

BOTSWANA STOCK EXCHANGE ACT, 1994

No. 11



of 1994

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An Act to provide for the establishment of an independent Stock Exchange in Botswana and to make provisions relating to the carrying on of the exchange and other matters connected therewith.

Date of Assent: 29th July, 1994.

Date of Commencement: By notice in the Gazette.

ENACTED by the Parliament of Botswana.

PART I — Preliminary

Short title and commencement

1. This Act may be cited as the Botswana Stock Exchange Act, 1994, and shall come into operation on such date or dates as the Minister may, by notice in the Gazette, appoint.

Interpretation

2. In this Act —

“annual general meeting” means an annual general meeting convened in terms of section 19(1);

“applicant” means a person making application for registration in terms of Part IV;

“appointed Committee member” means a Committee member appointed in terms of —

(a) section 5(1)(a); or

(b) section 12(1)(a);

“appointed date” means the date appointed as the date of commencement of this Act or the relevant part thereof ;

“associate member” means a member of the Exchange who, not being a registered stockbroker, acts as the agent of a registered stockbroker in the conduct of Exchange transactions;

“banking institution” means an accepting house, commercial bank, discount house, merchant bank or financial institution;

“Board” means the Board of Trustees of the Botswana Stock Exchange Security Fund and established by section 72(2);

“brokerage” means the commission charged by a stockbroker in respect of the purchase or sale of listed securities on behalf of a client;

“broker’s note” means a broker’s note referred to in section 52;

“certificate of registration” means a certificate of registration issued in terms of section 22(3)(a);

“Chairman” means the Committee member elected in terms of section 6 (1) or 6 (2) to be the Chairman of the Exchange;

“client”, save in section 87, means a person who instructs a stockbroker to purchase or sell listed securities;

“commercial bank” means a registered commercial bank approved by the Committee;

“Committee” means the Committee of the Botswana Stock Exchange referred to in section 4;

“Committee member” means an appointed Committee member or an elected Committee member;

“company” includes any body corporate;

“defaulter” means a stockbroker who makes default in one or more of his Exchange transactions;

“elected Committee member” means a Committee member —

- (a) elected in terms of section 5(1)(b); or
- (b) co-opted in terms of section 12(1)(b) or section 12(4);

“Exchange” means the Botswana Stock Exchange established by section 3;

“Exchange auditor” means the auditor elected or appointed in terms of section 41;

“Exchange estate”, in relation to a defaulter who has been suspended from practice, or a person who was a stockbroker and who has died, or whose registration has been cancelled, means the assets and liabilities arising from the Exchange transactions of that defaulter or person and includes-

- (a) the proprietary rights of that defaulter or person; and
- (b) differences paid to the Secretary in respect of the closing of Exchange transactions entered into by that defaulter or person;

“Exchange meeting” means an annual general meeting or a special meeting;

“Exchange transaction” means any transaction entered into under the auspices of the Botswana Stock Exchange;

“financial institution” means a registered financial institution approved by the Committee;

“financial year”, in relation to the Exchange, means a period of twelve months up to and including the 31st December of each year;

“Fund” means the Botswana Stock Exchange Security Fund established by section 72 (1);

“inspector” means an inspector appointed by the Minister in terms of section 61(1);

“insurer” means a person registered as an insurer in terms of the Insurance Industry Act;

“issuer” means any issuer of securities, including the Government;

“listed security” means any security which is included in the official list;

“member of the Exchange” means a person who —

- (a) is registered as a stockbroker in Botswana; or
- (b) has been admitted by the Committee to membership of the Exchange as an associate member, a non-broking member, or member appointed by the Minister;

“official list” means the list of securities kept in terms of section 16(1) (a);

“partnership” means a partnership of registered stockbrokers;

“proprietary right” means a share in the assets of the Exchange acquired by —

- (a) an applicant for the purpose of registration;
 - (b) a person seeking admission as an associate member; or
 - (c) a registered stockbroker, bearing a nominal value specified in the rules and bearing interest at a rate fixed by the Exchange in annual general meeting;
- “Register” means the Register of Stockbrokers established in terms of section 22 (1);
- “Registrar” means the Registrar of the Stock Exchange appointed in terms of section 21;
- “scrip” means share certificates, certified deeds and provisional share certificates;
- “Secretary” means the Secretary appointed in terms of section 18(1);
- “security” —
- (a) means any fully paid up share, stock, debenture, debenture stock, loan stock, unit in a unit portfolio or other security, other than a bearer security or proprietary right; and
 - (b) includes any right of option to acquire a security referred to in paragraph (a), whether fully paid up or not;
- “special meeting” means a special meeting of the Exchange convened in terms of section 19 (3);
- “stockbroker” means a person who —
- (a) carries on the business of purchasing and selling or purchasing or selling listed securities on behalf of other persons; or
 - (b) regularly purchases and sells or purchases or sells listed securities on his own behalf, otherwise than through a registered stockbroker and includes a company registered in terms of section 30;
- “the rules” means the rules made by the Committee in terms of section 89(1);
- “Vice-Chairman” means the Committee member elected in terms of section 6 (1) or 6 (2) to be the Vice-Chairman of the Exchange.

PART II — *Botswana Stock Exchange*

Establishment
of Botswana
Stock
Exchange

3. There is hereby established a stock exchange to be known as the Botswana Stock Exchange, which shall be a body corporate and shall be capable of suing and being sued in its corporate name and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform.

Committee of
Stock
Exchange

4. The affairs of the Exchange shall, subject to the provisions of this Act, be managed and controlled by a committee to be known as the Committee of the Botswana Stock Exchange.

5. (1) The Committee shall consist of —

- (a) three members appointed by the Minister; and
- (b) not less than two or more than six members, as the Committee may from time to time determine —
 - (i) elected by members of the Exchange; and
 - (ii) not more than two of whom shall be members of any one partnership or company,

who shall hold office for a period of one year, but shall be eligible to be re-appointed or re-elected.

(2) The Minister may appoint any person, other than the Registrar, to the Committee as an alternate to an appointed Committee member, and that person —

- (a) shall act as a Committee member only when the appointed Committee member to whom he is alternate is unable to exercise his functions on the Committee by reason of illness, absence from Botswana or other reasonable cause; and
- (b) when acting as a Committee member, shall —
 - (i) exercise the functions and powers and perform the duties of the appointed Committee member to whom he is alternate; and
 - (ii) for the purposes of this Act, be deemed to have been duly appointed to the Committee in terms of subsection (1) (a).

(3) The Secretary shall notify the Registrar in writing of any change in the membership of the Committee, within a period of fourteen days from the date of the change.

6. (1) The Committee members shall elect from among the elected Committee members a Chairman, Vice-Chairman and Treasurer of the Exchange at the first Committee meeting after an election referred to in section 5 (1) (b).

Chairman,
Vice-Chairman
and Treasurer
of Exchange

(2) If there is at any time a vacancy in the office of Chairman, Vice-Chairman or Treasurer of the Exchange, the Committee members may elect an elected Committee member to fill that vacancy.

(3) The Vice-Chairman shall —

- (a) assist the Chairman in the exercise of the functions and powers and the performance of the duties of the Chairman; and
- (b) exercise the functions and powers and perform the duties referred to in paragraph (a) during any period when the Chairman is unable to exercise those functions and powers or perform those duties.

(4) If both the Chairman and the Vice-Chairman are absent from a Committee meeting, the Committee members present may elect a Committee member to preside as chairman at that meeting.

Remuneration and allowances of Committee members

7. A Committee member shall be paid out of the funds of the Exchange such remuneration and allowances, if any, as the Committee may from time to time determine.

Disqualification for appointment or election as Committee member

8. No person shall be appointed or elected as a Committee member and no person shall be qualified to hold office as a Committee member who has —

- (a) in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or
- (b) within the period of ten years immediately preceding the date of his proposed appointment or election, been convicted —
 - (i) within Botswana of a criminal offence; or
 - (ii) outside Botswana of an offence by whatever name called which, if committed within Botswana, would have been a criminal offence, and sentenced by a court to imprisonment for six months or more without the option of a fine, whether or not that sentence has been suspended, and for which he has not received a free pardon.

Vacation of office by Committee member

9. A Committee member shall vacate his office and his office shall become vacant —

- (a) after a period of thirty days from the date upon which he —
 - (i) gives notice in writing to the Chairman, or in his absence, to the Vice-Chairman, of his intention to resign his office, unless it is agreed between himself and the Chairman, or the Vice-Chairman, as the case may be, that such vacation of office shall take place after such shorter period as they may jointly agree; or
 - (ii) is sentenced by a court to such imprisonment as is referred to in section 8 (b) after conviction for an offence referred to in that section:

Provided that if, during that period of thirty days, an application for a free pardon is made or an appeal is filed, the question of whether or not the member is to vacate his office shall not be determined until the final disposal of that application or appeal, whereupon that member shall forthwith vacate his office and his office shall become vacant unless he is granted a free pardon, his conviction is set aside, his sentence is reduced to a term of imprisonment of less than six months or a punishment other than imprisonment is substituted;

- (b) if he becomes disqualified in terms of section 8(a) to hold office as a Committee member;
- (c) if he is required in terms of section 11 to vacate his office;
- (d) if he is absent without the permission of the Committee from three consecutive Committee meetings of which he has had notice to attend;
- (e) if he is expelled from membership of the Committee by a resolution of —
 - (i) the Committee passed by a majority of not less than two-thirds of the Committee members present and voting at a Committee meeting of which special notice has been given; or
 - (ii) the Exchange passed by a majority of not less than two-thirds of the members of the Exchange present and voting at a special meeting convened for the purpose;
- (f) in the case of an elected Committee member —
 - (i) if he ceases to be a member of the Exchange;
 - (ii) who is a registered stockbroker, if he is suspended from practice; or
 - (iii) if he ceases to be employed by a company which nominated him as its representative or is at any time withdrawn by such company even though he may still be in its employ.

10. If at any Committee meeting a Committee member is aware that any matter which, directly or indirectly, beneficially affects —

- (a) himself or his spouse or child;
 - (b) any person who is a debtor, creditor, partner, employee or agent of the Committee member;
 - (c) any person who is a debtor under a mortgage bond of any body corporate or person of which the Committee member is a director or officer or under which he holds any office or position other than that of auditor; or
 - (d) any company of which he is a director,
- is to be discussed or is under discussion, that Committee member shall forthwith declare to the Committee meeting his interest in that matter.

11. (1) The Minister may, after consultation with the Registrar and the Committee, require a Committee member to vacate his office, if the Minister is satisfied that the Committee member —

- (a) has been adjudged guilty of having acted improperly as a Committee member; or
- (b) is mentally or physically incapable of performing his duties efficiently.

Committee member to declare interest

Committee member vacating office or suspended at request of Minister

Filling of
vacancies on
Committee

(2) The Minister shall suspend from office a Committee member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that Committee member is so suspended he shall not carry out any duties or be entitled to any remuneration or allowances as a Committee member.

12. (1) On the death of, or the vacating of office by, a Committee member —

(a) the Minister shall, in the case of an appointed Committee member, appoint a person; or

(b) the Committee shall, in the case of an elected Committee member, co-opt a member,

to take the place of the member dying or vacating office until the expiry of the period during which such member would otherwise have continued in office:

Provided that no registered stockbroker shall be co-opted if he is a member of a partnership of which two serving elected Committee members are members.

(2) If the members of the Exchange or of the Committee, as the case may be, for any reason fail, neglect or refuse —

(a) to elect any of the Committee members referred to in section 5(1) (b); or

(b) to co-opt a member in terms of subsection (1) (b),
the Minister may appoint a person or persons, as the case may be, to fill the vacancy or vacancies left unfilled by reason of such failure, neglect or refusal.

(3) A Committee member appointed by the Minister in terms of subsection (2) shall, for the purposes of this Act, and as the case may be, be deemed to have been —

(a) elected to the Committee in terms of section 5 (1) (b); or

(b) co-opted in terms of subsection (1) (b).

(4) If an elected Committee member is granted leave of absence by the Committee, the Committee may co-opt a member of the Exchange to fill the vacancy during the absence of that elected Committee member.

Voting at
Committee
meetings

13. At a Committee meeting, each Committee member present shall have one vote on each question before the Committee and, in the event of an equality of votes, the person presiding at the Committee meeting shall have a casting vote, in addition to his deliberative vote.

Validity of
decisions and
acts of
Committee

14. No decision or act of the Committee, or act done under the authority of the Committee, shall be invalid by reason only of the fact that, at the time the decision was taken, or the act was done or authorized —

(a) the Committee did not consist of the full number of Committee members for which provision is made in section 5 (1); or

(b) a disqualified person acted as a Committee member:

Provided that the number of committee members entitled to vote was at the time not less than half of all the Committee members for which provision is made in section 5 (1).

15. (1) The general functions of the Committee shall be —

- (a) to manage and control the affairs of the Exchange;
- (b) to regulate the transaction of business on the Exchange;
- (c) to manage and invest the funds of the Exchange;
- (d) to raise or borrow moneys for the purposes of the Exchange in sums not exceeding in aggregate Pula 50 000 in any financial year, unless otherwise authorized at an Exchange meeting;
- (e) to suspend the operation of the Exchange, if it appears desirable to the Committee to do so, and after consultation with the Registrar; and
- (f) to do all things required to be done by the Committee in terms of this Act, and such other things not being inconsistent with the terms of this Act as, in the opinion of the Committee, are necessary for ensuring —
 - (i) fair and efficient dealing in listed securities; and
 - (ii) that the competence and conduct of registered stockbrokers are of a standard sufficiently high for the protection of the public.

(2) The expenses incurred by the Committee in the exercise of its functions in terms of this Act shall be met out of the funds of the Exchange.

16. (1) The Committee shall —

- (a) keep a list of the securities which may be dealt in on the Exchange;
- (b) ensure that securities -
 - (i) which are not included in the official list; or
 - (ii) in which dealings have been suspended in terms of subparagraph (ii) of paragraph (e),are not dealt in on the Exchange:

Provided that the Committee may, with the consent of the Registrar, permit securities quoted by any stock exchange outside Botswana to be dealt in on the Exchange;

- (c) grant, subject to such conditions, if any, as the Committee may deem fit, defer or refuse applications from issuers for securities issued by them, including —

- (i) shares which may not be acquired or disposed of without the consent or approval of the directors; and
- (ii) any rights or options to shares referred to in subparagraph (i):

Provided that the Committee shall not, in granting such an application, impose any condition requiring the disclosure by the issuer concerned of any information or documents otherwise than in accordance with the provisions of subsection (2);

General
functions of
Committee

Functions of
Committee in
relation to
official list

- (d) review the official list not less than once in every financial year and transmit to the Registrar, within a period of fourteen days from the date of completion of that review, a certificate under the hand of the Chairman certifying that the review has been made;
 - (e) if it appears desirable to the Committee to do so —
 - (i) remove any securities from the official list;
 - (ii) suspend dealings in any listed securities; or
 - (iii) remove the prices of any listed securities from any list published by or on behalf of the Exchange;
 - (f) publish in such manner and at such intervals, such information concerning the number of listed securities dealt in on the Exchange over such period or on such date, as the Registrar may determine; and
 - (g) notify every registered stockbroker of any —
 - (i) change in the official list;
 - (ii) conditions attached to a grant, or of any deferment or refusal, referred to in paragraph (c); and
 - (iii) suspension referred to in paragraph (e) (ii), forthwith upon that change, attachment of conditions, deferment, refusal or suspension, as the case may be.
- (2) Where the Committee wishes an issuer of —
- (a) securities in respect of which an application referred to in subsection (1)(c) has been made; or
 - (b) listed securities,

to disclose any information or documents to the Committee and, additionally or alternatively, to any other person, the Committee shall, subject to the provisions of any other law, by notice in writing require that issuer to disclose within a period specified in that notice, to the Committee and, additionally or alternatively, to any other person specified in that notice, such information or documents as the Committee may consider necessary in the interests of the Exchange or of the public generally or any section thereof, other than information or documents certified in writing by the Minister to be information or documents which it would not be in the public interest publicly to disclose.

17. If it is not practicable to hold a Committee meeting for the transaction of business of an urgent nature, the Chairman may, after consulting such of the other Committee members as are available in the circumstances, deal with the business himself and, as soon as may be thereafter, give to the Committee full particulars of the nature and extent of the urgency of the business, the circumstances in which that urgency arose and the action taken by him in the matter:

Transaction
of urgent
business

Provided that where the Chairman has obtained the prior approval of not less than half of all the Committee members for which provision is made in section 5(1), ratification of the action taken by him shall not be unreasonably refused.

18. (1) The Committee shall appoint a Secretary and such employees of the Exchange as the Committee considers necessary or desirable.

Appointment
of staff of
Exchange

(2) The Secretary and any employees appointed in terms of subsection (1) shall —

(a) hold office on such terms and conditions as may be fixed by the Committee; and

(b) carry out such functions as may be assigned to them by or under this Act or by the Committee.

19. (1) The Committee shall, after the end of each financial year of the Exchange, issue a notice in writing convening an annual general meeting of all members of the Exchange and appointed Committee members at such place, date and time as may be specified in that notice:

Exchange
meetings

Provided that the date so specified shall not be more than six months after the end of the financial year concerned.

(2) The notice referred to in subsection (1) shall —

(a) be sent by the Secretary to every member of the Exchange, each appointed Committee member, the Registrar and the Exchange auditor, not less than twenty-one days before the date of the meeting concerned; and

(b) set out the agenda of that meeting.

(3) The Committee may itself at any time and shall, at the request in writing of —

(a) not less than two registered stockbrokers; or

(b) the Registrar,

issue a notice in writing convening a special meeting of all members of the Exchange and appointed Committee members at such place, date and time as may be specified in that notice.

(4) The notice referred to in subsection (3) shall —

(a) be sent by the Secretary to every member of the Exchange, each appointed Committee member, the Registrar and the Exchange auditor; and

(b) state the purpose for which the special meeting concerned is being convened.

(5) At each Exchange meeting the Chairman or, in his absence, the Vice-Chairman or, in the absence of both the Chairman and the Vice-Chairman, an elected Committee member elected by members of the Exchange for the purpose, shall preside as chairman for that meeting.

(6) Each member of the Exchange present at an Exchange meeting shall, subject to the provisions of this Act, have one vote on a question before the Exchange and, in the event of an equality of votes, the Chairman, or the Vice-Chairman, or the elected Committee member referred to in subsection (5), as the case may be, shall have a casting vote in addition to a deliberative vote:

Provided that a member of the Exchange who has failed to pay any moneys due by him to the Exchange or the Fund or who has been suspended from practice as a registered stockbroker shall not have a vote at an Exchange meeting during the continuance of that failure or suspension, as the case may be.

(7) Fifty per cent of the members of the Exchange, with not less than two entitled to vote at an Exchange meeting, shall form a quorum thereat.

(8) The Secretary shall send to every member of the Exchange, each appointed Committee member, the Registrar and the Exchange auditor a copy of the minutes of each Exchange meeting within a period of fourteen days after the conclusion of that meeting.

Exemption of
Committee
members and
others from
liability

20. No liability shall attach to any Committee member or employee or agent of the Exchange for any loss or damage sustained by any person as a result of the bona fide exercise or performance by any Committee member or by any employee or agent of the Exchange, of any power or duty conferred or imposed upon the Committee by this Act:

Provided that the provisions of this section shall not be construed so as to prevent any person from recovering, by action in any competent court, compensation for any loss or damage sustained by him which was caused by negligence or breach of contract.

PART III — *Registrar of Stock Exchange and Register of Stockbrokers*

Appointment of
Registrar of
Stock Exchange

21. The Minister shall, subject to the laws governing the Public Service, appoint a public officer to be known as the Registrar of the Stock Exchange.

Duties of
Registrar

22. (1) The Registrar shall establish a Register of Stockbrokers.

(2) It shall be the duty of the Registrar to —

- (a) enter in the Register the name, address and such other particulars as may be prescribed of each person registered in terms of section 29(4);
- (b) make any necessary alterations to the name, address or prescribed particulars of a registered stockbroker in the Register;
- (c) delete from the Register the name of any registered stockbroker who dies;
- (d) when required to do so by or under this Act or in pursuance of an order made by the Minister in terms of section 38(2), or of action taken by the Committee in terms of section 34 (1)(f) —

- (i) mark in the Register the registration of an applicant or, as the case may be, the suspension from practice of a registered stockbroker; or
 - (ii) cancel the registration of a registered stock-broker in the Register;
 - (e) publish in the Gazette —
 - (i) once in every calendar year a list of registered stockbrokers; and
 - (ii) notification of the registration, cancellation of registration or suspension from practice of any registered stockbroker;
 - (f) permit any person, on payment of the prescribed fee, to inspect, or to inspect and make a copy of, any entry in the Register;
 - (g) hear appeals; and
 - (h) generally comply with those provisions of this Act with which it is his duty to comply, and any order made by the Minister in terms of section 38(2).
- (3) If, in the performance of the duties imposed upon him by or under this Act, the Registrar —
- (a) registers an applicant, he shall issue to the applicant a certificate of registration; or
 - (b) cancels the registration of a registered stockbroker, or marks in the Register the suspension from practice of a registered stockbroker, he shall notify such stockbroker in writing accordingly.

23. (1) The production, by any person, of a certificate under the hand of the Registrar certifying that —

Register as evidence

- (a) the name of a person has been entered in the Register, shall be prima facie evidence that such person is a registered stockbroker;
- (b) the name of a person has been deleted from or does not appear in the Register, shall be *prima facie* evidence that such person is not a registered stockbroker;
- (c) a registered stockbroker has been suspended from practice for a period specified in that certificate, shall be prima facie evidence that such registered stockbroker has been suspended from practice for that period.

(2) Any person who falsifies an entry in the Register, or any certificate of registration, shall be guilty of an offence.

24. If the Exchange, the Committee, an issuer, an applicant, a member of the Exchange or a client is required or entitled to comply within a specified period with any provision of this Act or any direction or requirement made thereunder, the Registrar may at its or his request, as the case may be, extend that period from time to time, whether that request is made before or after the expiry of that period.

Registrar may extend time limits

Powers of Registrar to require information and examine records

25. (1) The Registrar may at any time, by notice in writing —
- (a) require such information from the Exchange or a member of the Exchange as he may consider necessary for the proper performance of his duties;
 - (b) call for the production of, and examine or cause to be examined by a person authorized thereto by him in writing, any books, documents or other records —
 - (i) relating to the affairs of the Exchange or a member of the Exchange; or
 - (ii) for the purpose of determining whether or not a person is practising as a stockbroker, or is carrying on the business of a stock exchange.
- (2) Any person who refuses or fails, without lawful excuse, the proof whereof lies on him —
- (a) to furnish to the Registrar any information required in terms of subsection (1)(a); or
 - (b) to produce to the Registrar, or to permit the Registrar or a person authorized in terms of subsection (1)(b) to examine, the records referred to in that paragraph,
- within such period as may be specified in the notice referred to in subsection (1), shall be guilty of an offence.

Documents or copies thereof certified by Registrar

26. Every document purporting to be certified, under the hand of the Registrar, to be a document deposited at the office of the Registrar under the provisions of this Act, or to be a true copy of such a document, shall, in the absence of proof to the contrary, be deemed to be that document or a true copy thereof, as the case may be, and shall, on its production by any person, be received in evidence as if it were the original document, unless some variation between it and the original document is proved.

PART IV — *Registration*

Application for registration

27. (1) An application for registration as a stockbroker shall be —
- (a) made in writing to the Secretary in the prescribed form;
 - (b) proposed and seconded in writing by registered stockbrokers:
 - Provided that, in respect of the first four stockbrokers to apply for registration, it shall be sufficient if their applications are approved by the Minister; and
 - (c) accompanied by such documents and information as may be prescribed.
- (2) The Secretary may require any statement made in, or in connexion with, an application for registration to be supported by a solemn declaration.
- (3) The Secretary shall refuse to accept an application for registration if the Registrar has, within a period of twelve months immediately preceding the date of that application, refused an application for registration by the applicant in terms of section 29(4).

28. The Secretary shall, after having given thirty days notice in the manner specified in the rules of his intention to do so, refer to the Committee —

Application for registration to be referred to Committee

- (a) any application for registration, together with any approval, documents and information accompanying that application; and
- (b) any report which he may wish to make in respect of such application.

29. (1) Where an applicant for registration —

Procedure to be followed in connexion with application for registration

- (a) is a natural person ordinarily resident in Botswana;
- (b) has attained the age of twenty five years;
- (c) owns assets in Botswana which exceed his liabilities by not less than Pula 50 000; and
- (d) has complied with such requirements for registration as may be determined by the Committee, and the Committee is satisfied that the applicant is a suitable person for registration, the Committee shall, in writing, recommend to the Registrar that the applicant be registered.

(2) If the Committee is not satisfied that an applicant meets the requirements set out in subsection (1), or that he is a suitable person for registration, it shall forthwith notify the Registrar and the applicant, in writing, that it is unable, for the reasons set out in that notification, to recommend that the applicant be registered.

(3) In any recommendation made in terms of subsection (1) or any notification made in terms of subsection (2), as the case may be, the Committee shall state whether or not the applicant has any interest, direct or indirect, in any banking institution, insurer, management company of mutual funds or any trust company.

(4) Upon receipt of a recommendation made in terms of subsection (1), or a notification made in terms of subsection (2), as the case may be, the Registrar may register the applicant, or, subject to the provisions of subsection (6), may refuse to register the applicant:

Provided that the Registrar shall not register an applicant unless —

- (i) the applicant has acquired not less than four or more than twelve proprietary rights; and
- (ii) in the case of an applicant who has an interest referred to in subsection (3), the Registrar is satisfied that such interest will not adversely affect his competence and conduct.

(5) Before acting in terms of subsection (4), the Registrar may call upon the applicant or the Committee or both the applicant and the Committee, as the case may be, to furnish him with such information as he may specify, and may then grant to the applicant and to the Committee an opportunity of commenting on any such information.

(6) If the Registrar proposes to refuse an application for registration, he shall —

- (a) so notify the applicant in writing, giving his reasons therefor; and
- (b) grant to the applicant an opportunity of showing cause, in writing, why his application should not be refused.

(7) Where the Registrar has registered an applicant in terms of subsection (4), he shall make the appropriate entry in the Register.

(8) For the purposes of subsection (1)(c) the Committee, at its sole discretion, may accept a suitable irrevocable guarantee issued by a Botswana financial institution in lieu of the ownership of such assets.

Registration of
stockbroking
companies

30. (1) If an applicant for registration is a company incorporated in terms of any enactment in Botswana, and —

- (a) owns assets in Botswana which exceed its liabilities by not less than Pula 150 000;
- (b) has as its sole object the business of stockbroking;
- (c) has complied with such requirements for registration as may be prescribed; and
- (d) has in its employ a registered stockbroker, and the Committee is satisfied that the applicant is suitable for registration, the Committee shall, in writing, recommend to the Registrar that the applicant be registered as a stockbroking company.

(2) For the purposes of subsection (1)(b), any company applying for registration as a stockbroker shall submit a copy of its memorandum and articles of association to the Committee and the Registrar.

(3) If the Committee is not satisfied that an applicant meets the requirements set out in subsection (1), or is not satisfied that it is suitable for registration, the Committee shall forthwith notify the Registrar and the applicant, in writing, that it is unable, for the reasons set out in that notification, to recommend that the applicant be registered.

(4) Subject to subsections (1) and (2), the provisions of section 29(3), (4), (5), (6) and (7) shall, mutatis mutandis, apply to a company applying for registration in terms of this section.

Registered
stockbroker to
be member of
the Exchange

31. (1) Every registered stockbroker shall —

- (a) be a member of the Exchange from the date of his registration; and
- (b) cease to be a member of the Exchange upon his death, liquidation or the cancellation of his registration:

Provided that where his registration is cancelled and he is admitted by the Committee to membership of the Exchange as an associate member or a non-broking member within a period of fourteen days from the date of that cancellation, he shall be deemed not to have ceased to be a member of the Exchange by reason of that cancellation.

(2) A registered stockbroker who has been suspended from practice in terms of this Act shall not cease to be a registered stockbroker and a member of the Exchange by reason only of that suspension.

Offences by
and in respect
of registered
stockbrokers

32. (1) Subject to the provisions of this Act, no person shall, after the appointed date practice as a stockbroker, or describe himself, or hold himself out, or allow himself to be described or held out as a stockbroker, unless he is registered as such in terms of his Act.

(2) No registered stockbroker shall, in any capacity whatsoever, employ any person —

- (a) who was a registered stockbroker and whose registration has been cancelled in terms of this Act;
- (b) who has been suspended from practice as a registered stockbroker in terms of this Act during the period of such suspension;
- (c) whose application for registration has been refused in terms of section 29(4); or
- (d) whose application for admission to membership of the Exchange as an associate member or non-broking member has been refused by the Committee, without the consent in writing of the Committee, which consent may be given for such period and subject to such conditions as the Committee thinks fit.

(3) No registered stockbroker shall —

- (a) practice as a stockbroker while he is suspended from practice in terms of this Act; or
- (b) enter into or remain in partnership with any person who is not a registered stockbroker.

(4) A person who contravenes any of the provisions of subsection (1), (2) or (3) shall be guilty of an offence and liable to a fine of Pula 25 000 and to imprisonment for three years.

(5) A conviction for a contravention of any of the provisions of subsection (1), (2) or (3) shall not be a bar to a further prosecution or further prosecutions for the continuance of the offence.

(6) Nothing in this section shall be deemed to prohibit —

- (a) a person who is in the *bona fide* employment of a registered stockbroker, or who is an associate member, from performing the work of a stockbroker under the direction and control of a registered stockbroker;
- (b) a person authorized thereto by the Committee, with the consent of the Registrar, from acting for a period not exceeding six months as the locum tenens of a registered stockbroker who is unable to carry on his practice through illness, absence from Botswana or other reasonable cause;
- (c) a person employed by the Government or a city, town or district council, or a township authority, or a statutory body, from carrying out his official duties; or
- (d) a person, other than a registered stockbroker, from purchasing and selling listed securities issued by the Government or by a city, town or district council, or a statutory body, for the sole purpose of effecting —
 - (i) the reconstruction of a company by the issue or sale of shares;
 - (ii) the takeover by one company of another company;
 - (iii) the merger of two or more companies;
 - (iv) the takeover of a company, in so far as the control of its management policy or business is concerned;

- (v) a discount house from purchasing and selling listed securities which are debentures;
- (vi) an accepting house or merchant bank from purchasing and selling listed securities in accordance with conditions approved by the Registrar, or
- (vii) the transfer of listed securities between a company and its subsidiaries, or between the subsidiaries of a company, by a person other than a registered stockbroker.

PART V — Cancellation of Registration and Disciplinary Powers of Committee

Cancellation
of registration

33. (1) If the Committee is of the opinion that a registered stockbroker —

- (a) is not a suitable person to remain registered;
- (b) has ceased to own assets in Botswana which exceed his liabilities as specified in section 29(1)(c) or section 30(1)(a), as the case may be;
- (c) has ceased to comply with such requirements for registration as may be prescribed;
- (d) has contravened any provision of this Act with which it is his duty to comply;
- (e) has been guilty of disgraceful conduct, or of negligence in his capacity as a stockbroker;
- (f) has obtained his certificate of registration by fraud or mistake;
- (g) has ceased to be ordinarily resident, or to practice as a stockbroker, in Botswana;
- (h) has become a defaulter;
- (i) has failed to pay any moneys due by him to the Exchange or the Fund; or
- (j) having proposed or seconded an applicant in terms of section 27(1)(b), has wilfully or negligently made a material misstatement of fact to the Committee relating to the applicant,

and the Committee is of the opinion that by reason thereof the registration of the stockbroker concerned should be cancelled, it shall forthwith notify the Registrar and such stockbroker in writing of its opinion and the reasons therefore, and shall forthwith suspend the stockbroker from practice until the Registrar has acted in terms of subsection (3).

(2) A registered stockbroker may, in writing, request the Registrar to cancel his registration.

(3) Upon receipt of a notification made in terms of subsection (1), or a request made in terms of subsection (2), as the case may be, the Registrar may, in his discretion, cancel the registration of the stockbroker concerned, or may decline to effect such cancellation:

Provided that —

- (i) in the case of a notification in terms of subsection (1), and where the Registrar proposes to cancel the registration of the stockbroker concerned, he shall so notify such stockbroker in writing, giving his reasons therefor, and shall afford him the opportunity of showing cause, in writing, why his registration should not be cancelled; and
- (ii) in the case of a request made in terms of subsection (2), the Registrar shall not cancel the registration of the stockbroker concerned unless every registered stockbroker has received from the Secretary not less than thirty days notice in writing of the request, and the Committee has agreed, unconditionally or on such conditions as the Committee may think fit, to that cancellation.

34. (1) If the Committee is of the opinion that a registered stockbroker —

- (a) has ceased to comply with such requirements for registration as may be specified in section 29(1) or section 30(1), as the case may be, or as may be prescribed;
- (b) has contravened any provision of this Act with which it is his duty to comply;
- (c) has been guilty of disgraceful conduct or negligence in his capacity as a registered stockbroker;
- (d) has ceased to be ordinarily resident, or to practice as a registered stockbroker, in Botswana;
- (e) has failed to pay any moneys due by him to the Exchange or the Fund; or
- (f) in proposing or seconding an applicant in terms of section 27 (1) (b), has wilfully or negligently made a material misstatement of fact to the Committee relating to the applicant,

but nevertheless is of the opinion that the registration of the stockbroker should not be cancelled, it may suspend such stockbroker from practice for such period as it deems appropriate, or may reprimand such stockbroker:

Provided that, if it suspends the stockbroker from practice in terms of this subsection, it shall forthwith notify the Registrar in writing of that fact.

(2) Where a registered stockbroker has become a defaulter but the Committee is of the opinion that the registration of such stockbroker should not be cancelled, the Committee shall suspend such stockbroker from practice forthwith for such period as it deems appropriate.

(3) If a registered stockbroker requests the Committee in writing to suspend him from practice for a period specified in that request, the Committee may suspend him from practice for that period or for such other period as the Committee deems appropriate.

Exercise of
disciplinary
powers by
Committee

(4) The Committee may exercise the powers conferred upon it by subsection (1), (2) or (3) notwithstanding that the Registrar may, in relation to the same circumstances or facts, have declined to cancel the registration of the stockbroker concerned in terms of section 33(3).

(5) If the Committee, having exercised the powers conferred upon it by subsection (1), (2) or (3), otherwise than in terms of subsection (4), considers, upon information which was not before the Committee at the time of the exercise of those powers, that the registration of the stockbroker concerned should have been, or should be, cancelled the Committee may act in terms of section 33(1), or the Registrar may act in terms of section 33(3), as the case may be, in relation to that stockbroker.

Responsibility
of stockbroker
for acts of
employees or
others

35. Where an employee or associate member or other agent of a stockbroker (hereinafter called the responsible broker) does or omits to do anything which, if done or omitted to be done by a stockbroker, would have rendered him liable to be dealt with in terms of section 33 or section 34, the responsible broker shall be deemed himself to have done or omitted to do that thing and shall be liable to be dealt with in terms of section 33(3) or in terms of section 34 unless he proves to the satisfaction of the Registrar or the Committee, as the case may be, that —

- (a) in doing or omitting to do that thing the employee or associate member or other agent was acting without his connivance or permission; and
- (b) all reasonable steps were taken by him to prevent any act or omission of the kind in question; and
- (c) it was not under any condition or in any circumstances within the course of employment, or within the scope of the authority, of the employee or associate member or other agent to do or omit to do things, whether lawful or unlawful, of the same character as that of the act or omission concerned.

Consequences
of conviction of
registered
stockbroker

36 (1) A registered stockbroker who has been convicted by a court, within or outside Botswana, of an offence which, in the opinion of the Registrar or the Committee, as the case may be, constitutes disgraceful conduct, shall be liable to be dealt with in terms of section 33(3) or in terms of section 34.

(2) On proof being given of a conviction such as is referred to in subsection (1), and without hearing further evidence, the Registrar or the Committee, as the case may be, may deal with the stockbroker concerned in terms of section 33 (3) or in terms of section 34:

Provided that the stockbroker concerned shall be afforded an opportunity of tendering to the Registrar or the Committee, as the case may be, in writing or in person, as he may elect, an explanation in extenuation of his conduct.

(3) After the termination of proceedings before any court in Botswana, if it appears to the court that there is prima facie evidence of disgraceful conduct on the part of a stockbroker, the court shall direct that a copy of the record of the proceedings, or a copy of such portion of that record as is material to the issue, shall be transmitted to the Committee.

PART VI — Appeals

37. (1) Any person who is aggrieved by any action, requirement or decision taken or made, as the case may be, by the Committee in terms of this Act, save for an action, requirement or decision relating solely to the regulation of Exchange transactions, may, within a period of thirty days from the date on which he is informed in writing of that action, requirement or decision, as the case may be, and of the reasons therefore, lodge notice with the Secretary of his intention to appeal to the Registrar:

Notices of
appeal

Provided that the provisions of this subsection shall not apply to a member of the Exchange, other than a registered stockbroker who is aggrieved by any action taken against him by the Committee in terms of section 34.

(2) Any person, which expression shall include the Committee and a stockbroking company, who is aggrieved by any action, requirement of, or decision taken or made by, the Registrar in terms of this Act, may, within a period of thirty days from the date on which he is informed in writing of that action, requirement or decision, as the case may be, and of the reasons therefor, lodge notice with the Registrar of his intention to appeal to the Minister.

(3) A notice of an appeal lodged in terms of subsection (1) or (2) shall be in writing, and shall specify in detail the grounds upon which the appeal is made.

(4) In the case of a notice of an appeal lodged in terms of —

- (a) subsection (1), the Secretary shall forward copies of that notice to the Registrar and the Committee;
- (b) subsection (2), the Registrar shall forward copies of that notice of appeal to the Minister and any person, not being the appellant, who may be affected by the outcome of the appeal.

(5) In the case of an appeal lodged in terms of subsection (1) or (2), the execution of the action, requirement or decision as the case may be, against which the appeal is made, shall be suspended until the termination of the appeal, unless the Committee or the Registrar, as the case may be, otherwise orders.

38. (1) As soon as is reasonably possible after receiving a copy of a notice of appeal under section 37, the Registrar, in respect of a notice under section 37(1), shall invite the Committee, and the Minister, in respect of a notice under section 37(2), shall invite the Registrar and the other person referred to in section 37(4)(b), to deliver to him within a period of thirty days from the date of dispatch of such invitation, submissions in writing relating to the grounds upon which the appeal is made.

Determination
of appeals

(2) After considering any submissions in writing delivered in accordance with subsection (1), in conjunction with the notice of appeal lodged in terms of section 37, the Registrar or the Minister, as the case may be, may allow the appeal wholly or in part, or may dismiss the appeal and make an order accordingly:

Provided that the Registrar or the Minister, as the case may be, may, before allowing or dismissing the appeal, call for additional information relevant to the determination of the appeal, and, in the case of the Registrar, invite the Committee, or in the case of the Minister, invite the Registrar and the Committee, and in either case invite any other person affected or likely to be affected by the outcome of the appeal, to comment in writing, within a specified period, upon the additional information produced.

(3) Where the Registrar has made an order in terms of subsection (2), he shall take appropriate action in terms of section 22(2)(d).

PART VII — *Financial Provisions Relating to Exchange*

Funds of
Exchange

39. (1) Subject to the provisions of Part XIII, the funds of the Exchange shall consist of —

- (a) fees paid by issuers in respect of the inclusion of their securities in the official list;
- (b) annual subscriptions paid to the Exchange by members of the Exchange;
- (c) fees, charges and other moneys payable to the Exchange in terms of this Act; and
- (d) such moneys and assets other than those referred to in paragraphs (a) to (c) as may accrue to or vest in the Exchange, whether in the course of the exercise of the functions of the Committee or otherwise.

(2) The income of the Exchange shall be exempt from income tax.

Records of
Exchange

40. (1) The Secretary of the Exchange shall keep proper accounts and other records relating to all of the affairs and property of the Exchange, including such particular records as the Registrar may direct, and shall preserve such records for a period of not less than six years from the date of the last entry therein.

(2) The records referred to in subsection (1) shall be kept by the Secretary at the principal office of the Exchange and shall, at all reasonable times, be open to inspection by —

- (a) any Committee member;
- (b) the Registrar; and
- (c) the Exchange auditor.

(3) The Secretary shall, after the end of every financial year of the Exchange, prepare —

- (a) an account of all revenue and expenditure of the Exchange;
- (b) a balance sheet;
- (c) a report setting out the activities of the Exchange; and
- (d) such accounts, statements and reports, other than those referred to in paragraphs (a) to (c), as may be prescribed, in respect of that financial year.

(4) All documents prepared in terms of subsection (3) and audited in terms of section 42 shall be signed by the Chairman and not less than two other Committee members, and copies thereof shall be thereafter —

- (a) sent by the Secretary to every member of the Exchange, every appointed Committee member, the Registrar, and to the Exchange auditor, together with the notice referred to in section 19(1); and
- (b) laid by the Secretary before the annual general meeting next following the end of the financial year in respect of which they were prepared.

41. (1) Members of the Exchange shall, subject to the provisions of subsection (5), at every annual general meeting, elect an auditor to hold office from the conclusion of that annual general meeting until the conclusion of the next annual general meeting:

Election or
appointment of
Exchange
auditor

Provided that if members of the Exchange for any reason fail, neglect or refuse to elect an auditor in terms of this subsection, the Minister may, subject to the provisions of subsection (5), appoint an auditor to hold office until the conclusion of the next annual general meeting.

(2) A retiring auditor shall be eligible for re-election or re-appointment, as the case may be, and no person other than the retiring auditor shall be elected in terms of subsection (1) unless notice in writing of the proposal to put forward the name of that person for election as auditor has been given by the Committee to every member of the Exchange, every appointed Committee member, the Registrar and the retiring auditor, not less than twenty eight days before the annual general meeting concerned.

(3) On the death of, or the vacation of office by, an auditor elected or appointed in terms of this section, the Committee may, subject to the provisions of subsection (5), appoint an auditor to fill the vacancy until the expiry of the period during which the first-mentioned auditor would, but for this death or the vacation of his office, have continued in office.

(4) The Committee shall, within a period of fourteen days from the date of election or appointment of an auditor in terms of this section, notify the Registrar in writing of that election or appointment.

(5) No person shall be elected or appointed as an auditor in terms of this section unless he is suitably qualified in terms of section 124(1) of the Companies Act.

42. (1) The Exchange auditor shall make a report to the Exchange on the records kept in terms of section 40(1) and on the documents prepared in terms of section 40(3) and the report shall state whether or not those documents give a true and fair view of the state of the financial affairs of the Exchange.

Duties of
Exchange
auditor

(2) In addition to the report referred to in subsection (1), the Registrar may require the Committee to obtain from the Exchange auditor such other reports in connexion with the financial affairs of the Exchange as the Registrar may consider expedient.

- (3) If, in the opinion of the Exchange auditor —
 - (a) he has not obtained the information and explanations he requires; or
 - (b) the records kept in terms of section 40(1) have not been properly kept; or
 - (c) the Committee has not complied with the provisions of section 40, the Exchange auditor shall include in the report made in terms of subsection (1) or (2), as the case may be, statements to that effect.
- (4) If, in the opinion of the Exchange auditor, he is unable for any reason to make the report referred to in subsection (1), he shall inscribe upon, or attach to, the balance sheet prepared in terms of section 40(3)(b) a statement to that effect, and the facts or circumstances which prevent him from making that report.

(5) Any statement or report made by the Exchange auditor in terms of this section shall —

- (a) unless all members of the Exchange present at an Exchange meeting resolve to the contrary, be read out to the Exchange at the Exchange meeting; and
- (b) at all reasonable times be open to inspection by —
 - (i) every member of the Exchange;
 - (ii) every appointed Committee member; and
 - (iii) the Registrar.

Powers of
Exchange
auditor

43. The Exchange auditor shall be entitled —

- (a) at all reasonable times to require —
 - (i) the records kept in terms of section 40(1) to be produced to him ;
 - (ii) such information and explanations, from any member of the Exchange, or from any employee or agent of the Exchange, as in his opinion are necessary for the purposes of his audit;
- (b) to attend any Exchange meeting; and
- (c) to be heard at any Exchange meeting on any part of the business of the Exchange meeting which concerns him in his capacity as the Exchange auditor.

PART VIII — *Financial Provisions Relating to Stockbrokers*

Records of
stockbroker

44. Every stockbroker shall —

- (a) keep such books, accounts, scrip registers and other records as may be necessary to show the nature and details of all dealings and transactions entered into by him in his practice;
- (b) preserve the records kept in terms of paragraph (a) in a safe place for a period of not less than six years from the date of the last entry therein;
- (c) as soon as is possible after the end of his financial year, prepare a balance sheet and profit and loss account in respect of that financial year; and

- (d) cause the records kept in terms of paragraph (a), and the balance sheet and profit and loss account prepared in terms of paragraph (c), to be examined by an auditor who is so qualified in terms of section 124(1) of the Companies Act:

Provided that, where a stockbroker is a member of a partnership and that the partnership has, on behalf of each partner, complied with the requirements set out in this section, it shall not be necessary for such stockbroker, himself, to comply with the requirements set out in this section.

45. (1) Every stockbroker shall, within a period of six months from the end of his financial year, submit to the Registrar —

Report of
auditor of
stockbroker

- (a) a copy of the balance sheet prepared in terms of section 44(c), and signed by that stockbroker or, where the stockbroker is a member of a partnership, by not less than two members of the partnership, or, where the stockbroker is a company, by not less than two directors of the company; and
- (b) a report by the auditor on the records kept in terms of section 44 (a), and the balance sheet and profit and loss account prepared in terms of section 44(c):

Provided that, where the stockbroker is a member of a partnership, and that partnership has, on behalf of each partner, complied with the requirement set out in this subsection, it shall not be necessary for the stockbroker concerned, himself, to comply with the requirement of this subsection.

(2) In the report referred to in subsection (1), the auditor shall state whether or not, in his opinion, the balance sheet and profit and loss account prepared in terms of section 44(c) give a true and fair view of —

- (a) the state of the financial affairs of the stockbroker concerned on the date to which that balance sheet relates; and
- (b) the profit or loss made by the stockbroker concerned during the financial year which ended on the date referred to in paragraph (a).

(3) If the auditor —

(a) is not satisfied that —

- (i) the requirements of section 44 have been complied with;
- (ii) he has obtained all the information and explanations he requires;
- (iii) listed securities deposited with the stockbroker concerned by another person, including listed securities held in safe custody, are in the possession of that stockbroker, or in the possession of a person other than that stockbroker, from which person the auditor has received independent verification in writing that those listed securities are free from any lien, charge or other encumbrance; or
- (iv) the stockbroker concerned has complied with those provisions of this Act which relate to his financial affairs; or

(b) has not received from the stockbroker concerned or from the partnership, if any, of which that stockbroker is a member, a certificate stating that the stockbroker owns assets in Botswana which exceed his liabilities, as specified in section 29(1)(c) or section 30(1)(a), as the case may be,

the auditor shall include a statement to that effect in the report referred to in subsection (1).

(4) In addition to the report referred to in subsection (1), the Registrar may require the stockbroker or partnership concerned to obtain from the auditor such other reports in connexion with the state of the financial affairs of that stockbroker as the Registrar may consider expedient.

(5) In this section —

“auditor” means the auditor referred to in section 44(d).

46. A registered stockbroker shall maintain such policy or policies of insurance with an insurer as the Registrar may deem adequate to make good any loss resulting from the negligence or dishonesty of any of the employees or associate members of such stockbroker:

Provided that, where a stockbroker is a member of a partnership, and such partnership maintains such policy or policies of insurance as the Registrar may deem adequate to make good any loss resulting from the negligence or dishonesty of any of the employees or associate members of the partners, it shall not be necessary for the stockbroker, himself, to comply with the requirement set out in this section.

PART IX — *Transfer of Listed Securities*

Professional indemnity and fidelity insurances

47. For the purposes of this Part —

“broker’s transfer form” means the form prescribed as a broker’s transfer form and includes any substantially similar form which is recognized by the law of the country in which the relevant transfer is registered;

“Exchange transaction” means an Exchange transaction for the purchase and sale of any listed securities in which each party thereto is a registered stockbroker, or is acting through the agency of a registered stockbroker in the ordinary course of his practice;

“securities’ transfer form” means the form prescribed as a securities’ transfer form, and includes any substantially similar form which is recognized by the law of the country in which the relevant transfer is registered.

Manner in which listed securities may be transferred

48. (1) Notwithstanding anything to the contrary contained in the provisions of any law or of any memorandum or articles of association of any company or of any contract which relate to the transfer of any listed security —

- (a) a listed security shall be transferred by means of a securities' transfer form; or
 - (b) a listed security may, for the purposes of an Exchange transaction, be transferred by means of both a securities' transfer form and a broker's transfer form, in which event-
 - (i) it shall not be necessary to complete the securities' transfer form in respect of the particulars relating to the transferee and the consideration passing; and
 - (ii) a separate broker's transfer form shall be used in respect of each transferee concerned in the Exchange transaction.
- (2) It shall not be necessary for the execution of a securities' transfer form or a broker's transfer form to be attested.
- (3) Nothing in this section contained shall be construed as —
- (a) entitling an issuer to refuse the registration of any person as the holder of a listed security on the ground that the transfer purports to be effected by means of a securities' transfer form or a broker's transfer form; or
 - (b) affecting the provisions of any law or of any memorandum or articles of association of any company or of any contract which deal with the manner in which any document shall be signed or sealed by or on behalf of any company; or
 - (c) affecting the liability for the payment of any duty payable in respect of the registration of the transfer of any listed security.

49. (1) If an issuer, under the signature of any person duly authorised to certify transfers of listed securities on behalf of the issuer, endorses on any instrument of transfer referred to in section 48, and executed by or on behalf of the transferor, that the certificate relating to the listed securities concerned has been lodged with the issuer, the issuer shall, for the purposes of this section, be deemed to have certified that instrument.

Certification
by issuer that
listed securi-
ties
have been
lodged for
security

(2) A certification in terms of subsection (1) shall, for the purposes of this section, be deemed to be signed if it purports to be authenticated by the signature of any person, whether by autograph or by mechanical means, unless it is shown that that signature is not that of a person authorized to certify transfers of listed securities on behalf of the issuer concerned.

(3) The certification by an issuer in terms of subsection (1) shall be taken as a representation by the issuer to any person acting on the faith of that certification that —

- (a) there have been lodged with the issuer the necessary documents relating to the listed securities mentioned in the instrument of transfer; and
- (b) it appears from the documents referred to in paragraph (a) that the title to the listed securities is held by the transferor named in the instrument of transfer.

(4) The representation referred to in subsection (3) shall not be taken as a representation that the transferor named in the instrument of transfer concerned has in fact any title to the listed securities concerned.

(5) Where a person acts on the faith of an incorrect certification negligently made by an issuer, the person shall be in the same position with reference to the issuer as if the certification has been fraudulently made.

(6) The certificates of any listed securities, in respect of which an issuer has certified any instrument of transfer as provided in this section, shall, upon that certification, be cancelled by the issuer.

Duty of issuer with reference to persons under contractual disability

50. When an issuer records in its registers the transfer of any listed security, it shall not be under any duty to satisfy itself that —

- (a) that transfer is within the contractual power of the transferor or transferee; or
- (b) any legal requisite relating to the ability of the transferor or transferee to transfer or to take transfer has been complied with; or
- (c) any person signing any document relevant to that transfer on behalf of any other person has been duly authorized to sign that document:

Provided that the provisions of this section shall not absolve any issuer from liability arising from any fraudulent act to which it is knowingly a party.

Warranty and indemnity by persons lodging documents of transfer

51. A person who, for the purpose of the issue or transfer of any listed security, as principal or as agent, lodges with the issuer of the listed security any document relating to that issue or transfer, shall be deemed thereby to warrant that the document is genuine, and that he or, when he is acting as agent, his principal jointly and severally with him, indemnifies that issuer against any claim made upon it, and any loss or damage suffered by it, arising out of that issuer registering an issue or transfer of the listed security referred to in that document.

PART X — Provisions Governing Stockbroking Transactions

Stockbroker to dispatch broker's note to client within twenty four hours

52. (1) A stockbroker who has purchased or sold in Botswana any listed securities on behalf of a client shall, within twenty four hours of that purchase or sale, as the case may be, dispatch to the client a broker's note—

- (a) advising him of the purchase or sale of the listed securities;
- (b) stating the price at which such purchase or sale was effected, and the brokerage charged in respect of that purchase or sale;
- (c) containing the words "Subject to the provisions of the Botswana Stock Exchange Act, 1993, and the regulations and rules made thereunder, and the usage of the Botswana Stock Exchange"; and
- (d) containing such other particulars, as may be prescribed.

(2) A stockbroker who does not comply with the provisions of subsection (1) shall not have any legal claim to brokerage in respect of the purchase or sale concerned, whether or not he ceases to be registered after that purchase or sale.

53. A stockbroker who has been instructed by a client —

- (a) to purchase any listed securities on his behalf, shall not, in connexion with that purchase, enter into any arrangement whereby, instead of purchasing the listed securities from a third party, the stockbroker sells his own listed securities to the client; or
- (b) to sell any listed securities on behalf of the client shall not, in connexion with that sale, enter into any arrangement whereby, instead of selling the listed securities to a third party, purchases them on his own behalf, unless that stockbroker has obtained the consent of the client to that arrangement, and discloses that arrangement to the client in the broker's note concerned.

Stockbroker to
act as agent of
client in
purchase or sale

54. (1) No client shall instruct a stockbroker to enter into a bear sale unless, at the time that instruction is given, the client —

Restrictions
on bear sales

- (a) discloses in writing to the stockbroker that the proposed sale is a bear sale; and
- (b) deposits with the stockbroker cash or cheques to the value of the listed securities to be sold, that value being —
 - (i) calculated on the last selling price on the Exchange of one unit of the listed securities concerned multiplied by the number of units of the listed securities to be sold; or
 - (ii) any sum determined by the stockbroker which exceeds the value of those listed securities calculated in terms of subparagraph (i).

(2) A client who contravenes the provisions of subsection (1) shall be guilty of an offence.

(3) A stockbroker who —

- (a) has been instructed by a client to enter into a bear sale —
 - (i) may refuse to comply with that instruction; or
 - (ii) if he agrees to enter into the bear sale, shall forthwith disclose that fact to the Secretary;
- (b) learns of a bear sale entered into unwittingly by himself, or by another stockbroker, and which has not been disclosed to the Secretary, shall forthwith disclose the bear sale to the Secretary.

(4) No person shall on his own behalf or on behalf of any other person effect a bear sale at a price —

- (a) below the cash sales' price of the listed securities last recorded by the Exchange; or
- (b) equalling the cash sales' price of the listed securities last recorded by the Exchange, unless that cash sales' price exceeds the most recent different cash sales' price of the listed securities recorded by the Exchange.

(5) A person who contravenes the provisions of subsection (4) shall be guilty of an offence.

(6) Notwithstanding anything contained in this section —

(a) a director or member of the board of a company who effects a bear sale of the listed securities of the company; or

(b) the beneficial owner of more than ten per cent in value of any class of listed securities of a company who effects a bear sale of any of the listed securities of the company; or

(c) a person who —

(i) has received or has access to confidential information which may affect the purchase price of the listed securities of a company; and

(ii) effects a bear sale of the listed securities of the company referred to in subparagraph (i);
shall be guilty of an offence and liable to a fine of P 25 000 and to imprisonment for three years.

(7) In this section “bear sale” —

(a) means a sale of listed securities of which the seller is not, and is not entitled to become, the owner at the time the sale is effected; and

(b) in subsection (6), includes any bear sale of listed securities effected by any person referred to in paragraph (a), (b) or (c) of that subsection where, before the completion of that bear sale, that person repurchases the listed securities.

Listed securities
purchased on
behalf of client
must be paid for

55. (1) Where a stockbroker purchases any listed securities on behalf of a client, the client shall pay to that stockbroker the purchase price of such securities in cash or by cheque against an offer to deliver the securities, unless the client —

(a) arranges with a banking institution for the listed securities to be paid for against delivery of such securities to the banking institution; and

(b) notifies the stockbroker in writing of the arrangement referred to in paragraph (a).

(2) A stockbroker referred to in subsection (1) who has not been paid the purchase price of the listed securities concerned in terms of that subsection, and has not been notified in terms of paragraph (b) of that subsection, shall sell, as soon as is reasonably possible after the failure to pay that purchase price, and, in any event, not later than fifteen days thereafter, those securities on behalf of the client.

(3) If the sum realized by the sale referred to in subsection (2) is less than the purchase price referred to in subsection (1), the stockbroker concerned shall, as soon as is reasonably possible after that sale and, in any event, not later than fifteen days thereafter, sell on his own behalf so much of any other securities held by him on behalf of, or to be delivered to him by, the client concerned, as may be necessary to realize the difference between that sum and that purchase price.

(4) A stockbroker referred to in subsection (1) who has not been paid the purchase price of the listed securities concerned in terms of that subsection, and who has been notified in terms of paragraph (b) of the subsection shall —

- (a) before purchasing those listed securities on behalf of the client, satisfy himself that the arrangement referred to in paragraph (a) of that subsection has been made;
- (b) as soon as is reasonably possible after purchasing those listed securities on behalf of the client, offer to deliver those listed securities in negotiable order to the banking institution concerned against payment of the purchase price of those listed securities; and
- (c) if payment of the purchase price of those listed securities is not made forthwith in terms of paragraph (b), sell, as soon as is reasonably possible after the date of the failure to make that payment, and, in any event, not later than fifteen days thereafter, those listed securities on behalf of the client.

(5) If the sum realized by the sale referred to in subsection (4)(c) is less than the purchase price referred to in subsection (1), the stockbroker concerned shall, as soon as is reasonably possible after the date of the failure to make the payment referred to in that paragraph and, in any event, not later than fifteen days thereafter, sell on his own behalf so much of any other securities held by him on behalf of, or to be delivered to him by, the client concerned, as may be necessary to realize the difference between that sum and that purchase price.

(6) In this section —

“purchase price” includes the brokerage payable on the purchase of the listed securities concerned.

56. Where a stockbroker purchases any listed securities on behalf of a client, such stockbroker shall be responsible for the collection of all dividends, capitalization issues, rights issues, share bonuses or other rights attaching to the listed securities, in terms of the contract of sale, until the listed securities have been delivered in negotiable order to the client.

Stockbroker responsible for collection of rights

57. Where a stockbroker sells any listed securities on behalf of a client —

- (a) the client shall be responsible for effecting delivery to the stockbroker, for transmission to the purchaser of the listed securities, of all dividends, capitalization issues, rights issues, share bonuses or other rights attaching to the listed securities in terms of the contract of sale prior to the delivery referred to in paragraph (b);
- (b) the stockbroker shall pay to the client the proceeds of that sale, less brokerage, against delivery of the listed securities in negotiable order to the stockbroker.

Duties of stockbroker and client on sales

Duty of stockbroker in relation to securities deposited with him

58. (1) Where listed securities are deposited by a client with a stockbroker for sale or safe custody, the stockbroker shall forthwith issue to the client a receipt —

- (a) signed by or on behalf of the stockbroker;
- (b) containing a description of the listed securities sufficient to identify the same; and
- (c) setting forth the purpose for which the listed securities were deposited.

(2) Where a document of title relating to listed securities comes into the possession of a stockbroker, he shall, as soon as is reasonably possible, mark that document of title in such a manner as readily to enable the identity of the owner of that document of title to be traced.

(3) A stockbroker shall not pledge to a third party listed securities which a client has pledged to him for an amount which —

- (a) exceeds the amount owed to the stockbroker by the client in connexion with the second-mentioned pledge; or
- (b) does not exceed the amount referred to in paragraph (a) without the consent in writing of the client.

Client entitled to sue own stockbroker only

59. Where a client is dissatisfied with an Exchange transaction or with the conduct of one or more of the parties thereto, and wishes to obtain relief in respect of the Exchange transaction or that conduct, he shall not be entitled to institute legal proceedings against any stockbroker other than the stockbroker who acted as the agent of the client in respect of the Exchange transaction.

PART XI — *Powers of Minister*

Interpretation of terms in Part XI

60. In this Part —
“investigation” means an investigation referred to in section 61(1); and
“report” means a report referred to in section 63(1).

Power of Minister to appoint inspectors

61. (1) Subject to the provisions of subsection (2), where —
(a) the Exchange or a stockbroker has failed, within a period of sixty days after receiving notice in writing from the Registrar to render, correct or complete a return required by or under this Act, to render, correct or complete that return; or
(b) the Registrar is in possession of information which, in the opinion of the Minister, makes it desirable to investigate the affairs of the Exchange or of a stockbroker; or
(c) not less than two registered stockbrokers apply in writing to the Minister for an investigation to be made into the affairs of the Exchange or of a stockbroker; or
(d) a person submits a written complaint of alleged conduct such as is referred to in section 70(1)(d) or section 70(1)(e) on the part of a stockbroker,

the Minister may appoint one or more inspectors to investigate the affairs of the Exchange or of a stockbroker, as the case may be, and to report thereon to the Minister in such manner as the Minister may direct.

(2) In the case of an application made in terms of subsection (1)(c), or a complaint submitted in terms of subsection (1)(d), the Minister —

- (a) may require the applicants or complainant, as the case may be, to furnish such security as he may specify for the payment of the expenses of the investigation; and
- (b) shall consult the Committee before deciding whether or not an investigation is justified.

62. An inspector shall, for the purposes of making an investigation, have the same powers, rights and privileges as are normally conferred upon a Commissioner under the Commissions of Inquiry Act, and the provisions of that Act shall, mutatis mutandis, apply in relation to the investigation and to any person summoned to give evidence or giving evidence at the investigation.

Powers, rights and privileges of inspectors

63. (1) An inspector —

- (a) may and, if so directed by the Minister, shall, submit interim reports to the Minister concerning the investigation being made by him;
- (b) shall, on the conclusion of the investigation made by him, submit a final report to the Minister on that investigation.

Inspector to report to Minister and Minister to circulate report

(2) The Minister may cause any report made to him under subsection (1) to be printed and published, and shall send copies of every such report —

- (a) to the Committee;
- (b) to any stockbroker whose affairs are being or have been investigated;
- (c) in the case of an application made in terms of section 61(1)(c), to the stockbrokers who made the application; and
- (d) in the case of a complaint submitted in terms of section 61(1)(d), to the person who submitted the complaint.

(3) If, after consideration of a report, the Minister is of the opinion that there are reasonable grounds for suspecting that any person has committed an offence, he shall refer the matter to the Attorney-General.

64. (1) Subject to the provisions of subsections (2) and (3), all expenses incurred in connexion with an investigation shall, in the first instance, be defrayed by the Minister.

Expenses of investigation

(2) The Minister may direct a stockbroker referred to in section 61(1)(c), or person referred to in section 61(1)(d), as the case may be, to defray to the Minister the whole or any part of the expenses referred to in subsection (1):

Provided that, before making any such direction, the Minister shall —

- (a) where he has referred a matter to the Attorney-General in terms of section 63, await the outcome of any criminal proceedings instituted as a result of that reference, and shall thereafter take into account any order of the court made in terms of subsection (3) when making that direction;

- (b) notify that registered stockbroker or that person, as the case may be, in writing that he proposes to make that direction; and
- (c) afford that stockbroker or that person, as the case may be, an opportunity to show cause in writing why that direction should not be made.

(3) A person who is found guilty of an offence prosecuted as a result of an investigation may be ordered by the court which convicted him to pay to the Minister the whole or any part of the expenses referred to in subsection (1).

(4) The expenses to be defrayed by the Minister in terms of subsection (1) shall be paid out of moneys appropriated for the purpose by the National Assembly, and any sums directed or ordered to be paid to the Minister in terms of subsection (2) or (3) shall be recoverable by the Minister by action in a competent court, and paid to the State.

Minister may suspend operation of Exchange

65. The Minister may —

- (a) after consideration of a report made in terms of section 63;
- (b) upon a request made by the Committee, or contained in a resolution passed by a majority of registered stockbrokers holding not less than three-quarters of the total number of proprietary rights issued by the Exchange; or
- (c) of his own motion, where he considers that special circumstances requiring the suspension of the operation of the Exchange exist and after consultation with the Committee, suspend the operation of the Exchange for a period not exceeding one month at any one time.

PART XII — *Public Notices and Other Activities in Relation to Exchange*

Membership of Exchange to be displayed

66. Every stockbroker shall display conspicuously and in easily legible letters at the entrance to every premises where he carries on his practice, and on every business communication published or issued by him or on his behalf, his name and the words “Member of the Botswana Stock Exchange”.

Newspaper and other media releases

67. A registered stockbroker may —

- (a) contribute articles on financial matters to any newspaper, periodical or news agency;
- (b) supply any newspaper, periodical or news agency with any factual information relating to the Exchange; or
- (c) by radio or television, make broadcasts on financial matters, or give factual information relating to the Exchange.

Misleading reports, forecasts etc.

68. (1) Neither the Exchange nor any stockbroker shall knowingly issue or cause to be issued any circular, report, forecast or other statement —

- (a) which is likely to mislead the public or a section thereof, in any way, as to the affairs of the Exchange or the stockbroker, as the case may be, or as to the affairs or future performance of any company; or

(b) in connexion with the affairs of the Exchange or the stockbroker, unless the name of the Exchange or the stockbroker, as the case may be, is clearly stated in that circular, report, forecast or other statement.

(2) The Registrar may, if he considers that any circular, report, forecast or other statement referred to in subsection (1) does not comply with, or is contrary to the requirements, of that subsection, by notice in writing draw the attention of the Exchange or the stockbroker concerned, as the case may be, to that circular, report, forecast or other statement.

(3) Upon receipt of a notice referred to in subsection (2), the Exchange or the stockbroker concerned, as the case may be, shall forthwith stop, or cause to be stopped, the issue and distribution of the circular, report, forecast or other statement to which that notice refers.

69. (1) Subject to the provisions of this Act, no stockbroker shall issue any circular, report, forecast or other statement in writing relating to listed securities or to a company, any of the securities of which are listed securities, and compiled for the information of his clients, to any person —

Restrictions
on issue of
reports, fore-
casts etc.

(a) other than a person on whose behalf he has previously entered into a transaction relating to securities, unless the first-mentioned person has requested in writing that that circular, report, forecast or other statement in writing be issued to him:

Provided that a stockbroker may, with the consent in writing of the Committee, issue a statement in writing on behalf of a client to the holders of the securities of any company offering to acquire those securities; and

(b) where that stockbroker has a direct interest in the listed securities or company referred to in this subregulation, unless the stockbroker discloses that interest in the circular, report, forecast or other statement in writing.

(2) The provisions of subsection (1) shall not prohibit a stockbroker from issuing any circular, report, forecast or other statement in writing referred to in that subsection to the Secretary, the Minister, the Registrar, the Committee, the Exchange auditor, an auditor referred to in section 44(d) or another registered stockbroker.

70. (1) No person shall —

Prohibition
of certain acts

(a) make or cause or permit to be made in any document or return which is required by or under this Act to be sent to the Secretary, the Minister, the Registrar, the Committee, the Exchange auditor or and auditor referred to in section 44(d), a statement which he knows or ought reasonably be expected to know is untrue;

(b) by addition, alteration, erasure or omission, falsify any document or return referred to in paragraph (a);

(c) by any statement, promise or forecast which he knows or ought reasonably be expected to know is untrue, induce any other person to purchase or sell any securities;

- (d) directly or indirectly use or take part in any manipulative or deceptive method of dealing in listed securities likely to stimulate further dealings in listed securities or any class or classes thereof on the Exchange;
- (e) by means of fictitious transactions or the spreading of false reports influence the prices of listed securities or any class or classes thereof on the Exchange; or
- (f) directly or indirectly knowingly deal in a security on the basis of unpublished price sensitive information about the security.

(2) No person, other than the Exchange, shall carry on the business of a stock exchange in Botswana after the date of coming into operation of this Act.

(3) Any person who contravenes the provisions of —

- (a) subsection (1)(a), (1)(b) or (1)(c) shall be guilty of an offence and liable to a fine of Pula 10 000 or to imprisonment for three years; or
- (b) subsection (1)(d), 1(e) or (1)(f) or the provisions of subsection (2) shall be guilty of an offence and liable to a fine of Pula 25 000 and to imprisonment for five years.

(4) In this section —

“unpublished price sensitive information” means information relating to the internal affairs of a company or its operations, assets, earning power or involvement in a transaction or proposed transaction, and which is not generally available to the investing public, and being information which would reasonably be expected to materially affect the price of the company’s securities.

Control of
certain
expressions

71. (1) Save with the consent of the Registrar, who in granting such consent may impose such conditions as he thinks fit, no person other than the Exchange shall use in the description or title under which that person is carrying on business in Botswana the expression “stock exchange” or “stockbroker”, or any literal translation of any such expression, or any combination of letters in which “stock exchange” or “stockbroker” appears.

(2) The Registrar may at any time vary or withdraw his consent granted to any person in accordance with subsection (1) or may impose new or additional or alternative conditions, as he thinks fit.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

PART XIII — *Botswana Stock Exchange Security Fund*

Establishment
of Botswana
Stock Exchange
Security Fund

72. (1) There is hereby established a fund, to be known as the Botswana Stock Exchange Security Fund, which shall be vested in the Board.

(2) There is hereby established a board of trustees, to be known as the Board of Trustees of the Botswana Stock Exchange Security Fund, which shall be a body corporate, capable of suing and being sued in its corporate name and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform, which shall, subject to the provisions of this Act, administer the Fund.

(3) The Exchange shall, annually on the 31st day of December, transfer to the Fund half of its annual profits, or Pula 5 000 in cash or securities, whichever is the greater.

(4) The Board shall ensure that the total value of cash and securities in the Fund at all times exceeds such sum as the Exchange may from time to time determine, and for this purpose may increase the transfers to be made in accordance with subsection (3) as may become necessary.

73. (1) The Board shall consist of one appointed Committee member, and two elected Committee members, appointed by the Committee.

Composition
of Board

(2) Each member of the Board shall hold office for one year, and at the conclusion of his term of office shall be eligible for re-appointment.

(3) A member of the Board shall vacate his office and his office shall become vacant if he —

- (a) resigns his office;
- (b) ceases to be a Committee member;
- (c) is convicted of any offence which, in the opinion of the Committee, debars him from continuing as a member; or
- (d) in the opinion of the Committee, he is incapacitated by illness or becomes otherwise unable or unfit to discharge the duties of his office.

(2) On the death of, or the vacating of office by, a member of the Board, the Committee shall, where such member was an appointed Committee member, appoint an appointed Committee member, or where such member was an elected Committee member, appoint an elected Committee member, to fill the vacancy until the expiry of the period during which the member concerned would, but for his death or the vacation of his office, have continued in office.

74. (1) The Fund shall consist of —

- (a) such sum or sums transferred to the Fund in terms of section 72(3);
- (b) all contributions paid to the Fund in terms of section 77;
- (c) all income accruing from the investment of moneys in the Fund;
- (d) all moneys borrowed for the purposes of the Fund;
- (e) all moneys received by the Fund under any insurance effected on behalf of the Fund; and
- (f) all moneys or assets, other than moneys or assets referred to in paragraphs (a) to (e), lawfully paid into or transferred to the Fund.

Constitution
of Fund

(2) The income of the Fund shall be exempt from income tax.

75. (1) Where it is proved to the satisfaction of the Board that a person has suffered loss in consequence of —

Compensation
for loss in
certain
circumstances

- (a) the dishonesty, insolvency, default or death or liquidation of a registered stockbroker, or of a broking member; or
- (b) the dishonesty of an employee or associate member or other agent of a registered stockbroker or broking member,

the Board may, in its entire discretion and subject to the provisions of this Part, make a grant to that person out of the Fund for the purpose of relieving or making good that loss.

(2) Before considering an application for a grant in terms of this section, the Board may in its discretion require an applicant to exhaust all legal remedies available to him in respect of the loss to which the application relates.

(3) A grant may be made in terms of this section whether the stockbroker concerned was in possession of a valid security fund certificate issued in terms of section 77 or not, in the event of dishonesty, insolvency, default, death or liquidation of the stockbroker, or dishonesty on the part of an employee, associate member or other agent of the stockbroker.

(4) No grant shall be made in terms of this section in respect of any loss unless notice of the loss has been given by the loser in such manner and within such period after the loss first came to his knowledge, as may be specified in rules made by the Committee under section 89.

Subrogation of Board

76. (1) On the making of a grant in terms of section 75 to a person in respect of a loss —

- (a) the Board shall, to the amount of that grant, be subrogated in respect of the loss to any rights and remedies of the person to whom that grant is made, or to the stockbroker or broking member of the Exchange who committed the act of dishonesty, became insolvent, defaulted, died or was liquidated, or to the employee or associate member or other agent who committed the act of dishonesty;
- (b) the person to whom the grant is made shall have no right under insolvency, other legal proceedings or otherwise to receive any sum out of the assets of the stockbroker, broking member, employee or associate member or other agent concerned in respect of the loss until the Board has been reimbursed the full amount of the grant.

(2) Any reference in subsection (1) to the person to whom the grant is made or to the stockbroker, broking member, employee or associate member or other agent concerned shall include, in the event of his insolvency, death or liquidation or other disability, a reference to his personal representative or any other person having authority to administer his estate.

Security fund certificates and contributions

77. (1) An application for a security fund certificate shall be made to the Board in such form as may be specified in rules made by the Committee in terms of section 89 within thirty days of registration as a stockbroker and in any event before the first day of January of each year thereafter.

(2) Subject to the provisions of subsection (5), upon receipt of an application in terms of subsection (1) and such contribution to the Fund as may be specified in the rules, the Board shall issue to the applicant a security fund certificate in such form as may be specified in the rules.

(3) A security fund certificate shall be valid —

(a) if the applicant is not already in possession of a valid security fund certificate, for the period from the date of issue of the security fund certificate until the last day of December of the year in which it is issued;

(b) in the case of an applicant not referred to in paragraph (a), for a period of twelve months from the first day of January next following the application of that applicant.

(4) A registered stockbroker shall submit to the Board at such time or times as may be specified in the rules an audit certificate in the form specified in the rules.

(5) No security fund certificate shall be issued in terms of subsection (2) unless the provisions of subsection (1) have been complied with, and an audit certificate in terms of subsection (4) has been submitted to the Board, and any security fund certificate issued in contravention of the provisions of this subsection shall be invalid.

78. (1) No person shall, after the expiry of a period of three months from the date of his registration as a stockbroker, practice as a stockbroker, or describe himself or hold himself out, or allow himself to be described or held out as a stockbroker, unless he is in possession of a valid security fund certificate.

Practising
without security
fund certificate

(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence.

(3) A conviction for a contravention of the provisions of subsection (1) shall not be a bar to a further prosecution or prosecutions for the continuance of the offence.

79. No person shall be entitled to maintain an action or suit for the recovery of any brokerage, fee, reward or reimbursement for or in respect of any business, matter or thing done by him as a stockbroker at a time when he was not in possession of a valid security fund certificate:

Brokerage not
recoverable
without security
fund certificate

Provided that the provisions of this section shall not apply in respect of any such business, matter or thing done within a period of three months after the coming into operation of this Act.

80. The Board may in its discretion refund to a stockbroker or his estate the whole or any part of his contributions to the Fund:

Contributions
may be re-
funded

Provided that the Board may deduct from the amount so refunded any moneys due by that stockbroker or his estate to the Exchange, and pay the moneys so deducted to the Exchange.

81. The Board may enter into a contract with an insurer whereby the Fund will be indemnified to the extent and in the manner provided by that contract against the making of grants under this Part.

Insurance

- Investments** **82.** Any moneys in the Fund which are not immediately required for the purposes thereof shall be invested in such manner as the Board may determine.
- Borrowing** **83.** The Board may borrow moneys for the purposes of the Fund and may charge any investments of the Fund by way of security for that loan:
 Provided that the aggregate sum owing at any one time in respect of any such loan or loans shall not exceed such limit as may be specified in rules made by the Committee.
- Audit** **84.** The accounts of the Fund shall be audited once at least in each calendar year by the Exchange Auditor.
- Expenditure from Fund** **85.** Subject to the provisions of this Act, there shall be payable from the Fund all or any of the following —
- (a) payment of any costs, charges and expenses of establishing, maintaining, administering and applying the Fund;
 - (b) payment of a grant in terms of section 75(3);
 - (c) a refund of contributions under section 80;
 - (d) payment of premiums on insurance effected on behalf of the Fund;
 - (e) repayment of moneys borrowed for the purposes of the Fund and payment of any interest thereon;
 - (f) payment for any other matter approved by the Minister.

PART XIV — *General*

- No right to legal representation** **86.** No person shall be entitled as of right to be represented before the Exchange, the Committee, the Registrar, the Minister, an inspector or the Board by, an advocate or attorney.
- Non-disclosure by lawyers or bankers** **87.** Nothing in this Act shall require disclosure to the Committee or any person —
- (a) by an advocate or attorney, of any privileged communication made to him in that capacity, other than the name and address of his client; or
 - (b) by the bankers of the Exchange or any registered stockbroker of any information concerning the affairs of any of their customers save of the Exchange or the stockbroker concerned.
- Regulations** **88.** (1) The Minister may, after consultation with the Registrar and the Committee, make regulations prescribing all matters which are by this Act required or permitted to be prescribed, or which in his opinion are necessary or convenient for the carrying out of or for giving effect to the provisions of this Act.
- (2) In the exercise of the powers conferred upon him by subsection (1), the Minister may provide for all or any of the matters set out in the First Schedule.

89. (1) Subject to the provisions of subsection (4), the Committee Rules
may make administrative rules in respect of —

(a) all matters which by this Act are required or permitted to be specified in the rules; and

(b) all or any of the matters set out in the Second Schedule.

(2) Nothing in the rules made by the Committee shall be construed so as to preclude —

(a) the Committee from investigating an allegation of disgraceful conduct which is not an act or omission specified in the rules, or from exercising the powers conferred upon the Committee by section 33(1) or section 34 in relation to a stockbroker considered or found, by the Committee to be guilty of such disgraceful conduct; or

(b) the Registrar from exercising the powers conferred upon the Registrar by section 33(3) in relation to a stockbroker considered by the Committee to be guilty of disgraceful conduct as referred to in paragraph (a).

(3) The Committee shall ensure that a copy of its rules and of any amendments thereto is —

(a) sent by registered post to every registered stock-broker at his address as shown in the Register; and

(b) available for inspection without charge by members of the public in every office or premises of the Exchange and in every premises in which a stockbroker carries on his practice.

(4) The rules made by the Committee shall be subject to the approval of the Registrar, and shall be binding on the Exchange, the Committee, the officers and employees of the Exchange, the members of the Exchange and all persons claiming under the rules or whose claim is derived from a stockbroker.

(5) Where there is any conflict between the provisions of the rules and the provisions of this Act or the regulations, the provisions of this Act or those regulations shall prevail.

90. The Minister may, by notice in the Gazette, add to, amend or replace the whole or any part of the First Schedule or the Second Schedule. Amendment
of Schedules

91. Save where otherwise specifically provided for, any person who is guilty of an offence under this Act shall be liable to a fine of Pula 10 000 and to imprisonment for three years. General
penalty

FIRST SCHEDULE (section 88)

Matters in Respect of which Minister may make Regulations

1. Notwithstanding anything contained in the Companies Act (Chapter 42:01) or any other law, the procedure to be followed in relation to, and the administration and distribution of the Exchange estates of, defaulters and registered stockbrokers whose registrations are cancelled or who die.
2. The issue of certificates of registration and duplicate certificates of registration.
3. The cancellation of the certificates of registration of persons who are no longer registered and the delivery of those certificates to the Registrar for that purpose.
4. The deletion from the Register of entries made in error or through fraudulent misrepresentations or concealment of material facts or in circumstances not authorised by law.
5. The notification to the Registrar of changes in the names, addresses and prescribed particulars of registered stockbrokers.

SECOND SCHEDULE (section 89)

Matters in Respect of which Committee may make Rules

1. The regulation of the hours of business of the Exchange.
2. The quorum of the Committee and its procedure to be followed in making rules.
3. The relationship between the Exchange and associate members, including the fees and subscriptions payable by associate members of the Exchange.
4. The management and review of the official list, including the fees payable by issuers in respect of securities issued by them and included or sought to be included in the official list.
5. The fees payable in connexion with the issue of certificates of registration and duplicate certificates of registration.
6. The scale according to which the brokerage, commission or other fee charged by a stockbroker in respect of the purchase or sale of securities or of any other service rendered by him in the course of his practice for payment or reward shall be calculated and the circumstances in which that scale may be departed from.
7. The manner in which applications for registration are to be dealt with prior to the making of a recommendation in terms of section 29(1) or section 30(1) or a notification in terms of section 29(2) or section 30(3).
8. The procedure to be followed by the Committee prior to the making of a notification in terms of section 33(1).
9. The manner in which the Committee is to exercise the powers conferred upon it by section 34.
10. The procedure to be followed by the Committee in relation to the admission to, and the expulsion from, membership of the Exchange of associate members and non-broking members.
11. The fixing of the annual subscriptions and any other fees or charges payable to the Exchange by members of the Exchange.
12. The regulation of the issue and transfer of proprietary rights.
13. The rules of conduct to be observed by members of the Exchange, including the acts or omissions by a stockbroker which are to be treated as disgraceful conduct.

14. The holding of examinations, including the fees payable in connexion therewith.
15. The location of the principal and other offices and premises of the Exchange.
16. The procedure to be followed at Committee meetings and Exchange meetings.
17. The special qualifications, if any, to be required of elected Committee members.
18. The regulation of the transaction of business on the Exchange, including the rights and obligations of stockbrokers in relation to Exchange transactions.
19. The designation of the persons who may sign deeds, transfers, contracts, leases and any other instruments on behalf of the Exchange.
20. The control and beneficial ownership of stockbroking companies and partnerships.
21. The rights and obligations of members of the Exchange generally.
22. The creation of different classes of membership of the Exchange and the rights and obligations of, and any special fees payable to the Exchange by, members of each such class.
23. The regulation of the establishment and maintenance of branch offices by stockbrokers.
24. The circumstances under which the Committee may prohibit members of the Exchange from doing business with a person who is not a member of the Exchange.
25. The duties of the Secretary and other employees of the Exchange.
26. The duties of employees of stockbrokers.
27. Employment by stockbrokers of authorized dealers and the fees payable to the Exchange by or in respect of authorized dealers.
28. The settlement of disputes between stockbrokers arising out of Exchange transactions.
29. Any matter, other than the matters set out in paragraphs 1 to 28, which —
 - (a) was dealt with by any rules made by Stockbrokers Botswana Limited with the approval of the Interim Stock Exchange Committee appointed by the Minister which were in force immediately before the appointed date; and
 - (b) is not dealt with by, and is not in conflict with, this Act or regulations made under the Act.

PASSED by the National Assembly this 7th day of July, 1994.

T.G.G.G. SEELETSO,
Clerk of the National Assembly.