

STOCK EXCHANGES CONTROL ACT 1 OF 1985

[ASSENTED TO: 12 MARCH 1985]

[DATE OF COMMENCEMENT: 27 MARCH 1985]

(Signed by the President)

as amended by

Financial Institutions Amendment Act 50 of 1986

Financial Institutions Amendment Act 51 of 1988

Financial Institutions Second Amendment Act 54 of 1989

Stock Exchanges Control Amendment Act 26 of 1992

Stock Exchanges Control Amendment Act 29 of 2000

Namibia Financial Institutions Supervisory Authority Act 3 of 2001

ACT

To consolidate the laws relating to the regulation and control of stock exchanges and of the business of stock-brokers and of certain lenders of money against the security of securities; and to provide for matters connected therewith.

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1 Definitions

In this Act, unless the context otherwise indicates-

"arbitrage transaction" means a purchase or sale by a person on his own account of securities on one stock exchange with intent to sell or buy those securities on another stock exchange to profit by the difference between the prices of those securities on such stock exchanges;

"bank", for the purpose of section 3(2), (3), (4) and (5), means any bank registered otherwise than provisionally under the Banks Act, 1965 (Act 23 of 1965);

[Definition of "bank" inserted by sec 25(a) of Act 54 of 1989.]

"bear sale" means a sale-

- (a) of listed securities of which the seller is not the owner at the time the sale is entered into, and of which he is not at that time entitled to become the owner by virtue of an inheritance or in terms of a transaction entered into before the sale is effected; or
- (b) of listed securities which, when aggregated with other sales of the same securities in respect of which delivery has not yet been made at the time of such sale, is a sale of securities in excess of securities of which the seller is the owner or so entitled to become the owner,

the seller being, in the case of a sale entered into by a stock-broker for a person who is directly or indirectly acting on behalf of another person, such last-mentioned person;

"business day", in relation to a stock exchange, means any day except a Sunday, Saturday or public holiday or any other day on which that stock exchange is closed;

"carrier against shares" means a person who carries on the business of lending money against the security of securities, excluding-

- (a) the Bank of Namibia ;
- (b) any person registered or provisionally registered as a banking institution under the Banks Act, 1965 (Act 23 of 1965);
- (c) a building society registered under the Building Societies Act, 1986 (Act 2 of 1986);
- (d) any person registered as an insurer under the Insurance Act, 1943 (Act 27 of 1943);

[Definition of "carrier against shares" substituted by sec 1(a) of Act 26 of 1992.]

"cash sale price", in relation to any securities and a particular time, means the sale price of those securities last recorded on the stock exchange in question as a cash sale price at that time;

"committee", in relation to a stock exchange, means the executive authority managing the affairs of that stock exchange;

"Gazette"

[Definition of "Gazette" deleted by sec (1)(b) of Act 26 of 1992.]

"licensed stock exchange" means a stock exchange to which a stock exchange licence has been issued;

"listed securities" means securities included in the list of securities kept by the committee of a licensed stock exchange in terms of section 16(a);

"minimum cover", in relation to any amount, means-

- (a) securities of which the prices are quoted in the list issued under the authority of a licensed stock exchange and which are of a value of not less than that amount; or
- (b) in connection with a bear sale, such securities which are of a value of not less than that amount, or cash which is not less than that amount, or such securities and, in so far as the value thereof is less than that amount, cash which is not less than the difference,

and for the purposes of this definition the value of securities shall be deemed to be 50 per cent of the amount they would realise at the buyer's price thereof last so quoted, or the other percentages of the last-mentioned amount which the Minister may, after consultation with the committee of a stock exchange, from time to time by notice in the *Gazette* determine and which shall apply from the date specified in the notice, but not being earlier than 14 days after the publication of the notice;

[Definition of "minimum cover" substituted by sec (1)(c) of Act 26 of 1992.]

"Minister" means the Minister of Finance;

"odd-lot transaction" means a transaction effected by a stock-broker on his own account for-

- (a) a purchase or sale of shares in quantities of less than 100 in number or of securities, other than shares, of a nominal value of less than R100; or
- (b) a sale of shares in the quantity of 100 in number or of securities other than shares, of a nominal value of R100, where such stock-broker is at the time of such sale the owner of a portion of such shares or securities; or
- (c) a purchase of shares in the quantity of 100 in number or of securities, other than shares, of a nominal value of R100, with intent to sell them in quantities of less than 100 in number or of a nominal value of less than R100;

"prescribed" means prescribed by regulation;

"president", in relation to a stock exchange, means the person appointed by the committee of such exchange as chief executive officer of that stock exchange or in his absence his deputy or, if there is no such chief executive officer or deputy, such other person as may be appointed by such committee to perform the functions which shall or may be performed by the president;

[Definition of "president" substituted by sec 14 of Act 50 of 1986.]

"Registrar" means the registrar of stock exchanges referred to in section 2;

[Definition of "Registrar" substituted by sec 24(a) of Act 51 of 1988 and by sec 37 of Act 3 of 2001.]

"regulation" means a regulation made under section 51;

"Republic"

[Definition of "Republic" deleted by sec (1)(d) of Act 26 of 1992.]

"securities" includes stocks, shares, debentures (whether issued by the State or a company having a share capital or any other body corporate or association of persons), notes, units of stock issued in place of shares, and options on stocks or shares or on such debentures, notes or units, and rights thereto, but excluding-

- (i) shares in a private company; or
- (ii) stocks or shares in a public company which cannot be acquired or transferred without the consent or approval of the directors or representatives of the company, other than such consent or approval required by, under or by virtue of any law, or options on or rights to such stocks or shares; or
- (iii) treasury bills, bankers' acceptances, negotiable certificates of deposit issued by a banking institution registered under the Banks Act, 1965 (Act 23 of 1965), or by building societies registered under the Building Societies Act, 1986 (Act 2 of 1986), or any other similar short-term instruments designated by the Registrar by notice in the *Gazette*, or options on or rights to such bills, acceptances, certificates or instruments;

[Subpara (iii) added by sec (1)(e) of Act 26 of 1992.]

"stock-broker" means any person who is a member of a licensed stock exchange and is under the rules of that stock exchange authorized to carry on the business of buying and selling securities on behalf of other persons or on his own account, or on behalf of other persons and on his own account;

"stock exchange" means-

- (i) in relation to premises of a licensed stock exchange, the one place in those premises which is recognized by the committee of that stock exchange to be the place where dealings in listed securities may take place; and
- (ii) in relation to persons, a number of persons who either on their own account or on behalf of their employers, congregate at intervals, regular or other, for the purpose of buying and selling securities on behalf of other persons or on their own account;

"stock exchange licence" means a licence issued in terms of section 9;

"Territory"

[Definition of "Territory" deleted by sec (1)(f) of Act 26 of 1992.]

"Treasury" means an officer of the Department of Finance authorized by the Minister to perform the functions assigned to the Treasury in this Act.

2 Registrar of Stock Exchanges

The person appointed in terms of section 5 of the Namibia Financial Institutions Supervisory Authority Act, 2001, as the chief executive officer of the Namibia Financial Institutions Supervisory Authority shall be the registrar of stock exchanges.

[Sec 2 substituted by sec 25 of Act 51 of 1988 and by sec 37 of Act 3 of 2001.]

2A

[Sec 2A inserted by sec 26 of Act 51 of 1988 and deleted by sec 37 of Act 3 of 2001.]

3 Restriction on right to carry on business of stock exchange or of buying and selling securities or of carrier against shares

(1) No person shall carry on the business of a stock exchange except under a stock exchange licence.

(2) No person shall carry on the business of buying and selling listed securities on behalf of other persons or on his own account, unless-

(a) in the case of such buying and selling on behalf of other persons, he is a stock-broker; or

(b) in the case of such buying and selling on his or her own account, he or she is a stock-broker and the buying and selling is effected as is contemplated in section 12(1)(c) and (d), or he or she is a person other than a stock-broker and the buying and selling is effected through a stock-broker; or

[Para (b) substituted by sec 1 of Act 29 of 2000.]

(c) he is a bank and such buying and selling is effected in accordance with such conditions as the Registrar may from time to time determine, and is restricted to transactions entered into-

(i) to give effect to a reconstruction of a company by the issue of new shares or a take-over by one company of another or a merger of two or more companies; or

(ii) with a view to the taking over of a company as regards control of its management, policy or business; or

(iii) on behalf of or with persons investments of whom are administered by such bank for remuneration.

[Subsec (2) amended by sec 2(a) of Act 26 of 1992 and para (c) substituted by sec 26(a) of Act 54 of 1989.]

(3)

[Subsec (3) deleted by sec (2)(b) of Act 26 of 1992.]

(4)

[Subsec (4) deleted by sec (2)(b) of Act 26 of 1992.]

(5) No person shall carry on the business of buying and selling securities, other than listed securities, unless he is-

(a) a stock-broker; or

(b) a bank; or

[Para (b) substituted by sec 26(d) of Act 54 of 1989.]

(c) a discount house registered as such under the Banks Act, 1965.

(6) No person shall carry on the business of a carrier against shares unless he is-

(a) a stock-broker; or

(b) the holder of a licence referred to in section 33.

(7) For the purposes of the preceding provisions of this section-

(a) a person shall not be deemed to be carrying on the business of buying and selling securities unless, in the opinion of the Registrar-

(i) it is a regular feature of his business to buy and sell securities on behalf of other persons or on his own account or on behalf of other persons and on his own account;

[Subpara (i) substituted by sec 27(c) of Act 51 of 1988.]

(ii) he holds himself out as a person who buys and sells securities;

[Subpara substituted by sec 27(c) of Act 51 of 1988.]

- (b) the buying and selling of securities by a management company registered under the Unit Trusts Control Act, 1981, for the unit portfolio of such company shall be deemed to be buying and selling on such company's own account.

(8) Nothing in subsections (1) to (6), inclusive, contained shall in any way restrict the buying and selling of listed securities on behalf of other persons through a stock-broker.

4 Restrictions on administration and custody of investments in listed securities on behalf of other persons

(1) No person shall, as a regular feature of his business, administer or hold in safe custody on behalf of any other person any investments in listed securities or any investments of which listed securities form part unless he is-

- (a) a stock-broker; or
- (b) a banking institution registered under the Banks Act, 1965 (Act 23 of 1965); or
- (c) a company which is registered as a management company under the Unit Trusts Control Act, 1981 (Act 54 of 1981), or a company or institution which is registered as a trustee under that Act; or
- (d) an attorney practising as such on his own account or in partnership or as a member of a professional company; or
- (e) an accountant or auditor registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), as an accountant and auditor and engaged in public practice as such; or
- (f) a person approved by the Registrar or a person who is a member of a category of persons approved by the Registrar,

and complies with such conditions as the Minister may determine from time to time by notice in the *Gazette*.

(2) For the purposes of subsection (1) it shall be deemed that the administration or safe custody of listed securities is not a regular feature of the business of any person-

- (a) unless he-
 - (i) either for himself or for any other person, directly or indirectly, canvasses or advertises or touts for any work being the administration or safe custody of such securities; or
 - (ii) receives any valuable consideration (other than fees normally charged by an attorney or an accountant or auditor referred to in subsection (1) for services rendered) for the administration or custody of such securities; or
- (b) if such securities form part of the assets-
 - (i) in any deceased or insolvent estate and he is the executor, administrator or trustee concerned or a person administering or holding in safe custody such securities on behalf of that executor, administrator or trustee; or
 - (ii) of any person under curatorship and he is the curator concerned or a person administering or holding in safe custody such securities on behalf of that curator; or
 - (iii) of a company in liquidation or under judicial management and he is the liquidator or judicial manager concerned or a person administering or holding in safe custody such securities on behalf of that liquidator or judicial manager; or
 - (iv) of a trust *inter vivos* and he is the trustee concerned or a person administering or holding in safe custody such securities on behalf of that trustee; or
 - (v) of a minor and he is the guardian concerned or a person administering or holding in safe custody such securities on behalf of that guardian.

5 Restriction on use of name or description implying connection with stock exchange

No person shall apply to any company, society, firm, business or undertaking a name or description signifying or implying some connection between the company, society, firm, business or undertaking and a stock exchange in the Republic when in fact no such connection exists.

6 Prohibition of publications

(1) No person, other than a licensed stock exchange, shall, as a regular feature of his business, enter into or carry on a scheme or arrangement in pursuance of which particulars are published, issued or circulated of securities which he or any other person desires to buy or to sell.

(2) The provisions of subsection (1) shall not-

- (a) apply in respect of a scheme or arrangement permitting the publication of particulars of securities of a kind mentioned in section 3(3) and which the Registrar has exempted from the provisions of this Act subject to such conditions (if any) as he may deem fit to impose;
- (b) be construed as limiting, amending, repealing or otherwise modifying any of the provisions of the Companies Act, 1973 (Act 61 of 1973), or as exempting any person from any duty imposed by the said Act or as prohibiting any person from complying with any of the provisions of the said Act.

(3) Notwithstanding the provisions of subsection (1), the Registrar may, subject to such conditions as he may determine from time to time, authorize any other person to enter into or carry on a scheme or arrangement in pursuance of which particulars are published outside the Republic of securities which such other person desires to buy or to sell.

[Subsec (3) added by sec 28 of Act 51 of 1988.]

7 Application for issue or renewal of stock exchange licence

(1) Notwithstanding the provisions of section 30 of the Companies Act, 1973 (Act 61 of 1973), any number of persons as the Minister may approve may form an association to carry on the business of a stock exchange, and the association may apply for and be issued with a licence to carry on the business of a stock exchange.

(2) A stock exchange licence shall be issued or renewed by the Registrar.

(3) An application for the issue or renewal of a stock exchange licence shall be made in the prescribed manner and form, and be accompanied-

- (a) by the prescribed application fee; and
- (b) in the case of an application for the issue of a licence, by five copies of the proposed rules of the applicant.

(4) Upon receipt of an application for the issue of a stock exchange licence, the Registrar shall advertise the application by notice in the *Gazette* and once in each three consecutive weeks in two newspapers circulating nationally at the expense of the applicant.

(5) The advertisement referred to in subsection (4) shall state-

- (a) the name of the applicant;
- (b) the place where the rules of the applicant shall lie open for inspection by any member of the public; and
- (c) the period within which any objections to the issue of the licence may be lodged with the Registrar, not being less than 14 days from the date of the last publication of the advertisement.

[Sec 7 substituted by sec 3 of Act 26 of 1992 and by sec 2 of Act 29 of 2000.]

8 Issue of stock exchange licence

On the expiry of the period contemplated in section 7(5)(c) the Registrar may, after

consideration of any objection lodged under that section, issue to the applicant a licence to carry on the business of a stock exchange, if-

- (a) the interests of the public would be served by the issue of the licence;
- (b) at least two members of the applicant will carry on the business as buyers and sellers of listed securities independently of and in competition with one another;
- (c) the applicant has sufficient financial resources for the proper exercise or carrying out the powers and duties conferred upon or assigned to a stock exchange by or under this Act; and
- (d) the proposed rules of the applicant comply with the requirements of this Act.

[Sec 8 amended by sec 4 of Act 26 of 1992 and substituted by sec 3 of Act 29 of 2000.]

9 Stock exchange licence

(1) A stock exchange licence shall expire on 31 December in each year, but may be renewed.

(2) The fee payable for the issue or renewal of a stock exchange licence shall be as prescribed.

(3) If the liability in respect of the issue of a stock exchange licence arises after 30 June in any year, one-half of the prescribed amount shall be payable for such issue.

(4) A stock exchange licence shall specify-

- (a) the place at which the business of the stock exchange may be carried on;
- (b) the trading method or facility by means of which the business of the stock exchange may be carried on; and
- (c) that the business shall not be carried on at any other place or in any other manner without the prior approval of the Registrar.

[Sec 9 substituted by sec 4 of Act 29 of 2000.]

10 Refusal of renewal of stock exchange licence

(1) The Registrar may refuse to renew a stock exchange licence, if-

- (a) during the year preceding the year for which the licence is to be renewed, the applicant failed-
 - (i) to enforce its rules properly;
 - (ii) to comply with the provisions of this Act or any regulation;
 - (iii) to give effect to a decision of the board referred to in section 21; or
 - (iv) to comply with any written direction, request, condition or requirement of the Registrar in respect of which an appeal had been noted by the Registrar in terms of section 20 and upheld by the board referred to in section 21; or
- (b) section 8(1)(a), (b), (c) or (d) is no longer complied with.

(2) The Registrar shall not refuse to renew a stock exchange licence on any ground, unless the Registrar has, by notice in writing, furnished the applicant with the reasons for his or her proposed refusal and the applicant has had the opportunity to show cause within a period specified in the notice why such renewal should not be refused.

[Sec 10 amended by sec 5 of Act 26 of 1992 and substituted by sec 5 of Act 29 of 2000.]

11 Juristic personality of stock exchange

(1) A stock exchange shall as from the date on which it is licensed be a juristic person capable of suing or being sued in the name in which it is licensed, and of acquiring, owning, hiring, letting and alienating property, and, subject to the provisions of this Act, of doing such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its rules.

(2) and (3)

[Subsecs (2) and (3) deleted by sec 6 of Act 29 of 2000.]

(4)

[Subsec (4) substituted by sec 16 of Act 50 of 1986 and deleted by sec 6 of Act 29 of 2000.]

(5)

[Subsec (5) deleted by sec 6 of Act 29 of 2000.]

(6) A stock exchange incorporated in terms of this section and which ceases to be a licensed stock exchange, shall be dissolved in terms of its rules.

12 Rules of stock exchange

(1) The rules of a stock exchange shall be so designed as to ensure, to the satisfaction of the Registrar-

(a) that no person is admitted or allowed to continue as a member unless-

- (i) such person is of good character and integrity;
- (ii) in the case of a corporate body, it is managed and controlled by a board of directors of which-
 - (aa) the directors are of good character and integrity; and
 - (bb) subject to subsection (1A), the managing director and at least 50 per cent of the other directors are Namibian citizens resident in Namibia;
- (iii) such person, or in the case of a corporate body its managing director, is a stock-broker and complies with such other standards of training and experience and other qualifications as may be required in terms of the rules; and
- (iv) such person holds and maintains while being a member, such amount of capital or equivalent bank guarantees as shall, subject to section 15, be prescribed by the rules;

[Para (a) substituted by sec 7(a) of Act 29 of 2000.]

(b) that-

- (i) the capital or guarantee requirements of members are reviewed when appropriate to ensure that risk exposures of a member are adequately covered; and
- (ii) different capital or guarantees be required from different categories of members or for different activities of a member's business;

[Para (b) substituted by sec 7(a) of Act 29 of 2000.]

(c) that the manner in and the terms and conditions under which members may trade in listed securities are consistent with efficiency, honesty and fair practice in relation to such trading;

[Para (c) substituted by sec 7(a) of Act 29 of 2000.]

(d) that the requirements for adequate disclosure of information relating to members' transactions with buyers and sellers of listed securities are consistent with efficiency, honesty and fair practice in relation to such trading;

[Para (d) substituted by sec 7(a) of Act 29 of 2000.]

(e) that a member who is a stock-broker and knowingly buys securities from a client of his or sells securities to such a client on his own account and through another stock-broker, notifies the client concerned in writing that those securities were bought or sold by the member on his own account;

(f) that adequate steps are taken against any member who contravenes or fails to comply with the provisions of this Act or of the regulations made thereunder, or of such rules;

(g) that the membership of a member who is a stock-broker is not terminated on any ground as to which he has not had an opportunity of making representations to the committee, and that a member who has so made representations to the committee shall be entitled to be supplied with a copy of a record of the meeting at which his representations were

- considered;
- (h) that any qualifying right to be held by any person in order to be admitted as a member, is available for acquisition by any applicant for admission, at not more than the price stated in the rules;
 - (i) that every member who is a stock-broker provides sureties or security to the satisfaction of the committee of the stock exchange, in an amount of not less than R8 000, for the discharge, during the first three years in which he is entitled to carry on business as a stock-broker, after he has been excused, of his liabilities arising out of transactions entered into by him in respect of securities;
 - (j) that every member who is a stock-broker contributes to the fund referred to in section 30;
 - (k) that members who are stock-brokers will charge reasonable fees for their services;
 - (l) that a member who is a stock-broker submits weekly a report in writing to the committee in which-
 - (i) particulars are furnished of securities which the member is, in compliance with the provisions of sections 22, 23, 24, 25, 26 and 27, required to buy or sell for the account of a person who failed to pay for securities purchased or to deliver securities sold, within the period prescribed by the said sections, but which the member has not yet purchased or sold; and
 - (ii) reasons are furnished for his failure to complete a purchase or sale contemplated in subparagraph (i);
 - (m) that the president, during his term of office-
 - (i) may be remunerated by the committee; and
 - (ii) does not himself buy and sell securities on behalf of other persons; and
 - (n) generally, that the business of the stock exchange is carried on with due regard to the public interest.

(1A) The Registrar may, upon application by a member of a stock exchange which is a corporate body, and if good reasons exist, grant approval to that member to appoint a person who is not a Namibian citizen as its managing director for such period as the Registrar may determine.

[Subsec (1A) inserted by sec 7(b) of Act 29 of 2000.]

(2) If under the rules of a licensed stock exchange members who are stock-brokers are permitted to grant a rebate of any portion of their fees to persons who are not stock-brokers, the basis of such rebate shall be determined in such rules.

(3) The rules of a stock exchange shall prescribe the conditions subject to which a member who is a stock-broker may establish a company the main object of which is to hold shares on his behalf or on behalf of his clients, and the objects and powers of such a company.

(4) The Registrar shall as soon as possible after he or she has issued a stock exchange licence, cause the rules of the stock exchange concerned to be published in the *Gazette* at the expense of the stock exchange concerned.

[Subsec (4) substituted by sec 7(c) of Act 29 of 2000.]

(5)(a) No amendment (other than a suspension) of the rules of a stock exchange shall be valid unless it has been approved by the Registrar, and if he or she approves thereof, such amendment shall come into operation on a date mentioned in the approval.

(b) If the Registrar does not disapprove of an amendment of the rules referred to in paragraph (a) within a period of two months after the expiry of the period referred to in subsection (7), he or she shall be deemed to have approved thereof, and such amendment shall

come into operation on the day immediately following upon the date of expiry of the aforesaid period of two months.

[Subsec (5) substituted by sec 29 of Act 51 of 1988 and by sec 7(c) of Act 29 of 2000.]

(6) Upon receipt of an application for his or her approval under subsection (5) the Registrar shall cause to be published at the expense of the association, in the *Gazette*, a notice setting forth the proposed amendment of the rules.

[Subsec (6) substituted by sec 7(c) of Act 29 of 2000.]

(7) The said notice shall call upon all interested persons who have any objections to the proposed amendment, to lodge their objections with the Registrar within a period of 30 days from the date of publication of the notice in the *Gazette*.

[Subsec (7) substituted by sec 7(c) of Act 29 of 2000.]

(8) Whenever it is necessary or desirable in the public interest, the Registrar may, after consultation with the committee of a stock exchange and with the consent of the Minister, by notice in the *Gazette* amend or rescind the rules of such stock exchange with effect from the date immediately following upon the date of publication of the notice or such later date as may be specified therein.

[Subsec (8) substituted by sec 7(c) of Act 29 of 2000.]

(9) Subject to the prior approval of the Registrar, the committee of a licensed stock exchange may suspend any of its rules for a period not exceeding 30 days at a time.

(10) The provisions of this section shall not be construed as prohibiting a president from being the owner of the business of a stock-broker or from having a financial interest in such a business as a partner or a creditor.

13

[Sec 13 repealed by sec 8 of Act 29 of 2000.]

14 Stock exchange membership of natural person

No natural person who is not a Namibian citizen or ordinarily resident in Namibia shall become a member of a licensed stock exchange.

[Sec 14 substituted by sec 6 of Act 26 of 1992.]

15 Financial requirements in regard to stock exchange members

No person shall be admitted or allowed to continue as a member of a stock exchange unless, at the time of such person's admission and thereafter while such person is authorized under the rules of that exchange to carry on the business of stock-broker, such person has in the Republic assets (other than a loan referred to in section 34(4)(d)) which exceed such person's liabilities by at least the amount determined by the Minister by notice in the *Gazette* plus, if the provisions of section 12(1)(i) apply to such person, the amount referred to therein.

[Sec 15 substituted by sec 9 of Act 29 of 2000.]

16 Stock exchange committee's duties in relation to listing of securities

(1) The committee of a licensed stock exchange-

- (a) shall keep a list of the securities which may be dealt in on the stock exchange, and shall, subject to the provisions of section 17(4), not permit dealings on the stock exchange in securities not included in the list, but may permit dealings on the stock exchange in securities of a company or corporate body not registered or incorporated in the Republic which are listed or quoted on, or in respect of which permission to deal in has been granted and has not been withdrawn by, a stock exchange outside the Republic which has been recognized by the Registrar for the purposes of this paragraph;
- (b) shall receive, consider and grant, defer or refuse applications by the issuers of securities for the inclusion of securities in the list of securities; and
- (c) shall revise the list at least once during every year and submit to the Registrar in each

year a certificate by the president that the list has been revised during that year, and may, notwithstanding any arrangement entered into before or after the commencement of this Act under which the securities may be dealt in on the stock exchange, charge such fees in respect of the revision as may be prescribed in the rules of the stock exchange.

17 Removal or suspension of inclusion of securities from or in list, and omission of securities from price list

(1) Notwithstanding any arrangement entered into under which securities may be dealt in on a stock exchange, the committee of the stock exchange may, subject to the other provisions of this section, if after investigation in accordance with the rules of the stock exchange the committee is of the opinion that it is desirable to do so-

- (a) remove from a list of securities referred to in section 16(a) any securities previously included therein, or suspend the inclusion in the list of those securities; or
- (b) omit from a list of quotations of prices of securities issued for publication on the authority of the stock exchange, the prices of any securities previously quoted in the list: Provided that a transfer of the price of securities from one section of the list to another section of that list shall not be regarded as an omission as contemplated in this paragraph.

(2) No removal, suspension or omission referred to in subsection (1) shall be effected by the committee on a ground in respect of which the person who issued the securities has not had the opportunity of making representations to the committee in support of the continued inclusion of the securities or prices in the relevant list.

(3) A suspension or an omission referred to in subsection (1) for a period not exceeding 30 days may be effected by the president after consultation with the head of the department of the stock exchange dealing with the listing of securities.

(4) In the case where the inclusion of securities in a list of securities has been suspended in terms of this section, the committee may, notwithstanding the provisions of section 16(a), permit members of the stock exchange concerned to deal on that stock exchange in the securities concerned for the sole purpose of making such purchases of the securities concerned as may be necessary to fulfil their obligations entered into before the suspension.

(5) The committee shall not remove securities from the list of securities in terms of subsection (1) unless the inclusion of those securities in the list has first been suspended in terms of this section.

(6) Securities issued by a company and considered by the president, after consultation with the head of the department of the stock exchange dealing with the listing of securities, to be eligible for continued inclusion in the list of securities, shall not be removed from that list upon the request or application by the company concerned, unless the proposed removal has been approved by its shareholders at a general meeting.

(7)(a) Whenever a committee under section 16(b) refuses an application for the inclusion of securities in the list of securities, or under subsection (1) of this section removes securities from the list or suspends the inclusion of securities in the list, it shall cause the committee of every other stock exchange in the Republic to be notified thereof as well as of the date of the refusal, removal or suspension, and thereupon no such committee shall, for a period of six months as from that date, grant an application for the inclusion of the securities concerned in the list kept by it under section 16(a), unless the refusal, removal or suspension in question has been set aside on appeal by the board under section 20.

(b) If the first-mentioned committee withdraws any such refusal, removal or suspension before the expiry of the said period of six months, it shall likewise cause the committee of every other stock exchange in the Republic to be notified thereof and thereupon the restriction upon the granting of any such application shall lapse.

18 Application of new conditions to existing listed securities

(1) Notwithstanding any conditions on which the committee of a stock exchange may have consented to the inclusion of any securities in the list referred to in section 16(a), any conditions imposed thereafter and in force from time to time in respect of the inclusion, may be applied by the committee also to securities in respect of which consent was granted prior to the imposition of the latter conditions, by notice in writing to the person who issued the securities concerned: Provided that-

- (a) such conditions so applied to any securities shall take effect in respect of such securities from a date determined by the committee concerned, which shall not be earlier than three months from the date on which the committee so notifies such person, but that the committee may extend the first-mentioned date on written application by the person who issued the securities; and
- (b) conditions relating to the capital structure of a company or the voting rights of shareholders of a company shall not be so applied to the existing shares of a company unless the conditions on which the committee consented to the inclusion of the securities of the company concerned in the said list, empower the committee so to do.

(2) Conditions applied by the committee of a stock exchange to securities under the circumstances contemplated in subsection (1) and of which the committee has notified the person who issued the securities concerned in writing within a period of two years before the commencement of section 13 of the Financial Institutions Amendment Act, 1984 (Act 86 of 1984), shall take effect in respect of those securities on the expiration of a period of three months after that commencement: Provided that the committee concerned may, on written application by the said person, extend the date on which the conditions shall take effect.

(3) If the committee of a stock exchange refuses an application for extension in terms of paragraph (a) of the proviso to subsection (1) or in terms of subsection (2), the person concerned may make representations in writing to the Registrar, and if the Registrar is satisfied that the application for an extension is reasonable and in the interest of the shareholders of the company concerned, he may in his discretion, after consultation with the committee concerned, extend the date on which such conditions shall take effect by not more than three months, and shall in writing inform the committee accordingly.

19 Disclosure of information by persons whose securities are listed

(1)(a) The president of a stock exchange may require any person whose securities are included in the list referred to in section 16(a) to disclose to him, within a period specified by him, such information at such person's disposal as the president may determine, and if the president is satisfied, after such person has had an opportunity of making representations to him, that the disclosure of that information to the registered holders of the securities in question will be in the public interest, he may by notice in writing require such person so to disclose that information within the period specified in the notice.

(b) If such person has any objection to the disclosure of the information in question to the president or such registered holders, such person may, after notice in writing thereof to the president, and within the relative period so specified by the president, submit the information required by or furnished to the president, as the case may be, to the Registrar, together with a

statement of the reasons for such person's objection, and if the Registrar is satisfied, after such person has had an opportunity of making representations to the Registrar, that the disclosure of the information in question to the registered holders of the securities in question will be in the public interest, the Registrar may by notice in writing require such person so to disclose that information and to disclose it to the committee of the stock exchange within the period specified in the notice.

(2) Such person shall, subject to the provisions of paragraph (b) of subsection (1), comply with the requirements of the president in terms of that subsection, and shall comply with the requirements of the Registrar in terms of the said paragraph, within the relative period specified or within such further period as the president or the Registrar, as the case may be, may allow.

(3) If such person discloses information to registered holders of the securities concerned which may influence the price of those securities, he shall at the same time make it available, for immediate publication, to-

- (a) the Namibia Press Agency and at least two daily newspaper in the Republic; and
[Para (a) substituted by sec 7 of Act 26 of 1992.]
- (b) the president of the stock exchange concerned.

20 Right of appeal

(1)(a) If the committee of a licensed stock exchange-

- (i) terminates the membership of any person;
- (ii) under section 16(b) defers or refuses any application for the inclusion of securities in, or under section 17(1)(a) removes securities from, or suspends, for a period which together with any suspension in terms of section 17(3) exceeds 30 days, the inclusion of securities in the list referred to in section 16(a), or omits, for a period which together with any omission in terms of section 17(3) exceeds 30 days, the price of securities from a list of quotations referred to in section 17(1)(b);
- (iii) grants an application for the inclusion of securities in the list referred to in section 16(a), and the Registrar is of opinion that the listing requirements of the stock exchange were not complied with in respect of those securities or that the inclusion of the securities in such list is not in the public interest; or
- (iv) makes any finding or takes any action against or in respect of a person regarding, or on the grounds of, an alleged contravention by such person of section 39(3),

such person, or the person who issued the securities, or the Registrar, as the case may be, shall be entitled to be furnished with the reason for the termination, deferment, refusal, removal, suspension, omission, inclusion, finding or action and may appeal against the decision of the committee to the board referred to in section 21, and the board may confirm, vary or set aside the decision, and, whether or not the appeal is withdrawn, make such award as to costs as it may deem fit.

[Para (a) substituted by sec 27(a) of Act 54 of 1989.]

(b)(i) The board shall deal with an appeal only on the relevant information which the committee had before it.

(ii) The appellant shall, except if he is the Registrar, within the period prescribed, lodge with the secretary of the board such sum of money as the chairman of the board may have determined, as security for the payment of any costs that may be awarded against the appellant.

(2) In the case of a termination, removal, suspension, omission, finding or action referred to in subsection (1), the committee may, subject to such conditions as it may impose and in accordance with the rules of the stock exchange (if any), suspend its decision pending any such appeal, and in the case of an inclusion referred in subsection (1), the committee shall suspend its

decision immediately after such an appeal has been noted and while it is pending.

[Subsec (2) substituted by sec 27(b) of Act 54 of 1989.]

(3) The decision of the board on appeal shall be binding upon the committee and all other interested parties, but nothing in this Act contained or in the rules of the association concerned shall limit in any way the right of the persons who under subsection (1) may appeal, to have the decision of the committee or of the board, or the right of the committee to have the decision of the board, reviewed by a court of competent jurisdiction.

21 Board for hearing appeals

(1) There is hereby established a board for the hearing of appeals under section 20.

(2) The board shall consist of an advocate of not less than 10 years standing, who shall be the chairperson of the board, an accountant of not less than 10 years standing, and a person selected by virtue of his or her knowledge of stock exchange matters in the Republic.

[Subsec (2) substituted by sec 8 of Act 26 of 1992.]

(3) The members of the board shall be appointed by the Minister for such period and upon such conditions as he may in each case determine.

(4) The Minister may, subject to the provisions of subsection (2), likewise appoint an alternate member in respect of any member so appointed by him.

(5) If any member or alternate member of the board is for any reason unable to act, the Minister may, subject to the provisions of subsection (2), appoint another person to act in his stead.

(6) Meetings of the board shall be held at such times and places as the chairman may direct.

22 Purchase of securities by stock-broker for payment against offer of delivery of securities

(1) If a stock-broker buys securities on behalf of any person, such person shall, subject to the provisions of section 23, pay to the stock-broker the purchase price in cash either against offer of delivery of those securities or, if such offer is not made within a period of seven business days after the purchase, before expiry of that period, unless such person-

(a) had, before the securities were purchased, made arrangements with and given instructions to a banking institution registered in terms of the Banks Act, 1965 (Act 23 of 1965), or a corporate body referred to in paragraph (b), or a subsidiary of such a corporate body, to pay for the securities against delivery thereof, and had notified the stock-broker of the arrangements and instructions; or

(b) is a corporate body whose last audited balance sheet as at a date not earlier than 15 months prior to the date on which the securities are purchased, shows that its assets exceed its liabilities (excluding liabilities in respect of paid-up share capital and reserves) by at least R1 000 000, or is a subsidiary of such corporate body, and that corporate body is capable of paying for the securities against delivery thereof, or, as the case may be, has furnished the stock-broker with a written guarantee by itself for payment, by such subsidiary, for the securities against delivery thereof.

(2) If a stock-broker has purchased securities on behalf of any person and such person is in terms of subsection (1) obliged to pay for the securities against offer of delivery thereof or within a period of seven business days after the purchase thereof the stock-broker shall, if he is not paid for the securities within the seven business days following upon such offer or the expiry of that period, as the case may be, as soon thereafter as is reasonably possible, but within 60 days thereafter or such further period as the Registrar may allow in the particular case-

(a) sell the securities for the account of the purchaser; and

- (b) sell for the purchaser's account so much of any other securities belonging to the purchaser and held by or in the custody of the stock-broker or so much of any other securities to be delivered to the stock-broker in respect of any transaction in connection with securities previously entered into on behalf of the purchaser as may be necessary to realize an amount equal to the amount still owing, after the sale of securities in terms of paragraph (a), in respect of the securities purchased on behalf of the purchaser.

[Para (b) substituted by sec 30(a) of Act 51 of 1988.]

(3) If a stock-broker has been notified of arrangements and instructions as is contemplated in subsection (1)(a), he shall, before purchasing the securities concerned, satisfy himself that in fact the arrangements have been made and the instructions given, and if he has purchased securities on behalf of any person in the circumstances contemplated in the said subsection, the stock-broker shall as soon as the securities purchased or any portion thereof is available for delivery by him, offer to deliver the same to the banking institution or corporate body concerned against payment of the amount payable to the stock-broker, and, if such payment is not made forthwith, shall as soon thereafter as is reasonably possible, but within 60 days thereafter or such further period as the Registrar may allow in the particular case-

- (a) sell the securities so offered for the account of the purchaser; and
(b) sell for the purchaser's account so much of any other securities belonging to the purchaser and held by or in the custody of the stock-broker or so much of any other securities to be delivered to the stock-broker in respect of any transaction in connection with securities previously entered into on behalf of the purchaser as may be necessary to realize an amount equal to the amount still owing, after the sale of securities in terms of paragraph (a), in respect of the securities purchased on behalf of the purchaser.

[Para (b) substituted by sec 30(b) of Act 51 of 1988.]

(4) Before purchasing securities on behalf of any person in the circumstances contemplated in subsection (1)(b), a stock-broker shall satisfy himself that such person is such a corporate body or subsidiary as is contemplated in the said subsection, and either shall satisfy himself that such corporate body is capable of paying for the securities against delivery thereof or, as the case may be, shall have been placed in possession of a guarantee as is contemplated in the said subsection, and if he has purchased securities on behalf of such person as is contemplated in the said subsection, the stock-broker shall, as soon as the securities purchased or any portion thereof is available for delivery by him, offer to deliver the same to such person against payment of the amount payable to the stock-broker, and, if such payment is not made forthwith, shall as soon thereafter as is reasonably possible, but within 60 days thereafter or such further period as the Registrar may allow in the particular case-

- (a) sell the securities so offered for the account of the purchaser; and
(b) sell for the purchaser's account so much of any other securities belonging to the purchaser and held by or in the custody of the stock-broker or so much of any other securities to be delivered to the stock-broker in respect of any transaction in connection with securities previously entered into on behalf of the purchaser as may be necessary to realize an amount equal to the amount still owing, after the sale of securities in terms of paragraph (a), in respect of the securities purchased on behalf of the purchaser.

[Para (b) substituted by sec 30(c) of Act 51 of 1988.]

(5) In determining the amount paid or owing by any person to a stock-broker for the purposes of this section, the purchase price paid or payable to the stock-broker in respect of securities sold on behalf of such person but not yet delivered to the stock-broker, as well as any minimum cover deposited with the stock-broker for the purposes of section 24(3), shall be left

out of account.

23 Purchase of securities by stock-broker otherwise than for payment against offer of delivery of securities

(1) If a stock-broker has bought securities on behalf of any person on condition that such person is not obliged to pay for those securities when they are available for delivery to him, such person shall not later than seven business days after the purchase-

- (a) pay to the stock-broker so much of the purchase price in cash as will make the securities so purchased sufficient to provide minimum cover for the balance of the purchase price; or
- (b) if he is not indebted to the stock-broker in respect of any transaction in connection with securities previously entered into on his behalf, deposit with the stock-broker such securities as (together with the securities purchased) may be necessary to provide minimum cover in respect of the amount owing in pursuance of the purchase; or
- (c) if he is indebted to the stock-broker in respect of any transaction in connection with securities previously entered into on his behalf deposit with the stock-broker such securities as (together with the securities purchased, and any other securities which may be held by the stock-broker in respect of such indebtedness) may be necessary to provide minimum cover in respect of the aggregate of the amount owing in pursuance of the purchase and the amount of such indebtedness.

(2) If minimum cover is not provided in terms of subsection (1) within the seven business days following upon the expiry of the period of seven days mentioned in the said subsection, the stock-broker in question shall as soon thereafter as is reasonably possible, but within 60 days thereafter or such further period as the Registrar may allow in the particular case, sell, for the account of such person, all the securities bought by him as contemplated in that subsection, or so much of-

- (a) the securities so bought; and
- (b) other securities belonging to the purchaser and held by or in the custody of the stock-broker or so much of other securities to be delivered to the stock-broker in respect of a transaction in connection with securities previously entered into on behalf of such person,

[Para (b) substituted by sec 31 of Act 51 of 1988.]

as is necessary to make the securities referred to in paragraphs (a) and (b) and which are not so sold sufficient to provide minimum cover for-

- (i) the amount owing in respect of such purchase; and
- (ii) any amount owing in respect of any transaction referred to in paragraph (b).

(3) In determining the amount owing by any person to a stock-broker for the purposes of subsection (1)(c), the purchase price paid or payable to the stock-broker in respect of securities sold on behalf of such person but not yet delivered to the stock-broker, as well as any minimum cover deposited with such stock-broker for the purposes of section 24(3), shall be left out of account.

23A Signing of certain forms on behalf of registered owner of securities

If securities were sold by a stock-broker in compliance with the provisions of sections 22 or 23 and the stock-broker is unable to obtain a form prescribed by any law for the purposes of transferring such securities to the purchaser thereof and duly signed by the registered owner of such securities or his nominee, the president may sign such form on behalf of such owner.

[Sec 23A inserted by sec 32 of Act 51 of 1988.]

24 Sale of securities by means of bear sale

(1)(a) If any person requests a stock-broker to sell securities on his behalf and the sale of those securities will be or is a bear sale, such person shall at the same time inform the stock-broker in question, and on the day on which the request is made, by telegram or by letter sent by registered post or delivered to him, confirm to that stock-broker, that the sale will be a bear sale.

(b) A letter referred to in paragraph (a) and delivered to a stock-broker but for which no receipt was furnished immediately after the delivery, shall for the purposes of that paragraph be left out of account.

(2) If any person requests a stock-broker to sell securities on his behalf, or if a stock-broker sells securities on his own behalf and any of those sales will be or is a bear sale-

(a) the stock-broker who sells the securities shall inform the stock-broker who buys the securities that the sale is a bear sale; and

(b) the stock-brokers who are concerned in the transaction shall, by means of endorsements on their respective brokers' notes, notify the person on whose behalf such securities were sold and the person on whose behalf the securities were bought, that the transaction was a bear sale.

(3) No stock-broker shall enter into a bear sale on behalf of any person unless such person has deposited with him minimum cover in respect of an amount equal to the value of the securities to be sold, calculated on the basis of the last price at which, before the request for the bear sale was made, the securities in question were sold on the stock exchange on which the bear sale is to take place.

(4) Subject to the provisions of subsection (5) no person shall for his own account or on behalf of any other person enter into a bear sale on a stock exchange-

(a) at a price below the cash sale price of the securities in question last recorded by such stock exchange; or

(b) at the cash sale price of the securities in question last recorded by such stock exchange, unless the cash sale price is higher than the last preceding different cash sale price so recorded.

(5) The provisions of subsection (4) shall not apply to-

(a) an arbitrage transaction; or

(b) an odd-lot transaction, provided the stock-broker who enters into the transaction, notified the stock-broker through whom the transaction is concluded, before the sale was concluded, that the transaction was an odd-lot transaction.

(6) If on any day after a bear sale has been entered into, but before the securities sold are delivered to the stock-broker who sold them or before those securities are bought in by the stock-broker, the last cash sale price of the securities on that day on the stock exchange on which the bear sale was entered into, is more than the price at which the securities were sold, the stock-broker concerned may at any time after the next succeeding business day after that day buy in the securities on behalf of the person on whose behalf the bear sale was entered into, unless such person before the closing of that stock exchange on the said next succeeding business day either delivers to the stock-broker the securities sold or deposits with him minimum cover which, together with the minimum cover deposited in terms of subsection (3), is sufficient to provide minimum cover for an amount equal to the value of the securities sold, calculated on the basis of the said cash sale price.

25 Sale of securities otherwise than by means of bear sale

(1) If a stock-broker sells securities on behalf of any person and the stock-broker was not

prior to the sale advised that the sale would be a bear sale or that such person was not in possession of the securities, such person shall within seven business days after the sale deliver the securities to the stock-broker, and if the stock-broker does not receive the securities within the seven business days following upon the expiration of the first-mentioned seven days, he shall as soon thereafter as is reasonably possible, but within 60 days thereafter or such further period as the Registrar may allow in the particular case, buy the securities for the account of such person.

(2)(a) If any person requests a stock-broker to sell securities on his behalf and he advises the stock-broker that he is the owner thereof or is entitled to become the owner thereof by virtue of an inheritance or in terms of any transaction entered into before the sale, but that he is not in possession of the securities, the stock-broker shall, before he sells the securities, satisfy himself by means of proof in writing that such person is the owner thereof or entitled so to become the owner thereof, and ascertain by means of such proof on which date such person will acquire possession thereof and sell the securities for delivery on a date not earlier than that date.

(b) If any person sells securities in the circumstances contemplated in paragraph (a) and the stock-broker who sells them on his behalf is not the person who is to give possession thereof to him as is contemplated in that paragraph, such first-mentioned person shall within seven business days after the receipt of the securities by him deliver them to such stock-broker.

(c) If any person sells securities in the circumstances contemplated in paragraph (a) and the stock-broker does not receive the securities within the seven business days following upon the date for deliver referred to in that paragraph, the stock-broker shall as soon thereafter as is reasonably possible, but within 60 days thereafter or such further period as the Registrar may allow in the particular case, buy the securities for the account of such person.

26 Minimum cover

(1) No stock-broker shall return securities deposited with him or held by him as minimum cover under section 23 or 24, or any part thereof, to the depositor or person on whose behalf the securities are so held as minimum cover, or deliver them to any, other person to be held or dealt with on behalf of or for the benefit of the depositor or person on whose behalf the securities are so held as minimum cover, if the effect of the return or delivery of the securities would be to reduce the value of the securities held by the stock-broker concerned in respect of the amount owing to him by the depositor or person on whose behalf the securities are so held as minimum cover, below the value necessary to provide minimum cover in respect of the said amount.

(2) If securities are held by a stock-broker as minimum cover in relation to an amount owing to him, and if-

- (a) by reason of a fall of the buyers' price contemplated in the definition of "minimum cover" in section 1, of those securities, or by reason of a reduction by the Minister of the percentage of the buyers' price to be taken into account in calculating minimum cover in relation to that amount, the securities concerned are insufficient to be minimum cover for that amount; and
- (b) the person owing that amount does not within seven business days after those securities have become insufficient so to be minimum cover, by a reduction of the amount owing by him or by the provision of additional securities provide minimum cover for the amount owing by him,

the stock-broker shall as soon thereafter as is reasonably possible, but within 60 days there after or such further period as the Registrar may allow in the particular case, sell for the account of that person so much of those securities as is necessary to make, as far as possible, the securities

not so sold sufficient to provide minimum cover in relation to the amount still owing to him after the sale.

(3) If securities are held by a stock-broker as minimum cover in relation to a bear sale, and if-

- (a) by reason of a fall of the buyers' price contemplated in the definition of "minimum cover" in section 1, of those securities, or by reason of a reduction by the Minister of the percentage of the buyers' price to be taken into account in calculating minimum cover in relation to that bear sale, those securities and any cash deposited for the purpose are insufficient to be minimum cover for an amount equal to the cash sale price of the securities representing the bear sale; and
- (b) the person on whose behalf the bear sale has been entered into does not, within seven business days after those securities have become insufficient so to be minimum cover, by the provision of additional securities or cash or such securities and cash, provide minimum cover for that amount,

the stock-broker shall as soon thereafter as is reasonably possible but within 60 days thereafter or such further period as the Registrar may allow in the particular case, sell for the account of that person so much of those securities as is necessary to make, as far as possible, the securities not so sold, and any cash deposited for the purpose, together with the proceeds of the securities so sold, sufficient to provide minimum cover for that amount.

27 Limitations and qualifications in respect of sections 22, 23, 24, 25 and 26

(1) Sections 22, 23, 24 and 25 shall not apply if the person on whose behalf securities are purchased or sold is a person in any other country, and any part of his regular business in that country consists of the buying and selling of securities.

(2) Sections 22, 23, 24(1)(a) and (3) and 25 shall not apply to a stock-broker who buys or sells securities to execute an order placed by any other stock-broker.

(3) The provisions of sections 22, 23, 24, 25, 26 and this section or any act performed thereunder shall not affect the provisions of a contract in so far as they are not in conflict with the first-mentioned provisions.

(4) If a stock-broker who is in terms of section 22, 23, 24, 25 or 26, read with this section, obliged to buy or sell securities within a specified period fails to do so, he shall continue to be obliged to buy or sell those securities, as the case may be, but his rights against and his liabilities to the person on whose behalf he is obliged to buy or sell the securities, shall be the rights and liabilities that would have existed if he had bought or sold those securities within the prescribed period.

28 Prohibition of bear sales by directors and certain shareholders

(1) A director of a company or a person entitled to the financial rights attaching to more than 10 per cent in value of any class of securities issued by a company and which are listed securities shall not directly or indirectly effect a bear sale of the securities of the company in question.

(2) For the purposes of subsection (1) a bear sale includes a sale of securities by a director or any person referred to in the said subsection, where, prior to completion of the transaction by delivery, such director or person repurchases the securities.

29 Repudiation of purchase of securities

If a stock-broker buys securities on behalf of any person for delivery to such person within a specified period and fails to deliver them to such person within that period, such person may call upon the stock-broker in writing to deliver to him the securities in a negotiable form

within a period determined by him but not ending earlier than 14 business days thereafter, and if the stock-broker fails to do so, such person may, without prejudice to any other rights he may have, repudiate the transaction.

30 Establishment and maintenance of guarantee fund

(1) The committee of a stock exchange shall establish and maintain, to the satisfaction of the Registrar, a fund out of which shall, after execution of a stock-broker, be paid, up to an amount specified in the rules referred to in subsection (3), his liabilities arising out of the buying and selling of securities by him on behalf of other persons, while a member of the stock exchange in question.

(2) Every stock-broker shall contribute to the fund on such basis as may be determined in the rules referred to in subsection (3).

(3) The committee shall make rules to control the administration of the fund, and such rules shall be approved by the Registrar after he has in his discretion added to or amended them, if necessary.

31 Grant of certificate authorizing issue or renewal of licence to carry on business of carrier against shares

(1) The Registrar may, upon application made in the prescribed form and manner, grant to any person a certificate authorizing a receiver of revenue to issue to that person a licence to carry on the business of a carrier against shares, or to renew such licence.

(2) Such a certificate may be refused-

(a) if such person-

- (i) in the case of the issue of a licence by virtue of this Act, has not deposited with the Treasury an amount of not less than R20 000; or
- (ii) in the case of the renewal of such licence, has not kept so deposited an amount of R20 000 until he has held the licence for three years and thereafter an amount of R12 000,

in cash or in securities approved by the Registrar, or in cash and in such securities, to be made available in the prescribed manner, after that person has been excused, for the discharge of any liability of such person arising out of any transaction entered into by him in respect of securities; or

(b) if the Registrar is not satisfied that-

- (i) the person concerned has assets (except a loan referred to in section 34(4)(d)) in the Republic, other than the relative amount deposited in terms of paragraph (a), of an aggregate value of at least R20 000 in excess of his liabilities; or
- (ii) the public interest will be served by the issue or renewal of the licence.

(3) For the purposes of subsection (2)(a) securities shall have the value which they have in terms of the definition of "minimum cover" in section 1.

(4) Any person who has made a deposit for the purposes of subsection (2)(a) (in this section referred to as the depositor) may at any time-

(a) withdraw so much thereof as exceeds the relative amount referred to in the said subsection; or

(b) substitute for any securities so deposited any money or other securities approved by the Registrar of an equivalent value.

(5) If at any time the value of the deposit made by a depositor is less than the relative amount referred to in subsection (2)(a), the Treasury may, by notice in writing, call upon the depositor to make good the deficiency by a further deposit in cash or in securities, approved by

the Registrar, or in cash and in such securities, and if the depositor fails to comply with the notice within a period of 30 days from the date thereof, or within such further period as the Registrar may allow, the Registrar may cancel the depositor's licence to carry on the business of a carrier against shares.

(6) If a depositor has deposited any money for the said purposes, the Treasury shall, at his request, invest it in securities specified by the depositor and approved by the Registrar, and those securities shall be deemed to have been so deposited by the depositor.

(7) A depositor shall be entitled to the income derived from securities deposited or deemed to have been deposited with the Treasury for the said purposes.

(8) If a depositor has ceased to carry on the business of a carrier against shares for a period of not less than three months, or has become a stock-broker and has been a stock-broker for such a period, the Registrar shall, subject to the provisions of subsections (9), (10) and (11), authorize the Treasury to return to the depositor so much of any deposit made or deemed to have been made by him, as is held by the Treasury.

(9) Before authorizing the return of such deposit the Registrar shall cause to be published at the expense of the depositor, in the *Gazette* and in every province and in the Territory once in each of three consecutive weeks in an English and an Afrikaans newspaper approved by the Registrar, a notice calling upon all persons who have claims against the depositor arising out of transactions entered into by him in respect of securities and who object against the return of the deposit in question to the depositor, to lodge their objections with the Registrar within a period specified in the notice, not being less than 30 days as from the date of the last publication thereof.

(10) If any objection is lodged under subsection (9) and the depositor admits the claim of the objector, the Registrar shall not authorize the Treasury to return such deposit until the claim has been satisfied.

(11) If any objection is so lodged and the depositor does not admit the claim of the objector, the Registrar shall not authorize the Treasury to return the deposit-

- (a) unless the objector fails to institute legal proceedings against the depositor in pursuance of the objector's claim within a period of two months after the expiry, of the period referred to in subsection (9) or within such further period as the Registrar may allow; or
- (b) if the objector does institute such proceedings within the said period, unless his claim is dismissed or withdrawn, or until a judgment given against the depositor has been satisfied.

(12)(a) If a depositor dies or if his estate is sequestrated, the Registrar shall authorize the Treasury to hand over so much of a deposit made or deemed to have been made by the depositor, as is held by the Treasury, to the executor or trustee of the depositor's deceased or insolvent estate, as the case may be.

(b) Whenever the estate of the depositor is insolvent, a deposit so handed over shall be applied towards the satisfaction of a claim arising out of a transaction entered into by the depositor in respect of securities, in priority to any other claim.

32 Exemption of persons from provisions relating to carriers against shares

The Registrar may in writing exempt any person except a person whose main business in the Republic is that of a carrier against shares, subject to such conditions as he may determine, from any provision of this Act relating to carriers against shares, and may likewise at any time withdraw such exemption.

33 Issue and renewal of licence to carry on business of carrier against shares

(1) A licence to carry on the business of a carrier against shares shall be issued or renewed by the Registrar.

(2) A carrier against shares licence shall expire on 31 December in each year, but may be renewed.

(3) The fee payable in respect of the issue or renewal of a carrier against shares licence shall be as prescribed.

(4) If the liability in respect of the issue of a carrier against shares licence arises after 30 June in any year, one-half of the prescribed amount shall be payable for such issue.

[Sec 33 substituted by sec 10 of Act 29 of 2000.]

34 Restriction on loans by stock-brokers and carriers against shares

(1) No stock-broker or carrier against shares shall in the course of his business lend money to any person against any security other than listed securities.

(2) No stock-broker or carrier against shares shall in the course of his business-

- (a) lend any amount to any person unless that person has deposited with him such securities as may be necessary to provide minimum cover in respect of that amount; or
- (b) if any person is indebted to him in respect of a previous loan made in the course of his business, lend any amount to that person unless that person has deposited with him such securities as (either alone or together with other securities which may be held by the stock-broker or carrier in respect of the debt) may be necessary to provide minimum cover in respect of the aggregate of that amount and of the debt.

(3) The provisions of section 26(1) shall *mutatis mutandis* apply to the securities so deposited.

(4) The provisions of this section shall not apply-

- (a) if the lender and the borrower concerned are stock-brokers in the Republic;
- (b) with reference to a deposit made by a stock-broker or carrier against shares with a banking institution registered otherwise than provisionally in terms of the Banks Act, 1965 (Act 23 of 1965), or with a building society registered otherwise than provisionally in terms of the Building Societies Act, 1986 (Act 82 of 1986);
[Para (b) substituted by sec 28 of Act 54 of 1989 and substituted by sec 9 of Act 26 of 1992.]
- (c) with reference to a loan made to a licensed stock exchange by a member of that stock exchange; and
- (d) with reference to a loan made by a stock-broker or carrier against shares for purposes other than the buying and selling of securities.

35 Issue or receipt to depositor of or borrower against securities

Whenever securities are deposited with a stock-broker in terms of section 23 or 24 or deposited with a stock-broker or carrier against shares in respect of a loan referred to in section 34 or for safe custody, the stock-broker or carrier against shares shall forthwith issue to the depositor or borrower, as the case may be, a receipt, signed by him or on his behalf setting forth the purpose for which the securities have been deposited and containing a description of the particular securities sufficient to identify them.

36 Stock-broker or carrier against shares to mark securities in his possession

Whenever a document of title relating to securities comes into the possession of a stock-broker or carrier against shares, he shall mark it, as soon as it is practicable to do so, in a manner which will render it possible at any time thereafter to establish readily the identity of the person entitled to those securities.

37 Restriction on alienation of securities which have been deposited or are held as security in respect of loan

Subject to the provisions of sections 22(2), (3) and (4), 23(2) and 26(2) and (3), no stock-broker shall alienate securities which have been deposited with him in terms of section 23 or 24 and no stock-broker or carrier against shares shall alienate securities held by him as security in respect of a loan, unless the person who deposited the securities or to whom the loan was made, as the case may be, has before or after the deposit or loan, authorized him thereto in writing.

38 Restriction on borrowing against and repledging of clients' securities

A stock-broker or carrier against shares shall not-

- (a) borrow against securities which a client has pledged with him an amount in excess of the outstanding balance of any amount he may have lent the client concerned against such securities;
- (b) repledge securities which a client has pledged with him without the written consent of the client concerned; or
- (c) repledge more of the securities which a client has pledged with him than would be required by a lender to lend to him an amount not exceeding the outstanding balance of the amount which he has lent to such client: Provided that he may repledge a certificate for 100 shares or for securities other than shares of a nominal value of R100 (or of R200 where no smaller certificate is available), notwithstanding the fact that the number of shares or the nominal value of such securities so required for a loan of such amount, is less than 100, or R100 or R200, as the case may be.

39 Advertising or canvassing relating to buying and selling of securities

(1) No person other than a stock-broker, carrier against shares, or an officer or employee of a member of a stock exchange who is so permitted in terms of the rules, or a stock exchange or an employee of a stock exchange shall in any manner or by any means, either for himself, herself or itself or for any other person, directly or indirectly advertise or canvass any business relating to the buying and selling of listed securities.

(2) The committee of a stock exchange may in consultation with the Registrar prescribe the conditions on which such advertising or canvassing may be undertaken and may take such action as it considers necessary, against any person authorized to advertise or canvass by or under subsection (1), in the event of any contravention of such conditions.

(3) Notwithstanding anything to the contrary contained in any law, the Registrar may, if he or she is of the opinion that any advertisement, brochure or other similar document relating to the business of buying and selling of listed securities and proposed to be published or being published by a person authorized to advertise or canvass under subsection (1) or his or her authorized agent is misleading or for any reason objectionable, direct such person-

- (a) not to publish the advertisement, brochure or document;
- (b) to cease the publication of the advertisement, brochure or document; or
- (c) to effect such adjustments as the Registrar thinks fit.

[Sec 39 substituted by sec 29 of Act 54 of 1989 and by sec 11 of Act 29 of 2000.]

40 Manipulative practices

No person shall by means of any statement, promise or forecast which he knows to be misleading induce any other person to buy or sell listed securities, or directly or indirectly, whether within or outside a stock exchange, by means of the creation of fictitious transactions or the spreading of false reports attempt to stimulate activities or influence the prices of securities on a licensed stock exchange.

41 Certain written matter to bear names of certain persons

No person shall publish or issue to the public or circulate any written comment which

relates to the trading results of a company or which may influence the value of the securities of a company unless such comment is accompanied by-

- (a) the name of the person or persons who compiled it or the name of the person or persons on the editorial staff of a newspaper or periodical who, in the opinion of the editor thereof, compiled it; or
- (b) disclosure of the source from which it was obtained.

42 Appointment of auditor

(1) Every stock-broker and carrier against shares shall appoint an auditor registered as an accountant and auditor under the Public Accountants and Auditors' Act, 1951 (Act 51 of 1951), who engages in public practice as contemplated in that Act and who has no direct or indirect financial interest in the business carried on by such broker or carrier.

(2) No director or employee of a stock-broker or of a carrier against shares, no member of a stock exchange and no firm of which such director, employee or member is a member or employee, shall be appointed as an auditor of that stock-broker or carrier against shares.

(3) Every stock-broker and carrier against shares shall within 30 days of the date of appointment of an auditor under this section, apply to the Registrar for his approval of that appointment.

(4) The Registrar may, without assigning any reason therefor, refuse to approve the appointment of an auditor or may withdraw his prior approval of such appointment, and thereupon the auditor concerned shall vacate his office as auditor of the stock-broker or carrier against shares concerned.

(5) When the Registrar has in terms of subsection (4) refused to approve or has withdrawn his approval of the appointment of an auditor, or whenever for any other reason an auditor vacates his office as auditor of a stock-broker or carrier against shares, the stock-broker or carrier against shares concerned shall appoint some other person as auditor, but again subject to the approval of the Registrar.

(6) Where the auditor of a stock-broker or carrier against shares is a partnership, such auditor shall for the purposes of subsection (5) be deemed not to have vacated his office by reason of a change in the composition of the partnership, as long as not less than half the number of the partners in the reconstituted partnership are persons who were, as at the date when the appointment of the partnership as auditor was last approved by the Registrar, partners therein.

43 Accounting records and audit

(1) Every stock-broker and carrier against shall-

- (a)
[Para (a) deleted by sec 10 of Act 26 of 1992.]
- (b) preserve such records in a safe place for a period of at least five years as from the date of the latest entry therein; and
- (c) cause such records to be audited, not later than 31 May of the year in question, or such later date as the Registrar may allow, in respect of each year ending upon the last day of February, or such other day as the Registrar may approve, by an auditor whose appointment has been approved by the Registrar in terms of section 42.

(2) The auditor who has in terms of this section audited the accounting records of a stock-broker or carrier against shares shall, not later than 30 June of the year in question, or such later date as the Registrar may allow, transmit to the Registrar, and in the case of a stock-broker also to the committee of the stock exchange concerned-

- (a) a copy of the balance sheet of that broker or carrier for the year to which the audit relates, signed by the broker or carrier, as the case may be, or, in the case of a

partnership or company, by at least two members of the partnership or two directors of the company;

- (b) a report setting forth-
- (i) whether or not all the necessary accounting records have been kept by the broker or carrier during the period to which the audit relates, whether or not they have been properly kept, and if not, in which respects they are defective;
 - (ii) whether or not he has obtained all the information and explanations he has required and if not, the nature of the information he has not obtained and the matters which have not been explained;
 - (iii) whether or not any securities which, according to the relevant accounting records, are held by the broker or carrier on behalf of any other person, including securities held in safe custody, are in possession of the broker or carrier, and if not, in whose possession or custody they are and for what purpose;
 - (iv) whether or not investigations carried out, as at the date of the balance sheet, indicate that the broker or carrier appears to comply with the provisions of sections 22, 23, 24, 25, 26 and 27 and whether or not the auditor during the course of his audit became aware of any contravention of the said provisions; and
 - (v) such other matters as may be prescribed.

44 Report by auditor of irregularities

An auditor who in terms of section 43 audits the accounting records of a stock-broker or carrier against shares shall, if a failure on the part of the stock-broker or carrier to comply with a requirement of this Act which, in the auditor's opinion, is a material requirement, comes to his notice, report the matter forthwith to the Registrar and, in the case of a stock-broker, also to the president of the stock exchange concerned.

45 Inspections

(1) The provisions of the Inspection of Financial Institutions Act, 1984 (Act 38 of 1984), shall apply *mutatis mutandis* to a stock exchange, stock-broker or carrier against shares, or to a person who in terms of the provisions of section 4 of this Act is entitled, as a regular feature of his business, to administer or hold in safe custody on behalf of any other person any investments in listed securities or any investments of which listed securities form part, and for the purposes of such application the stock exchange, stock-broker, carrier against shares or person shall be deemed to be a financial institution, and the Registrar as defined in section 1 of this Act shall be the registrar in relation to the stock exchange, stock-broker, carrier against shares or person.

(2) In such application of the said provisions of the Inspection of Financial Institutions Act, 1984-

- (a) section 4(2) thereof shall be construed as if after the words "of the financial institution" the words "or any person who has had any dealings with such institution" had been inserted; and
- (b) section 8(1) thereof shall be construed as if the following further proviso had been added at the end thereof:
- (c) the registrar may in his discretion communicate to the committee of a stock exchange information obtained by him in the course of an inspection under this Act, or from a report by an inspector on an inspection, of the affairs of a stock-broker who is or was a member of that stock exchange.

(3) The committee of a stock exchange may in any disciplinary proceedings in terms of the rules of the stock exchange against the member concerned or any other member of the stock

exchange, take into consideration any relevant information furnished to the committee by virtue of the provisions of subsection (2)(b).

45A Disclosure of information by stock exchange

Notwithstanding the provisions of any other law, a stock exchange may enter into an agreement with any other exchange or organisation of stock exchange supervisors, whether domestic or foreign, to disclose information relating to a security, a person whose securities are listed on a stock exchange, a particular transaction, a member of stock exchange, an officer or employee of such member, if such information is of importance to such exchange or organisation, and the disclosure is not against public interest.

[Sec 45A inserted by sec 12 of Act 29 of 2000.]

46 Attendance of certain meetings by Registrar and furnishing of certain documents to him

(1) The Registrar or a person nominated by him may attend any meeting of the committee of a stock exchange or a subcommittee of that committee, and take part in all the proceedings at such meeting.

(2) The president of a stock exchange shall furnish the Registrar with all notices, minutes and documents which are furnished to members of the committee of the stock exchange concerned or a subcommittee of that committee, as if the Registrar were a member of that committee and subcommittee.

47 Furnishing of information to Registrar

The Registrar may by notice in writing require any person who is not a stock-broker or licensed carrier against shares or a person referred to in section 4(1) and in respect of whom the Registrar has reason to suspect that he is carrying on the business of buying and selling securities in contravention of section 3(2), (3), (4) or (5) or of a carrier against shares in contravention of section 3(6) or of administering or holding in safe custody on behalf of any other person any investments in listed securities or any investments of which listed securities form part in contravention of section 4(1), to transmit to the Registrar within a period stated in the notice any document or information at that person's disposal and relating to his affairs which the Registrar may require, and that person shall comply with the requirements of the Registrar to his satisfaction within the relevant period or within such further period as the Registrar may allow.

[Sec 47 substituted by sec 30 of Act 54 of 1989.]

48 Penalties

(1) Any person who-

- (a) contravenes a provision of section 3(1);
- (b) contravenes a provision of section 5;
- (c) contravenes or fails to comply with a provision of section 4 or 6, or of section 22, 23, 24, 25 or 26, read with section 27, or of section 28, 34, 38 or 43(1);
- (d) contravenes or fails to comply with a provision of section 3(2), (3), (4), (5) or (6), 19(3), 35, 36, 37, 39 or 42(1), (2), (3), (4) or (5);
- (e) refuses or fails to comply with any requirement of a president under section 19 or of the registrar under the said section 19, section 39 or section 47;
- (f) carries on the business of a stock-broker or carrier against shares, at any time when in terms of a declaration under section 50 he is disqualified from doing so;
- (g) makes any incorrect statement or entry in any accounting record kept under section 43, knowing the same to be incorrect; or
- (h) contravenes a provision of section 40 or 41,

[Para (e) substituted by sec 31 of Act 54 of 1989.]

shall be guilty of an offence and liable on conviction-

- (i) in the case of an offence referred to in paragraph (a) or (h), to a fine not exceeding R4 000 or to imprisonment for a period not exceeding four years, or to both that fine and that imprisonment;
- (ii) in the case of an offence referred to in paragraph (c), (e) or (g), to a fine not exceeding R2 000 or to imprisonment for a period not exceeding two years, or to both that fine and that imprisonment; and
- (iii) in the case of an offence referred to in paragraph (b), (d) or (f), to a fine not exceeding R400 or to imprisonment for a period not exceeding 12 months, or to both that fine and that imprisonment.

(2) The provisions of section 37 read with paragraph (d) of subsection (1) of this section shall not prevent the institution against any person of criminal proceedings for an offence under the common law.

49 Evidence

A record purporting to have been made or kept in the ordinary course of the carrying on of the business of a stock exchange, or the business of a stock broker or carrier against shares as such, or a copy of or an extract from such record certified to be correct by an officer in the service of the State, shall on its mere production by the public prosecutor in any criminal proceedings under this Act or any other law or the common law against the person who carries or carried on the business in question or any other person, be admissible in evidence and be *prima facie* proof of the facts contained in such record, copy or extract.

50 Powers of court to declare stock-broker or carrier against shares disqualified

(1) If a court-

- (a) convicts a stock-broker or carrier against shares of an offence under this Act or of an offence of which any dishonest act or omission is an element; or
- (b) finds, in proceedings to which a broker or carrier is a party or in which his conduct is called in question, that he has been guilty of dishonest conduct,

the court may (in addition, in a case referred to in paragraph (a), to any sentence it may impose) declare the broker or carrier concerned to be disqualified, for an indefinite period or for a period specified by the court, from carrying on the business of a stock-broker or carrier against shares, as the case may be.

(2) The court may, on sufficient cause shown, vary a declaration made under subsection (1).

(3) The registrar or clerk of any court which has made any declaration under subsection (1), or varied any declaration under subsection (2), shall forthwith notify the Registrar and, in the case of such a declaration in respect of a stock-broker, also the committee of the stock exchange of which the broker concerned is a member, of that declaration or variation.

(4) No declaration made under subsection (1) shall affect any right on the part of the committee of a stock exchange to take disciplinary action against the broker concerned.

51 Regulations

(1) The Minister may make regulations as to-

- (a) the manner in which and the period within which appeals under section 20 shall be noted and prosecuted;
- (b) the minimum requirements in regard to experience and education to be complied with by applicants for membership of a stock exchange;
- (c) the assets or classes of assets which a stock-broker shall hold for the purpose of section

15 or a carrier against shares for the purpose of section 31(2)(b)(i), and the basis of their valuation;

- (d) the manner in which money paid by a purchaser of securities to a stock-broker should be safeguarded until the securities purchased are delivered to the purchaser;
- (e) all matters which by this Act are required or permitted to be prescribed; and
- (f) generally all matters which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

(2) A regulation made under subsection (1) may, in respect of a contravention thereof or failure to comply therewith, prescribe a penalty not exceeding a fine of R200 or imprisonment for a period not exceeding three months.

(3) A regulation made under subsection (1)(c) shall commence on a date fixed by the Minister.

52

[Sec 52 repealed by sec 11 of Act 26 of 1992.]

53 Repeal and amendment of laws

(1) Subject to the provisions of subsection (2), the laws set out in the Schedule are hereby repealed to the extent set out in the third column thereof.

(2) Anything done or deemed to have been done by, under or in terms of any provision of a law repealed by subsection (1), shall be deemed to have been done by, under or in terms of the corresponding provision of this Act.

54 Short title

This Act shall be called the Stock Exchanges Control Act, 1985.

Schedule LAWS REPEALED

No. of year	Short title	Extent of repeal
Act 7 of 1947	Stock Exchange Control Act, 1947	The whole
Act 1 of 1948	Stock Exchanges Control Amendment Act, 1948	The whole
Act 72 of 1951	Stock Exchanges Control Amendment Act, 1951	The whole
Act 44 of 1962	Licences Act, 1962	Section 15
Act 53 of 1963	Stock Exchanges Control Amendment Act, 1963	The whole
Act 93 of 1963	General Law Further Amendment Act, 1963	Section 3
Act 86 of 1971	Stock Exchanges Control Amendment Act, 1971	The whole
Act 67 of 1973	Financial Institutions Amendment Act, 1973	Sections 1, 2 and 3
Act 101 of 1976	Financial Institutions Amendment Act, 1976	Section 16
Act 80 of 1978	Financial Institutions Amendment Act, 1978	Sections 7, 8 and 9
Act 99 of 1980	Financial Institutions Amendment Act, 1980	Sections 23, 24 and 25

Act 36 of 1981	Financial Institutions Amendment Act, 1981	Section 5
Act 82 of 1982	Financial Institutions Amendment Act, 1981	Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13
Act 86 of 1984	Financial Institutions Amendment Act, 1984	Sections 12 and 13