## PART II - THE STOCK EXCHANGE OF MAURITIUS LTD

### 14 Establishment of the Stock Exchange

(1) There is hereby established a Stock Exchange which shall be operated and maintained by a Stock Exchange Company to be known as the Stock Exchange of Mauritius Ltd.

(2) The Stock Exchange Company shall -

- (a) be under the control and supervision of the Commission; and
- (b) be managed by its Board of Directors.

### 15 The Stock Exchange Company

(1) Subject to section 54, the Stock Exchange Company shall be incorporated under the Companies Act.

(2) The Stock Exchange Company shall -

- (a) have the exclusive right to operate, manage and maintain the Stock Exchange; and
- (b) comply with the provisions of this Act as to its constitution, objects, powers, duties and other obligations.

[Amended GN 24/2000]

### 16 Objects of the Stock Exchange Company

The objects of the Stock Exchange Company shall be -

- (a) to operate and maintain the Stock Exchange;
- (b) to provide facilities for buying, selling and otherwise dealing in securities on the Stock Exchange;
- (c) to establish a clearing service under the Securities (Central Depository, Clearing and Settlement) Act 1996.
- (d) to provide and maintain, to the satisfaction of the Commission, adequate and properly equipped premises for the conduct of its business.

### 17 Memorandum and Articles of Association of the Stock Exchange Company

The memorandum and articles of association of the Stock Exchange Company shall -

- (a) provide for the making of rules for the proper and efficient operation, management and maintenance of the Stock Exchange;
- (b) not be amended except to such extent and in such manner as may be approved or directed by the Commission for the purposes of this Act.

### 18 Application of the Companies Act 1984

The provisions of the Companies Act shall apply to the Stock Exchange Company and its members save and except to the extent that they are inconsistent with the provisions of this Act.

### 19 Fee payable by the Stock Exchange Company

The Stock Exchange Company shall pay such annual fee as the Minister may prescribe.

### 20 Obligations of Stockbroking companies

Every stockbroking company shall -

- (1) satisfy such minimum capital requirements as may be prescribed from time to time;
- (2) pay such contributions as may be prescribed for the purpose of the Compensation Fund;

- (3) have as directors and other officers persons of good financial standing and integrity;
- (4) comply with the provisions of this Act and such rules as the Stock Exchange Company may make; and
- (5) satisfy such other conditions as the Minister may, upon the recommendation of the Commission, prescribe.

[Amended GN 24/2000]

## **21 Rules of the Stock Exchange Company**

(1) The Stock Exchange Company shall make rules for -

- (a) the performance or fulfilment of its objects, powers, duties and other obligations and
- (b) the conduct and guidance of stockbroking companies.

[Amended GN 24/2000]

(2) Rules made under subsection (1) shall provide in particular for -

- (a) the making of returns and the contents thereof;
- (b) the keeping of accounts, books and records;
- (c) the inspection of such accounts, books and records;
- (d) the audit of accounts;
- (e) the disciplinary measures that may be taken against any officer or other member of the staff of the Stock Exchange Company; and [Amended 25/94]

(3) Without prejudice to the generality of subsection (1), the Stock Exchange Company may, with the approval in writing of the Commission, make or amend Listing Rules for the purposes of regulating the listing of securities on the Stock Exchange. [Added 10/98]

## **22 Duties of the Stock Exchange Company**

(1) It shall be the duty of the Board of Directors of the Stock Exchange Company -

- (a) to ensure compliance by member companies with this Act; and
- (b) to notify the Commission forthwith -
  - (i) of any failure or neglect by a member company to comply with this Act;
  - (ii) of any financial irregularity or other matter which, in its opinion, indicates or may indicate that the financial standing or integrity of any officer of a member Company is questionable.

(2) The officers and members of staff of the Stock Exchange Company shall take the oath prescribed in the Schedule. [Amended 25/94]

## **PART III - LICENSING OF PERSONS AUTHORISED TO DEAL IN SECURITIES**

### **(23) Licensing of stockbrokers and dealer's representatives**

**(1) No person shall be authorised to act as a stockbroker or as a dealer's representative unless he has been licensed as such by the Commission.**

(2) No person shall be licensed under subsection (1) unless -

- (a) he is a person of sound financial means and has not been convicted of any offence involving fraud or other dishonesty;
- (b) he satisfies such minimum entry requirements and has passed or has been exempted from such examinations as may be prescribed; and
- (c) he satisfies such other conditions as may be prescribed.

(3) No person shall act as a stockbroker or hold himself out as carrying on such a business unless he acts as such or carries on such a business as a stockbroker employed by a stockbroking company or as a director of such a company.

(4) Every person who is licensed under subsection (1) shall abide by such code of conduct and comply with such rules as may be prescribed.

[Amd. 13/01]

#### **24 Licensing of stockbroking companies**

No company shall carry on the business of a stockbroking company or hold itself out as carrying on such a business unless -

- (a) it is the holder of a licence granted by the Commission;
- (b) at least two of its officers are duly licensed stockbrokers.

[Amd. 13/01]

#### **25 Application for licence**

(1) An application for a licence under this Part shall be made in such form and manner as may be determined by the Commission and be accompanied by the prescribed fee.

(2) The Commission may require an applicant to supply it with such further information as it considers reasonably necessary to determine the application.

#### **26 Licensing conditions**

The Commission may grant or renew a licence under sections 23 and 24 subject to such terms and conditions as it thinks fit.

[Amd. 13/01]

#### **27 Register of licences**

(1) The Commission shall keep, in such form as it thinks fit, a register of all licences issued under this Act.

- (2) The register shall indicate -
- (a) the name of the licensee;
  - (b) the business address of the licensee;
  - (c) the name under which the licensee carries on his business; and
  - (d) the nature of the licence held by the licensee.

(3) Any person may, on payment of the prescribed fee, inspect the register, take extracts of it and have any such extract certified by the Commission.

#### **27A Dealer's authorised clerk**

- (1) No person shall be appointed and approved to act as a dealer's authorised clerk -
- (a) unless he meets the requirements set out in the approved rules; and
  - (b) otherwise than in accordance with the approved rules

(2) No person shall act as a dealer's authorised clerk or hold himself out as acting as such unless he has been so appointed and approved pursuant to the approved rules.

(3) Every person who is appointed and approved to act as a dealer's authorised clerk pursuant to the approved rules shall abide by any conditions of his appointment and approval and by the approved rules and the provisions of this Act.

(4) In this section "approved rules" means rules made by the Stock Exchange Company and approved by the Commission pursuant to section 32. [Added 23/92]

## PART IV - LISTING AND TRADING OPERATIONS

### **28 Official List**

(1) There shall be an Official List of the Stock Exchange which shall be the list of all securities which have been admitted for quotation.

(2) Every company desirous of being admitted for quotation on the Official List or of issuing new securities of a class already listed shall make an application in such form as the Stock Exchange Company may, from time to time and with the approval of the Commission, determine.

(3) On receipt of an application under subsection (2), the Stock Exchange Company shall refer the application to the Listing Committee.

[Amended 24/2000]

(4) The Listing Committee, after giving due consideration to the eligibility and suitability of an application, may -

- (a) grant the application subject to any conditions it deems fit; or
- (b) reject the application.

[Amended 24/2000]

(5) Where the Listing Committee grants an application under subsection (4), it shall forthwith forward a copy of the listing particulars referred to in section 33 (2) to the Stock Exchange Commission and the Stock Exchange Company.

[Amended 24/2000]

(6) Any company which is aggrieved by a decision of the Listing Committee under subsection (4) may, within 28 days of the date of the decision, appeal to the Stock Exchange (Listing) Appeals Committee specified in section 28B.

[Added 24/2000]

(7) The Stock Exchange Company may, with the approval of the Listing Committee, suspend for any period or withdraw any company from the Official List at any time without assigning any reasons for such decision.

[Amended 25/93; 10/98]

### **28A Listing Committee**

(1) There shall be a Committee to be known as a Listing Committee.

(2) The Listing Committee shall be constituted and shall conduct its business in such manner as the Minister may prescribe.

(3) Any person appointed as a member or officer of the Listing Committee shall take the oath prescribed in the Schedule. [Added 25/93]

### **28B Stock Exchange (Listing) Appeals Committee**

(1) There shall be set up, on an adhoc basis, for the purposes of section 28 a Stock Exchange (Listing) Appeals Committee which shall consist of -

- (a) a Chairperson, appointed by the Minister; and
- (b) 2 other members, appointed by the Minister from amongst persons who have a sound understanding and experience in the workings of financial markets that render them fit and proper persons to be members.

- (2) Every member of the Appeals Committee shall take the oath prescribed in the Schedule.
- (3) An appeal under this section shall be dealt with in such manner as may be prescribed.
- (4) The Committee shall –
  - (a) meet at such time and place as the Chairperson thinks fit; and
  - (b) subject to the other provisions of this section, regulate its meetings and proceedings in such manner as it thinks fit.
- (5) The Commission may nominate such member of its staff as may be necessary to assist in the conduct of the business of the Appeals Committee.
- (6) The members of the Appeals Committee shall be paid such fees as may be approved by the Minister on the recommendation of the Commission.

[added 24/2000]

**28C Registration and regulation of sponsors and authorised representatives**

- (7) No person shall act as a sponsor or an authorised representative of an issuer unless the person –
  - (a) is a stockbroking company licensed under section 24; or
  - (b) is duly registered with the Commission in accordance with such regulations as may be prescribed.
- (8) For the purposes of this section –

“authorised representative” means a registrar, underwriter or a custodian in respect of an issue of securities or any financial intermediary who may, in any manner, be associated with the securities market;

“sponsor” means a stockbroking company, financial institution or any other person duly registered, with the Commission.

[Added 24/2000]

**29 Permitted dealings**

- (1) The following securities may be traded or otherwise dealt with on the Stock Exchange-
  - (a) securities which are quoted on the Official List of the Stock Exchange or admitted to any other stock market of the Stock Exchange;
  - (b) Treasury Bills, bonds and other securities issued by, or on behalf of, the Government of Mauritius; and
  - (c) units issued under a unit trust scheme approved by the Minister.

(2) Dealings in securities mentioned in subsection 1 (b) and (c) shall be permitted on the Stock Exchange on such terms and conditions as the Stock Exchange Company may, with the approval of the Commission, determine.

**30 Dealings in securities quoted on the Official List**

All dealings in securities quoted on the Official List or admitted to any other stock market of the Stock Exchange, shall be made by a stockbroking company licensed under section 24.

**31 Central Depository, Clearing and Settlement Service**

The Stock Exchange Company shall establish and maintain a central depository, clearing and settlement service in accordance with the provisions of the Securities (Central Depository, Clearing and Settlement) Act 1996.

(Amended 1996)

**32 Conduct of trading operations**

(1) The conduct of trading operations shall be subject to such rules as the Stock Exchange Company, with the approval of the Commission, shall make.

(2) Rules made pursuant to subsection (1) shall provide in particular for -

- (a) the dealing system;
- (b) access to do business through the Stock Exchange of Mauritius Automated Trading System (SEMATS);
- (c) issue of contract notes;
- (d) buying-in and selling-out procedures;
- (e) reporting of transactions;
- (f) delivery and settlement procedures; and
- (g) margin requirements to be maintained by stockbroking companies.

(3) A stockbroking company shall, in respect of a transaction of sale or purchase of securities, forthwith issue a contract note in compliance with subsection (4).

(4) A contract note issued by a stockbroking company under subsection (3) shall include

- (a) the name under which the stockbroking company carries on its business and the address of the principal place at which it so carries on business;
- (b) the name and address of the person to whom the stockbroking company gives the contract note;
- (c) the day and time on which the transaction took place and, if the transaction did not take place in the ordinary course of business on the Stock Exchange, a statement to that effect;
- (d) the number, or amount and description, of the securities that are the subject of the contract;
- (e) the price per unit of the securities;
- (f) the amount of the consideration;
- (g) the rate and amount of commission (if any) charged;
- (h) the amounts of all stamp duties or other duties and taxes payable in connection with the contract; and
- (i) if an amount is to be added to or deducted from the settlement amount in respect of the right to a benefit purchased or sold together with the securities, the first-mentioned amount and the nature of the benefit.

**33 Advertisements in relation to securities**

(1) No securities shall be quoted on the Official List except upon publication of listing particulars for the benefit of investors.

(2) The listing particulars shall contain all such particulars as are specified in the Listing Rules to enable any interested person to be reasonably well informed.

(3) Without prejudice to the generality of subsection (2), the listing particulars shall disclose-

- (a) the assets and liabilities of the issuer;
- (b) the financial position of the issuer;
- (c) the issued and paid up share capital of the issuer;
- (d) the profits and losses of the issuer;
- (e) the directorship of the issuer;

- (f) the rights attaching to the securities; and
- (g) the prospects of the issuer.

(4) Where an issuer or any other person wishes to advertise any information relating to operations involving the public which the issuer or any other person on his behalf proposes to launch or undertake, no such advertisement shall be made except with the authorisation of the Commission.

(5) Subsection (4) shall not apply to any prospectus not being a prospectus which also serves as listing particulars or other document which is authorised to be issued and is issued in compliance with the enactment authorising it or to any circular, document or advertisement issued by or on behalf of the Government and relating to Government securities.

- (6) For the purpose of subsection (4), operations involving the public shall include -
- (a) any offer to buy or exchange quoted securities;
  - (b) any proposal to quote new securities on the Stock Exchange even though those securities may be assimilated to existing securities;
  - (c) any offer to buy or sell securities which are not already quoted but which are intended to be quoted; and
  - (d) such other dealings as may be prescribed by the Commission and which concern, wholly or partly, investments in securities.

[Amended 23/92]

### **33A Prohibition of advertisements**

- (1) Where at any time the Commission is of opinion that an advertisement under section 33(4) -
- (a) is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities to which it relates;
  - (b) is inconsistent with any registered prospectus referred to in it; or
  - (c) does not comply with this Act or any regulations made thereunder,

the Commission may make an order prohibiting the distribution of that advertisement which relates to the offer of securities.

- (2) An order under subsection (1) may be made on such terms and conditions as the Commission thinks fit.
- (3) Where the Commission makes an order under this section
- (a) it shall forthwith notify the issuer of the securities that the order has been made and the reasons for making it; and
  - (b) it may notify any other person that the order has been made and the reasons for making it.
- (4) Any person who contravenes an order made under this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.
- (5) It shall be a defence to a charge for an offence under subsection (4) where the defendant proves that the advertisement was distributed
- (a) without his knowledge; or
  - (b) without his knowledge of the order.

- (6) Where an order has been made under this section, the issuer of the securities to which the advertisement relates shall be entitled to appear and to be represented before the Commission and the Commission may, where it is satisfied that the order should not continue in force, revoke the order.

**34 Publication of prices**

The Stock Exchange Company shall -

- (a) keep records of all dealings carried out by all stockbroking companies;
- (b) publish in at least 2 daily newspapers abstracts from such records showing the current buying and selling prices of securities traded on the Stock Exchange; and
- (c) post at the Stock Exchange a copy of the current prices in a conspicuous position to which the public has access during working hours.

**PART V - ACCOUNTS, AUDIT AND DISCLOSURE REQUIREMENTS**

**35 Duty to furnish returns and information**

Every person licensed under sections 23 and 24 shall furnish such returns and provide such information relating to his business as the Commission may require.

**36 Accounts to be kept by stockbroking companies**

(1) Every stockbroking company licensed under section 24 shall keep or cause to be kept accounting and other records that will sufficiently explain the transactions and financial position of its business.

(2) The directors of every stockbroking company shall cause to be made out and laid before the company at each annual general meeting a profit and loss account showing a true and fair view of the profit or loss of the company and a balance sheet showing a true and fair view of the company's affairs as at the end of the financial year.

(3) The records to be kept by a stockbroking company under subsection (1) shall be kept in sufficient detail to show particulars of -

- (i) all monies received or paid by the company;
- (ii) all purchases and sales of securities made by the company, including the names of the buyer and seller of those securities;
- (iii) all income received from commissions, interest and other sources;
- (iv) all expenses, commissions and interest paid;
- (v) all its assets and liabilities;
- (vi) all securities which form part of its assets;
- (vii) all underwriting transactions entered into by the company; and
- (viii) every transaction it has entered into.

**37 Separate bank accounts**

(1) Every licensee shall open and maintain a separate and distinct bank account in which he shall keep all amounts received for the purchase and from the sale of securities (less any brokerage or other proper charges).

(2) No licensee shall withdraw any money from the bank account mentioned in subsection (1) except for the purpose of making a payment -

- (a) to the person entitled thereto or his agent; or
- (b) defraying brokerage and other proper charges.

**38 Appointment of auditor**

Every stockbroking company shall -

- (a) appoint a qualified auditor to carry out an audit of the accounts of the company;

(b) lodge with the Stock Exchange Company, within 3 months after the end of the financial year, the auditor's report.

**39 Duties of the auditor**

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

- (a) of any matter which, in his opinion, may adversely affect the financial position of the company to a material extent;
- (b) of any matter which, in his opinion, may constitute a breach of any provision of this Act or fraud or other dishonesty; and
- (c) that irregularities that may have a material effect upon the accounts have occurred, including irregularities that may jeopardise the funds or property of the clients of the stockbroking company,

he shall immediately report the matter to the Stock Exchange Company and the Commission.

(2) No liability, civil or criminal, shall attach to an auditor who complies with subsection(1) in good faith.

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**PART VI - COMPENSATION FUND**

40. - 45 .....[Repealed by the Financial Services Development Act 2001]

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**PART VII - PROHIBITED DEALINGS**

**46 Insider dealing**

(1) A person who has been or is connected with a body corporate shall not deal in any securities of that body corporate if by reason of his so being, or having been, connected with that body corporate whose securities are traded or at the time of the dealing are in prospect of being traded on any stock market, he is in possession of information that is not generally available but, if it were, would be likely materially to affect the price of those securities.

(2) A person who has been or is connected with a body corporate shall not deal in any securities of any body corporate referred to in subsection(1) if by reason of his so being, or having been, connected with the first-mentioned body corporate he is in possession of information that -

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

[Amd. Companies Act 15/2001]

(3) Where a person is in possession of any such information as is mentioned in subsection (1) or (2) that if generally available would be likely materially to affect the price of securities but

is not precluded by either of those subsections from dealing in those securities, he shall not deal in those securities if-

- (a) he has obtained the information, directly or indirectly, from another person and is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is then himself precluded by subsection (1) or (2) from dealing in those securities; and
- (b) when the information was so obtained, he was associated with that other person or had with him an arrangement for the communication of information of a kind to which those subsections apply with a view to dealing in securities by himself and that other person or either of them.

(4) A person shall not, at any time when he is precluded by subsection (1), (2) or (3) from dealing in any securities, cause or procure any other person to deal in those securities.

(5) A person shall not, at any time when he is precluded by subsection (1), (2) or (3) from dealing in any securities by reason of his being in possession of any information communicated to any other person if -

- (a) trading in those securities is permitted on the Stock Exchange;
- (b) he knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing or causing or procuring another person to deal in those securities.

(6) Without prejudice to subsection (3) but subject to subsections (7) and (8), a body corporate referred to in subsection (1) shall not deal in any securities at a time when any officer of that body corporate is precluded by subsection (1), (2) or (3) from dealing in those securities.

[Amd. Companies Act 15/2001]

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

- (a) the decision to enter into the transaction was taken on its behalf by a person other than the officer;
- (b) it had in operation at that time arrangements to ensure that the information was not communicated to that person and that no advice with respect to the transaction was given to him by a person in possession of the information; and
- (c) the information was not so communicated and such advice was not so given.

(8) A body corporate is not precluded by subsection (6) from dealing in securities of another body corporate at any time by reason only of information in the possession of an officer of that first-mentioned body corporate, being information that was obtained by the officer in that course of the performance of his duties as an officer of that first-mentioned body corporate and that relates to proposed dealings by that first-mentioned body corporate in securities of that other body corporate.

(9) For the purposes of this section, a person is connected with a body corporate, if being a natural person -

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

(10) This section does not preclude the holder of a licence issued under sections 23 and 24 from dealing in permitted securities of a body corporate, if -

- (a) the holder of the licence enters into the transaction concerned as agent for another person pursuant to a specific instruction by that other person to effect that transaction;
- (b) the holder of the licence has not given any advice to the other person in relation to dealing in securities, or rights or interests in securities, of that body corporate that are included in the same class as the first-mentioned securities; and
- (c) the other person is not associated with the holder of the licence.

(11) Where a prosecution is instituted against a person for an offence by reason that the person was in possession of certain information and entered into a transaction in contravention of this section, it is a defence if the person satisfies the court that the other party to the transaction knew, or ought reasonably to have known, of the information before entering into the transaction.

(12) For the purposes of subsection (8), "officer", in relation to a body corporate, includes-

- (a) a director, secretary, executive officer or employee of the body corporate;
- (b) a receiver, or receiver and manager, of property of the body corporate;
- (c) a judicial manager of the body corporate;
- (d) a liquidator of the body corporate; and
- (e) a person administering a compromise or arrangement made between the body corporate and another person or other persons.

(13) A person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Rs 100,000 or to imprisonment for a term not exceeding 10 years.

(14) Where an advantage is gained from a dealing in securities in contravention of the provisions of this section, any person who gained that advantage shall, whether or not any person has been prosecuted for or convicted of an offence in respect of the contravention, be liable -

- (a) to any other person for the amount of any loss incurred by that other person by reason of the gaining of that advantage; and
- (b) to the company that issued or made available those securities, for any profit that accrued to him by reason of the gaining of that advantage.

(15) Where a loss or profit referred to in subsection (14) is incurred by means of an advantage gained from a dealing in securities, the amount of the loss or profit shall be the difference between -

- (a) the price at which the dealing was effected; and
- (b) the price that, in the opinion of the Court before which it is sought to recover the amount of the loss or profit, would have been the market price of the securities at the time of the dealing if the specific information used to gain that advantage had been generally known at that time.

(16) The Commission may bring an action in the name of and for the benefit of a person for recovery of a loss or profit referred to in subsection (14).

[Amd. 13/01]

(17) An action to recover a loss or profit referred to in subsection (14) may not be brought after the expiry of the period of -

- (a) two years next succeeding the dealing in securities to which the action relates; or
- (b) six months next succeeding the discovery of the relevant fact by the person who suffered the loss or seeks to recover the profit whichever first occurs.

(18) Notwithstanding the provisions of section 107 of the Companies Act 1984, any proceedings whether civil or criminal in relation to insider dealing connected with securities listed on the Stock Exchange shall be instituted under this Act.

#### **47 Fraudulent inducement to invest**

(1) Every person who, by any fraudulent means, induces or attempts to induce another person to enter into or offer to enter into -

- (a) an agreement for, or with a view to, acquiring, disposing of, subscribing for or underwriting securities; or
- (b) an agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities,

shall commit an offence and shall on conviction, be liable to pay a fine which shall not exceed Rs 100,000 and to imprisonment for a term which shall not exceed 5 years.

(2) For the purpose of subsection (1), fraudulent means shall include -

- (a) any statement, promise or forecast which the person knows to be misleading, false or deceptive;
- (b) any dishonest concealment of material facts; or
- (c) any reckless making of any statement, promise or forecast which is misleading, false or deceptive.

#### **48 False statements and transactions**

Every person who knowingly or recklessly -

- (a) gives a fictitious price to securities by means of false rumours;
- (b) obtains admission to the Official List by means of a false statement;
- (c) makes any fictitious dealings in securities; or
- (d) advertises or holds out that securities which are not quoted on the Stock

Exchange are so quoted,

shall commit an offence and shall, on conviction, be liable to pay a fine which shall not exceed Rs 100,000 and to imprisonment for a term not exceeding five years.

#### **49 Misleading documents**

Every person who -

- (a) distributes or causes to be distributed any documents which, to his knowledge, are circulars containing -
  - (i) an invitation to persons to do any of the acts the inducement or attempted inducement to do which by a misleading, false or deceptive statement is an offence under section 47; or
  - (ii) information calculated to lead directly or indirectly to the doing of any of the acts specified in paragraph (i) by the recipient of the information;
- (b) has in his possession for the purpose of distribution any circulars which, to his knowledge, are such circulars as are specified in paragraph (a),

shall commit an offence and shall, on conviction, be liable to pay a fine which shall not be less than Rs 10,000 or more than Rs 100,000 together with imprisonment for a term not exceeding 5 years.

#### **50 Stockmarket manipulation**

(1) A person shall not, with the fraudulent intent to induce other persons to purchase or subscribe for securities of a body corporate or of a related corporation effect, take part in, be concerned in or carry out, either directly or indirectly, 2 or more transactions in securities of the body corporate, being transactions that have, or are likely to have, the effect of abnormally or artificially raising the price of securities of the body corporate on the Stock Exchange.

(2) A person shall not, with the fraudulent intent to induce other persons to sell securities of a body corporate or of a related corporation, effect, take part in, be concerned in or carry out,

either directly or indirectly, 2 or more transactions in securities of the body corporate, being transactions that have, or are likely to have, the effect of abnormally or artificially lowering the price of securities of the body corporate on the Stock Exchange.

(3) A person shall not, with the fraudulent intent to induce other persons to sell, purchase or subscribe for securities of a body corporate or of a related corporation, effect, take part in, be concerned in or carry out, either directly or indirectly, 2 or more transactions in securities of a body corporate, being transactions that have, or are likely to have the effect of abnormally or artificially maintaining the price of securities of the body corporate on the Stock Exchange.

(4) A reference in this section to a transaction, in relation to securities of a body corporate, includes-

- (a) a reference to the making of an offer to sell or purchase such securities of the body corporate; and
- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase such securities of the body corporate.

(5) Every person who acts in contravention of this section shall commit an offence and shall, on conviction, be liable to pay a fine which shall not be less than Rs 25,000 or more than Rs 100,000 and to imprisonment for a term not exceeding 5 years.

#### **PART VII A - INVESTMENT INSTITUTIONS**

##### **50A Designation of approved investment institutions**

The Commission may designate an investment institution to be an approved investment institution for the purpose of this Act.

[Amd. 13/2001]

##### **50B Rules by the Commission**

The Commission shall make rules for the setting up and monitoring of activities of such approved investment institutions. [Added 23/92]

#### **PART VIII - MISCELLANEOUS PROVISIONS**

##### **51 Penalties**

(1) Every person who fails to comply with the requirements of confidentiality prescribed by the terms of his oath under this Act shall commit an offence and shall on conviction be liable to pay a fine which shall not be less than Rs 10,000 or more than Rs 100,000 and to imprisonment for a term not exceeding 3 years.

(2) Every person who fails to comply with any regulations made under this Act shall commit an offence and shall, on conviction, be liable to pay a fine not exceeding Rs 50,000 and to imprisonment for a term not exceeding one year.

(3) Every person who without reasonable excuse fails to comply with any request made by the Commission pursuant to section 10 shall commit an offence and shall, on conviction, be liable to pay a fine not exceeding Rs 50,000 and to imprisonment for a term not exceeding one year and the Court may, in addition, order the person to comply with the request of the Commission.

[Amd. 13/2001]

(4) Every person who makes a disclosure of information in contravention of section 33 shall commit an offence and shall, on conviction, be liable to pay a fine which shall not exceed Rs 100,000 and to imprisonment for a term not exceeding 5 years.

(5) Every person who fails to comply with any provision of this Act for which no separate penalty is provided shall commit an offence and shall, on conviction, be liable to pay a fine not exceeding Rs 50,000 and to imprisonment for a term not exceeding one year.

(6) The Commission may revoke the licence of any licensee convicted for an offence under this Act.

[Amd. 13/2001]

## **52 Reporting offences**

Where the Commission is of opinion that an offence against the Act has been committed by any person, it shall forthwith refer the matter to the Commissioner of Police.

### **52 A Investigatory Powers**

(1) The powers of the Commission under this section may, notwithstanding section 10, be exercised by the Chief Executive of the Commission where the Commission has good reason to suspect that a person has contravened any provision of this Act or of any regulations made under this Act or has committed any breach of trust, defalcation, fraud, misfeasance or offence against any other enactment in relation to dealing or trading in securities or that insider dealing within the meaning of section 46 has taken place.

[Amd. 13/2001]

(2) The Commission may, by notice in writing, require the person whose affairs are to be investigated (“the person under investigation”), or any other person whom it has reason to believe has relevant information, to -

- (a) attend before the Commission to answer questions or otherwise furnish information; and
- (b) produce any documents which appear to the Commission to relate to any matter relevant to the investigation and the Commission may take copies of all books, accounts and documents which are produced for the purposes of the investigation.

(3) Where books, accounts and documents referred to in subsection (2)(b) are not produced, the Commission may require the person who was required to produce them to state, to the best of his knowledge and belief where they are.

(4) A statement by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(5) No person, other than a lawyer who may be required to furnish the name and address of his client, shall, under this section, be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege.

(6) Any person who, without reasonable excuse, fails to comply with a requirement imposed on him under this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

(7) A person who, in purported compliance with a requirement under this section

- (a) makes a statement which he knows to be false or misleading in a material particular; or
- (b) recklessly makes a statement which is false or misleading in a material particular,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

(8) Where any person who knows or suspects that an investigation by the Commission is being or is likely to be carried out, falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which he knows or suspects are or would be relevant to such an investigation, he shall commit an offence, unless he proves that he had no intention of concealing the facts disclosed by the documents from persons carrying out such an investigation, and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

(9) Any person who is convicted on a prosecution instituted as a result of an investigation under this section may, in the same proceedings, be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

## **52 B Compliance Orders**

Where, from any inquiry conducted by the Commission under this Act, it appears to the Commission that there has been a contravention of this Act or of regulations made under this Act, the Commission may apply to the Supreme Court for an order directing or securing compliance with those provisions in such manner as the Supreme Court deems fit.

## **53 Powers of the Minister**

(1) The Minister may make such regulations as he considers necessary for the purposes of this Act.

(2) Regulations made under subsection (1) may provide -

- (a) that no person shall have the right to establish, maintain and operate a stock market, other than a stock market established by the Stock Exchange, except upon such terms and conditions as may be prescribed;
- (b) that no person shall engage in any transactions in securities in any stock market other than a stock market which is authorised under this Act; and
- (c) for the levy of fees and charges.

## **54 Registration and winding-up of the Stock Exchange Company**

(1) The Stock Exchange Company shall be deemed to have been registered under the Companies Act 1984 and shall be issued with a certificate of incorporation upon the memorandum and articles of association of the company being lodged with the Registrar of Companies.

[Amd. 13/2001]

(2) No resolution for winding-up the Stock Exchange Company shall be valid unless approved by the Commission.

[Amended 24/2000]

## **55 Restriction on the use of the words "Stock Exchange"**

No person shall use the words "Stock Exchange" in connection with his business without having obtained the prior permission of the Commission.

## **56 Rules made by the Commission**

The Commission may make rules -

- (a) to provide for the exercise of disciplinary powers over licensees under this Act;
- (b) to establish a code of practice on mergers, take-overs and other corporate re-organisations;

- (c) to provide for the keeping, by each person licensed under section 23 and any officer or member of staff of the Stock Exchange Company, of a register of securities in which he has a personal interest; and
- (d) to provide for the registration, operation and control of the activities of investment clubs;
- (e) to discharge any of its functions under this Act.

[Amended 23/92; 25/93]

[Amended 10/98]

[Amd. 13/2001]

57 -

**58 Transitional provisions**

(1) Anything done under the Stock Exchange Act 1987 shall be considered to have been validly done under this Act.

(2) The Chairman, Vice-Chairman and members of the Commission appointed under the Stock Exchange Act 1987 shall continue in office on the same terms under which they were appointed and shall be considered to have been validly appointed under this Act.

**59 Repeal**

The Stock Exchange Act 1987 is repealed.

**60 Commencement**

This Act shall come into operation on a day to be fixed by Proclamation and different dates may be fixed in respect of different provisions of this Act.

**SCHEDULE**

(sections 22 (2), 28A and 28B of the Stock Exchange Act 1988)

**OATH**

I ..... being appointed Chairman/Vice-Chairman/Member/Secretary/member of Staff/officer of the Stock Exchange Company/Listing Committee/member of the Stock Exchange (Listing) Appeals Committee, do hereby swear/solemnly affirm that I will, to the best of my judgement, act for the furtherance of the objects of the Stock Exchange Company/Listing Committee and shall not, on any account and at any time, disclose, otherwise than with the authorisation of the Stock Exchange Company/Listing Committee/member of the Stock Exchange (Listing) Appeals Committee or where it is strictly necessary for the performance of my duties, any information of a confidential nature obtained by me in virtue of my official capacity.

Taken before me, .....The Master and Registrar of the Supreme Court on .....

[Amended 25/93]  
[Amended 13/2001]