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CONSOLIDATED TO 18TH DECEMBER, 2024

SECURITIES ACT

(Act 8 of 2007)

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PART 1 – GENERAL PROVISIONS

Short title

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

Interpretation

2. (1) In this Act, unless the context otherwise requires –

“accountant” means –

- (a) A person who has qualified as an accountant by examination of any one of the following bodies –
 - (i) Institute of Chartered Accountants in England and Wales;
 - (ii) Association of Chartered Certified Accountants (United Kingdom);
 - (iii) Institute of Chartered Accountants in Ireland;
 - (iv) Institute of Certified Public Accountants in Ireland;
 - (v) Institute of Chartered Accountants in Scotland;
 - (vi) Institute of Chartered Accountants in Australia;
 - (vii) Institute of Certified Public Accountants in Singapore;
 - (viii) Hong Kong Institute of Certified Public Accountants;
 - (ix) South African Institute of Chartered Public Accountants;
 - (x) American Institute of Certified Public Accountants;
 - (xi) Canadian Institute of Chartered Accountants; and
- (b) a member of any other accountancy body recognized by the Authority as such for the purposes of this Act,

and who is a current member in good standing of one of those bodies;

“auditor” means an accountant licensed by the Seychelles Licensing Authority or an accountant outside Seychelles who has been approved in writing by the Securities Authority;

“accredited” is construed in accordance with section 53;

“advertisement” includes every form of advertising, whether in a publication, or by the display of notices, signs, labels or showcards by means of circulars or other documents, by an exhibition of pictures or photographic or cinematographic films, by way of sound broadcasting or television, by the distribution of recordings, by

internet or other computer or digital means, or in any other manner, and “advertising” shall be construed accordingly;

“bank” means any bank in Seychelles or a bank licensed and regulated as such outside of Seychelles;

“bank in Seychelles” means a bank licensed under the Financial Institutions Act 2004;

“clearing agency” means a company whose business is the provision of services for the clearing and settlement of transactions in securities;

“company” means a company incorporated or other body corporate wherever incorporated or constituted, and shall include a limited partnership constituted under the Limited Partnerships Act 2003;

“Companies Act” means the Companies Act 1972;

“constitutional documents” means, in the case of a company, the certificate of incorporation and the memorandum and articles of association or other instrument of incorporation;

“Court” means the Supreme Court of Seychelles;

“dealing in securities” is construed in accordance with section 45(5) to 45(6) and likewise “deal” shall be construed accordingly;

“Disciplinary Committee” means the Disciplinary Committee established under section 120;

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

- (a) any writing on any material;
- (b) a book, graph, drawing or other pictorial representation or image;
- (c) information recorded or stored by any electronic or other technological means and capable with or without the aid of any equipment of being reproduced;

“exempt overseas securities dealer” has the meaning given in section 45(1)(b);

“investment advisor” means a person who carries on business giving advice on securities, or who holds himself out as conducting such business, within the meaning of section 48;

“investment advisor's representative” means an individual in the employment of (including a director of) an investment advisor whose principal purpose is to oversee the execution of the activities outlined within the meaning of section 48(3), whether he is paid a salary, wages, commission or otherwise;

“issuer” in relation to any securities, means the person by whom they have been or are to be issued;

“licensee” means a person licensed under Part 5;

“listed company” means a public company whose securities are listed and quoted on a securities exchange and “listed security” shall be construed accordingly;

“member” in relation to a securities exchange, means a licensee who is admitted to membership of the exchange;

“Minister” means the Minister responsible for finance;

“person” includes a company and an individual;

“prescribed” means prescribed by regulations made by the Minister on the recommendation of the Securities Authority;

“prospectus” means prospectus, notice, circular, advertisement or other communication or invitation, offering to the public for subscription or purchase any securities;

“public company” means a company whose shares (or any class of shares) are intended for distribution to the public and includes a listed company;

“recognized jurisdiction” means a jurisdiction in which a regulatory authority for a securities market is an ordinary member of the International Organisation of Securities Commissions;

“recognized overseas regulatory authority” means a regulatory authority which exercises one or more functions corresponding to the functions of the Securities Authority under this Act –

- (a) in a recognized jurisdiction; or
- (b) in such other country or territory outside Seychelles which the Securities Authority has declared by notice published in the *Gazette* to be recognized for the purposes of this Act;

“recognized overseas securities dealer” means a company, or a subsidiary or holding company of a company, which is licensed by a recognized overseas regulatory authority to deal in securities and is a member of a recognized overseas securities exchange;

“recognized overseas securities exchange” means —

- (a) any duly licensed securities exchange located and regulated in a recognized jurisdiction; or
- (b) any other securities exchange which the Authority has declared by notice by the Minister published in the *Gazette* to be so recognized for the purposes of this Act;

“representative” means an accredited securities dealer’s representative or an investment advisor’s representative, as the case may be, licensed under section 52;

“resident person” means an individual who resides and who is domiciled in Seychelles; or who is present in Seychelles for a period of, or periods amounting in aggregate to, one hundred eighty-three (183) days or more in any twelve (12) month period that commences or ends during the financial year of a licensee;

“restricted licence securities dealer” means a securities dealer licensed under section 46(3);

“securities” means –

- (a) securities as set out in Schedule 1;
- (b) any other instruments prescribed to be securities for the purposes of this Act,

but does not include –

- (i) bills of exchange;
- (ii) treasury bills with an original maturity of less than ninety days;
- (iii) promissory notes for less than two hundred and seventy days;
- (iv) certificates of deposit issued by a licensed financial institution;
or
- (v) any other instrument prescribed, on the recommendation of the Securities Authority, not to be securities for the purposes of the Act;

“Securities Authority” means the Central Bank of Seychelles as established by the Central Bank of Seychelles Act 2004, and shall include any statutory successor to the Central Bank of Seychelles;

“securities business” means the business of dealing in securities;

“securities dealer” means a person who carries on the business of dealing in securities, or who holds himself out as conducting such business, within the meaning of section 45, and shall include a person who holds a restricted securities dealer licence issued under section 46(3);

“securities dealer's representative” means an individual in the employment of (including a director of) a securities dealer whose principal purpose is to oversee the execution of the activities outlined within the meaning of section 45 (5), whether he is paid a salary, wages, commission or otherwise;”

“securities exchange” means a market, exchange, place or facility which provides for bringing together on a regular basis purchasers and sellers of securities, and

sets rules for the execution of securities transactions or for the negotiation or conclusion of sales and purchases of securities, but does not include –

- (a) the office or facilities of a member of a licensed securities exchange;
or
- (b) the office or facilities of a clearing agency or securities facility;

“securities facility” has the meaning given in section 41(1);

“Seychelles Securities Exchange” means a company operating in a market or other place in Seychelles at or on which securities are offered for sale, purchase or exchange and which is licensed by the Securities Authority in accordance with section 9 of this Act;

“underwriting” includes the purchase of newly issued securities for the purpose of public resale on behalf of the issuer, and the guaranteeing to an issuer that the unsold residue of the issuer’s public issue or sale will be taken up.

(2) A company is –

- (a) a subsidiary of another company (its holding company) if that other company –
 - (i) holds a majority of the voting rights in it;
 - (ii) is a member of it and has the right to appoint or remove a majority of its board of directors; or
 - (iii) is a member of it and controls alone, pursuant to an agreement with other shareholders, a majority of the voting rights in it;
- (b) deemed to be a subsidiary of another if the first mentioned company is a subsidiary of a company which is itself a subsidiary of that other company.

(3) In this Act, unless the context otherwise requires, any reference to a statute or a provision of a statute is a reference to that statute or provision as amended or consolidated or re-enacted at the relevant time.

PART 2 – SECURITIES AUTHORITY

Purposes of the Securities Authority

3. The purposes of the Securities Authority under this Act are to –

- (a) license persons engaged in securities-related business and to monitor and supervise the conduct of such business by licensees under this Act;
- (b) promote the confident and informed participation of investors in Seychelles’ securities markets, and to foster fair, efficient and transparent securities markets in Seychelles;

- (c) promote protection of investors in Seychelles' securities through setting up and encouraging of the high standards of professional and other activities within the securities market;
- (d) maintain effective compliance and enforcement programs supported by adequate statutory powers;
- (e) promote the growth and development of Seychelles capital markets;
- (f) suppress and prevent financial crimes and illegal practices;
- (g) carry out research, and collect, compile and disseminate data and information on the Seychelles' securities industry.

Duties of the Securities Authority

4. The duties of the Securities Authority are to –

- (a) take all reasonable steps to ensure that this Act and any rules or regulations made under this Act are complied with;
- (b) license, supervise and regulate the activities of securities exchanges, clearing agencies and any securities facility;
- (c) set standards of competence for licensees whether by way of examination or otherwise;
- (d) approve the rules of securities exchanges, clearing agencies and securities facilities;
- (e) monitor and enforce rules for the conduct of business of licensees including suspension and revocation of licences in accordance with this Act;
- (f) promote and encourage high standards of investor protection and integrity among licensees, and to encourage the delivery by licensees of balanced and informed advice to their clients and to the public generally;
- (g) support the operation of an orderly, fair and properly informed securities market;
- (h) regulate the manner of trading and the range of securities traded on securities exchanges;
- (i) take all reasonable steps to safeguard and protect the interest of investors in securities and to suppress illegal, dishonourable and improper practices in dealings in securities and in providing advice or other services relating to securities;
- (j) co-operate with and assist other regulatory authorities that are concerned with securities or with operations of companies;
- (k) exercise and perform such other duties as may be conferred or imposed upon it.

Powers of the Securities Authority

5. (1) For the attainment of its purposes the Securities Authority may –
- (a) acquire and dispose of property of any description;
 - (b) make contracts or enter into other agreements;
 - (c) receive and expend money;
 - (d) grant licences in accordance with the Act;
 - (e) require the payment of fees;
 - (f) prescribe such forms as it considers necessary for the purposes of this Act or any regulations made pursuant to this Act;
 - (g) for the proper administration of this Act or any regulations made pursuant to this Act, issue directions, guidelines or codes, and any licensee to whom a direction has been given or guidelines or codes have been issued shall comply with the direction, guidelines or codes, as the case may be;
 - (h) do all such other things as are required or incidental to the attainment of its purposes.

(2) A function of the Securities Authority under or for the purposes of this Act may be carried out by an authorised officer of the Securities Authority.

(3) The Securities Authority may engage the services of, or appoint any expert or other competent person for the purpose of performing any of its functions under this Act.

Consultation and co-operation

6. (1) The Securities Authority shall consult and co-operate with the Seychelles International Business Authority and any other body that exercises regulatory authority under any law over a financial institution or other person in order to minimize duplication of effort, to maximize the protection of investors and in the interest of the public.

(2) The Securities Authority may co-operate with any agency of a foreign government in connection with the investigation of a contravention of the Act or any similar written overseas law.

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

PART 3 – SECURITIES EXCHANGE

Restriction on establishment of securities exchanges

7. (1) No person shall establish or operate a securities exchange in Seychelles, whether

physically, electronically or otherwise, except under and in accordance with a securities exchange licence granted by the Securities Authority under this Act.

(2) No person shall assist any other person in the operation of a securities exchange unless that other person is the holder of a securities exchange licence granted by the Securities Authority under this Act.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction –

- (a) in the case of an individual, to a fine of US\$100,000 or the equivalent in Seychelles rupees or to imprisonment for two years or to both;
- (b) in the case of a company, to a fine of US\$200,000 or the equivalent in Seychelles rupees, and if the offence is a continuing offence, the individual or company is liable to a further fine not exceeding US\$500 or the equivalent in Seychelles rupees, for every day that the offence continues after conviction.

(4) A person convicted of an offence under this section shall, following an assessment by the Securities Authority, be liable to pay to the Securities Authority, any monies received or the monetary equivalent of any assets obtained as a result of carrying on securities business without a licence.

(5) Securities listed on a recognized overseas securities exchange shall be eligible for listing on a Seychelles Securities Exchange, subject to the rules of the Seychelles Securities Exchange.

(6) The following shall each be eligible for listing on a Seychelles Securities Exchange, subject to the rules of the Seychelles Securities Exchange —

- (a) a licensed public fund (as defined in the Mutual Fund and Hedge Fund Act);
- (b) a licensed professional fund (as defined in the Mutual Fund and Hedge Fund Act);
- (c) an exempt foreign fund (as defined in the Mutual Fund and Hedge Fund Act); or
- (d) any other public or professional mutual fund (as defined in the Mutual Fund and Hedge Fund Act) registered and licensed in a recognised jurisdiction.

(7) Notwithstanding anything contained in any other law subject to subsection (8), no dealing in a security listed in Seychelles shall take place in Seychelles except on the Seychelles Securities Exchange on which it is listed in accordance with this Act and any regulations or rules made hereunder.

(8) Subsection (7) shall not apply to individuals who are trading in securities for his, her, or their own account or for the account of his or her spouse and children (or his or her spouse or children) under eighteen years of age.

Application for securities exchange licence

8. (1) Only a company incorporated under the Companies Act whose sole activity is the operation of a securities exchange may apply to the Securities Authority for a securities exchange licence.

(2) An application under subsection (1) shall be made in the prescribed form and accompanied by:

- (a) the prescribed fee;
- (b) certified true copies of the constitutional documents of the applicant; and
- (c) any other information the Securities Authority may require.

(3) Any company desiring to be licensed as a Securities Exchange pursuant to this Act shall make arrangements acceptable to the Securities Exchange for a compensation fund for the protection of securities dealers and clients of security dealers who may suffer loss as a result of the insolvency or winding up of a securities dealer.

Grant of securities exchange licence

9. (1) Upon receipt of an application duly made under section 8, the Securities Authority may grant a securities exchange licence if it is satisfied that –

- (a) it is appropriate to do so in the public interest and for the proper regulation of markets in securities; and
- (b) the applicant satisfies the conditions specified in subsection (2).

(2) The conditions to be satisfied by the applicant are that –

- (a) the applicant's activities be limited to the operation of a securities exchange;
- (b) the applicant can provide and maintain, to the satisfaction of the Securities Authority, adequate and properly equipped facilities or systems for the conduct of the business of a securities exchange;
- (c) the applicant shall have not less than three members who are engaged in the business of dealing in securities independently of and in competition with each other;
- (d) the rules and practices proposed to be followed by the applicant must be such as will ensure that business conducted by means of its facilities or systems will be conducted in an orderly manner and so as to accord proper protection to investors;
- (e) the applicant has made such arrangements as the Securities Authority considers satisfactory for –
 - (i) the clearing and settlement of dealings in securities to ensure the performance of transactions effected on the securities exchange, and for the recording and publication of such transactions;

- (ii) market surveillance;
- (iii) the effective monitoring and enforcement of compliance with its rules, this Act and regulations made under this Act; and
- (iv) investigating complaints in respect of business transacted by any of its members;
- (f) the applicant must have default rules which, where a member of the securities exchange appears to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts, enable action to be taken to close out his position in respect of all unsettled market contracts to which he is a party;
- (g) at least 2 directors, of whom one shall be a resident person who is employed on a full-time basis, of the proposed securities exchange shall have experience in the operations of listed companies and dealing with investors in securities;
- (h) the applicant is fit and proper to be licensed as a securities exchange.

(3) A director of a securities exchange has a duty to act in the best interests of investors and, where there is a conflict between the interests of the investors and the interests of the securities exchange, the director shall give priority to the interests of the investors.

(4) In considering whether an applicant is fit and proper to be licensed, the Securities Authority —

- (a) shall have regard to, in respect of each of its directors and officers —
 - (i) his financial status;
 - (ii) his educational or other qualifications or experience having regard to the nature of his application;
 - (iii) his ability to perform his proposed function efficiently, honestly and fairly;
 - (iv) his reputation, character, financial integrity and reliability;
- (b) may take into account any matter relating to —
 - (i) any person who is or is to be employed by, or associated with, the applicant for the purposes of the business to which the application relates;
 - (ii) any person who will be acting as a representative in relation to such business;
 - (iii) any substantial shareholder, director or officer of the company, any other company in the same group of companies or to any director or officer of any such company.

Annual licence fee, suspension and revocation of securities exchange licence

10. (1) A securities exchange licence granted under this Act shall be valid unless suspended, revoked or surrendered.

(2) Where a person is granted a securities exchange licence under this Act there shall be payable to the Securities Authority, an annual licence fee as prescribed from time to time by the Minister by regulations made under this Act.

(2A) If a licence is not first granted in the month of January, February or March, the first annual licence fee payable under subsection (2) shall be reduced on a quarterly pro-rata basis, calculated having regard to the quarter in which the licence was first granted.

(3) A person granted a securities exchange licence shall in January of each year —

- (a) pay the annual licence fee as prescribed from time to time by the Minister by Regulations; and
- (b) lodge with the Securities Authority a compliance certificate in the prescribed form.

(4) If an annual licence fee is not paid on or before the due date in each year, there shall be payable an additional fee equal to one twelfth of that annual licence fee for each month or part thereof during which the annual licence fee and any additional fee imposed by this subsection remains unpaid.

(5) The Securities Authority may, for good cause, waive any additional fee imposed by virtue of subsection (4).

(6) The Securities Authority may suspend a securities exchange licence if the company —

- (a) temporarily ceases to operate the securities exchange;
- (b) goes into receivership;
- (c) contravenes a provision of this Act;
- (d) is operating in a manner detrimental to the public interest;
- (e) fails to provide the Securities Authority with information lawfully required;
- (f) fails to comply with a lawful direction of the Securities Authority;
- (g) fails to pay its annual licence fee as prescribed on or before the due date in each year.

(7) The Securities Authority may revoke a securities exchange licence if the company

—

- (i) ceases to operate the securities exchange;
- (ii) is being wound up, compounds or compromises with its creditors;

- (iii) contravenes a provision of this Act;
- (iv) is operating in a manner detrimental to the public interest;
- (v) fails to continue to comply with the conditions specified in section 9(2);
- (vi) fails to pay its annual licence fee as prescribed on or before the anniversary of the day of the grant of its licence; or
- (vii) requests the Securities Authority to do so.

Duties of holder of securities exchange licence

11. (1) A holder of a securities exchange licence shall ensure, so far as is reasonably practicable, an orderly, fair and transparent market in the securities that are traded through its facilities.

(2) In performing its duties under subsection (1), the holder of a securities exchange licence shall –

- (a) act in the interest of the investing public;
- (b) ensure that such interests prevail where they conflict with any other interests the company is required to serve under any other law;
- (c) publish daily, on every trading day, and periodic information, indices and averages on its activities.

(3) The holder of a securities exchange licence shall ensure that its members comply with its rules, this Act and regulations made under this Act.

(4) The holder of a securities licence shall provide and maintain at all times to the satisfaction of the Securities Authority –

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

(5) The holder of a securities exchange licence shall notify the Securities Authority immediately if it becomes aware –

- (a) that a member is unable to comply with any financial resources regulation made under section 69; or
- (b) of a financial irregularity or other matter which in the opinion of the holder of the securities exchange licence may indicate that the financial standing or integrity of a member is in question, or that a member may not be able to meet that member's legal obligations.

(6) No person other than –

- (a) a securities dealer licensed under this Act; or
- (b) a recognized overseas securities dealer, which has obtained membership to deal on a Seychelles Securities Exchange may deal on such Seychelles Securities Exchange.

(7) Subject to the provisions of Part 5, a Seychelles Securities Exchange shall ensure that each of its members holding membership to deal in securities shall be either —

- (a) a securities dealer licensed under this Act; or
- (b) a recognized overseas securities dealer.

Rules of securities exchange

12. (1) Subject to the approval of the Securities Authority, the holder of a securities exchange licence shall make rules for the proper and efficient regulation, operation, management and control of the securities exchange.

(2) Without limiting the general effect of subsection (1), the holder of a securities exchange licence shall make rules —

- (i) for access to the securities exchange, including conditions relating to financial integrity and business ethics;
- (ii) under which securities are to be traded on the securities exchange;
- (iii) in respect of applications for listing on the securities exchange and the requirements for listing;
- (iv) regarding agreements to be entered into between the securities exchange and other persons for listing securities and enforcing those agreements;
- (v) regarding the cancellation and withdrawal of the listing of securities and the suspension of dealings in them;
- (vi) obliging a person to observe specified standards of conduct or to perform, or refrain from performing, specified acts reasonably imposed for the listing or continued listing of securities; and
- (vii) regarding the penalties and sanctions which the holder of the securities exchange licence may impose for a breach of the rules of the securities exchange;
- (viii) concerning the buy-back of listed securities by companies whose securities are listed;
- (ix) the admission and expulsion of recognized overseas securities dealers as members the securities exchange.

Amendment to rules of securities exchange

13. (1) A securities exchange that wishes to make any amendment to its rules shall submit a draft of the proposed amendment to the Securities Authority for approval.

(2) The Securities Authority shall, within 30 days, of receipt of the proposed amendment by notice in writing to the holder of the securities exchange licence approve the amendment or disapprove the whole or any specified part of the amendment in question and until such notice is given the amendment shall not have force and effect.

Fixing of trading and position limits

14. (1) The Minister may, on the recommendation of the Securities Authority, make regulations prescribing limits on the amount of the trading which may be done, or positions which may be held, by a member of a securities exchange.

(2) Subsection (1) does not prohibit the Minister on the recommendation of the Securities Authority from fixing different trading or position limits for different types of transactions, or from exempting specified transactions.

(3) Without limiting the general effect of subsection (1), the Minister may, on the recommendation of the Securities Authority, make regulations to prohibit a person from –

- (a) directly or indirectly entering, during a prescribed period, into transactions of a specified class in excess of the prescribed amount; or
- (b) directly or indirectly holding or controlling positions of a specified class in excess of a prescribed position limit.

Power of Securities Authority to issue directions to securities exchange

15. Where the Securities Authority is satisfied that it is necessary for the protection of investors or for the proper regulation of a securities exchange, the Securities Authority may issue directions to the holder of a securities exchange licence with respect to –

- (a) trading on or through its facilities generally or with respect to the trading of a particular security;
- (b) the manner in which the securities exchange carries on any aspect of its business, including the manner of reporting off-market trades by members; or
- (c) any other matter that the Securities Authority considers necessary for the effective administration of this Act, and the holder of the securities exchange licence shall comply with the direction.

Power of Securities Authority to require amendment to rules

16. Where the Securities Authority considers it necessary for the protection of investors, it may by notice in writing require the holder of a securities exchange licence to make or to amend any rule and, on the Securities Authority specifying the amendments and the dates those amendments shall have force and effect, the securities exchange shall comply with the requirement in accord with any time-frame specified in such notice or, where no time-frame is specified, as soon as practicable after receipt of the notice from the Securities Authority.

Securities exchange to assist Securities Authority

17. The holder of a securities exchange licence shall provide such assistance to the Securities Authority as the Securities Authority reasonably requires for the performance of its functions, including the furnishing of returns and providing information in respect of dealings in securities or any other specified information as the Securities Authority may require for the proper administration of this Act.

Disciplinary powers over members of securities exchange

18. (1) Where a securities exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member in accordance with its rules, the securities exchange shall, within 7 days of taking such action, give to the Securities Authority in writing particulars of the name of the member, the reason for and nature of the action taken, the amount of any fine, and the period of any suspension.

(2) Any action taken by a securities exchange under subsection (1) shall be without prejudice to the power of the Securities Authority to take such action as it sees fit with regard to the member or the licence held by the member.

Closure of securities exchange in emergency

19. (1) The Securities Authority may, after consulting the holder of a securities exchange licence, direct it to close its market for a period not exceeding 5 trading days.

(2) The Securities Authority may give the direction under subsection (1) if it is of the opinion that the orderly transaction of business on the securities exchange is being, or is likely to be, prevented because –

- (a) of an impending emergency or natural disaster or where such emergency or disaster occurred in Seychelles; or
- (b) there exists an economic or financial crisis, whether in Seychelles or elsewhere, or any other circumstance, which is likely to prevent orderly trading on the securities exchange.

(3) The Securities Authority may, in consultation with the Minister, extend the direction for further periods not exceeding 10 trading days.

Restriction on use of titles relating to exchanges, markets, etc

20. (1) No person other than the holder of a securities exchange licence may take or use the title or description “stock exchange”, “stock market”, “securities exchange” or “securities market” or anything which so closely resembles any of them as to be calculated to deceive.

(2) Subsection (1) shall not prevent any person from using any of the restricted terms in connection with an application, including an application for the formation of a company, to the Securities Authority for a licence.

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

Annual reports

21. (1) A securities exchange licensed under this Part shall file with the Securities Authority, within four months of its annual balance sheet date, an annual report which shall include –

- (a) a report on the corporate governance policy of the licensed securities exchange and any other information required by the Securities Authority;
- (b) audited financial statements of the licensed securities exchange; and
- (c) consolidated financial statements, where the person is a holding company or a subsidiary.

(2) The annual balance sheet date referred to in subsection (1) shall, in the absence of written authorization to the contrary from the Securities Authority, be 31st December for each securities exchange licensed under this Act.

(3) The financial statement to be included in an annual report under subsection (1), shall be audited in accordance with international accounting and auditing standards by an auditor approved by the Securities Authority.

(4) The Securities Authority shall not approve an auditor under subsection (3) unless it is satisfied that the auditor has adequate experience, expertise and resources to carry on such audit.

(5) The Securities Authority may, at any time, instruct a licensed securities exchange to have its accounts audited and to submit them to the Securities Authority within such time as the Securities Authority specifies.

(6) A licensed securities exchange shall ensure that an instruction given to it in accordance with subsection (5) is complied with within the specified time, and whoever contravenes this provision commits an offence.

PART 4 – CLEARING AGENCIES AND OTHER SECURITIES FACILITIES

Interpretation

22. (1) In this Part –

“default proceedings” means any proceedings or other action taken by a clearing agency under its default rules;

“default rules”, for a clearing agency, means the rules of the clearing agency required by section 26;

“defaulter” means a participant who is the subject of any default proceedings;

“market charge” means a charge, whether fixed or floating, granted in favour of a clearing agency –

- (a) over property, specified in subsection (2), held by or deposited with the

clearing agency; and

- (b) to secure liabilities arising directly with the clearing agency facilitating the settlement of a market contract;

“market collateral” means property, specified in subsection (2), held by or deposited with a clearing agency to secure

liabilities arising directly with the clearing agency facilitating the settlement of a market contract;

“market contract” means a contract subject to the rules of a clearing agency entered into by the clearing agency with a participant under a novation which is both in accordance with those rules and for the purpose of the clearing and settlement of transactions in securities effected on, or subject to the rules of a securities exchange;

“participant” means a person who, under the rules of a clearing agency, may participate in one or more of the services provided by the clearing agency in its capacity as a clearing agency;

“relevant office-holder” means –

- (a) the Official Assignee appointed under the Bankruptcy and Insolvency Act;
- (b) a person acting in relation to a company as its liquidator, provisional liquidator, receiver or manager;
- (c) a person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property; or
- (d) a person appointed under an order for the administration in bankruptcy of an insolvent estate of a deceased person;

“settlement”, in relation to a market contract, includes partial settlement;

(2) Property which may be subject to a market charge, or provided as market collateral, is –

- (a) money, letters of credit, bankers’ drafts, certified cheques, and any similar instruments;
- (b) securities;
- (c) future contracts and other similar financial contracts.

(3) Where a charge is granted partly for the purpose specified in the definition of “market charge” and partly for other purposes, the charge shall be a market charge in so far as it has effect for that specified purpose.

(4) Where collateral is granted partly for the purpose specified in the definition of

“market collateral” and partly for other purposes, the collateral is market collateral in so far as it has been provided for that specified purpose.

(5) References in this Part to the law on insolvency include references to every provision made by or under –

- (a) the Bankruptcy and Insolvency Act;
- (b) the Companies Act; and
- (c) any other enactment which is concerned with or in any way related to the insolvency of a person.

(6) References in this Part to settlement in relation to a market contract are references to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.

Licensing of clearing agencies

23. (1) No person shall establish or operate a clearing agency in Seychelles, whether physically, electronically or otherwise, except under and in accordance with a clearing agency licence granted by the Securities Authority under this Act.

(2) No person shall assist any other person in the operation of a clearing agency unless that other person is the holder of a clearing agency licence.

(3) Subject to the provisions of this Part, the Securities Authority may license a company to operate a clearing agency, which shall be the company’s sole activity, where it is satisfied that it is appropriate –

- (a) in the interests of the investing public; and
- (b) for the proper regulation of services for the clearing and settlement of transactions in securities contracts on a securities exchange.

Application for clearing agency licence

24. (1) Only a company incorporated under the Companies Act may apply to the Securities Authority for a licence to operate a clearing agency.

(2) An application made under subsection (1) shall –

- (a) be made in the form prescribed by the Securities Authority and shall be completed in accordance with any direction specified in the form;
- (b) be accompanied by certified true copies of the constitutional documents of the applicant and a copy of the applicant’s rules; and
- (c) be accompanied by particulars of the Seychelles Securities Exchange, together with a letter of confirmation from such securities exchange, with which the applicant proposes to make clearing arrangements.

(3) At any time after receiving an application and before determining it the Securities Authority may require the applicant to furnish additional information.

(4) Any information to be furnished to the Securities Authority under this section shall, if it so requires, be in such form or verified in such manner as the Securities Authority may specify.

Grant of clearing agency licence

25. (1) On receipt of an application duly made in accordance with section 24 the Securities Authority may grant a licence to operate a clearing agency if it is satisfied that –

- (a) it is appropriate to do so in the public interest;
- (b) the applicant has financial resources sufficient for the proper performance of its functions;
- (c) the applicant has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules;
- (d) the applicant is able to provide clearing services which would enable a securities exchange to ensure the performance of transactions effected on the market; and the default rules of the applicant satisfy the requirements of section 26;
- (e) the applicant is fit and proper to be licensed as a clearing agency.

(2) In considering whether an applicant is fit and proper to be licensed, the Securities Authority —

- (a) shall have regard to, in respect of each of its directors and officers —
 - (i) his financial status;
 - (ii) his educational or other qualifications or experience having regard to the nature of his application;
 - (iii) his ability to perform his proposed function efficiently, honestly and fairly; and
 - (iv) his reputation, character, financial integrity and reliability; and
- (b) May take into account any matter relating to —
 - (i) any person who is or is to be employed by, or associated with, the applicant for the purposes of the business to which the application relates;
 - (ii) any person who will be acting as a representative in relation to such business;

- (iii) any substantial shareholder, director or officer of the company, any other company in the same group of companies or to any director or officer of any such company.

Rules of clearing agency

26. (1) For the purposes of this Part, the rules of a clearing agency shall include provisions –

- (i) where a participant appears to be unable, or likely to become unable, to meet the obligations in respect of one or more market contracts, to enable action to be taken to close out the participant's position in relation to all unsettled market contracts to which the participant is a party;
- (ii) where the clearing agency determines that the activity of a participant presents or is likely to present unreasonable risk to the clearance and settlement systems to cease to act for the participant;
- (iii) to enable the settlement of all of the contracts by providing for there to be payable by or to the participant a sum of money in relation to each contract if that is required after taking into account all the rights and liabilities of the participants under or in respect of the contract concerned;
- (iv) to enable all sums of money payable by or to the participant as determined in accordance with paragraph (b) to be aggregated or set-off so as to produce a net sum, if any, payable by or to the participant;
- (v) if any net sum referred to in paragraph (c) is payable by the participant, to provide for that net sum to be set-off against all property of the participant which is either subject to a market charge or which has been provided as market collateral, or set-off against the proceeds of the realization of such property, so as to produce a further net sum, if any, payable by or to the participant;
- (vi) if any net sum referred to in paragraph (c) is payable to the participant, to provide that all property of the participant which is either subject to a market charge or which has been provided as market collateral shall cease to be subject to the market charge (but without prejudice to any other form of charge to which it may be subject) or to be market collateral (but without prejudice to its provision as any other form of collateral), as the case may be; and
- (vii) to provide for the certification by the clearing agency of any net sum referred to in paragraph (c) payable to the participant, or of any further net sum referred to in paragraph (d) payable by or to the participant, as the case may be, or if there is no such sum, the certification by the clearing agency of that fact.

(2) Where a clearing agency takes default proceedings, all subsequent action taken under its rules for settlement of market contracts to which the defaulter is a party are to be treated as taken under the default rules.

Approval of amendments to rules of clearing agency

27. (1) A clearing agency shall submit to the Securities Authority –

- (a) all proposed rules and amendments to rules of the clearing agency; and
- (b) explanations of the purpose and likely effect, including the effect on the investing public of all proposed rules or amendments to rules, in sufficient detail to enable the Securities Authority to decide whether to approve such rules or refuse to approve them.

(2) The proposed rules of a clearing agency or an amendment to its rules shall not have effect unless the Securities Authority has approved them in writing.

(3) The Securities Authority shall, within 30 days after receiving the proposed rules or amendments for approval, give notice in writing to the clearing agency that –

- (a) it approves them; or
- (b) it refuses to approve them.

(4) The Securities Authority shall not refuse a proposed rule or an amendment to a rule without first giving the clearing agency an opportunity of being heard.

Alteration of facts disclosed in application

28. An applicant for a licence under this Part shall forthwith give written notice to the Securities Authority of –

- (a) any proposed alteration to, or
- (b) the occurrence of any event which it knows affects or may affect in a material respect, information supplied to the Securities Authority in relation to the application, being a proposal or event made or occurring while the application is pending a decision by the Securities Authority.

General conditions

29. It shall be a condition of every clearing agency licence granted under this Part that –

- (a) the licence is personal to the applicant and is not transferable;
- (b) the clearing agency shall forthwith give written notice to the Securities Authority of –
 - (i) any proposed alteration to; or
 - (ii) the occurrence of any event which it knows affects or may affect in a material respect, any matter in respect of which it was required to supply information to the Securities Authority;
- (c) the consent of the Securities Authority shall be obtained prior to the making of any change in the constitution or control of the clearing agency; and

- (d) the clearing agency shall not carry on, or hold itself out as carrying on, any business other than that of providing clearing and settlement services.

Annual reports

30. (1) A clearing agency licensed under this Part shall file within the Securities Authority, within 4 months of its annual balance sheet date, an annual report which shall include —

- (a) a report on the corporate governance policy of the clearing agency and any other information required by the Securities Authority;
- (b) audited financial statements of the clearing agency; and
- (c) consolidated financial statements, where the person is a holding company or a subsidiary.

(2) The annual balance sheet date referred to in subsection (1) shall, in the absence of written authorization to the contrary from the Securities Authority, be 31st December for each securities exchange licensed under this Act.

(3) The financial statements to be included in an annual report under subsection (1), shall be audited in accordance with international accounting and auditing standards by an auditor approved by the Securities Authority.

(4) The Securities Authority shall not approve an auditor under subsection (3) unless it is satisfied that the auditor has adequate experience, expertise and resources to carry out such audit.

(5) The annual report of a clearing agency shall also include an audited report on risk management procedures and their application and any other information required by the Securities Authority.

(6) The Securities Authority may, at any time, instruct a licensed clearing agency to have its accounts audited and to submit them to the Securities Authority within such time as the Securities Authority specifies.

(7) A licensed clearing agency shall ensure that an instruction given to it in accordance with subsection (6) is complied with within the specified time, and any person who contravenes this provision commits an offence.

Revocation and suspension of licence

31. (1) A clearing agency licence granted under this Act shall be valid unless suspended, revoked or surrendered.

(2) Where a person is granted a clearing agency licence there shall be payable to the Securities Authority an annual licence fee as prescribed from time to time by the Minister by regulations made under this Act.

(2A) If a licence is not first granted in the month of January, February or March, the first annual licence fee payable under subsection (2) shall be reduced on a quarterly pro-rata

basis, calculated having regard to the quarter in which the licence was first granted.

(3) A person granted a clearing agency licence shall in January of each year —

- (a) pay the annual licence fee as prescribed from time to time by the Minister by Regulations; and
- (b) lodge with the Securities Authority a compliance certificate in the prescribed form.

(4) If an annual licence fee referred to in subsection (3) is not paid on or before the due date in each year, there shall be payable an additional fee equal to one twelfth of that annual licence fee for each month or part thereof during which the annual licence fee and any additional fee imposed by this subsection remains unpaid.

(5) The Securities Authority may, for good cause, waive any additional fee imposed by virtue of subsection (4).

(6) The Securities Authority may at any time revoke or suspend a clearing agency licence if it appears to the Securities Authority that the holder of the clearing agency licence —

- (a) has ceased to operate a clearing agency;
- (b) has failed to comply with any obligation to which it is subject under this Act; or
- (c) is operating in a manner detrimental to the public interest.

(7) Where the Securities Authority suspends a licence, the suspension may be for the period, or until the happening of an event, the Securities Authority considers appropriate.

(8) The Securities Authority shall not revoke or suspend a clearing agency licence without first giving the holder of the licence an opportunity of being heard.

Power of Securities Authority to issue directions

32. Where the Securities Authority is satisfied that it is necessary for the protection of investors or for the proper regulation of a clearing agency, the Securities Authority may issue directions —

- (a) with respect to the manner in which the clearing agency carries on any aspect of its business; or
- (b) with respect to any other matter that the Securities Authority considers necessary for the effective administration of this Act, and the clearing agency shall comply with the direction.

Duty to assist Securities Authority

33. Notwithstanding any other law, a clearing agency shall provide such assistance to the Securities Authority as the Securities Authority reasonably requires from time to time for the performance of its functions, including the furnishing of returns and the provision of

information in respect of securities transactions or any other specified information.

Proceedings of clearing agency take precedence over laws of insolvency

34. (1) The following shall not be to any extent invalid at law for inconsistency with the law for distributing the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver over any of the assets of a person –

- (a) a market contract;
- (b) the rules of a clearing agency for the settlement of a market contract;
- (c) proceedings or other action taken under the rules of a clearing agency for the settlement of a market contract;
- (d) a market charge;
- (e) the default rules of a clearing agency; or
- (f) default proceedings.

(2) No person acting under the laws of insolvency, may exercise any power to prevent or interfere with –

- (a) the settlement of a market contract under the rules of a clearing agency; or
- (b) default proceedings.

Duty to report on completion of default proceedings

35. (1) A clearing agency shall, upon completion by it of default proceedings, make a report on such proceedings stating the respect of each defaulter –

- (a) the net sum, if any, certified by the clearing agency to be payable by or to the defaulter; or
- (b) that no sum is payable.

(2) A clearing agency which has made a report pursuant to subsection (1) shall supply the report to –

- (a) the Securities Authority;
- (b) any relevant office-holder in relation to –
 - (i) the defaulter to whom the report relates; or
 - (ii) that defaulter's estate; or
- (c) if there is no relevant office-holder referred to in subsection (b), the defaulter to whom the report relates.

(3) Where the Securities Authority receives pursuant to subsection (2) a report made

pursuant to subsection (1), it may publish notice of that fact in such manner as it thinks appropriate to bring it to the attention of creditors of the defaulter to whom the report relates.

(4) Where a relevant office-holder or defaulter receives pursuant to subsection (2) a report made pursuant to subsection (1), the office-holder or defaulter shall, at the request of a creditor of the defaulter to whom the report relates –

- (a) make the report available for inspection by the creditor;
- (b) on payment of such reasonable fee as the relevant office-holder or defaulter, as the case may be, determines, supply to the creditor all or any part of that report.

(5) In subsection (2), (3) and (4), “report” includes a copy of a report.

Net sum payable on completion of default proceedings

36. (1) Where a receiving or winding up order has been made, or a resolution for voluntary winding up has been passed, any net sum shall, notwithstanding any of the provisions of the Bankruptcy and Insolvency Act or the Companies Act, be provable in the bankruptcy or winding up or, as the case may be, shall be payable to the relevant office-holder under the Bankruptcy and Insolvency Act or in the case of a winding-up order under the Companies Act.

(2) This section applies to any net sum certified under section 35(1)(a) by a clearing agency, upon the completion by it of any default proceedings, to be payable to or to a defaulter.

Enforcement of judgments over property subject to market charge

37. (1) Where property is subject to a market charge or has been provided as market collateral, no execution or other legal process for the enforcement of a judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in or security over the property, except with the consent of the clearing agency concerned.

(2) Where by virtue of this section a person would not be entitled to enforce a judgment or order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.

Participant to be party to certain transactions as principal

38. Where a participant –

- (a) in his capacity as such enters into any transaction, including a market contract, with a clearing agency; and
- (b) but for this subsection, would be a party to that transaction as agent, then as between the clearing agency and any other person, including the participant and the person who is his principal in respect of that transaction, the participant is for all purposes, including any action, claim or demand either civil or criminal –
 - (i) deemed not to be a party to that transaction as agent; and

- (ii) deemed to be a party to that transaction as principal, notwithstanding any other enactment or rule of law.

Securities deposited with clearing agency

39. (1) An action, claim or demand, either civil or criminal, for a right, title or interest held by any person in securities deposited by a participant with a clearing agency in accordance with the rules of the clearing agency, does not lie, and may not be commenced or allowed, against the clearing agency or its nominees, notwithstanding any other enactment or rule of law.

(2) The operation of subsection (1) in respect of securities deposited with a clearing agency is subject to any modifications and exclusions provided in the rules of the clearing agency.

Preservation of rights

40. Except to the extent that it expressly provides, this Part does not operate to limit, restrict or otherwise affect –

- (a) a right, title, interest, privilege, obligation or liability of a person;
- (b) an investigation, legal proceeding or remedy in respect of the right, title, interest, privilege, obligation or liability.

Other securities facilities

41. (1) A person shall not establish or operate, or assist in the operation of, a securities registry business or a securities depository or provide any other services (not including clearing agency services licensed under sections 23 and 25 of this Act) which facilitate or are ancillary to the operations of a Seychelles Securities Exchange (any such service shall be referred to in this Act as a “securities facility”) without being licensed as a securities facility by the Securities Authority.

(2) Subject to the provisions of this Part, the Securities Authority may license a company to carry on business as a securities facility where it is satisfied that it is –

- (a) in the interests of the investing public; and
 - (b) the applicant will be able to competently operate as a securities facility.
- (3) A person who contravenes subsection (1) commits an offence.

Application for securities facility licence

42. (1) Only a company incorporated in Seychelles may apply to the Securities Authority for a licence to operate as a securities facility.

- (2) An application under subsection (1) shall –
- (a) be made in the form prescribed by the Securities Authority; and
 - (b) be accompanied by the prescribed fee and any other information as may be

required by the Securities Authority.

(3) At any time after receiving an application the Securities Authority may require an applicant to furnish additional information.

(4) Any information to be furnished to the Securities Authority under this section shall, if it so requires, be in such form or verified in such manner as the Securities Authority may specify.

Grant of securities facility licence

43. (1) On receipt of an application duly made in accordance with section 41 the Securities Authority may grant a licence to operate a Securities Facility if it is satisfied that the applicant has financial resources sufficient for the proper performance of its functions and is fit and proper to be licensed as a securities facility.

(2) In considering whether an applicant is fit and proper to be licensed, the Securities Authority —

- (a) shall have regard to, in respect of each of its directors and officers —
 - (i) his financial status;
 - (ii) his educational or other qualifications or experience having regard to the nature of his application;
 - (iii) his ability to perform his proposed function efficiently, honestly and fairly; and
 - (iv) his reputation, character, financial integrity and reliability; and
- (b) may take into account any matter relating to —
 - (i) any person who is or is to be employed by, or associated with, the applicant for the purposes of the business to which the application relates;
 - (ii) any person who will be acting as a representative in relation to such business;
 - (iii) any substantial shareholder, director or officer of the company, any other company in the same group of companies or to any director or officer of any such company.

(3) Where a person is granted a securities facility licence there shall be payable to the Securities Authority, an annual licence fee as prescribed from time to time by the Minister by Regulations made under this Act.

(4) If a licence is not first granted in the month of January, February or March, the first annual licence fee payable under subsection (3) shall be reduced on a quarterly pro-rata basis, calculated having regard to the quarter in which the licence was first granted.

(5) A person granted a securities facility licence shall in January of each year —

- (a) pay the annual licence fee as prescribed from time to time by the Minister by Regulations; and
- (b) lodge with the Securities Authority a compliance certificate in the prescribed form.

(6) If an annual licence fee referred to in subsection (3) is not paid on or before the due date in each year, there shall be payable an additional fee equal to one twelfth of that annual licence fee for each month or part thereof during which the annual licence fee and any additional fee imposed by this subsection remains unpaid.

(7) The Securities Authority may, for good cause, waive any additional fee imposed by virtue of subsection (6).

Application of section 28 to 33 to securities facilities

44. Sections 28 to 33 inclusive shall apply *mutatis mutandis* to a licensed securities facility.

PART 5 – LICENSING OF MARKET PARTICIPANTS

Licensing of securities dealers

45. (1) Subject to the provisions of this Part, no person shall carry on business in Seychelles dealing in securities, or hold himself out as carrying on that business, unless that person is –

- (a) licensed to do so by the Securities Authority under this Part; or
- (b) subject to sub-section (2), a recognized overseas securities dealer who holds current membership to deal on a Seychelles Securities Exchange (“an exempt overseas securities dealer”).

(2) If an exempt overseas securities dealer provides services to residents of Seychelles or opens a place of business in Seychelles or otherwise becomes a resident of Seychelles, it shall cease to be an exempt overseas securities dealer and shall not carry on securities business in Seychelles unless it obtains a securities dealer’s licence under this Act.

(3) Dealing by an exempt overseas securities dealer in securities listed on a Seychelles Securities Exchange will not, of itself, constitute a ground under subsection (2) to result in such person ceasing to be an exempt overseas securities dealer.

(4) No licensed securities dealer shall operate other than in accordance with its licence.

(5) A person is regarded as carrying on business dealing in securities if that person (whether acting as principal or agent) by way of business –

- (a) makes or offers to make an agreement with another person to enter into or offer to enter into an agreement, for or with a view to acquiring, disposing of, subscribing for or underwriting securities or in any way effects or causes to effect a securities transaction;
- (b) without limiting the generality of subsection (5)(a), causes any sale or disposition of or other dealing or any solicitation in respect of securities for valuable consideration, whether the terms of payment be on margin, installment or otherwise or any attempt to do any of the foregoing;
- (c) participates as a securities dealer in any transaction in a security occurring upon a securities exchange;
- (d) receives as a securities dealer under an order to buy or sell a security which is executed; or
- (e) manages a portfolio of securities for another person on terms under which the first mentioned person may hold property of the other person.

(6) A person is not regarded as carrying on business dealing in securities, or as holding himself out as carrying on that business if that person –

- (a) is carrying out functions as a clearing agency;
- (b) is an investment advisor and, in a manner consistent with a licence granted to that person, manages a portfolio of securities for another person –
 - (i) without holding property of the other person; and
 - (ii) on terms which preclude that person from doing so; or
- (c) gives advice on securities as an incident to the person's practice as a lawyer or professional accountant;
- (d) as an employer buys, sells, subscribes for or underwrites securities in connection with the operation of a share or pension scheme for the benefit of employees or former employees, or of their spouses, widows, widowers or children or step-children under the age of eighteen;
- (e) as principal or agent buys, subscribes for or underwrites securities and such securities create or acknowledge indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which such person or his principal has made, granted or provided;
- (f) as a company, partnership or trust issues, and redeems or repurchases any of its own securities falling within paragraphs 1, 2, and 3 of Schedule 1;
- (g) buys, sells, subscribes for or underwrites securities for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply by a supplier to a client and the supplier is acting –
 - (i) as a principal; or

- (ii) as an agent, and the supplier does not hold himself out generally as engaging in the buying, selling, subscribing for or underwriting of securities and does not regularly solicit members of the public to buy, sell, subscribe for or underwrite securities;

- (h) buys, sells, subscribes for or underwrites securities in the course of carrying on any profession or business not otherwise constituting dealing in securities and where such transaction is a necessary or incidental part of other services provided in the course of carrying on that profession or business and is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.

(7) For the purposes of subsection (5) and (6), “hold” in relation to property includes the control of its disposal but does not include the mere receipt and dispatch or delivery of a cheque or other order made payable to another person.

(8) The persons specified in Schedule 4 do not require a securities dealer’s licence to deal in securities.

(9) An exempt overseas securities dealer shall not carry on any securities business in Seychelles (unless it becomes licensed as a securities dealer under this Act) in the event that it (or, as the case may be, its holding company if it is a subsidiary or its subsidiary if it is a holding company) —

- (a) ceases to be licensed by a recognized overseas regulatory authority to deal in securities; or
- (b) ceases to be a member of a recognized overseas securities exchange; or
- (c) ceases to be a member of a Seychelles Securities Exchange.

(10) A Seychelles Securities Exchange shall —

- (a) ensure it has procedures and rules in place to verify that each recognized overseas securities dealer, who is or wishes to become a member of such Seychelles Securities Exchange is —
 - (i) licensed by a recognized overseas regulatory authority to deal in securities;
 - (ii) is a member of a recognized overseas securities exchange;
- (b) ensure that its rules provide for expulsion, as a member of such Seychelles Securities Exchange, of any recognized overseas securities dealer who ceases to be —
 - (i) licensed by a recognized overseas regulatory authority to deal in securities; or
 - (ii) a member of a recognized overseas securities exchange.
- (c) in the event that it expels any member as contemplated under paragraph (b),

immediately inform the Securities Authority of the name and address of the expelled person and the circumstances leading up to and including the expulsion.

(11) Sections 57, 113, 114, 115, 116 and 119 shall apply *mutatis mutandis* to an exempt overseas securities dealer.

(12) Without limiting the generality of the Securities Authority's power in relation to exempt overseas securities dealers under subsection (11), the Securities Authority may—

- (a) impose conditions in respect of the manner or extent to which an exempt overseas securities dealer may carry on securities business in Seychelles; or
- (b) prohibit an exempt overseas securities dealer from carrying on securities business in Seychelles in the event that such exempt overseas securities dealer:
 - (i) has contravened this Act or the rules of any stock exchange of which it is a member;
 - (ii) has, in the Security Authority's opinion, acted in a manner detrimental to its clients or the public interest;
 - (iii) has, in the Security Authority's opinion, acted wrongfully, improperly or otherwise such as may bring the reputation of Seychelles into disrepute; or
- (c) require an exempt overseas securities dealer to apply for a security dealer's licence under this Act.

(13) A person who contravenes any of subsections (8), (9) or (12) commits an offence.

Grant of securities dealer licence

46. (1) The Securities Authority may grant a securities dealer's licence to a company which applies in the prescribed form and manner and accompanied by—

- (a) the prescribed fee;
- (b) certified true copies of the constitutional documents of the applicant; and
- (c) any other documents or information the Securities Authority may require.

(2) A licence granted under this section shall specify the securities business activity that the securities dealer is permitted to undertake and shall be restricted to such business as so specified. If no restriction as to the type of securities the licensee may deal in is specified on a licence, the licensee shall be permitted to deal in any type of securities business.

(3) The Securities Authority may grant a restricted securities dealer's licence by —

- (a) limiting the number of clients to whom the licensee may provide services; or

- (b) limiting the licensee to providing services only to the clients named in the licence or a schedule thereto; or
- (c) setting the minimum value of an individual client's investment.

(4) The Securities Authority shall not grant a securities dealer's licence unless the applicant –

- (a) is a company incorporated under the Companies Act or under the laws of a recognized jurisdiction;
- (b) employs at least 2 natural person directors of whom one shall be a resident person who is employed on a full-time basis;
- (c) employs at least one individual who is licensed as a representative under section 52;
- (d) complies with any prescribed minimum paid-up capital requirement;
- (e) complies with the insurance requirement under section 73;
- (f) satisfies the Securities Authority that it is a fit and proper person to be licensed as a dealer;
- (g) will be able, if licensed, to comply with any financial resources regulations that may apply to it;
- (h) has specified premises under section 47(c) that are suitable for keeping records or other documents.

(5) In considering whether an applicant is a fit and proper person to be licensed, the Securities Authority –

- (a) shall have regard to, in respect of each of its directors and officers –
 - (i) his financial status;
 - (ii) his educational or other qualifications or experience having regard to the nature of his application;
 - (iii) his ability to perform his proposed function efficiently, honestly and fairly; and
 - (iv) his reputation, character, financial integrity and reliability; and
- (b) may take into account any matter relating to–
 - (i) any person who is or is to be employed by, or associated with, the applicant for the purposes of the business to which the application relates;
 - (ii) any person who will be acting as a representative in relation to such business;

- (iii) any substantial shareholder, director or officer of the company, any other company in the same group of companies or to any director or officer of any such company.

(6) For the purposes of this section, the Securities Authority may have regard to any information in its possession whether furnished by the applicant or not.

(7) In subsection (5)(b)(iii), “substantial shareholder”, in relation to a company, means a person who has an interest in shares in the company –

- (a) the stated value of which is equal to or more than 10% of the issued share capital of the company; or
- (b) which entitles the person to exercise or control the exercise of 10% or more of the voting power at a general meeting of the company.

Application for securities dealer licence

47. An application for a securities dealer licence shall be made in the prescribed form and accompanied by the prescribed fees, and shall be accompanied by –

- (a) certified true copies of the constitutional documents of the applicant or such other proof as may be satisfactory to the Authority that the applicant is lawfully constituted under the laws of Seychelles or the laws of a recognized jurisdiction;
- (b) unless the Securities Authority receives proof satisfactory to it that the applicant company or its controlling shareholder or beneficial owner is a member of or listed on a recognised overseas securities exchange, a personal questionnaire, in such form as the Authority shall require from time to time, by each—
 - (i) shareholder and beneficial owner of an applicant company;
 - (ii) director of an applicant company;
- (c) particulars of the location of all premises at which the records or other documents of the business for which the application is made are to be kept;
- (d) any other documents or information as the Authority may require for the purpose of determining the application.

Licensing of investment advisors

48. (1) Subject to the provisions of this Part, no person shall carry on business in Seychelles giving advice on securities, or hold himself out as carrying on that business, unless he is licensed under this Part as an investment advisor by the Securities Authority.

(2) No licensed investment advisor shall operate other than in accordance with his licence.

(3) A person is regarded as carrying on business of giving advice on securities if he, by way of business –

- (a) advises other persons concerning investment in securities;
 - (b) issues, analyses or reports concerning specific securities; or
 - (c) manages a portfolio of securities for another person –
 - (i) without holding property of the other person; and
 - (ii) on terms that preclude him from doing so.
- (4) A person is not regarded as carrying on business of giving advice on securities if that person –
- (a) is a bank in Seychelles;
 - (b) is a lawyer or a professional accountant who gives advice on securities as an incident of the practice of that person's profession;
 - (c) gives advice on securities only in a newspaper, magazine, journal or other periodical publication –
 - (i) which is generally available to the public; and
 - (ii) which does not have as its principal or only object the provision of advice, or the issue of analysis or reports, concerning securities.

Grant of investment of advisor licence

49. (1) The Securities Authority may grant an investment advisor licence to an individual or a company who applies in the prescribed form and manner and accompanied by –

- (a) the prescribed fee;
- (b) certified true copies of the constitutional documents of the applicant; and
- (c) any other documents or information the Securities Authority may require.

(2) A licence granted under this section shall specify the securities business activity or activities that the licensee is permitted to undertake and the licensee shall be restricted to such business as so specified.

(3) The Securities Authority shall refuse to grant an investment advisor licence unless the applicant –

- (a) in the case of a company, employs at least one individual who is licensed as a representative under section 52;
- (b) complies with any prescribed minimum paid-up capital requirement;
- (c) complies with the insurance requirement under section 73;
- (d) satisfies the Securities Authority that the applicant is a fit and proper person to be licensed as an investment advisor;

- (e) will be able, if licensed, to comply with any financial resources regulations that may apply to it;
- (f) has specified premises under section 50(c) that are suitable for keeping records or other documents.

(4) In considering whether an applicant is a fit and proper person to be licensed, the Securities Authority –

- (a) shall have regard to, in respect of an applicant who is an individual, and in the case of an applicant company in respect of each of its directors and officers –
 - (i) his financial status;
 - (ii) his educational or other qualifications or experience having regard to the nature of his application;
 - (iii) his ability to perform his proposed function competently, honestly and fairly;
 - (iv) his reputation, character, financial integrity and reliability; and
 - (v) his satisfactory completion of any examination requirements as may be prescribed;
- (b) may take into account any matter relating to –
 - (i) any person who is or is to be employed by, or associated with, the applicant for the purposes of the business to which the application relates;
 - (ii) any person who will be acting as a representative in relation to such business; and
 - (iii) where the applicant is a company, any substantial shareholder, director or officer of the company, any other company in the same group of companies or to any director or officer of any such company.

(5) For the purposes of this section, the Securities Authority may have regard to any information in its possession whether furnished by the applicant or not.

(6) In subsection (4)(b)(iii), “substantial shareholder”, in relation to a company, means a person who has an interest in shares in the company –

- (a) the stated value of which is equal to or more than 10% of the issued share capital of the company; or
- (b) which entitles the person to exercise or control the exercise of 10% or more of the voting power at a general meeting of the company.

Application for investment advisor licence

50. An application for an investment advisor licence shall be made in the prescribed form and accompanied by the prescribed fees, and shall be accompanied by –

- (a) such information as the Securities Authority requires –
 - (i) about the business which the applicant proposes to carry on and the services it proposes to provide to which the application relates; and
 - (ii) to enable the Securities Authority to consider the matters referred to in subsection (3) and (4) of section 49; and
- (b) unless the Securities Authority receives proof satisfactory to it that the applicant company or its controlling shareholder or beneficial owner is a member of or listed on a recognized overseas securities exchange, a personal questionnaire, in such form as the Authority shall require from time to time, by each –
 - (i) shareholder and beneficial owner of an applicant company;
 - (ii) director of an applicant company;
- (c) particulars of the location of all premises at which the records or other documents of the business for which the application is made are to be kept;
- (d) any other supporting information or documents as the Securities Authority may require for the purpose of determining the application.

Licensing of securities dealer's representatives and investment advisor's representatives

51. Subject to this Part, no person shall carry on business in Seychelles as a representative of a securities dealer or a representative of an investment advisor, or hold himself out as carrying on such business, unless he is licensed to do so by the Securities Authority under this Part.

Grant of securities dealer's representative licence and investment advisor's representative licence

52. (1) The Securities Authority may grant a licence to carry on business as a representative of a securities dealer or a representative of an investment advisor to an individual who applies in the prescribed form and manner and pays the prescribed fees together with any information the Securities Authority may require.

(2) The Securities Authority shall refuse to grant a representative licence unless the applicant –

- (a) is an individual;
- (b) has sufficient educational or other qualifications or experience;
- (c) satisfies the Securities Authority that the applicant is a fit and proper person to be licensed as a representative;
- (d) supplies the Securities Authority with the information that it requires to assess whether the applicant is a fit and proper person.

(3) In considering whether an applicant is a fit and proper person to be licensed the Securities Authority shall have regard to the applicant's –

- (a) financial status;
- (b) educational or other qualifications or experience having regard to the nature of the application;
- (c) ability to perform his proposed function competently, honestly and fairly;
- (d) reputation, character, financial integrity and reliability; and
- (e) satisfactory completion of any examination requirements prescribed by the Securities Authority.

(4) For the purposes of this section, the Securities Authority may have regard to any information in its possession whether furnished by the applicant or not.

Accreditation of representatives

53. (1) A representative is accredited to a securities dealer or investment advisor for the purposes of this Part only if –

- (a) the licence of the representative states that he is accredited to the licensee; and
- (b) the representative is recorded as being accredited in the register maintained under section 58.

(2) The Securities Authority shall not issue a representative licence unless both the representative and the licensee have notified the Securities Authority in writing that he is, or is to be, accredited.

(3) If a licensee or representative notifies the Securities Authority in writing that the accreditation of the representative has been terminated –

- (a) the Securities Authority may amend the register of licensees accordingly; and
- (b) the representative shall return his licence to the Securities Authority within 7 days of the Securities Authority requiring him to do so.

Application for representative licence

54. (1) An application for a representative licence shall be made in the prescribed form and accompanied by the prescribed fees, and shall give the Securities Authority the information it requires –

- (a) about the services which the applicant will hold himself out as being able to provide if the application is allowed;
- (b) about the business which the applicant's company proposes to carry on and

to which the application relates; and

- (c) to enable the Securities Authority to consider the matters referred to in subsections (2) and (3) of section 52.

(2) The Securities Authority may require an applicant to provide it with such further documents or information as the Securities Authority thinks necessary.

Power of Securities Authority to impose conditions and licence renewal

55. (1) Any licence granted by the Securities Authority may contain such reasonable conditions it considers necessary and the licensee shall comply with any such conditions.

(2) Conditions may be of general or special application and may make different provision for different cases or classes of cases.

(3) Without limiting the generality of subsections (1) and (2) and without prejudice to section 46(3), the conditions which the Authority may impose on a licensee may include conditions –

- (a) limiting the nature and scope of the business which may be carried on by the licensee, including as to the type of securities the licensee may deal in;
- (b) specifying whether or not the licensee may hold clients' assets; and
- (c) requiring the licensee or a senior officer or manager of the licensee to acquire and maintain membership of a recognized overseas securities exchange.

(4) The Securities Authority may, by written notice to the holder of the licence, amend or cancel any of the conditions or attach new conditions provided that, in the case of proposed new conditions, the Securities Authority shall not impose them without first giving the licensee an opportunity of being heard.

(5) A person to whom a licence is granted shall not, when conducting business for which a licence is required, use a name other than the name specified in the licence.

(6) A licence granted under this Part shall be valid unless suspended, revoked or surrendered.

(7) Where a person is granted a licence under this Part there shall be payable to the Securities Authority, an annual licence fee as prescribed from time to time by the Minister by regulations made under this Act.

(7A) If a licence is not first granted in the month of January, February or March, the first annual licence fee payable under subsection (7) shall be reduced on a quarterly pro-rata basis, calculated having regard to the quarter in which the licence was first granted.

(8) A person granted a securities exchange licence shall in January of each year —

- (a) pay the annual licence fee as prescribed from time to time by the Minister by Regulations; and

- (b) lodge with the Securities Authority a compliance certificate in the prescribed form.

(9) If an annual licence fee referred to in subsection (8) is not paid on or before the due date in each year, there shall be payable an additional fee equal to one twelfth of that annual licence fee for each month or part thereof during which the annual licence fee and any additional fee imposed by this subsection remains unpaid.

(10) The Securities Authority may, for good cause, waive any additional fee imposed by virtue of subsection (9).

Revocation and suspension of licences and other action

56. (1) The Security Authority may take any action specified in subsection (2) if it is satisfied that –

- (a) a corporate licensee enters into liquidation or is ordered to be wound up or is or is likely to become unable to meet its debts as they fall due;
- (b) a receiver or manager of all or a substantial part of the property of a corporate licensee is appointed;
- (c) a corporate licensee ceases to carry on the business for which it is licensed;
- (d) it has reason to believe that a corporate licensee, or any of its directors or employees, has not performed its or his duties honestly and fairly;
- (e) the direction and management of the business of a licensee has not been conducted in a fit and proper manner;
- (f) a person holding a position as a licensee is not a fit and proper person to hold the respective position;
- (g) a corporate licensee contravenes or fails to comply with any condition applicable in respect of the licence;
- (h) a corporate licensee is in breach of this Act or any regulation made under this Act;
- (i) where applicable, a corporate licensee does not continue to employ at least one person who holds the appropriate representative licence granted under this Act;
- (j) a natural person licensee is mentally or physically incapable of performing the activities to which the licence relates;
- (k) a natural person licensee is adjudged a bankrupt, in Seychelles or elsewhere;
- (l) a licensee is convicted, whether in Seychelles or elsewhere, of fraud or any other offence involving dishonesty;

- (m) a licensee is convicted of an offence under this Act or regulations made under this Act;
- (n) a licensee fails to pay its annual licence fee as prescribed on or before the due date in each year;
- (o) a licensee is carrying on or attempting to carry on the business in a manner that is prejudicial to its clients or creditors; or
- (p) by reason of any other circumstances, a licensee is no longer a fit and proper person to hold a licence.

(2) For the purpose of subsection (1), the actions the Security Authority may take in respect of a licensee are to –

- (a) revoke any licence which the licensee holds;
- (b) impose conditions or further conditions on a licensee's licence and amend or revoke those conditions;
- (c) require the replacement of any officer of a licensee;
- (d) appoint a person to advise a licensee on the proper conduct of its licensed business;
- (e) appoint a person to assume control of the affairs of a licensee relating to its licensed business; or
- (f) suspend a licence granted under this Act for a period of time, or until the happening of an event, as the Securities Authority considers appropriate.

(3) If the Securities Authority takes an action under subsection (2), the Securities Authority may apply to the Court for an order to take such other action as it considers necessary to protect the interests of the clients and creditors of the relevant licensee or former licensee.

(4) A person appointed under the subsection (2)(d) or (e) is appointed at the expense of the relevant licensee, and any expenses incurred by the Securities Authority by virtue of the appointment shall be an amount due and payable to the Securities Authority by the licensee.

(5) A person appointed under subsection (2)(e) has all the powers necessary, to the exclusion of any other person (other than a liquidator or receiver), to administer the affairs of the licensee relating to its licensed business under this Act in the best interest of the licensee's clients and creditors.

(6) The powers referred to in subsection (5) include the power to terminate the business of the licensee in so far as it relates to its licensed business under this Act.

(7) A person appointed in respect of a licensee under subsection (2)(d) or (e) shall –

- (a) when requested to do so by the Securities Authority, supply the Securities Authority with such information in respect of the licensee's licensed business as is specified by the Securities Authority;

- (b) within 3 months of his appointment, or within such other period as the Securities Authority may specify, prepare and supply to the Securities Authority a report on the licensee's licensed business making, where appropriate, recommendations in respect of the licensee or its licensed business; and
 - (c) if his appointment is not terminated after supplying the report referred to in subsection 7(b) subsequently supply to the Securities Authority such other information, reports and recommendations as the Securities Authority specifies.
- (8) If a person appointed under subsection (2)(d) or (e)–
 - (a) fails to comply with an obligation under subsection (7); or
 - (b) in the Security Authority's opinion, is not carrying out his obligations in respect of the licensee satisfactorily, the Security Authority may revoke the appointment and appoint some other person in his place.
- (9) On receipt of any information or a report under subsection (7) in respect of a licensee, the Security Authority may –
 - (a) require the licensee to reorganize its affairs in a manner specified by the Security Authority; or
 - (b) if the licensee is a company, apply to the Court for the company to be wound up by the Court, and may take such action in respect of the appointment of the person appointed under subsection (2)(d) or (e) as the Security Authority considers appropriate.
- (10) If the Security Authority takes action under subsection (9), the Security Authority may apply to the Court for an order to take such other action as it considers necessary to protect the interest of the licensee's clients or creditors.
- (11) The Securities Authority may revoke a licence at the request of the licensee.
- (12) A person whose licence is revoked or suspended under this Act shall be notified accordingly by the Securities Authority and shall, for the purpose of this Act, be deemed not to be licensed from the date of notification of revocation or suspension, as the case may be.
- (13) The suspension or revocation of a licence under this Part does not operate so as to –
 - (a) avoid or affect any agreement, transaction or arrangement relating to a dealing in securities entered into by the person whose licence has been suspended or revoked, whether the agreement, transaction or arrangement was entered into before or after the suspension or revocation of the licence, except that the licensee shall not be allowed to retain any benefit charges or payable thereto; or
 - (b) affect any right, obligation, or liability arising under any such agreement, transaction or arrangement.

Power of Securities Authority to issue directions to licensees

57. (1) The Securities Authority may by notice in writing give a licensee a direction under this section where it appears to the Securities Authority that –

- (a) it is desirable for the protection of investors; or
- (b) the licensee is contravening, has contravened or is about to contravene, or has failed to comply with any provision of or requirement under this Act or regulations made under this Act, or, in purported compliance with any such provision or requirement has furnished the Securities Authority with information that is false, inaccurate or misleading.

(2) A direction under this section may contain all or any of the following prohibitions or requirements –

- (a) require a licensee to cease and desist from the contravention;
- (b) prohibit a licensee from entering into transactions of a class or description specified in the notice or entering into them otherwise than in circumstances so specified or to an extent so specified;
- (c) prohibit a licensee from soliciting business from a person of a class or description so specified or from persons other than persons of such a class or description; or
- (d) prohibit a licensee from carrying on business in a specified manner or otherwise than in a specified manner;
- (e) as regards any assets whether in Seychelles or elsewhere and whether they are the assets of the licensee or not –
 - (i) prohibit a licensee from disposing of such assets or prohibit the licensee from dealing with them in a manner specified in the notice; or
 - (ii) require a licensee to deal with such assets in, and only in, a manner specified in the notice;
- (f) require a licensee to maintain in Seychelles assets of such value as appears to the Securities Authority to be desirable with a view to ensuring that the licensee will be able to meet its liabilities in respect of its licensed securities business;
- (g) require a licensee to transfer control of assets of a specified class or description to a trustee approved by the Securities Authority.

(3) A licensee shall comply with a direction of the Securities Authority under this section.

(4) A direction under this section shall be for such specified period as the Securities Authority considers necessary (which may be extended as deemed necessary), except that a

direction issued by the Securities Authority containing any prohibition or requirement under paragraphs (e), (f) or (g) of subsection (2) shall be for a period not exceeding 60 days.

(5) A licensee who fails to comply with a direction of the Securities Authority commits an offence.

(6) The Securities Authority may, by written notice either of its own motion or on the application of a licensee on whom a prohibition or requirement has been imposed under this section, rescind or vary the prohibition or requirement if it appears to the Security Authority that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

Register of licences

58. (1) The Securities Authority shall maintain a register of persons holding licences granted under Parts 3, 4 and 5.

(2) For each licensed securities dealer, investment advisor, securities exchange, clearing agency and securities facility, the register maintained under subsection (1) shall record

—

- (a) the name and address of the licensee;
- (b) the date on which the licence was granted;
- (c) the trade names and domain names being used by the licensee;
- (d) the type of securities business permitted by the licence;
- (e) any conditions attached to the licence;
- (f) the name and address of every accredited representative (where applicable);
- (g) where the licensee is a company, the name and address of every director, company secretary and shareholder;
- (h) the location of the premises at which the records or other documents of the licensee are kept;
- (i) any disciplinary action against the licensee;
- (j) any order of suspension or revocation, or surrender of the licence; and
- (k) such other particulars as the Securities Authority considers necessary in the interest of the investors or general public.

(3) For each licensed representative, the register shall record —

- (a) his name and address;
- (b) the date on which the licence was granted;
- (c) the name and address of the principal to whom he is accredited;

- (d) any order of revocation or suspension; and
- (e) such other particulars as the Securities Authority considers desirable in the interest of the investing or general public.

(4) The registers kept by the Securities Authority under subsections (1), (2), and (3) shall be open to public inspection during ordinary office hours on payment of a fee as may be prescribed from time to time by the Minister by regulations made under this Act.

(5) Any person, on payment of a fee as prescribed may request the authority for a certificate of official search under the seal of the Authority in respect of any licensee, which shall contain the information set out in the registers kept by the Securities Authority under subsections (1), (2) and (3).

Notification of change in register particulars

59. (1) A licensee shall as soon as is practicable and in any event within 7 days give notice in writing to the Securities Authority where –

- (a) the licensee is a securities dealer, investment advisor, securities exchange, clearing agency or securities facility and ceases to carry on the business to which its licence relates;
- (b) a representative ceases to be a representative of the licensee to whom the representative is accredited; or
- (c) a change occurs in any matter particulars of which are required by section 58 to be entered in the register of licensees.

(2) A licensee who fails to comply with subsection (1) commits an offence.

Ownership changes

60. (1) No shares in a licensee which is a company shall be issued, and no issued shares shall be voluntarily transferred or disposed of, without the proper approval of the Securities Authority.

(1A) A licensee shall submit an application to the Authority for approval under subsection (1) accompanied by such fees as may be prescribed by the Minister by Regulations.

(2) Notwithstanding subsection (1), the Securities Authority may exempt from the provisions of this section a licensee whose shares or interests are publicly traded on a Seychelles Securities Exchange or a recognized overseas securities exchange, and any such exemption –

- (a) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, notify the Securities Authority of –
 - (i) any change in control of the licensee;
 - (ii) the acquisition by any person or group of persons of shares representing more than 10% of the licensee's issued share capital or total voting rights; or

- (iii) the acquisition by any person or group of persons of shares representing more than 10% of the issued share capital or total voting rights of the licensee's parent company;
- (b) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, provide such information to the Securities Authority, and within such period of time, as the Securities Authority may require for the purpose of enabling an assessment as to whether persons acquiring control or ownership of the licensee in the circumstances set out in paragraph (a) are fit and proper persons to have such control or ownership; and
- (c) shall be subject to such other terms and conditions as the Securities Authority may deem necessary.

(3) In subsection (1), the reference to shares or interests being transferred or disposed of includes the transfer or disposal of the legal or the beneficial interest in the shares or interests.

(4) In the event of shares in a company which is licensed under this Act vesting involuntarily or through process of law in a person, the company, as soon as it becomes aware of such vesting, shall inform the Securities Authority of the number of shares and the identity of the person in whom they have vested, and the company and the person in whom they have vested shall comply with any instructions as to the licence or the business of the company as may be given by the Securities Authority.

Name requirements

61. (1) The Securities Authority may require a licensee with a name which –

- (a) is identical with that of another person, whether within Seychelles or not, or which so nearly resembles that name as to be likely to deceive;
- (b) in the opinion of the Securities Authority connotes, falsely, the patronage of or connection with a person whether within Seychelles or not;
- (c) in the opinion of the Securities Authority connotes, falsely, that it has a special status in relation to or derived from the Government, or has the official backing of or acts on behalf of the Government or of any of its departments or officials;
- (d) in the opinion of the Securities Authority is liable to mislead investors, or constitute a misrepresentation; or
- (e) includes any prescribed word or expression, immediately to change its name and pay such fees as may be prescribed by the Minister by Regulations, and in default of compliance within 3 calendar months of the receipt of notice from the Securities Authority of its requirements, the Securities Authority may revoke its licence.

(2) A licensee shall submit to the Securities Authority the trade names and domain names, to be used by the licensee as part of the application process for a licence under section 46(1), for approval by the Authority.

(3) Notwithstanding subsection (2), a licensee may use trade names and domain names,

other than the trade names and domain names approved under subsection (2), subject to the Securities Authority's approval in writing.

(4) A licensee shall submit an application to the Authority for approval under subsection (2), accompanied by such fees as may be prescribed by the Minister by Regulations.

(5) The Securities Authority shall list all approved trade names on the licence of the licensee and on its website.

(6) A licensee shall prominently display all its approved trade names on its website.

Custodians of securities

62. (1) Except as provided for in the Mutual Fund and Hedge Fund Act, no person shall carry on business as a custodian of securities, including the taking of securities into custody for safe keeping or holding himself out as carrying on that business, except for –

- (a) a bank; or
- (b) a company licensed to provide trustee services under the International Corporate Service Providers Act 2003; or
- (c) a licensed clearing agency which undertakes custodial services as an incident of its business; or
- (d) such other person in Seychelles or elsewhere as may be approved in writing by the Securities Authority, including a securities dealer who meets such conditions relating to storage and safety of physical securities as may be specified by the Securities Authority or prescribed.

(2) A person who contravenes subsection (1) commits an offence.

Offences under this Part

63. (1) Any person who carries on business requiring the grant of a licence under this Part without holding such a licence, or other than in accordance with his licence, commits an offence and is liable on summary conviction –

- (a) in the case of an individual, to a fine of UD\$100,000 or the equivalent in Seychelles rupees or to imprisonment for two years or to both;
- (b) in the case of a company, to a fine of US\$200,000 or the equivalent in Seychelles rupees, and if the offence is a continuing offence, the individual or company is liable to a further fine not exceeding US\$500 or the equivalent in Seychelles rupees for every day that the offence continues after conviction.

(2) A person convicted of an offence under this section shall, following an assessment by the Securities Authority, be liable to pay to the Securities Authority, any monies received or the monetary equivalent of any assets obtained as a result of carrying on securities business without a licence.

PART 6 – CONDUCT OF SECURITIES BUSINESS

Standards of conduct

64. In the conduct of securities business, a licensee shall at all times act according to the principles of the best practice and, in particular, shall –

- (a) observe a high standard of integrity and fair dealing;
- (b) act with due skill, care and diligence;
- (c) observe high standards of market conduct;
- (d) seek from clients information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling the licensee to fulfil the licensee's responsibilities to the client;
- (e) take reasonable steps to give every client the licensee advises, in a comprehensible way, any information needed to enable the client to make a balanced and informed investment decision;
- (f) avoid any conflict of interest with clients and, where such a conflict unavoidably arises, ensure fair treatment to the client by complete disclosure or by declining to act;
- (g) ensure that the interests of the licensee are not unfairly placed above those of the client;
- (h) protect by way of segregation and identification, those client assets for which the licensee is responsible;
- (i) maintain adequate financial resources to meet the securities business commitments of the licensee and withstand the risks to which the business is subject;
- (j) organize and control internal affairs in a responsible manner;
- (k) keep proper records;
- (l) have adequate arrangements to ensure that all staff employed are suitable, adequately trained and properly supervised and establish and maintain well defined compliance procedures;
- (m) deal with the Securities Authority in an open and cooperative manner;
- (n) ensure that at all times in Seychelles there are at least two resident fit and proper individuals who are either directors, compliance officers or members of the managerial staff of the licensee; and

- (o) ensure that at all times it has in place standard risk warnings as may be prescribed by the Minister by Regulations.

Business conduct regulations

65. (1) The Minister may, on the recommendation of the Securities Authority, make regulations prescribing the manner in which licensees are required to conduct their business.

(2) Where any contract for the sale or purchase of securities is entered into in contravention of a regulation made under this section, the contravention is actionable at the suit of any client who suffers loss as a result of the contravention.

Issue of contract notes

66. (1) A securities dealer shall, in respect of every contract for the purchase, sale or exchange of securities entered into by it, whether as principal or agent, not later than the end of the next trading day after the contract was entered into, make out a contract note which complies with subsection (2) and –

- (a) where the contract was entered into by the licensee as agent, deliver the original contract note to the person on whose behalf it entered into the contract; or
- (b) where the contract was entered into by the licensee as principal, retain the contract note for itself.

(2) The contract note shall state whether it is in respect of a purchase, sale or exchange of securities and shall include –

- (a) the name of the licensee and the address of the principal place at which it carries on business;
- (b) where the licensee is acting as principal, a statement that it is so acting;
- (c) the name and address of the person, if any to whom the licensee is required to give the contract note and, where different, the name of the person for whom the transaction was undertaken;
- (d) the date of the contract, and the date on which the contract note is made out;
- (e) the quantity and description of the securities that are the subject of the contract;
- (f) the price per unit of the securities;
- (g) the amount of consideration under the contract or, in the case of an exchange, sufficient particulars of the securities exchanged to identify them;
- (h) the rate or amount of commission or other fee payable in respect of the contract;

- (i) the amount of tax or duty (if any), payable in connection with the contract and, where applicable, in respect of the transfer;
- (j) the date of settlement;
- (k) such other information as may be prescribed to ensure that there is a complete audit trail for the execution of client instructions and the settlement of market transactions.

Short selling

67. (1) Except in accordance with regulations made by the Minister, on the recommendation of the Securities Authority, a person shall not sell any listed securities which that person or that person's principal does not own either for that person's own account or for the account of another person.

(2) For the purpose of subsection (1) a person who sells securities includes a person who –

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

(3) For the purposes of subsection (1), a person is treated as owning securities only if that person –

- (a) or his agent is legally entitled to the securities;
- (b) has purchased the securities, or has entered into an unconditional contract to purchase the securities, even if he does not yet have title to them;
- (c) owns other securities convertible into or exchangeable for the securities and has tendered the other securities for conversion or exchange;
- (d) has an option to acquire the securities and has exercised the option; or
- (e) has rights or warrants to subscribe to the securities and has exercised the rights or warrants, and that person or that person's agent has received or will receive a fixed or currently ascertainable amount of the securities at a fixed or currently ascertainable price.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction –

- (a) in the case of an individual, to a fine of US\$100,000 or the equivalent in Seychelles rupees or to imprisonment for three years or to both;
- (b) in the case of a company, to a fine of US\$200,000 or the equivalent in

Seychelles rupees.

Accounts to be kept by securities dealers

68. (1) Each licensed securities dealer and each licensed investment advisor shall keep such accounting and other records as will explain the transactions and financial position of all business relating to its licence and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time, and shall keep those records in such manner and form as to enable them to be conveniently and properly audited.

(2) Without limiting the generality of subsection (1), a securities dealer and an investment advisor shall each maintain such accounts and other records, and file such financial statements and reports, as may be prescribed.

(3) The accounting and other records required to be maintained under this section shall at all reasonable times be open to inspection by the Securities Authority or by an auditor appointed by the Securities Authority.

(4) A licensee to whom the financial resources regulations made under section 69 apply shall keep its records in sufficient detail to establish readily whether or not the financial resources regulations are being complied with.

Financial resources regulations

69. (1) The Minister may, on the recommendation of the Securities Authority, make regulations requiring licensees to have and maintain, in respect of the securities business for which they are licensed, the financial resources set by the regulations.

(2) Financial resources regulations may –

- (a) impose requirements which are absolute or which vary from time to time by reference to factors which either are specified in, or are to be determined in accordance with, the regulations;
- (b) impose requirements which apply differently to different classes of business for which licensees are licensed, and which take account of a business carried on by the licensee with, or in addition to, business referred to in subsection (1);
- (c) provide for the assets, liabilities and other matters to be taken into account under the regulations to determine a person's financial resources and the extent to which, and the manner in which, they are to be taken into account for that purpose;
- (d) require licensees to submit to the Securities Authority, at intervals set out in the regulations a return of their financial resources in a form set by the Securities Authority.

Failure to comply with financial resources regulations

70. (1) If a licensee becomes unable to comply with financial resources regulations that are made under section 69 and are applicable to it, the licensee shall –

- (a) notify the Securities Authority of such inability; and
- (b) cease conducting business for which it is licensed otherwise than for the purpose of giving effect to an agreement or arrangement permitted under its licence and entered into before the time when it became aware of such inability.

(2) The duties of a licensee under subsection (1) shall arise as soon as it becomes aware, or should, with the exercise of reasonable diligence, have become aware, of its inability to comply with the financial resources regulations and in relation to paragraph (a) of subsection (1), must be exercised within twenty-four hours after such awareness.

(3) A licensee that is a company is deemed to be aware of an inability to comply with the financial resources regulation if a director or officer of it is so aware or would, with the exercise of reasonable diligence, have been aware of the inability.

(4) Where the Securities Authority becomes aware of an inability by a licensee to comply with financial resources regulations the Securities Authority may, whether or not notice has been given under subsection (1) –

- (a) suspend the licence; or
- (b) permit the licensee to carry on business on the conditions, if any, the Securities Authority imposes.

(5) A licensee who contravenes subsection (1) commits an offence.

Monitoring compliance with financial resources regulations

71. The Securities Authority or a person authorized by the Securities Authority may appoint in writing an auditor to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of the licensee, and on money, securities or other property held on account of any other person by the licensee or by a nominee appointed by the licensee.

Client's property

72. (1) The Minister may, on the recommendation of the Securities Authority make regulation with respect to the segregation and safekeeping of clients' money or securities held by the licensees on behalf of clients.

(2) Without limiting the general effect of subsection (1) such regulations may–

- (a) make provision with respect to the opening and keeping of clients' bank accounts, including provision as to the circumstances in which money other than clients' money may be paid into such accounts and the circumstances in which and the persons to whom money held in such accounts may be paid out;
- (b) require clients' money to be paid forthwith into a segregated client bank account the title of which contains the word “client”;
- (c) require the keeping of accounts and records in respect of clients' money or

securities; and

- (d) require the accounts and records to be examined by an accountant and require the accountant to report to the Securities Authority whether in his opinion the provisions of the regulations have been complied with and on such other matters as may be specified in the regulations.

(3) A licensee, who is accountable for securities, that are the property of another person and that the licensee or a nominee controlled by it holds, shall –

- (a) hold and account for them in the manner prescribed;
- (b) not dispose of, assign or lend the securities or deposit them as security for loans or advances except as may be prescribed.

(4) Money or other property held by a licensee on account of a client shall not be available for payment of the debts of the licensee or liable to be paid or taken in execution under the order or the process of any court against the licensee.

(5) A payment made in contravention of subsection (4) is void from the outset, and a person to whom the money is paid does not obtain any title to it notwithstanding any other law to the contrary.

Insurance requirement

73. Every licensee, other than an accredited representative, shall, to the satisfaction of or on terms prescribed by the Securities Authority, effect and maintain an appropriate policy of insurance on such terms and conditions as may be determined by the Securities Authority for the purpose of indemnifying such licensee against any liability that may be incurred as a result of any act or omission by the licensee or any of its officers or employees in the conduct of the licensee's securities business.

Auditor to be appointed

74. (1) Within 30 days after becoming licensed under this Act a licensee, other than an accredited representative, shall appoint an auditor who is acceptable to the Securities Authority.

(2) An auditor shall not be eligible for appointment under subsection (1) if he is –

- (a) a director, officer, employee, shareholder or partner of the licensee; or
- (b) a partner or employee of such person.

(3) A licensee shall, within 7 days of the appointment of an auditor, notify the Securities Authority in writing of the name and address of the auditor.

(4) A licensee shall within 7 days of the removal or resignation of an auditor, notify the Securities Authority in writing.

Audited accounts to be filed with Securities Authority

75. (1) A licensee, other than an accredited representative, shall –

- (a) in respect of the first financial year or part thereof, ending on 31st December or such other date as may be approved by the Securities Authority, during which it commences carrying on securities business; and
- (b) for each subsequent financial year,

submit to the Securities Authority within 4 months after the end of the financial year or such later date as may be approved by the Securities Authority in writing, audited financial statements prepared in accordance with international accounting standards, and which contain such additional information as may be prescribed.

(2) A licensee who contravenes subsection (1) commits an offence.

(3) The Securities Authority may, at any time, instruct a licensee to have its accounts audited and to submit them to the Securities Authority within such time as the Securities Authority specifies.

(4) A licensee shall ensure that an instruction given to it in accordance with subsection (3) is complied with within the specified time, and any person who contravenes this provision commits an offence.

Auditor to report to Securities Authority in certain cases

76. If, during the performance of his duties as auditor for a licensee, an auditor –

- (a) becomes aware of any matter which in his opinion adversely affects the financial position of the licensee to a material extent; or
- (b) discovers evidence of a contravention of section 68, 69 or 72 he shall as soon as is practicable, and in any event within 7 days, report it in writing to the Securities Authority and to the licensee.

Power of Securities Authority to appoint auditor

77. Where the Securities Authority is satisfied that –

- (a) the licensee has failed to file an auditor's report under section 75;
- (b) the Securities Authority has received a report under section 76; or
- (c) there is evidence of a contravention of section 68, 69 or 72;

it may appoint in writing an auditor to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of the licensee, and on money, securities or other property held on account of any other person by the licensee or by a nominee appointed by the licensee.

PART 7 – REGISTERS OF INTERESTS IN SECURITIES

Application of this Part

78. (1) This Part applies to—

- (a) a securities dealer;
- (b) a securities dealer's representative;
- (c) an investment advisor;
- (d) an investment advisor's representative; and
- (e) a financial journalist.

(2) In this Part, "financial journalist" means a person who regularly contributes advice concerning securities or prepares analyses or reports concerning securities for publication in a newspaper or periodical.

(3) In this Part, a reference to securities is a reference to securities which are listed on a securities exchange licensed by the Securities Authority.

Register of Securities

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

(2) Particulars of these securities in which a person to whom this Part applies has an interest and particulars of the person's interest in those securities shall be entered in the register within 7 days of the acquisition of the interest.

(3) Where, there is a change in the interest in securities of a person to whom this Part applies that person shall, within 7 days after the day of the change enter in the register full particulars of the change including the date of the change and the circumstances by reason of which that change has occurred.

(4) For the purposes of subsection (3) where a person acquires or disposes of securities there shall be deemed to be a change in the interest of that person.

Notice of particulars to Securities Authority

80. (1) A person to whom this Part applies shall give notice to the Securities Authority in the prescribed form containing such particulars as are prescribed by the Securities Authority including the place at which he will keep the register of his interests in securities.

(2) The notice shall be given —

- (a) In the case of a person who is required by this Act to hold a licence, as part of his application for the licence; or
- (b) In the case of any other person, if the person becomes a person to whom this Part applies within 7 days after becoming such a person.

(3) A person who ceases to be a person to whom this Part applies shall, within 7 days of his so ceasing, give notice of the fact to the Securities Authority.

(4) A person who fails or neglects to give notice as required by this section commits an offence.

Production of register

81. (1) The Securities Authority or any person authorized by it in that behalf may require any person to whom this Part applies to produce for inspection the register required to be kept pursuant to section 79 and the Securities Authority or any person so authorized may make extracts from the register.

(2) Any person who fails to produce a register for inspection or fails to allow any person authorized under subsection (1) to make a copy of or make extracts from the register commits an offence.

Particulars of financial journalists

82. (1) The Securities Authority or any person authorized by it in that behalf may, where the Securities Authority is satisfied that it is necessary for the protection of investors or in the public interest, by notice in writing require the proprietor or publisher of a newspaper or periodical to supply him with the name and address of the financial journalist who has regularly contributed any advice or prepared any analysis or report that has been published in a newspaper or periodical owned or published by that proprietor or publisher or with names and addresses of all the financial journalists who have regularly contributed any such advice or prepared any such analysis or report within a period specified in the notice.

(2) A proprietor or publisher of a newspaper or periodical who, without reasonable excuse, fails to comply with a notice under subsection (1) commits an offence.

Extract of register

83. The Securities Authority may supply a copy of the extract of a register obtained of register pursuant to section 81 to any person who in the opinion of the Securities Authority, should, in the public interest be informed of the dealing in securities disclosed in the register.

Interest in securities

84. (1) A person shall be deemed to have an interest in a security where a body corporate has an interest in a security and –

- (a) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person in relation to that security;
- (b) that person has a controlling interest in the body corporate; or
- (c) that person is or the associates of that person or that person and his associates are entitled to exercise or control the exercise of not less than 15% of the votes attached to the voting shares in the body corporate.

(2) For the purposes of subsection (1)(c), a person is an associate of another person if the first-mentioned person is –

- (a) a company which, by virtue of section 123, is deemed to be related to that other person;
- (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (1);
- (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security;
- (d) a body corporate which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security; or
- (e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.

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

- (a) has entered into a contract to purchase a security;
- (b) has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
- (c) where he is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a body corporate or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he is the registered holder.

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

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

(6) The following shall not constitute an interest in a security for the purpose of this Part –

- (a) an interest in a security if the interest is that of a person who holds the security as bare trustee;
- (b) an interest in a security of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the

purposes of a transaction entered into in the ordinary course of business in connection with the lending of money; and

- (c) an interest of a person in a security being an interest held by him by reason of his holding a prescribed office; and
- (d) a prescribed interest in a security being an interest of such person, or of the persons included in such class of persons, as is prescribed.

PART 8 – OFFERS TO PUBLIC OF CORPORATE SECURITIES

Public offers of securities

85. (1) This Part shall not apply to –

- (a) securities which are offered by the Central Bank of Seychelles;
- (b) an offer of securities that are made or guaranteed by the Government of Seychelles;
- (c) an offer of securities determined by the Securities Authority to be a private placement;
- (d) or in respect of a licensed public fund or licensed professional fund or an exempt foreign fund under the Mutual Fund and Hedge Fund Act.

(2) For the purposes of this Part, a person offers securities if that person invites another to enter into an agreement for or with a view to subscribing for or otherwise acquiring or underwriting any securities, or that person invites another person to make such an offer.

(3) Subject to the provisions of this Part, no person shall make a public offer of securities unless the issuer or offeror of the securities has submitted for approval to the Securities Authority a prospectus which complies with this Act, and the Securities Authority has approved the prospectus.

(4) The Securities Authority shall not be liable to any action in damages suffered as a result of any prospectus approved by the Securities Authority.

(5) A prospectus approved by the Securities Authority shall be valid only for a period of up to 12 months from the date of such approval.

(6) The Minister may, on the recommendation of the Securities Authority, exempt issuers or offerors from the prospectus requirement in particular cases or classes of cases.

(7) The Minister may, on the recommendation of the Securities Authority, make regulations allowing a draft prospectus to be published in advance of its approval by the Securities Authority.

(8) Upon the commencement of this Act, sections, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49 inclusive and the Fourth Schedule of the Companies Act 1972 shall be repealed.

(9) A person who contravenes subsection (3) commits an offence and is liable on summary conviction –

- (a) in the case of an individual, to a fine of US\$100,000 or the equivalent in Seychelles rupees or to imprisonment for three years or to both;
- (b) in the case of a company, to a fine of US\$200,000 or the equivalent in Seychelles rupees,

and if the offence is a continuing offence, the individual or company is liable to a further fine not exceeding US\$500 or the equivalent in Seychelles rupees or every day that the offence continues after conviction.

Publication of prospectus

86. (1) Where a public offer of securities is to be made in Seychelles the offeror shall publish a prospectus by making it available to the public, free of charge, at an address in Seychelles, from the time the securities are first offered until the end of the period during which the offer remains open.

(2) The offeror shall, not less than 30 days before the proposed date of publication of the prospectus, submit a copy to the Securities Authority for approval.

(3) No person shall publish a prospectus until it has been approved by the Securities Authority.

(4) No person shall issue an advertisement, other than a prospectus, announcing a public offer of securities for which a prospectus is required under this Part unless a prospectus has been published and the advertisement gives an address in Seychelles from which it can be obtained.

(5) A person who contravenes subsection (3) or (4) commits an offence and is liable on summary conviction –

- (a) in the case of an individual to a fine of US\$100,000 or the equivalent in Seychelles rupees or to imprisonment for two years or to both;
- (b) in the case of company, to a fine of US\$200,000 or the equivalent in Seychelles rupees and if the offence is a continuing offence, the individual or company is liable to a further fine not exceeding US\$500 or the equivalent in Seychelles rupees for every day that the offence continues after conviction.

Content of prospectus

87. The Securities Authority may approve a prospectus only if –

- (a) it contains all such information as investors and their professional advisors would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of –
 - (i) the assets and liabilities, financial position, profits and losses, and prospects

of the issuer of the securities; and

- (ii) the rights attaching to those securities;
- (b) it contains in addition such other information and particulars, and complies with such other requirements, as may be prescribed.

Compensation for false or misleading prospectus

88. Every offeror, issuer, director of an offeror or issuer shall be liable to pay compensation to any person who acquires any of the securities, in reliance upon the prospectus, to which the prospectus relates and suffers loss in respect of them as a result of any untrue or misleading statement in the prospectus or the omission from it of any matter required to be included by or under section 87.

Continuing disclosure obligations of issuers

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

- (a) is necessary to enable them and the public to appraise the financial position of the issuer and of its subsidiaries;
- (b) is necessary to avoid the establishment of a false market in its securities; or
- (c) might reasonably be expected materially to affect the price of its securities.

(2) For the purposes of this section, securities are publicly traded if, irrespective of when issued –

- (a) They are traded on a licensed securities exchange; or
- (b) The Securities Authority so determines, having regard to the volume or frequency of trading in such securities.

(3) Without limiting the general effect of subsection (1), the issuer shall also comply with such further obligations and requirements as may be prescribed.

PART 9 – REGISTRATION OF CORPORATE ISSUERS

Registration statement

90. (1) From the commencement of this Act, all public companies will become reporting issuers and shall, within 90 days from the date, or within such other period as the Securities Authority may specify, file with the Securities Authority a registration statement in the form specified by the Securities Authority.

- (2) A company which proposes to issue securities to the public shall register with the

Securities Authority as a reporting issuer and file a registration statement in the form and within the period specified by the Securities Authority.

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

(4) Where a reporting issuer ceases to be a public company, it shall forthwith automatically cease to be a reporting issuer.

(5) The provisions of this section shall not apply to a licensed mutual fund or exempt foreign fund under the Mutual Fund and Hedge Fund Act.

Annual reports

91. (1) A reporting issuer shall, within 4 months after the end of its financial year –

- (a) file with the Securities Authority a copy of its annual report containing such information as the Securities Authority may specify; and
- (b) forward to each holder of its securities such financial statements as the Securities Authority may specify.

(2) A reporting issuer shall file with the Securities Authority such other reports in such form as the Securities Authority may specify.

(3) Unless specifically authorized by the Securities Authority to the contrary, where a material change occurs in the affairs of a reporting issuer that is likely to have a significant influence on the value of the market price of its securities, the reporting issuer shall, as soon as practicable but in any event no later than 7 days after the change occurs, issue a press release, to be filed with the Securities Authority, authorized by a director of the issuer that discloses the nature and substance of the change.

(4) Without limiting what amounts to a material change referred to in subsection (3), the following changes shall require disclosure under this section –

- (a) any distribution of securities in Seychelles or in any other jurisdiction;
- (b) any change in the beneficial ownership of the issuer's securities that affects or is likely to affect the control of the issuer;
- (c) any reorganization in capital, merger or amalgamation;
- (d) a takeover bid on its own securities or made on the securities of another issuer or issuer bid; or
- (e) any significant acquisition or disposition of assets, property or joint venture interests.

(5) For the purposes of subsection 4(e), an acquisition or disposition is significant when the value of the asset, property or interest acquired or disposed of exceeds 10 per cent of the net asset of the reporting issuer.

- (6) A reporting issuer may choose not to issue a press release where –
- (a) the information concerns an incomplete proposal or negotiation;
 - (b) the information comprises matters of supposition or is insufficiently definite such that it would be misleading to the market for it to be disclosed;
 - (c) the information is a trade secret.

(7) The exemption of subsection (6) shall not apply where the board of the issuer reasonably believes that transactions in the securities have taken place or are likely to take place based on undisclosed information.

(8) Where the exemption in subsection (6) applies, the reporting issuer shall issue the press release under subsection (1) as soon as circumstances that justify non-disclosure end.

PART 10 – INSIDER DEALING AND OTHER MARKET ABUSES

Insiders

- 92.** (1) For the purposes of this Part, an individual has information as an insider if –
- (a) it is inside information, and that individual knows that it is inside information; and
 - (b) that individual has the information, and knows that he or she has the information, from an inside source.
- (2) For the purposes of subsection (1), an individual has information from an inside source if –
- (a) the individual has it through –
 - (i) being a director, employee or shareholder of an issuer of securities; or
 - (ii) having access to the information by virtue of that individual's employment, office or profession; or
 - (b) the direct or indirect source of the individual's information is a person referred to in paragraph (a).

Inside information

- 93.** For the purposes of this Part –
- (a) “inside information” means information which–
 - (i) relates to particular securities or to a particular issuer of securities and not to securities generally or to issuers of securities generally;
 - (ii) is specified or precise;

- (iii) has not been made public; and
 - (iv) if it were made public would be likely to have a significant effect on the price of any securities;
- (b) securities are “price-affected securities” in relation to inside information, if the information would, if made public, be likely to have a significant effect on the price of the securities.

Information “made public”

94. (1) For the purposes of section 93, “made public”, in relation to information, shall be construed in accordance with the following provisions of this section, but these provisions shall not be exhaustive as to the meaning of that expression.

- (2) Information is made public if –
 - (a) it is published in accordance with the rules of a securities exchange for the purpose of informing investors and their professional advisors;
 - (b) it is contained in records which by virtue of any enactment are open to inspection by the public;
 - (c) it can be readily acquired by those likely to deal in any securities –
 - (i) to which the information relates; or
 - (ii) of an issuer to which the information relates; or
 - (d) it is derived from information which has been made public.

Offence of insider dealing

95. (1) An individual who has information as an insider commits the offence of insider dealing if that individual –

- (a) deals in securities that are price-affected in relation to that information;
- (b) encourages another person to deal in securities that are, whether or not that other person knows it, price-affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place; or
- (c) discloses the information, otherwise than in the proper performance of the functions of that individual’s employment, office or profession, to another person.

(2) An individual who commits an offence under subsection (1) is liable on summary conviction –

- (a) to a fine of US\$200,000 or the equivalent in Seychelles rupees or to imprisonment for four years or to both; and

- (b) the court may make an order imposing on the convicted person a penalty, payable to the Securities Authority, of an amount not exceeding 3 times the amount of any profit gained or loss avoided by any person as a result of the insider dealing.

(3) In addition to the penalty stated in subsection (2) an individual who is convicted of an offence under this section shall be –

- (a) liable to compensate any person for any direct loss incurred by that person as a result of the insider dealing unless the other person was a party to the insider dealing;
- (b) accountable to the company for any direct benefit or advantage received or receivable as a result of the insider dealing.

(4) No contract shall be void or unenforceable by reason only of an offence under this section.

False trading

96. (1) A person commits an offence if that person, in Seychelles or elsewhere, creates, or does anything that is intended or the person knows is likely to create, a false or misleading appearance –

- (a) of active trading in securities on a licensed securities exchange; or
- (b) in the price of securities traded on a licensed securities exchange.

(2) Without limiting the general nature of what constitutes a false or misleading appearance of active trading under subsection (1), a false or misleading appearance of active trading in securities is created for the purpose of this section if a person –

- (a) carries out, either directly or indirectly, a sale or purchase of securities that does not involve a change in the beneficial ownership of them, or offers to do so;
- (b) offers to sell securities at a price that is substantially the same as the price at which that person has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to buy the same or substantially the same number of them; or
- (c) offers to buy the securities at a price that is substantially the same as the price at which that person has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same number of them.

Price rigging

97. A person commits an offence if that person maintains, increases, reduces, or causes fluctuations in, the market price of securities by means of purchases or sales that do not involve a change in the beneficial ownership of those securities or by fictitious transactions or devices.

Market manipulation

98. A person commits an offence if that person enters into or carries out, whether in Seychelles or elsewhere, either directly or indirectly, a transaction in securities that either directly or indirectly, by itself or in conjunction with another transaction –

- (a) increases, or is likely to increase, their market price with the intention of inducing other persons to sell or to purchase, or to refrain from selling or purchasing, securities issued by the same company or a related company;
- (b) reduces, or is likely to reduce, their market price with the intention of inducing other persons to sell or purchase, or to refrain from selling or purchasing, securities issued by the same company or a related company;
- (c) stabilizes, or is likely to stabilize, their market price with the intention of inducing other persons to sell or purchase, or refrain from selling or purchasing, securities by the same company or by a related company.

Use of deceptive statement as inducements

99. A person commits an offence if that person induces or attempts to induce another person to deal in securities –

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

Fraudulent transactions

100. A person commits an offence if that person, directly or indirectly, in connection with any transaction with any other person involving the purchase, sale or exchange of securities –

- (a) employs any device, scheme or artifice to defraud that other person; or
- (b) engages in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, on that other person.

False or misleading statement inducing securities transactions

101. A person commits an offence if that person, directly or indirectly, for the purpose of inducing the sale or purchase of the securities by any other person of any company, or to raise, lower or stabilize the market price of that company's securities, makes with respect to those securities, or with respect to the operations or the past, or future performance of the company –

- (a) any statement which is, at the time and in light of the circumstances in which it is made, false or misleading with respect to any material fact and which that person knows or has reasonable grounds to believe to be false or misleading; or

- (b) any statement which is, by reason of the omission of a material fact, rendered false or misleading, and which that person knows or has reasonable grounds to believe is rendered false or misleading by reason of omission of that fact.

Penalties for offences under sections 96 to 101

102. A person who commits an offence under section 96, 97, 98, 99, 100 or 101 is liable on summary conviction –

- (a) in the case of an individual to a fine of US\$100,000 or the equivalent in Seychelles rupees or to imprisonment for three years or to both;
- (b) in the case of a company, to a fine of US\$200,000 or the equivalent in Seychelles rupees.

Liability to pay damages

103. (1) A person who is convicted of an offence under section 96, 97, 98, 99, 100 or 101 shall, in addition to criminal liability for the offence, be liable, at the suit of any person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the act or transaction which comprises or is the subject of the offence, to an action for damages in respect of the loss concerned.

(2) Nothing in subsection (1) limits or diminishes any civil liability which any person may incur under any other law.

PART II – DISCLOSURE OF SHAREHOLDINGS OF DIRECTORS AND SUBSTANTIAL SHAREHOLDERS

Interpretation

104. In this Part –

"associated person" shall be construed in accordance with section 84(2);

"director" includes –

- (a) a person occupying the position of a director (by whatever name called); and
- (b) a person in accordance with whose directions or instructions, not being advice given in a professional capacity, the directors are accustomed to act;

"interest in securities" shall be construed in accordance with section 84;

"securities" means securities which are listed on a Seychelles Securities Exchange;

"substantial shareholder", in relation to an issuer, means a person who has an interest in shares of the issuer –

- (a) the stated value of which is more than 10% of the issued share capital of the issuer; or
- (b) which entitles the person to exercise or control the exercise of more than 10% of the voting power at a general meeting of the issuer.

Notification of interests of directors and substantial shareholders

105. Where, on the commencement of this Act, a director or substantial shareholder of an issuer is interested in securities of that issuer or another issuer that is an associated person, he shall notify the issuer within 14 days in writing of his interest in such securities giving particulars of the number of securities of every class.

Change in director's interest in securities

106. (1) A director shall notify the issuer of which he is a director within 14 days of the occurrence of –

- (a) any event in consequence of which he becomes or ceases to be interested in securities of the issuer or of an associated person;
- (b) the entering into by him of a contract to buy or sell any such securities;
- (c) the assignment by him of a right granted to him or to any member of his family by the issuer to subscribe for securities of the issuer;
- (d) the grant to him by an associated company of the issuer to subscribe for securities of that associated person, that exercise or the assignment of such a right, stating the number or amount and class of securities involved.

(2) Where a director is granted the right to subscribe for the securities of a company under subsection (1)(d), the director shall notify the issuer of –

- (a) the date on which the right is granted;
- (b) the period during which or the time at which the right is exercisable;
- (c) the consideration for the grant; and
- (d) in the case of the exercise of the right, the number of securities in respect of which it is exercised, and the name in which such securities are registered.

Obligation to notify acquisition or change in substantial shareholding

107. (1) Any person who –

- (a) not previously being a shareholder of an issuer, acquires an interest in shares so as to become a substantial shareholder of that issuer;
- (b) being a shareholder of an issuer, acquires an interest in further shares so as to become a substantial shareholder;

- (c) being a substantial shareholder of an issuer –
 - (i) acquires an interest in additional shares of the issuer;
 - (ii) reduces his number of shares of the issuer but remains a substantial shareholder; or
 - (iii) ceases to be a substantial shareholder of the issuer, shall notify the issuer in writing of the occurrence of the event resulting in his change of interest within fourteen days of the date on which it occurred, and the number of shares in which he has become interested or ceased to be interested.

Extension to spouses and children

108. (1) For the purposes of section 105, 106 and 107, an interest in securities of the spouse and minor child (such child not being a director) of a director or substantial shareholder of an issuer shall be treated as being the director's or substantial shareholder's interest, as the case may be.

(2) In this section "child" includes a step-child, an adopted child and a child born out of wedlock.

Register of interests of directors and substantial shareholders

109. (1) An issuer shall keep, in the form and manner specified by the Securities Authority, a register of directors' and substantial shareholders' interests.

(2) The register shall be held at the issuer's registered office and shall, during usual office hours, be open to inspection free of charge to members of the public.

(3) The register shall be produced at the commencement of the issuer's annual general meeting and be kept open and available throughout the meeting to any person attending.

Notification to securities exchange and Securities Authority

110. (1) Where an issuer is notified by a director or substantial shareholder of any matter relating to securities of which the issuer is required to give notice under this Part, or enters in its register any matter relating to securities required to be entered under this Part, the issuer shall inform the securities exchange on which the securities of the issuer are listed, and the Securities Authority, before the end of the day following the day of the notification or entry, as the case may be.

(2) The securities exchange or the Securities Authority may publish, in such manner as it may determine, any information it receives under this section.

Offences

111. A person who contravenes any provision of this Part, or who –

- (a) makes a statement which that person knows to be false;

- (b) recklessly makes a statement which is false; or
 - (c) fails to supply any particulars which that person is required to supply,
- commits an offence.

PART 12 – INFORMATION, INSPECTION AND INVESTIGATION

Power of Securities Authority to call for information

112. (1) The Securities Authority may, by notice in writing, require a licensee to furnish it with such information as it may reasonably require for the exercise of its functions within such reasonable time and verified in such manner as it may specify.

(2) The duty to supply information under this section applies notwithstanding any other enactment or rule of law in Seychelles.

Right to exchange information

113. (1) The Securities Authority, a securities exchange, a clearing agency and any other body which exercises a regulatory function over any person involved in securities business or operations shall have the right to supply each other with information about their securities business and –

- (a) in the case of a securities exchange, information on the securities business of any of its members; and
- (b) in the case of a clearing agency, information on the securities business of any of its participants.

(2) The Securities Authority may by written notice require a securities exchange or clearing agency to supply it with the information the Securities Authority reasonably requires for the performance of its functions under this Act, including information in the possession, or under the control, of a securities exchange or clearing agency relating to –

- (a) in the case of a securities exchange the securities business of any of its members; and
- (b) in the case of a clearing agency, the securities business of any of its participants.

(3) The right to exchange and the duty to supply information under this section apply notwithstanding any other enactment of law in Seychelles.

Information relating to transactions

114. (1) The Securities Authority or a person authorized in writing by the Securities Authority for the purpose of this section may require –

- (a) a person registered as the holder of securities;

- (b) a person whom the Securities Authority or the person authorized has reasonable grounds to believe –
 - (i) holds securities;
 - (ii) has a beneficial interest in securities;
 - (iii) has acquired or disposed of securities directly or through a nominee, trustee or agent, and whether as beneficial owner, nominee, trustee, agent or otherwise;
 - (c) a person whom the Securities Authority or the person authorised has reasonable ground to believe (d) a person whom the Securities Authority
 - (d) a licensee, to disclose to the Securities Authority or the person authorised by the Securities Authority the information referred to in subsection (2) in relation to an acquisition, disposal or holding of securities.
- (2) The information that may be required under subsection (1) is –
- (a) the name, address, telephone number and occupation of the person, or other particulars that are capable of establishing the identity of the person, from, to or through whom, or on whose behalf, the securities were acquired, disposed of or were or are held;
 - (b) the quantity of securities so required, disposed of or held; and
 - (c) the instructions given to or by the person referred to in (a) in relation to the securities.
- (3) A person commits an offence if that person –
- (a) without reasonable excuse fails to disclose to the Securities Authority or the authorized person information required to be disclosed under this section and which is in his possession or under his control; or
 - (b) furnishes to the Securities Authority or the authorized person in purported compliance with the requirement of disclosure under this section information which the person knows to be false or misleading in a material particular, where the Securities Authority or an authorized person requires information under subsection (1).

Power of Securities Authority to inspect

115. (1) For the purpose of ascertaining whether a person who is, or at any time has been, a licensee is complying or has complied with any provision of a requirement under this Act, regulations made under this Act or the terms and conditions of his licence, the Securities Authority may inspect any document or other record or property relating to the business to which the licence applies.

(2) The Securities Authority may appoint any person (hereinafter referred to as the “authorized person”) to exercise the powers of the Securities Authority under this section.

- (3) In the exercise of his powers under this section, an authorized person may –
- (a) enter the licensee’s premises or any other place where the licensee has records and documents or other property;
 - (b) require the licensee, or any other person whom he reasonably believes is in possession of or has under his control any record or other document referred to in subsection (1), to produce it to him;
 - (c) inspect and make copies, or take extracts from, and where necessary in an appropriate case take possession of such records or other documents.

(4) For the purpose of an inspection under this section, the licensee or other person mentioned in subsection (3) shall afford an authorized person access to the records or other documents as may be reasonably required for the inspection, and shall produce to the authorized person such records or other documents as he may reasonably require.

(5) Any person who, without reasonable excuse, contravenes subsection (4) commits an offence.

Power of Securities Authority to investigate

116. (1) Where the Securities Authority has reasonable grounds to believe that –

- (a) an offence under this Act or regulations made under this Act has been committed; or
- (b) a person may have committed a breach of trust, fraud or misconduct –
 - (i) in dealing in securities;
 - (ii) in the management of investment in securities; or
 - (iii) in giving advice as regards the acquisition, disposal, purchase or sale, or otherwise investing in, and security; or
- (c) the manner in which a person has engaged or is engaging in any of the activities referred to in paragraph (b) is not in the interest of the investing public or the public interest,

the Securities Authority may in writing appoint a person (hereinafter referred to as “the investigator”) to investigate any matter referred to in paragraphs (a) to (c) and to report the results of the investigation to the Securities Authority.

(2) Any person who is reasonably believed or suspected by the investigator to have in his possession or under his control any record or other document which contains, or which is likely to contain, information relevant to an investigation under this section, or who is so believed or suspected of otherwise having such information in his possession or under his control, shall –

- (a) produce to the investigator, with such time and at such place as he may reasonably require, any document specified by the investigator which is, or

may be, relevant to the investigation, and which is in his possession or under his control;

- (b) if so required by the investigator, give to him such explanation or further particulars in respect of a document produced in compliance with a requirement under paragraph (a) as the investigator shall specify; and
 - (c) attend before the investigator at such time and place as the investigator may reasonably require in writing, and answer truthfully and to the best of his ability under oath, which oath the investigator is hereby empowered to administer, such questions relating to the matters under investigation as the investigator may put to him.
- (3) A person commits an offence if, without reasonable cause, that person –
- (a) fails to produce a record or other document which that person is required to produce under subsection (2)(a);
 - (b) fails to give an explanation or particulars required under subsection (2)(b);
 - (c) fails to comply with a requirement under subsection (2)(c) to attend before the investigator; or
 - (d) fails to answer a question put to him by the investigator under subsection (2)(c), or in answering the question says anything which that person knows to be false or misleading in a material particular or who in so answering recklessly makes a false statement.

Power of Securities Authority to require production of records and documents concerning listed companies

117.(1) Where it appears to the Securities Authority that there are circumstances suggesting that –

- (a) the business of a company, which is or was at the relevant time listed, has been or is being conducted with intent to defraud its creditors, or the creditors of another person;
- (b) a company was formed for a fraudulent or unlawful purpose;
- (c) the persons concerned with the formation of a company or the management of its affairs have in relation to the formation or management been guilty of fraud, misfeasance or other misconduct towards it or its members; or
- (d) the members of a company have not been given all the information with respect to its affairs that they might reasonably expect, the Securities Authority may give directions to –
 - (i) the company;
 - (ii) a subsidiary of the company;

- (iii) a company that is substantially under the control of the same person as is the company,

requiring it, at the time and place specified in the directions to produce the records and documents specified in the directions.

(2) The Securities Authority may, when acting under subsection (1), authorize a person, on producing evidence of his authority, to require a company referred to in subsection (1) to produce to him records and documents specified by him.

(3) Where the Securities Authority or authorized person require production of records and documents from a company under this section, the Securities Authority or authorized person may also require production of those records and documents from a person who appears to the Securities Authority or authorized person to be in possession of them.

(4) A power under this section to require a company or other person to produce records and documents includes the power –

- (a) if the records and documents are produced –
 - (i) to take copies of them or extracts from them; and
 - (ii) to require that person, or any other person who is a present or past officer of the company, or is or was at any time employed by the company, to provide an explanation of any of the records or documents; or
- (b) if the records and documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) If a requirement to produce records or provide an explanation or make a statement which is imposed under this section is not complied with, the company or other person on whom the requirement was so imposed commits an offence.

Remedy in cases of unfair prejudice by listed companies

118. (1) If it appears to the Securities Authority from any information, record or other document obtained under this Part, that the affairs of a listed company are being or have been conducted in a manner unfairly prejudicial to the interest of its members generally or of some part of the members, the Securities Authority may make an application to the Supreme Court for an order under this section.

(2) If on an application under this section the Supreme Court is of the opinion that the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of its members generally or of some part of the members, whether or not the conduct consists of an isolated act or a series of acts, the Supreme Court may, with a view to bringing to an end the matters complained of –

- (a) make an order restraining the carrying out of the act or conduct;
- (b) order that the company shall bring in its name the proceedings the Supreme

Court thinks fit against the persons, on the terms, the Supreme Court orders;

- (c) appoint a receiver or manager of the whole or a part of the company's property or business and may specify the powers and duties of the receiver or manager and fix his remuneration;
- (d) make any other order it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purpose of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

(3) Where an order under this section makes an alteration in or an addition to the constitution of a company, the company shall not have power without the leave of the Supreme Court to make any further alteration in or addition to the constitution inconsistent with the order.

Destruction of documents

119. A person who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any document which he knows or ought to know is relevant to an inspection made under section 115 or an investigation under section 116, commits an offence and is liable on summary conviction –

- (a) in the case of an individual, to a fine of US\$50,000 or the equivalent in Seychelles rupees or to imprisonment for one year or to both;
- (b) in the case of a company, to a fine of US\$100,000 or the equivalent in Seychelles rupees.

Establishment of Disciplinary Committee

120. (1) The Securities Authority may establish a Disciplinary Committee and the composition of that committee shall be as prescribed.

(2) The Disciplinary Committee may, where it is satisfied after due enquiry that a licensee is in contravention of the provisions of this Act or any regulations made under this Act, exercise in relation to that licensee any one or more of the following sanctions as it deems appropriate in the circumstances—

- (a) issue a private warning or reprimand;
- (b) issue a notice of public censure;
- (c) issue an order requiring the licensee to cease and desist from the activity or non activity causing the licensee to be in contravention;
- (d) issue an order debarring the licensee from carrying on securities business whilst the contravention subsists;
- (e) impose a fine in such amount as may be prescribed.

Disciplinary offences

121. A licensee who contravenes any provision of this Act, or any regulation made under this Act, is liable to disciplinary proceedings irrespective of any other action, whether criminal or civil, that may be taken against him by any person in respect of the same conduct.

PART 13 – TAKEOVERS

Takeover offers

122. (1) This Part shall only apply to listed companies.

(2) In this Part "takeover offer" means an offer to acquire, by or on behalf of a company or individual (hereinafter referred to as "the offeror") –

- (a) all the shares, or all the shares of any class, in a company (hereinafter referred to as "the offeree company") other than shares which at the date of the offer are already held by the offeror; or
- (b) such shares in the offeree company which will result in the offeror acquiring effective control of the offeree company.

(3) For the purposes of subsection (2), "acquiring effective control" means the acquiring of shares in an offeree company which together with shares, if any, already held by the offeror or by any other person that is deemed by virtue of section 123 to be related to the offeror, carry the right to exercise, or control the exercise of, more than 50% of the rights attached to the voting shares of the offeree company.

When companies deemed to be related

123. Where a company –

- (a) is the holding company of another company;
- (b) is the subsidiary of another company; or
- (c) is a subsidiary of the holding company of another company,

that first-mentioned company and that other company shall for the purposes of this Part be deemed to be related to each other.

Conduct of takeovers

124. (1) The Minister may, on the recommendation of the Securities Authority, make regulations with respect to the making and conduct of takeover offers.

(2) Where the Minister has made regulations under subsection (1), no person shall make or pursue a takeover offer except in accordance with such regulations.

PART 13A – CHANGE IN FIT AND PROPER INDIVIDUALS

124A. In this Part —

“key position” or “in a significant role” includes but is not limited to, —

- (a) the management and oversight of the day-to-day operations of the employees;
- (b) ensuring the availability of up-to-date and timely information concerning the operations and affairs;
- (c) acting as an intermediary between the board and employees;
- (d) formulating and implementing policies and procedures;
- (e) conducting training for staff and assisting in the identification and evaluation of other officers and board members as may be appropriate;
- (f) having regulatory knowledge of the industry;
- (g) having knowledge and understanding of the roles and duties for the position occupied or for the position applied to be occupied as applicable;

124B.(1) The provisions of this Part shall apply to —

- (a) licensed Securities Dealers;
- (b) licensed Investment Advisors;
- (c) licensed Securities Exchanges;
- (d) licensed Clearing Agencies;
- (e) licensed Securities Facilities;

Provided that the particular circumstances in which they apply are relevant to fit and proper determination of individuals in a key position or in a significant role.

(2) A determination under subsection (1) shall apply to a change in an approved fit and proper individual's key position or significant role which has been previously approved under section 9(4), 46(5) and 49(4), or thereafter.

(3) A licensee shall submit an application, as may be prescribed by the Securities Authority, for a change referred to in subsection (2), accompanied by any fees as may be prescribed by the Minister by Regulations.

(4) A licensee shall not effect a change referred to under this Part unless the proposed change has been approved by the Securities Authority.

(5) A licensee who fails to comply with subsections (3) and (4) shall be liable to a penalty of USD5000 per day or part thereof during which the contravention continues.

(6) Further to subsection (5), the Authority may take enforcement action as deemed appropriate.

PART 14 – MISCELLANEOUS

Judicial review

125. Any decision of the Securities Authority may be challenged by judicial review before the Supreme Court, including a decision –

- (a) to suspend any licence under this Act;
- (b) to revoke any licence under this Act;
- (c) to refuse to grant or renew any licence under this Act.

Immunity

126. The Securities Authority, members, officers and employees of the Securities Authority shall not be liable to any action in damages for anything done or omitted to be done in the exercise or performance of any power or duty conferred or imposed by or under this Act.

Offences and penalties

127. (1) A person who commits an offence under section 20(3), 41(3), 57(5), 59(2), 62(2), 70(5), 75(2), 75(4), 80(4), 81(2), 82(2), 111, 114(3), 115(5), 116(3) or 117(5) is liable on summary conviction –

- (a) in the case of an individual, to a fine of US\$50,000 or the equivalent in Seychelles rupees, or to imprisonment for one year or to both;
- (b) in the case of a company, to a fine of US\$100,000 or the equivalent in Seychelles rupees, and if the offence is a continuing offence, the individual or company is liable to a further fine not exceeding US\$250 or the equivalent in Seychelles rupees, for failing to supply any particulars which that person is required to supply, for every day that the offence continues after conviction.

(2) A person who contravenes or fails to comply with any other provision of this Act, where the provision does not expressly create an offence or provide for a penalty, commits an offence and is liable on summary conviction –

- (a) in the case of an individual, to a fine of US\$50,000 or the equivalent in Seychelles rupees;
- (b) in the case of a company, to a fine of US\$100,000 or the equivalent in Seychelles rupees.

Exemptions and concessions

128. (1) Subject to subsection (2), the laws specified in column 1 of Schedule 3 shall to the extent specified in column 2 of Schedule 3 not apply to licensed securities exchanges, clearing agencies, securities facilities, securities dealers.

(2) The concession relating to the Business Tax Act specified in Schedule 3 shall only apply if the licensee meets the substantial activity requirements as may be prescribed.

(3) The exemptions and concessions granted under subsection (1) and by Schedule 3 shall remain in force and be irrevocable for a period of 20 years from the date of commencement of this Act, and shall automatically continue in force thereafter unless or until specifically repealed or altered by a written law.

Orders of the Supreme Court

129. (1) Where, on the application of the Securities Authority, it appears to the Supreme Court that a person has contravened this Act or the conditions of any licence, or is about to do an act with respect to dealing in securities that, if done, would be such a contravention, the Supreme Court may, without prejudice to any order it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders –

- (a) an order restraining a person from acquiring, disposing of, or otherwise dealing with any securities specified in the order;
- (b) in relation to a securities dealer or investment advisor, an order appointing a person to administer its property;
- (c) an order declaring the contract, if any, relating to any securities to be void or voidable;
- (d) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; or
- (e) any ancillary order which it considers necessary in consequence of the making of any other order under this section.

(2) The Supreme Court shall, before making an order under this section, satisfy itself, so far as it reasonably can, that the order would not unfairly operate to the detriment of any other person.

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

(4) The Supreme Court may reverse, vary, or discharge an order made by it under this section or suspend the operation of such an order.

Civil action

130. Without prejudice to any other provision of this Act, a contravention of this Act or regulation made under this Act shall be actionable at the suit of a person who suffers pecuniary loss as a result of the contravention.

Winding up orders

131. If, in the case of a company licensed under this Act, it appears to the Securities Authority

that it is necessary for the protection of investors that the company should be wound up under the Companies Act, the Securities Authority may present a petition for it to be wound up under that Act on the ground that it is just and equitable that it should be wound up.

Receiving orders

132. If it appears to the Securities Authority that it is necessary for the protection of investors to do so, the Securities Authority may present a petition for a receiving order in accordance with the Bankruptcy and Insolvency Act against an individual licensed under this Act if the individual has committed an act of insolvency within the meaning of that Act, and that Act shall, with any necessary modifications, apply in relation to any such petition as it applies in relation to a petition presented by a creditor.

Regulations

133. (1) Without limitation to specific provisions in this Act enabling the Minister to make regulations, the Minister may make regulations, on the recommendation of the Securities Authority, for or with respect to –

- (a) applications for licences, the issue of licences and incidental matters;
- (b) the display of licences and the issue of duplicate licences;
- (c) the qualifications, experience and training required of licensees, the examinations that applicants for licences may be required to take, and the circumstances in which they may be excused from such requirements;
- (d) the making of annual or other regular returns to the Securities Authority by licensees;
- (e) the conditions subject to which securities may be listed and the circumstances in which dealings in listed securities shall be suspended;
- (f) insider dealings and market manipulations;
- (g) the particulars to be recorded in relation to accounts to be kept for the purposes of this Act, and the particulars to be recorded in profit and loss accounts and balance sheets;
- (h) the information to be contained in auditors' reports required to be filed under this Act;
- (i) the form and content of advertisements relating to securities business, and restrict who may issue such advertisements;
- (j) the licensing and supervision of clearing agencies and persons providing securities facilities;
- (k) any matter which this Act provides is to be, or may be, prescribed;
- (l) the better carrying out of the purposes and provisions of this Act.

(2) The regulations may provide that a contravention of any specified provision shall be an offence and may provide financial penalties not exceeding –

- (a) in the case of an individual, US\$100,000 or the equivalent in Seychelles rupees;
- (b) in the case of case of a company, US\$200,000 or the equivalent in Seychelles rupees and if the offence is a continuing offence, the individual or company is liable to a further fine of US\$500 or the equivalent in Seychelles rupees for every day that the offence continues after conviction.

(3) The regulations may be of general or special application and may make different provision for different cases or classes of cases

(4) Regulations, whether made under this or any other section, may provide for the exercise of discretion in particular cases.

Rules

134. The Securities Authority may make rules for procedural and implementation matters –

- (a) where the Act or regulations provide that they are to be, or may be, prescribed by the Securities Authority;
- (b) for the better carrying out of the purposes and provisions of this Act and any regulations made under this Act.

Guidance notes

135. The Securities Authority may issue such guidance notes, bulletins, advice or other regulatory statements as it may consider necessary or desirable for the administration of this Act.

Confidentiality

136. (1) Subject to subsection (2), neither the Securities Authority nor any agent of the Securities Authority shall disclose to any third party any information or documents acquired in the performance of its duties under this Act, including in respect of any licensees.

(2) Subsection (1) shall not apply to any disclosure –

- (a) lawfully required by any court of competent jurisdiction in Seychelles;
- (b) in respect of the affairs of any licensee or other person, with the consent of such person, as the case may be, which consent has been voluntarily given;
- (c) where the information disclosed is in statistical form or is otherwise disclosed in such a manner that does not enable the identity of any licensee or other person to which the information relates to be ascertained; or
- (d) pursuant to any lawful disclosure required under the Mutual Assistance in Criminal Matters Act or the Anti-Money Laundering Act 2006 or the

Prevention of Terrorism Act 2004 or any other Seychelles law.

Repeal and savings

137. (1) Upon the commencement of this Act, the Securities Industry Act 1995 is hereby repealed.

(2) Notwithstanding subsection (1) any subsidiary legislation made under the repealed Act shall continue to have effect until repealed or revoked by subsidiary legislation made under this Act.

(3) To the extent of any inconsistency with this Act, this Act shall prevail over the Companies Act, the Bankruptcy and Insolvency Act and the Acts specified in Column 1 of Schedule 3.

SCHEDULE 1 (under section 2(1))

SECURITIES

- 1.** Any of the following securities –
 - (a) shares and stock of any kind in the share capital of a company in Seychelles or elsewhere;
 - (b) shares or other units of participation in a mutual fund as defined in the Mutual Fund and Hedge Fund Act.
- 2.** Debentures, debenture stock, loan stock, bonds, certificates of deposit and any other instruments creating or acknowledging indebtedness other than –
 - (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
 - (b) a check or other bill of exchange, a bankers draft or a letter of credit;
 - (c) a bank note, a statement showing a balance in a current, deposit or savings account, a lease or other disposition of property;
 - (d) a contract of insurance;
 - (e) any instrument creating or acknowledging indebtedness in respect of money raised by the Government of Seychelles or any public authority created thereby; and
 - (f) an instrument creating or acknowledging indebtedness and creating security for that indebtedness over land.
- 3.** Warrants and other instruments entitling the holder to subscribe for securities falling within paragraph 1 or 2.
- 4.** Certificates or other instruments which confer contractual or proprietary rights –
 - (a) in respect of any security falling within paragraph 1, 2 or 3 being a security held by a person other than the person on whom the rights are conferred by the certificate or instrument; and
 - (b) the transfer of which may be effected without the consent of that person.
- 5.** Options to acquire or dispose of –
 - (a) a security falling in any other paragraph of this Schedule;
 - (b) any currency;
 - (c) any precious metal; or
 - (d) an option to acquire or dispose of a security falling within this paragraph by virtue

of subparagraph (a), (b) or (c) of this paragraph.

FUTURES

6. Rights under a contract for the disposal of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made other than a contract made for commercial and not investment purposes.

- (a) A contract is to be regarded as made for investment purposes if it is made or traded on a Seychelles Securities Exchange or recognized overseas securities exchange or made otherwise than on a Seychelles Securities Exchange or recognized overseas securities exchange but is expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.
- (b) A contract not falling within paragraph 7 is to be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within seven days.
- (c) The following are indications that a contract not falling within paragraph 7 or 8 is made for commercial purposes and the absence of them is an indication that it is made for investment purposes –
 - (i) one or more of the parties is a producer of the commodity or other property or uses it in his business; or
 - (ii) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.
- (d) It is an indication that a contract is made for commercial purposes that the prices, the lot, the delivery date or other terms are determined by the parties for the purposes of the particular contract and not by reference (or not solely by reference) to regularly published prices, to standard lots or delivery dates or to standard terms.
- (e) The following are indications that a contract is made for investment purposes –
 - (i) it is expressed to be as traded on a securities exchange;
 - (ii) Performance of the contract is ensured by a securities exchange or a clearing house; or
 - (iii) There are arrangements for the payment or provision of margin.

7. For the purposes of paragraph 6, a price is to be taken to be agreed on when a contract is made –

- (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
- (b) in a case where the contract is expressed to be by reference to a standard lot and

quality,

notwithstanding that provision is made for a variation of the price to take account of any variation in quantity or quality on delivery.

CONTRACTS FOR DIFFERENCES

8. Rights under –

- (a) a contract for differences; or
- (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in –
 - (i) the value or price of property of any description; or
 - (ii) an index or other factor designated for that purpose in that contract other than–
 - (A) Rights under a contract if the parties intend that the profit is to be secured or the loss is to be avoided by one or more of the parties taking delivery of any property to which the contract relates; or
 - (B) Rights under a contract under which money is received by way of deposit on terms that any interest or other return to be paid on the sum deposited will be calculated by reference to fluctuations in an index or other factor.

SCHEDULE 2

Repealed.

SCHEDULE 3 (under section 128)

EXEMPTIONS AND CONCESSIONS APPLICABLE TO LICENSED SECURITIES EXCHANGES, CLEARING AGENCIES, SECURITIES FACILITIES, SECURITIES DEALERS, INVESTMENT ADVISORS

Column 1	Column 2
Law	Extent of exemption and non-applicability
1 Business Tax Act	1.(a) The rate of tax payable by a Licensee shall be (one and a half percent) of assessable (gross) income; 1.(b) The rates of withholding tax payable by a licensee under Part IV of the Business Tax Act shall be nil.
2 Immovable Property (Transfer Restriction) Act	2. Section 4, in so far it prohibits a non-Seychellois from leasing immovable property in Seychelles or entering into an agreement to lease immovable property.
3 Social Security Act	3. The whole Act in respect of a licensee which has no staff in Seychelles. In respect of a licensee which has staff in Seychelles, the licensee shall pay employer's social security contribution at the fixed rate of 5% of each employee's emoluments for the first 10 years of the licensee carrying on licensed business in Seychelles and at the fixed rate of 10% thereafter.
4 Stamp Duty Act	4. The following shall be exempt from the payment of stamp duty: (a) All instruments evidencing a transfer or other transaction in respect of an equity interest or debt obligation in respect of a licensee; (b) All transfers of other property to or by a licensee; (c) All instruments constituting, evidencing or related to securities or transfer of or other dealings in listed companies or other listed securities; (d) All instruments constituting evidencing or

related to loan or loan security in respect of a licensee or a listed company:

Provided that the exemptions granted under this paragraph shall not include exemption from stamp duty in respect of transfers or other dealings in immovable property.

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| 5 | Trades Tax Act | 5. | All furniture, stationery and equipment imported for the exclusive use in an office of a licensee and used only for the licensed activity shall be liable to trades tax at the rate of nil (0%). |
| 6. | Goods and Services Tax Act | 6.(a) | All furniture, stationery and equipment imported for the exclusive use in an office of a licensee and used only for the licensed activity shall be liable to a rate of nil (0%); |
| | | 6.(b) | All fees charged by the licensee shall be exempted from taxation under the Goods and Services Tax Act. |
| 7 | Immigration Decree | 7. | A licensee shall be entitled to employ expatriate employees comprising up to 50% of its total number of Seychelles resident employees; and the gainful occupation permit fee in respect of expatriate employees shall be R375 per person per month. |
| 8 | Foreign Exchange Act | 8. | The whole Act. |
| 9 | Companies Act 1972 | 9. | A licensee shall be exempted from all fees in respect of any increase in its authorized share capital. |

SCHEDULE 4 (under section 45(8))

1. A company within a group of companies carrying on securities business exclusively for one or more companies within the same group.

2. A person participating in a joint enterprise (and where that person is a company any other company which is part of the same group of companies as that person) with the person carrying on the business where the activities constituting such securities business are to be carried on for the purposes of or in connection with that joint enterprise.

3. The following persons –

- (a) a Seychelles Securities Exchange;
- (b) the Security Authority; or
- (c) the Government of Seychelles or any public authority created by it.

4. In respect of dealings in the equity interests in a mutual fund – operators of mutual fund and any fund administrator licensed under the Mutual Fund and Hedge Fund Act 2007 or any exempt foreign administrator.

5. A person dealing in securities only in the course of acting in any of the following capacities –

- (a) a director;
- (b) a partner;
- (c) a liquidator (including a provisional liquidator);
- (d) a trustee in bankruptcy;
- (e) a receiver of an estate or company; of
- (f) an executor or administrator of an estate; or
- (g) a trustee acting together with co-trustees in their capacity as such, or acting for a beneficiary under the trust, provided that in each case such person –
 - (i) is not separately remunerated for any of the activities which constitute the carrying on of such investment business otherwise than as part of any remuneration such person receives for acting in that capacity; and
 - (ii) does not hold himself out as carrying on securities business other than as a necessary or incidental part of performing functions in that capacity, or
 - (iii) is acting on behalf of a company, partnership or trust that is otherwise licensed or exempted from licensing under this law.

6. A person who carries on a business of dealing in securities only through the holder of a

dealer's licence for the person's own account;

7. A financial institution licensed to carry on business under the Financial Institutions Act if any dealing in securities by the financial institution is by way of –

- (a) making or offering to make with any person an agreement for or with a view to the underwriting of securities;
- (b) making an invitation to persons to subscribe for securities or to purchase securities on the first sale thereof;
- (c) issuing any document which is or is deemed to be a prospectus under this Act;
- (d) acquiring or disposing of securities only through the holder of a dealer's licence;
or
- (e) such other way as the Securities Authority may from time to time decide.

8. An investment advisor whose dealing in securities is solely incidental to carrying on the business of managing a portfolio of securities on behalf of a client.