ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER S13

SECURITIES ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises and consolidates:

Act 11/2001, in force 8 November 2001
Act 10/2005, in force 1 February 2006

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SECURITIES ACT

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SECURITIES ACT

PART 1
GENERAL PROVISIONS

Interpretation

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

"accountant" means a person who is qualified as an accountant by examination conducted by one of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants, the Association of Chartered Certified Accountants, the American Institute of Certified Public Accountants, the Chartered Institute of Management Accountants, the Certified General Accountants Association of Canada, the Certified Management Accountants of Canada or such other institute or body of accountants as may from time to time be approved by the Commission, and is a practising member in good standing of one of those institutes or is otherwise approved by any supervisory body of the accounting profession recognised under the law of Anguilla;

"accredited" is construed in accordance with section 63;

"advertisement" includes every form of advertising, whether in a publication, by the display of notices, signs, labels or showcards, by means of circulars or other documents, by an exhibition of pictures or photographic or cinematographic films, by way of sound broadcasting or television, by the distribution of recordings, by computer output, or in any other manner, and "advertising" shall be construed accordingly;

"Agreement" means the Agreement establishing the Eastern Caribbean Securities Regulatory Commission made on the 24th day of November 2000, the text of which is set out in the Schedule and to which the Government of Anguilla is a party;

"broker dealer" means a person who carries on the business of dealing in securities, or who holds himself out as conducting such business, within the meaning of section 46;

"broker dealer's representative" means an individual in the employment of, or acting for or by arrangement with, a broker dealer, who deals in securities on behalf of that broker dealer, whether he is paid a salary, wages, commission or otherwise;

"charge" includes any mortgage, hypothec, assignment, pledge or lien (other than a lien of a company on shares issued by it) on any security for securing money or money's worth;

(Act 10/2005, s.1)

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

"Commission" means the Eastern Caribbean Securities Regulatory Commission established by Article 3 of the Agreement;

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"company" includes a company, limited partnerships, unit trust or other business entity, which is incorporated, registered or otherwise established under the laws of a Member territory;

(Act 10/2005, s.1)

"dealing in securities" is construed in accordance with section 46;

"Disciplinary Committee" means the Disciplinary Committee established under section 139;

"document" includes—

(a) information recorded in any form; and

(b) in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

"investment adviser" means a person who carries on business giving advice on securities, or who holds himself out as conducting such business, within the meaning of section 52;

"investment adviser's representative" means an individual in the employment of, or acting for or by arrangement with, an investment adviser, who advises on securities on behalf of that investment adviser, whether that individual is paid a salary, wages, commission or otherwise;

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

"licensee" means a person licensed under Part 4;

"limited service broker" is construed in accordance with section 49;

"limited service broker's representative" means an individual in the employment of, or acting for or by arrangement with, a limited service broker, who deals in securities on behalf of that broker, whether he is paid a salary, wages, commission or otherwise;

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

"Minister" means the Minister responsible for the subject of finance;

"Monetary Council" means the Monetary Council established under Article 7 of the Agreement establishing the Eastern Caribbean Central Bank done at Port-of-Spain on the 5th day of July 1983 which said Agreement is set out in the Schedule to the Eastern Caribbean Central Bank Agreement Act, 1983;

"Participating Government" has the same meaning as in the Agreement;

"person" includes a company and an individual;

"prescribed" means prescribed by regulations made by the Minister on the recommendation of the Commission;

"principal" is construed in accordance with section 59;

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"representative" means an accredited broker dealer's representative, a limited service broker's representative or an investment adviser's representative, as the case may be, licensed under section 61;

"securities" means—

(a) shares and stock in the share capital of a company;

(b) any instrument creating or acknowledging indebtedness which is issued or proposed to be issued by a company including, in particular, debentures, debenture stock, loan stock, bonds and notes;

(c) bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of any Participating Government;

(d) any right (whether conferred by warrant or otherwise) to subscribe for shares or debt securities;

(e) any option to acquire or dispose of any other security;

(f) units in a collective investment scheme, including shares in or securities of an investment company; and

(g) any other instruments prescribed to be securities for the purposes of this Act;

but does not include—

(h) bills of exchange;

(i) treasury bills with an original maturity of less than 90 days;

(j) promissory notes for less than 270 days;

(k) certificates of deposit issued by a licensed financial institution; or

(l) any other instrument prescribed, on the recommendation of the Commission, not to be securities for the purposes of this Act;

"securities exchange" means a market, exchange, place or facility which provides for bringing together on a regular basis purchasers and sellers of securities, and sets rules for the execution of securities transactions or for the negotiation or conclusion of sales and purchases of securities, but does not include—

(a) the office or facilities of a member of a licensed securities exchange; or

(b) the office or facilities of a clearing agency or securities depository;

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

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(2) A company is deemed to be—

(a) a subsidiary of another company (its holding company) if that other company—

(i) holds a majority of the voting rights in it,

(ii) is a member of it and has the right to appoint or remove a majority of its board of directors, or

(iii) is a member of it and controls alone, pursuant to an agreement with other shareholders, a majority of the voting rights in it; or

(b) a subsidiary of another if the first-mentioned company is a subsidiary of a company which is itself a subsidiary of that other company.

Agreement to have the force of law

2. The Agreement shall have the force of law in Anguilla.

Amendment to Agreement

3. Where an amendment to the Agreement becomes effective in accordance with Article 32 of the Agreement, the Minister shall by regulation amend the Schedule for the purpose of including the amendment.

Eastern Caribbean Securities Regulatory Commission

4. The Commission is a legal body vested with all the powers and characteristics of a body corporate having perpetual succession and a common seal.

Funding of Commission

5. (1) The Commission shall be funded in accordance with Article 24 of the Agreement.

(2) The Commission is authorised to impose such fees, charges or levies as may be prescribed.

PART 2

SECURITIES EXCHANGES

Restriction on establishment of securities exchanges

6. (1) No person shall establish or operate a securities exchange in Anguilla except under and in accordance with a securities exchange licence granted by the Commission under this Act.

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

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

(a) in the case of an individual, to a fine of $100,000 or to imprisonment for 2 years or to both;

(b) in the case of a company, to a fine of $200,000; and

if the offence is a continuing offence, the individual or company is liable to a further fine of $1,000 for every day that the offence continues after conviction.

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

Eastern Caribbean Securities Exchange Limited

7. (1) With effect from 8th November 2001, the Eastern Caribbean Securities Exchange Limited shall, subject to subsection (3), be deemed to be licensed under this Part.

(2) The Eastern Caribbean Securities Exchange Limited shall, not later than 12 months after 8th November 2001 or within such longer period as the Commission will allow—

(a) take such steps as are necessary to ensure that it satisfies the conditions specified in section 9(2);

(b) notify the Commission in writing of the steps so taken; and

(c) apply for a securities exchange licence under section 8.

(3) If the Eastern Caribbean Securities Exchange Limited fails to take action in accordance with subsection (2) within the time limited by or under that subsection, the Eastern Caribbean Securities Exchange Limited shall cease to be deemed to be licensed on the expiration of that period.

Application for securities exchange licence

8. (1) Only a company whose sole activity is the operation of a securities exchange may apply to the Commission for a securities exchange licence.

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

Grant of securities exchange licence

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

(a) it is appropriate to do so in the public interest, or for the proper regulation of markets in securities; and

(b) the applicant satisfies the conditions specified in subsection (2).

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

(a) the applicant's activities will be limited to the operation of a securities exchange;

(b) the applicant can provide and maintain, to the satisfaction of the Commission, adequate and properly equipped facilities or systems for the conduct of the business of a securities exchange;

(c) the applicant shall have not less than 3 members who are engaged in the business of dealing in securities independently of and in competition with each other;

(d) the rules and practices proposed to be followed by the applicant must be such as will ensure that business conducted by means of its facilities or systems will be conducted in an orderly manner and so as to accord proper protection to investors;

(e) the applicant has made such arrangements as the Commission considers satisfactory for—

(i) the clearing and settlement of dealings in securities to ensure the performance of transactions effected on the securities exchange, and for the recording and publication of such transactions,

(ii) market surveillance,

(iii) the effective monitoring and enforcement of compliance with its rules, this Act and regulations made under this Act, and

(iv) investigating complaints in respect of business transacted by any of its members; and

(f) the applicant must have default rules which, where a member of the securities exchange appears to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts, enable action to be taken to close out his position in respect of all unsettled market contracts to which he is a party.

Suspension and revocation of securities exchange licence

10. (1) The Commission may suspend a securities exchange licence granted under section 9 if the company—

(a) temporarily ceases to operate the securities exchange;

(b) goes into receivership;

(c) contravenes a provision of this Act;

(d) is operating in a manner detrimental to the public interest;

(e) fails to provide the Commission with information lawfully required;

(f) fails to comply with a lawful direction of the Commission; or

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(g) fails to pay its annual licence fee as prescribed on or before the anniversary of the day of the grant of its licence.

(2) The Commission may revoke a securities exchange licence granted under section 9 if the company—

(a) ceases to operate the securities exchange;

(b) is being wound up or compounds or compromises with its creditors;

(c) contravenes a provision of this Act;

(d) is operating in a manner detrimental to the public interest;

(e) fails to continue to comply with the conditions specified in section 9(2);

(f) fails to pay its annual licence fee as prescribed on or before the anniversary of the day of the grant of its licence; or

(g) requests the Commission to do so.

(3) The Commission shall not revoke or suspend a securities exchange licence without first giving the holder of the licence an opportunity of being heard.

Duties of holder of securities exchange licence

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

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

(a) act in the interests of the investing public; and

(b) ensure that such interests prevail where they conflict with any other interests the company is required to serve under any other law.

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

(4) The holder of a securities exchange licence shall provide and maintain at all times to the satisfaction of the Commission—

(a) adequate and properly equipped premises for the conduct of its business;

(b) competent personnel for the conduct of its business; and

(c) automated or other systems with adequate capacity, facilities to meet emergencies and security arrangements.

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(5) The holder of a securities exchange licence shall notify the Commission immediately if it becomes aware—

(a) that a member is unable to comply with any financial resources regulation made under section 75; or

(b) of a financial irregularity or other matter which in the opinion of the holder of the securities exchange licence may indicate that the financial standing or integrity of a member is in question, or that a member may not be able to meet that member's legal obligations.

Rules of securities exchange

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

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

(a) in respect of applications for listing and the requirements for listing;

(b) regarding agreements to be entered into between the securities exchange and other persons for listing securities and enforcing those agreements;

(c) regarding the cancellation and withdrawal of the listing of securities and the suspension of dealings in them;

(d) obliging a person to observe specified standards of conduct or to perform, or refrain from performing, specified acts reasonably imposed for the listing or continued listing of securities; and

(e) regarding the penalties and sanctions which the holder of the securities exchange licence may impose for a breach of the rules of the securities exchange.

Amendment to rules of securities exchange

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

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

Fixing of trading and position limits

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

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

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

(a) directly or indirectly entering, during a prescribed period, into transactions of a specified class in excess of the prescribed amount; or

(b) directly or indirectly holding or controlling positions of a specified class in excess of a prescribed position limit.

Power of Commission to issue directions to securities exchange

15. Where the Commission is satisfied that it is necessary for the protection of investors or for the proper regulation of a securities exchange, the Commission may issue direction to the holder of a securities exchange licence with respect to—

(a) trading on or through its facilities generally or with respect to the trading of a particular security;

(b) the manner in which the securities exchange carries on any aspect of its business, including the manner of reporting off-market trades by members; or

(c) any other matter that the Commission considers necessary for the effective administration of this Act;

and the holder of the securities exchange licence shall comply with the direction.

Power of Commission to require amendment to rules

16. Where the Commission considers it necessary for the protection of investors, it may by notice in writing require the holder of a securities exchange licence to make or to amend or repeal any rule and, on the Commission specifying the amendments and the dates those amendments shall have force and effect, the securities exchange shall comply with the requirement as soon as practicable after receipt of the notice from the Commission.

Securities exchange to assist Commission

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

Disciplinary action over members of a securities exchange

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

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

Closure of securities exchange in emergency

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

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

(a) of an impending emergency or natural disaster or where such emergency or disaster has occurred in Anguilla; or

(b) there exists an economic or financial crisis, whether in Anguilla or elsewhere, or any other circumstance, which is likely to prevent orderly trading on the securities exchange.

(3) The Commission may, on consultation with the Monetary Council, extend the direction for further periods not exceeding 10 trading days.

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

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

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

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

PART 3

CLEARING AGENCIES AND SECURITIES REGISTRIES

Interpretation

21. (1) In this Part—

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

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

"default rules", for a clearing agency, means the rules of the clearing agency required by section 25;

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"market charge" means a charge, whether fixed or floating, granted in favour of a clearing agency—

(a) over property, specified in subsection (2), held by or deposited with the clearing agency; and

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

"market collateral" means property, specified in subsection (2), held by or deposited with a clearing agency to secure liabilities arising directly with the clearing agency facilitating the settlement of a market contract;

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

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

"relevant office-holder" means—

(a) the Official Receiver appointed under the Bankruptcy Act;

(b) a person acting in relation to a company as its liquidator, provisional liquidator, receiver or manager;

(c) a person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property; or

(d) a person appointed under an order for the administration in bankruptcy of an insolvent estate of a deceased person;

"settlement", in relation to a market contract, includes partial settlement.

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

(a) money, letters of credit, bankers' drafts, certified cheques, and any similar instruments;

(b) securities;

(c) futures contracts, and any similar financial contracts.

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

(4) Where collateral is granted partly for the purpose specified in the definition of "market collateral" and partly for other purposes, the collateral is market collateral in so far as it has been provided for that specified purpose.

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

(a) the Bankruptcy Act;

(b) the Companies Act*; and

(c) any other enactment which is concerned with or in any way related to the insolvency of a person.

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

Licensing of clearing agencies

22. (1) No person shall establish or operate a clearing agency except under and in accordance with a clearing agency licence granted by the Commission under this Act.

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

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

(a) in the interests of the investing public; and

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

Application for clearing agency licence

23. (1) Only a company may apply to the Commission for a licence to operate a clearing agency.

(2) An application under subsection (1) shall—

(a) be made in the form prescribed by the Commission and shall be completed in accordance with any direction specified in the form;

(b) be accompanied by a copy of the applicant's rules; and

(c) be accompanied by particulars of the securities exchange, together with a letter of confirmation from the securities exchange, with which the applicant proposes to make clearing arrangements.

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

* Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

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

Grant of clearing agency licence

24. On receipt of an application duly made in accordance with section 23 the Commission may grant a licence to operate a clearing agency if it is satisfied that—

(a) it is appropriate to do so in the public interest;

(b) the applicant has financial resources sufficient for the proper performance of its functions;

(c) the applicant has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules;

(d) the applicant is able to provide clearing services which would enable a securities exchange to ensure the performance of transactions effected on the market; and

(e) the default rules of the applicant satisfy the requirements of section 25.

Rules of clearing agency

25. (1) For the purposes of section 24, the rules of a clearing agency shall include provisions—

(a) where a participant appears to be unable, or likely to become unable, to meet the obligations in respect of one or more market contracts, to enable action to be taken to close out the participant's position in relation to all unsettled market contracts to which the participant is a party;

(b) where the clearing agency determines that the activities of a participant present, or are likely to present, unreasonable risk to the clearance and settlement systems, to cease to act for the participant;

(c) to enable the settlement of all of the contracts by providing for there to be payable by or to the participant a sum of money in relation to each contract if that is required after taking into account all the rights and liabilities of the participant under or in respect of the contract concerned;

(d) to enable all sums of money payable by or to the participant as determined in accordance with paragraph (c) to be aggregated or set-off so as to produce a net sum, if any, payable by or to the participant;

(e) if any net sum referred to in paragraph (d) is payable by the participant, to provide for that net sum to be set-off against all property of the participant which is either subject to a market charge or which has been provided as market collateral (or set-off against the proceeds of the realisation of such property) so as to produce a further net sum, if any, payable by or to the participant;

(f) if any net sum referred to in paragraph (d) is payable to the participant, to provide that all property of the participant which is either subject to a market charge or which has been provided as market collateral shall cease to be subject to the market charge (but

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without prejudice to any other form of charge to which it may be subject) or to be market collateral (but without prejudice to its provision as any other form of collateral), as the case may be; and

(g) to provide for the certification by the clearing agency of any net sum referred to in paragraph (d) payable to the participant, or of any further net sum referred to in paragraph (e) payable by or to the participant, as the case may be, or if there is no such sum, the certification by the clearing agency of that fact.

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

Approval of amendments to rules of clearing agency

26. (1) A clearing agency shall submit to the Commission—

(a) all proposed rules and amendments to rules of the clearing agency; and

(b) explanations of the purpose and likely effect, including the effect on the investing public, of all proposed rules or amendments to rules;

in sufficient detail to enable the Commission to decide whether to approve such rules or refuse to approve them.

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

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

(a) it approves them; or

(b) it refuses to approve them.

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

Alteration of facts disclosed in application

27. An applicant for a licence under this Part shall forthwith give written notice to the Commission of—

(a) any proposed alteration to; or

(b) the occurrence of any event which it knows affects or may affect in a material respect;

information supplied to the Commission in relation to the application, being a proposal or event made or occurring while the application is pending a decision by the Commission.

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General conditions

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

(a) the licence is personal to the applicant and is not transferable;

(b) the clearing agency shall forthwith give written notice to the Commission of—

(i) any proposed alteration to, or

(ii) the occurrence of any event which it knows affects or may affect in a material respect,

any matter in respect of which it was required to supply information to the Commission;

(c) the consent of the Commission shall be obtained prior to the making of any change in the constitution or control of the clearing agency; and

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

Revocation and suspension of licence

29. (1) The Commission may at any time revoke or suspend a clearing agency licence granted under this Part if it appears to the Commission that the holder of the clearing agency licence—

(a) has ceased to operate a clearing agency;

(b) has failed to comply with any obligation to which it is subject under this Act; or

(c) is operating in a manner detrimental to the public interest.

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

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

Power of Commission to issue directions

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

(a) with respect to the manner in which the clearing agency carries on any aspect of its business; or

(b) with respect to any other matter that the Commission considers necessary for the effective administration of this Act;

and the clearing agency shall comply with the direction.

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Duty to assist Commission

31. Notwithstanding any other law, a clearing agency shall provide such assistance to the Commission as the Commission reasonably requires for the performance of its functions, including the furnishing of returns and the provision of information in respect of securities transactions or any other specified information as the Commission may require from time to time.

Proceedings of clearing agency take precedence over laws of insolvency

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

(a) a market contract;

(b) the rules of a clearing agency for the settlement of a market contract;

(c) proceedings or other action taken under the rules of a clearing agency for the settlement of a market contract;

(d) a market charge;

(e) the default rules of a clearing agency;

(f) default proceedings.

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

(a) the settlement of a market contract under the rules of a clearing agency; or

(b) default proceedings.

Duty to report on completion of default proceedings

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

(a) the net sum, if any, certified by the clearing agency to be payable by or to the defaulter; or

(b) that no sum is payable.

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

(a) the Commission; and

(b) any relevant office-holder in relation to—

(i) the defaulter to whom the report relates, or

(ii) that defaulter's estate;

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or if there is no relevant office-holder referred to in paragraph (b), the defaulter to whom the report relates.

(3) Where the Commission receives pursuant to subsection (2) a report made pursuant to subsection (1), it may publish notice of that fact in such manner as it thinks appropriate to bring it to the attention of creditors of the defaulter to whom the report relates.

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

(a) make the report available for inspection by the creditor;

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

(5) In subsections (2), (3) and (4), "report" includes a copy of a report.

Net sum payable on completion of default proceedings

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

(2) This section applies to any net sum certified under section 33(1)(a) by a clearing agency, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

Enforcement of judgments over property subject to market charge

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

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

Participant to be party to certain transactions as principal

36. Where a participant—

(a) in his capacity as such enters into any transaction (including a market contract) with a clearing agency; and

(b) but for this section, would be a party to that transaction as agent;

[†] Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.
[‡] Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

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then as between the clearing agency and any other person (including the participant and the person who is his principal in respect of that transaction), the participant is for all purposes (including any action, claim or demand, either civil or criminal)—

(c) deemed not to be a party to that transaction as agent; and

(d) deemed to be a party to that transaction as principal;

notwithstanding any other enactment or rule of law.

Securities deposited with clearing agency

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

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

Preservation of rights

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

(a) a right, title, interest, privilege, obligation or liability of a person;

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

Securities registries

39. (1) A person shall not establish or operate, or assist in the operation of, a share registry business that is not licenced for such purpose by the Commission.

(2) Subject to the provisions of this Part, the Commission may license a company to operate a share registry business where it is satisfied that it is appropriate—

(a) in the interests of the investing public; and

(b) for the proper regulation of share registry services.

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

Application for securities registry licence

40. (1) Only a company registered in Anguilla may apply to the Commission for a licence to operate a share registry.

(2) An application under subsection (1) shall—

(a) be made in the form prescribed by the Commission; and

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(b) be accompanied by the prescribed fee.

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

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

Grant of securities registry licence

41. On receipt of an application duly made in accordance with section 40 the Commission may grant a licence to operate a share registry if it is satisfied that the applicant has financial resources sufficient for the proper performance of its functions.

Application of sections 27 to 31 to securities registries

42. Sections 27, 28, 29, 30, and 31 shall apply *mutatis mutandis* to a licensed share registry.

Eastern Caribbean Central Securities Registry Limited

43. With effect from 8th November 2001, the Eastern Caribbean Central Securities Registry Limited shall be deemed to be licensed as a share registry under this Act.

Eastern Caribbean Central Securities Depository Limited

44. With effect from 8th November 2001, the Eastern Caribbean Central Securities Depository Limited shall be deemed to be licensed as a clearing agency and as a custodian under this Act.

PART 4

LICENSING OF MARKET PARTICIPANTS

Licensing requirement

45. Subject to the provisions of this Part, no person shall carry on business, or hold himself out as carrying on business, as—

(a) a broker dealer;

(b) a limited service broker;

(c) an investment adviser;

(d) a custodian;

(e) a principal of a broker dealer, limited service broker or corporate investment adviser; or

(f) a representative of a broker dealer, limited service broker or investment adviser;

unless that person is licensed to do so by the Commission under this Part.

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Broker dealers

46. (1) Subject to the provisions of this Part, no person shall carry on business in Anguilla dealing in securities, or hold himself out as carrying on that business, unless that person is a licensed broker dealer.

(2) No broker dealer shall operate other than in accordance with its licence.

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

(a) makes or offers to make an agreement with another person to enter into, or offer to enter into an agreement, for or with a view to acquiring, disposing of, subscribing for or underwriting securities or in any way effects or causes to effect a securities transaction; or

(b) manages a portfolio of securities for another person on terms under which the first-mentioned person may hold property of the other person.

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

(a) is carrying out functions as a clearing agency;

(b) deals in securities as principal only through a broker dealer or its representative or a limited service broker;

(c) is an investment adviser and, in a manner consistent with a licence granted to that person, manages a portfolio of securities for another person—

(i) without holding property of the other person, or

(ii) on terms which preclude that person from doing so; or

(d) gives advice on securities as an incident to the person's practice as a lawyer or professional accountant.

(5) For the purpose of subsections (3) and (4), and section 52(3), "hold", in relation to property, includes the control of its disposal but does not include the mere receipt and despatch or delivery of a cheque or other order made payable to another person.

Grant of broker dealer licence

47. (1) The Commission may grant a broker dealer licence to a company which applies in the prescribed manner and pays the prescribed fee.

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

(3) The Commission shall refuse to grant a broker dealer licence unless the applicant—

(a) is a company;

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(b) employs at least one individual who is licensed as a principal under section 59;

(c) employs at least one individual who is licensed as a representative under section 61;

(d) has the prescribed minimum paid-up capital and is able to meet the prescribed minimum net liquid capital requirement in cash or readily marketable securities;

(e) complies with the insurance requirement under section 79;

(f) satisfies the Commission that it is a fit and proper person to be licensed as a broker dealer;

(g) will be able, if licensed, to comply with the financial resources regulations that may apply to it; and

(h) has specified premises under section 48(1)(c) that are suitable for keeping records or other documents.

(4) In considering whether an applicant is a fit and proper person to be licensed, the Commission—

(a) shall have regard to, in respect of each of its directors and officers—

(i) his financial status,

(ii) his educational or other qualifications or experience having regard to the nature of his application,

(iii) his ability to perform his proposed function efficiently, honestly and fairly, and

(iv) his reputation, character, financial integrity and reliability; and

(b) may take into account any matter relating to—

(i) any person who is or is to be employed by, or associated with, the applicant for the purposes of the business to which the application relates,

(ii) any person who will be acting as a principal or representative in relation to such business, and

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

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

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(6) In subparagraph (4)(b)(iii), "substantial shareholder", in relation to a company, means a person who has an interest in shares in the company—

(a) the stated value of which is equal to or more than 5% of the issued share capital of the company; or

(b) which entitles the person to exercise or control the exercise of 5% or more of the voting power at a general meeting of the company.

(7) The Commission—

(a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and

(b) if it refuses an application for a licence, shall notify the applicant in writing of the refusal and the reasons for such refusal.

Application for broker dealer licence

48. (1) An application for a broker dealer licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall—

(a) give the Commission information it reasonably requires—

(i) about the services which the applicant will hold itself out as being able to provide if the application is allowed,

(ii) about the business which the applicant proposes to carry on and to which the application relates, and about any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business, and

(iii) to enable the Commission to consider the matters referred to section 47(3) and (4);

(b) nominate as a principal at least one individual who will actively participate in, and who will be responsible for the supervision of, its business; and

(c) specify the location of all premises at which the records or other documents of the business for which the application is made are to be kept.

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

Limited service brokers

49. (1) A limited service broker means a person dealing in securities whose licence is restricted to executing securities trades on its own account and on behalf of customers, together with any necessary and incidental activities.

(2) A limited service broker shall not provide services such as investment advice, investment banking and underwriting or hold discretionary accounts for customers.

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Grant of limited service broker licence

50. (1) The Commission may grant a limited service broker licence to a company, which applies in the prescribed manner and pays the prescribed fee.

(2) A limited service broker licence shall restrict the securities business activity that the licensee is permitted to undertake to execute securities trades on its own account and on behalf of customers.

(3) The Commission shall refuse to grant a limited service broker licence unless the applicant—

(a) is a company;

(b) employs at least one individual who is licensed as a principal under section 59;

(c) employs at least one individual who is licensed as a representative under section 61;

(d) has the prescribed minimum paid-up capital and is able to meet the prescribed minimum net liquid capital requirement in cash or readily marketable securities;

(e) complies with the insurance requirement under section 79;

(f) satisfies the Commission that it is a fit and proper person to be licensed as a limited service broker;

(g) will be able, if licensed, to comply with the financial resources regulations made under section 75 that may apply to it; and

(h) has specified premises under section 51(1)(c) that are suitable for keeping records or other documents.

(4) In considering whether an applicant is a fit and proper person to be licensed, the Commission—

(a) shall have regard to, in respect of each of its directors and officers—

(i) his financial status,

(ii) his educational or other qualifications or experience having regard to the nature of his application,

(iii) his ability to perform his proposed function efficiently, honestly and fairly, and

(iv) his reputation, character, financial integrity and reliability; and

(b) may take into account any matter relating to—

(i) any person who is or is to be employed by, or associated with, the applicant for the purposes of the business to which the application relates,

(ii) any person who will be acting as a representative in relation to such business, and

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

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

(6) In subparagraph (4)(b)(iii), "substantial shareholder", in relation to a company, means a person who has an interest in shares in the company—

(a) the stated value of which is equal to or more than 5% of the issued share capital of the company; or

(b) which entitles the person to exercise or control the exercise of 5% or more of the voting power at a general meeting of the company.

(7) The Commission—

(a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and

(b) if it refuses an application for a licence, shall notify the applicant in writing of the refusal and the reasons for it.

Application for limited service broker licence

51. (1) An application for a limited service broker licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall—

(a) give the Commission information it reasonably requires—

(i) about the services which the applicant will hold itself out as being able to provide if the application is allowed,

(ii) about the business which the applicant proposes to carry on and to which the application relates, and about any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business, and

(iii) to enable the Commission to consider the matters referred to in section 50(3) and (4);

(b) nominate as a principal at least one individual who will actively participate in, and who will be responsible for the supervision of, its business; and

(c) specify the location of all premises at which the records or other documents of the business for which the application is made are to be kept.

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

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Investment advisers

52. (1) No person shall carry on business in Anguilla giving advice on securities, or hold himself out as carrying on that business, unless he is a licensed investment adviser.

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

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

(a) advises others concerning investment in securities;

(b) issues analyses or reports concerning specific securities; or

(c) manages a portfolio of securities for another person—

(i) without holding property of the other person, and

(ii) on terms that preclude him from doing so.

(4) A person is not regarded as carrying on business giving advice on securities if that person—

(a) is a broker dealer;

(b) is a financial institution licensed under the Banking Act[§];

(c) is a lawyer or a professional accountant who gives advice on securities as an incident to the practice of that person's profession;

(d) gives advice on securities only in a newspaper, magazine, journal or other periodical publication—

(i) which is generally available to the public, and

(ii) which does not have as its principal or only object the provision of advice, or the issue of analyses or reports, concerning securities.

Grant of investment adviser licence

53. (1) The Commission may grant an investment adviser licence to an individual or a company who applies in the prescribed manner and pays the prescribed fee.

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

§ Banking Act, 2015 (Act 6/2015) *repealed* the Banking Act, R.S.A. c. B11.

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(3) The Commission shall refuse to grant an investment adviser licence unless the applicant—

(a) in the case of a company, employs at least one individual who is licensed as a principal under section 59;

(b) in the case of a company, employs at least one individual who is licensed as a representative under section 61;

(c) has the prescribed minimum paid up capital;

(d) complies with the insurance requirement under section 79;

(e) satisfies the Commission that the applicant is a fit and proper person to be licensed as an investment adviser;

(f) will be able, if licensed, to comply with the financial resources regulations made under section 75, that will apply to him; and

(g) has specified premises under section 54(1)(c) that are suitable for keeping records or other documents.

(4) In considering whether an applicant is a fit and proper person to be licensed, the Commission—

(a) shall have regard to, in respect of an applicant who is an individual, and in the case of an applicant company in respect of each of its directors and officers—

(i) his financial status,

(ii) his educational or other qualifications or experience having regard to the nature of his application,

(iii) his ability to perform his proposed function efficiently, honestly and fairly,

(iv) his reputation, character, financial integrity and reliability, and

(v) his satisfactory completion of any examination requirements as may be prescribed; and

(b) may take into account any matter relating to—

(i) any person who is or is to be employed by, or associated with, the applicant for the purposes of the business to which the application relates,

(ii) any person who will be acting as a principal or representative in relation to such business, and

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

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

(6) In subparagraph (4)(b)(iii), "substantial shareholder", in relation to a company, means a person who has an interest in shares in the company—

(a) the stated value of which is equal to or more than 5% of the issued share capital of the company; or

(b) which entitles the person to exercise or control the exercise of 5% or more of the voting power at a general meeting of the company.

(7) The Commission—

(a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and

(b) if it refuses an application for a licence, shall notify the applicant in writing of the refusal and the reasons for it.

Application for investment adviser licence

54. (1) An application for an investment adviser licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall—

(a) give the Commission information it reasonably requires—

(i) about the services which the applicant will hold himself out as being able to provide if the application is allowed,

(ii) about the business which the applicant's company proposes to carry on and to which the application relates, and

(iii) to enable the Commission to consider the matters referred to in section 53(3) and (4);

(b) nominate as a principal at least one individual who will actively participate in, and who will be responsible for the supervision of, its business; and

(c) specify the location of all premises at which the records or other documents of the business for which the application is made are to be kept.

(2) The Commission may require an applicant to provide it with such further information, as the Commission thinks necessary.

Custodians

55. (1) No person shall carry on the business, in Anguilla, of taking securities into custody for safekeeping, or hold himself out as carrying on that business, unless that person is a licensed custodian.

(2) No custodian shall operate other than in accordance with a licence.

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Grant of custodian licence

56. (1) The Commission may grant a custodian licence to a company which applies in the prescribed manner and pays the prescribed fee.

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

(3) The Commission shall refuse to grant a custodian licence unless the applicant—

(a) is a bank or financial institution licensed under the Banking Act[**];

(b) is a trust company which is a subsidiary of such bank or financial institution;

(c) is a company, other than a company referred to in paragraph (b), that has the prescribed minimum paid-up capital and the Commission is satisfied that the applicant has the experience necessary to enable it to conduct its business and to carry out its duties as a securities custodian;

(d) complies with the insurance requirement under section 79;

(e) satisfies the Commission that it is a fit and proper person to be licensed as a custodian;

(f) will be able, if licensed, to comply with the financial resources regulations made under section 75 that may apply to it; or

(g) has specified premises under section 57(1)(b) that are suitable for keeping records or other documents.

(4) In considering whether an applicant is a fit and proper person to be licensed, the Commission—

(a) shall have regard to, in respect of each of its directors and officers—

(i) his financial status,

(ii) his educational or other qualifications or experience having regard to the nature of his application,

(iii) his ability to perform his proposed function efficiently, honestly and fairly, and

(iv) his reputation, character, financial integrity and reliability; and

(b) may take into account any matter relating to—

(i) any person who is or is to be employed by, or associated with, the applicant for the purposes of the business to which the application relates,

(ii) any person who will be acting as a representative in relation to such business, and

[**] Banking Act, 2015 (Act 6/2015) *repealed* the Banking Act, R.S.A. c. B11.

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

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

(6) In subparagraph (4)(b)(iii), "substantial shareholder", in relation to a company, means a person who has an interest in shares in the company—

(a) the stated value of which is equal to or more than 5% of the issued share capital of the company; or

(b) which entitles the person to exercise or control the exercise of 5% or more of the voting power at a general meeting of the company.

(7) The Commission—

(a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and

(b) if it refuses an application for a licence, shall notify the applicant in writing of the refusal and the reasons for it.

Application for custodian licence

57. (1) An application for a custodian licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall—

(a) give the Commission information it reasonably requires—

(i) about the services which the applicant will hold himself out as being able to provide if the application is approved,

(ii) about the business which the applicant proposes to carry on and to which the application relates, and about any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business, and

(iii) to enable the Commission to consider the matters referred to in section 57(3) and (4); and

(b) specify the location of all premises at which the records or other documents of the business for which the application is made are to be kept.

(2) The Commission may require an applicant to provide it with such further information, as the Commission thinks necessary.

Non-application of sections 55 to 57

58. Sections 55, 56 and 57 shall not apply to a licensed clearing agency that undertakes custodial services as an incident to its business.

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Grant of principal licence

59. (1) The Commission may grant a principal licence to an individual who applies in the prescribed manner and pays the prescribed fee.

(2) The Commission shall refuse to grant a principal licence unless the applicant—

(a) is an individual;

(b) satisfies the Commission that the applicant—

(i) has sufficient educational or other qualifications or experience,

(ii) has sufficient authority within the company, and

(iii) is a fit and proper person,

to supervise the business for which the company that has nominated him is licensed or is applying to be licensed;

(c) satisfies the Commission that he is a fit and proper person to be licensed as a principal; and

(d) supplies the Commission with the information that it requires to assess whether he is a fit and proper person to be a principal of the company.

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

(a) financial status;

(b) educational or other qualifications or experience having regard to the nature of the application;

(c) ability to perform his proposed function efficiently, honestly and fairly;

(d) reputation, character, financial integrity and reliability; and

(e) satisfactory completion of any examination requirements as may be prescribed.

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

(5) The Commission—

(a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and

(b) if it refuses an application for a licence, shall notify the applicant in writing of the refusal and the reasons for such refusal.

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Application for principal licence

60. (1) An application for a principal licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall give the Commission information it reasonably requires—

(a) about the services which the applicant will hold himself out as being able to provide if the application is allowed;

(b) about the business which the applicant's company proposes to carry on and to which the application relates; and

(c) to enable the Commission to consider the matters referred to in section 59(2) and (3).

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

Grant of representative licence

61. (1) The Commission may grant a representative licence to an individual who applies in the prescribed manner and pays the prescribed fee.

(2) The Commission shall refuse to grant a representative licence unless the applicant—

(a) is an individual;

(b) has sufficient educational or other qualifications or experience;

(c) satisfies the Commission that the applicant is a fit and proper person to be licensed as a representative; and

(d) supplies the Commission with the information that it requires to assess whether the applicant is a fit and proper person.

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

(a) financial status;

(b) educational or other qualifications or experience having regard to the nature of the application;

(c) ability to perform his proposed function efficiently, honestly and fairly;

(d) reputation, character, financial integrity and reliability; and

(e) satisfactory completion of any examination requirements prescribed by the Commission.

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

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(5) The Commission—

(a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and

(b) if it refuses an application for a licence, shall notify the applicant in writing of the refusal and the reasons for such refusal.

Application for representative licence

62. (1) An application for a representative licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall give the Commission information it reasonably requires—

(a) about the services which the applicant will hold himself out as being able to provide if the application is allowed;

(b) about the business which the applicant's company proposes to carry on and to which the application relates; and

(c) to enable the Commission to consider the matters referred to in section 61(2) and (3).

(2) The Commission may require an applicant to provide it with such further information, as the Commission thinks necessary.

Accreditation of representatives

63. (1) A representative is accredited to a broker dealer, limited service broker or investment adviser for the purposes of this Part only if—

(a) the licence of the representative states that he is accredited to the licensee; and

(b) the representative is recorded as being accredited in the register maintained under section 67.

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

(3) If a licensee or representative notifies the Commission in writing that the accreditation of the representative has been terminated—

(a) the Commission may amend the register of licensees accordingly; and

(b) the representative shall return his licence to the Commission within 7 days of the Commission requiring him to do so.

Power of Commission to impose conditions

64. (1) Any licence granted by the Commission may contain such reasonable conditions it considers necessary.

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

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(3) In the case of a condition of special application to a particular licence, the condition shall be for a specified period of time.

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

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

Revocation and suspension of licences

65. (1) The Commission may revoke a licence granted to an individual under this Part if that individual—

(a) is shown by certified medical evidence to be mentally or physically incapable of performing the activities to which the licence relates;

(b) is adjudged a bankrupt, in Anguilla or elsewhere;

(c) is convicted, whether in Anguilla or elsewhere, of fraud or any other offence involving dishonesty;

(d) is convicted of an offence under this Act or regulations made under this Act;

(e) contravenes or fails to comply with any condition applicable in respect of the licence;

(f) ceases to carry on the business for which that individual is licensed;

(g) is the holder of a representative licence and the licence of the licensee to whom that individual is accredited is revoked or suspended;

(h) fails to pay the annual licence fee as prescribed on or before the anniversary of the day of the grant of the licence; or

(i) by reason of any other circumstances, is no longer a fit and proper person to hold a licence.

(2) The Commission may revoke a licence granted to a company under this Part if—

(a) the company goes into liquidation or is ordered to be wound up;

(b) a receiver or manager of all or a substantial part of the property of the company is appointed;

(c) the company ceases to carry on the business for which it is licensed;

(d) it has reason to believe that the company, or any of its directors or employees, has not performed its or his duties honestly and fairly;

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(e) the company contravenes or fails to comply with any condition applicable in respect of the licence;

(f) the company is in breach of this Act or any regulation made under this Act;

(g) where applicable, the company does not continue to employ at least one person who holds the appropriate representative licence granted under this Act;

(h) the company fails to pay its annual licence fee as prescribed on or before the anniversary of the day of the grant of its licence; or

(i) by reason of any other circumstances, the company is no longer a fit and proper person to hold a licence.

(3) The Commission may, if it thinks it necessary—

(a) as a matter of urgency for the protection of investors; or

(b) as a result of any investigation under this Act or regulations made under this Act;

suspend a licence granted under this Part for the period, or until the happening of an event, as the Commission considers appropriate.

(4) The Commission may revoke a licence at the request of the licensee.

(5) A person whose licence is revoked or suspended under this Act shall be notified accordingly by the Commission and shall, for the purpose of this Act, be deemed not to be licensed from the date of notification of revocation or suspension, as the case may be.

(6) The suspension or revocation of a licence under this Part does not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement relating to a dealing in securities entered into by the person whose licence has been suspended or revoked, whether the agreement, transaction or arrangement was entered into before or after the suspension or revocation of the licence, except that the licensee shall not be allowed to retain any benefits charged or payable thereto; or

(b) affect any right, obligation, or liability arising under any such agreement, transaction or arrangement.

Power of Commission to issue directions to licensees

66. (1) The Commission may by notice in writing give the licensee a direction under this section where it appears to the Commission that—

(a) it is desirable for the protection of investors; or

(b) the licensee is contravening, has contravened or is about to contravene, or has failed to comply with any provision of or requirement under this Act or regulations made under this Act, or, in purported compliance with any such provision or requirement, has furnished the Commission with information that is false, inaccurate or misleading.

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

(a) require a licensee to cease and desist from the contravention;

(b) prohibit a licensee from entering into transactions of a class or description specified in the notice or entering into them otherwise than in circumstances so specified or to an extent so specified;

(c) prohibit a licensee from soliciting business from a person of a class or description so specified or from persons other than persons of such a class or description;

(d) prohibit a licensee from carrying on business in a specified manner or otherwise than in a specified manner;

(e) as regards any assets whether in Anguilla or elsewhere and whether they are the assets of the licensee or not—

(i) prohibit a licensee from disposing of such assets or prohibit the licensee from dealing with them in a manner specified in the notice, or

(ii) require a licensee to deal with such assets in, and only in, a manner specified in the notice;

(f) require a licensee to maintain in Anguilla assets of such value as appears to the Commission to be desirable with a view to ensuring that the licensee will be able to meet its liabilities in respect of its licensed securities business; or

(g) require a licensee to transfer control of assets of a specified class or description to a trustee approved by the Commission.

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

(4) A direction under this section shall be for such specified period as the Commission considers necessary (which may be extended as deemed necessary): Except that a direction issued by the Commission containing any prohibition or requirement under paragraph (2)(e), (f) or (g) shall be for a period not exceeding 60 days.

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

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

Register of licensees

67. (1) The Commission shall maintain a register of persons holding licences granted under this Part in the form it considers most appropriate.

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(2) For each licensee other than a licensed principal or representative, the register shall record—

(a) the name and address of the licensee;

(b) the date on which the licence was granted;

(c) the type of securities business permitted by the licence;

(d) any conditions attached to the licence;

(e) the name and address of every accredited representative;

(f) the name and address of every manager and officer;

(g) the location of the premises at which the records or other documents of the licensed business are kept;

(h) in the case of a company licensee, the name of the principal, the name of each director and of the secretary of the company, and the names and respective shareholdings of each shareholder;

(i) any disciplinary action against the licensee;

(j) any order of suspension or revocation; and

(k) such other particulars as the Commission considers necessary in the interest of the investing or general public.

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

(a) his name and address;

(b) the date on which the licence was granted;

(c) the name and address of the principal to whom he is accredited;

(d) any order of revocation or suspension; and

(e) such other particulars as the Commission considers desirable in the interest of the investing or general public.

(4) The register shall, during usual office hours, be open to inspection free of charge by members of the public.

Notification of change in register particulars

68. (1) A licensee shall as soon as is practicable and in any event within 7 days give notice in writing to the Commission where—

(a) the licensee is a broker dealer, limited service broker, investment adviser or custodian and ceases to carry on the business to which its licence relates;

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(b) a representative ceases to be a representative of the licensee to whom the representative is accredited; or

(c) a change occurs in any matter particulars of which are required by section 67 to be entered in the register of licensees.

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

Offences under this Part

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

(a) in the case of an individual, to a fine of $100,000 or to imprisonment for 2 years or to both;

(b) in the case of a company, to a fine of $200,000; and

if the offence is a continuing offence, the individual or company is liable to a further fine of $1,000 for every day that the offence continues after conviction.

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

PART 5

CONDUCT OF SECURITIES BUSINESS

Standards of conduct

70. In the conduct of securities business, a licencee shall at all times act according to the principles of best practice and, in particular, shall—

(a) observe a high standard of integrity and fair dealing;

(b) act with due skill, care and diligence;

(c) observe high standards of market conduct;

(d) seek from customers information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling the licensee to fulfil the licensee's responsibilities to the customer;

(e) take reasonable steps to give every customer the licensee advises, in a comprehensible way, any information needed to enable the customer to make a balanced and informed investment decision;

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(f) avoid any conflict of interest with customers and, where such a conflict unavoidably arises, ensure fair treatment to the customer by complete disclosure or by declining to act;

(g) ensure that the interests of the licensee are not unfairly placed above those of the customer;

(h) protect, by way of segregation and identification, those customer assets for which the licensee is responsible;

(i) maintain adequate financial resources to meet the securities business commitments of the licensee and withstand the risks to which the business is subject;

(j) organise and control internal affairs in a responsible manner;

(k) keep proper records;

(l) have adequate arrangements to ensure that all staff employed are suitable, adequately trained and properly supervised, and establish and maintain well-defined compliance procedures; and

(m) deal with the Commission in an open and co-operative manner.

Business conduct regulations

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

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

Issue of contract notes

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

(a) where the contract was entered into by the licensee as agent, deliver the original contract note to the person on whose behalf it entered into the contract; or

(b) where the contract was entered into by the licensee as principal, retain the contract note for itself.

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

(a) the name of the licensee and the address of the principal place at which it carries on business;

(b) where the licensee is acting as principal, a statement that it is so acting;

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(c) the name and address of the person (if any) to whom the licensee is required to give the contract note and (where different) the name of the person for whom the transaction was undertaken;

(d) the date of the contract, and the date on which the contract note is made out;

(e) the quantity and description of the securities that are the subject of the contract;

(f) the price per unit of the securities;

(g) the amount of consideration under the contract or, in the case of an exchange, sufficient particulars of the securities exchanged to identify them;

(h) the rate or amount of commission payable in respect of the contract;

(i) the amount of stamp duty (if any), payable in connection with the contract and, where applicable, in respect of the transfer;

(j) the date of settlement;

(k) such other information as may be prescribed to ensure that there is a complete audit trail for the execution of customer instructions and the settlement of market transactions.

Short selling

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

(2) For the purposes of subsection (1), a person who sells securities includes a person who—

(a) purports to sell the securities;

(b) offers to sell the securities;

(c) holds himself out as entitled to sell the securities; or

(d) instructs a broker to sell the securities.

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

(a) or his agent is legally entitled to the securities;

(b) has purchased the securities, or has entered into an unconditional contract to purchase the securities, even if he does not yet have title to them;

(c) owns other securities convertible into or exchangeable for the securities and has tendered the other securities for conversion or exchange;

(d) has an option to acquire the securities and has exercised the option; or

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(e) has rights or warrants to subscribe to the securities and has exercised the rights or warrants;

and that person or that person's agent has received or will receive a fixed or currently ascertainable amount of the securities at a fixed or currently ascertainable price.

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

(a) in the case of an individual, to a fine of $200,000 or to imprisonment for 3 years or to both;

(b) in the case of a company, to a fine of $400,000.

Accounts to be kept by broker dealers and limited service brokers

74. (1) A broker dealer and a limited service broker shall keep such accounting and other records as will explain the transactions and financial position of all business relating to their licence and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time, and shall keep those records in such manner and form as to enable them to be conveniently and properly audited.

(2) Without limiting the generality of subsection (1), a broker dealer and a limited service broker shall maintain such accounts and other records, and file such financial statements and reports, as may be prescribed.

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

(4) A licensee to whom the financial resources regulations made under section 75 apply shall keep its records in sufficient detail to establish readily whether or not the financial resources regulations are being complied with.

Financial resources regulations

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

(2) Financial resources regulations may—

(a) impose requirements which are absolute or which vary from time to time by reference to factors which either are specified in, or are to be determined in accordance with, the regulations;

(b) impose requirements which apply differently to different classes of business for which licensees are licensed, and which take account of a business carried on by the licensee with, or in addition to, the business referred to in subsection (1);

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(c) provide for the assets, liabilities and other matters to be taken into account under the regulations to determine a person's financial resources and the extent to which, and the manner in which, they are to be taken into account for that purpose;

(d) require licensees to submit to the Commission, at intervals set out in the regulations, returns of their financial resources in a form set by the Commission.

Failure to comply with financial resources regulations

76. (1) If a licensee becomes unable to comply with financial resources regulations that are made under section 75 and are applicable to it, the licensee shall—

(a) notify the Commission of such inability; and

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

(2) The duties of a licensee under subsection (1) shall arise as soon as it becomes aware, or should, with the exercise of reasonable diligence, have become aware, of its inability to comply with the financial resources regulations and in relation to paragraph (1)(a), must be exercised within 24 hours after such awareness.

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

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

(a) suspend the licence; or

(b) permit the licensee to carry on business on the conditions, if any, the Commission imposes.

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

Monitoring compliance with financial resources regulations

77. To ascertain whether or not a licensee complies with the financial resources regulations made under section 75, the Commission or a person authorised by the Commission may appoint in writing an auditor to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of the licensee, and on money, securities or other property held on account of any other person by the licensee or by a nominee appointed by the licensee.

Customers' property

78. (1) The Minister may, on the recommendation of the Commission, make regulations with respect to the segregation and safekeeping of customers' money or securities held by licensees on behalf of customers.

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(2) Without limiting the general effect of subsection (1), regulations may—

(a) make provision with respect to the opening and keeping of customers' bank accounts, including provision as to the circumstances in which money other than customers' money may be paid into such accounts and the circumstances in which and the persons to whom money held in such accounts may be paid out;

(b) require customers' money to be paid forthwith into a segregated bank account the title of which contains the word "customer";

(c) require the keeping of accounts and records in respect of customers' money or securities; and

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

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

(a) hold and account for them in the manner prescribed;

(b) not dispose of, assign or lend the securities or deposit them as security for loans or advances except as may be prescribed.

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

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

Insurance requirement

79. Every licensee, other than an accredited principal and representative, shall, to the satisfaction of or on terms prescribed by the Commission, effect and maintain appropriate policies of insurance on such terms and conditions as may be determined by the Commission for the purpose of indemnifying such licensee against any liability that may be incurred as a result of any act or omission by the licensee or any of its officers or employees in the conduct of the licensee's securities business or its business as a custodian or management company of a collective investment scheme.

Auditor to be appointed

80. (1) Within one month after becoming licensed under this Act a licensee, other than an accredited principal and representative, shall appoint an auditor who is acceptable to the Commission.

(2) No person shall be qualified for appointment as an auditor under subsection (1) unless he is an accountant.

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

(a) a director, officer, employee, shareholder or partner of the licensee; or

(b) a partner or employee of such person.

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

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

Audited accounts to be filed with Commission

81. (1) A licensee shall—

(a) for the financial year beginning on the day on which it commences to carry on securities business; and

(b) for each subsequent year;

submit to the Commission, within 90 days after the end of the financial year, audited financial statements prepared in accordance with international accounting standards, and which contain such additional information as may be prescribed.

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

Auditor to report to Commission in certain cases

82. If, during the performance of his duties as auditor for a licensee, an auditor—

(a) becomes aware of any matter which in his opinion adversely affects the financial position of the licensee to a material extent; or

(b) discovers evidence of a contravention of section 74, 75 or 78;

he shall as soon as is practicable, and in any event within 7 days, report it in writing to the Commission and to the licensee.

Power of Commission to appoint auditor

83. Where the Commission is satisfied that—

(a) the licensee has failed to file an auditor's report under section 81;

(b) the Commission has received a report under section 82; or

(c) discovers evidence of a contravention of section 74, 75 or 78;

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

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PART 6

REGISTERS OF INTERESTS IN SECURITIES

Application of this Part

84. (1) This Part applies to—

(a) a broker dealer;

(b) a broker dealer's principal and representative;

(c) a limited service broker;

(d) a limited service broker's principal and representative;

(e) an investment adviser;

(f) an investment adviser's principal and representative; and

(g) a financial journalist.

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

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

Register of securities

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

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

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

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

Notice of particulars to Commission

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

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(2) The notice shall be given—

(a) in the case of a person who is required by this Act to hold a licence, as part of his application for the licence; or

(b) in the case of any other person, if the person becomes a person to whom this Part applies, within 7 days after becoming such a person.

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

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

Production of register

87. (1) The Commission or any person authorised by it in that behalf may require any person to whom this Part applies to produce for inspection the register required to be kept pursuant to section 85 and the Commission or any person so authorised may make extracts from the register.

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

Particulars of financial journalists

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

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

Extract of register

89. The Commission may supply a copy of the extract of a register obtained pursuant to section 87 to any person who, in the opinion of the Commission, should, in the public interest, be informed of the dealing in securities disclosed in the register.

Interest in securities

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

(a) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person in relation to that security;

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(b) that person has a controlling interest in the body corporate; or

(c) that person is, or the associates of that person or that person and his associates are, entitled to exercise or control the exercise of not less than 15% of the votes attached to the voting shares in the body corporate.

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

(a) a company which, by virtue of section 142, is deemed to be related to that other person;

(b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (1);

(c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security;

(d) a body corporate which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security; or

(e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.

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

(a) has entered into a contract to purchase a security;

(b) has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;

(c) has the right to acquire a security or an interest in a security, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

(d) is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a body corporate or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he is the registered holder.

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

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

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

(a) an interest in a security if the interest is that of a person who holds the security as bare trustee;

(b) an interest in a security of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;

(c) an interest of a person in a security being an interest held by him by reason of his holding a prescribed office;

(d) a prescribed interest in a security being an interest of such person, or of the persons included in such class of persons, as is prescribed.

PART 7

OFFERS OF CORPORATE SECURITIES

Offers of securities

91. (1) This Part shall not apply to—

(a) securities which are offered by the Eastern Caribbean Central Bank;

(b) an offer of securities that is made or guaranteed by a Participating Government; and

(c) an offer of securities determined by the Commission to be a private placement.

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

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

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

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

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

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

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

(a) in the case of an individual, to a fine of $200,000 or to imprisonment for 3 years or to both; and

(b) in the case of a company, to a fine of $400,000; and

if the offence is a continuing offence**,** the individual or company is liable to a further fine of $1,000 for every day that the offence continues after conviction.

Publication of prospectus

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

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

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

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

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

(a) in the case of an individual, to a fine of $100,000 or to imprisonment for 2 years or to both;

(b) in the case of company, to a fine of $200,000; and

if the offence is a continuing offence, the individual or company is liable to a further fine of $1,000 for every day that the offence continues after conviction.

Contents of prospectus

93. The Commission may approve a prospectus only if—

(a) it contains all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of—

(i) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities, and

(ii) the rights attaching to those securities; and

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(b) it contains in addition such other information and particulars, and complies with such other requirements, as may be prescribed.

Compensation for false or misleading prospectus

94. Every offeror, issuer, director of an offeror or issuer shall be liable to pay compensation to any person who acquires any of the securities, in reliance upon the prospectus, to which the prospectus relates and suffers loss in respect of them as a result of any untrue or misleading statement in the prospectus or the omission from it of any matter required to be included by or under section 93.

Continuing disclosure obligations of issuers

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

(a) is necessary to enable them and the public to appraise the financial position of the issuer and of its subsidiaries;

(b) is necessary to avoid the establishment of a false market in its securities; or

(c) might reasonably be expected materially to affect the price of its securities.

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

(a) they are traded on a licensed securities exchange; or

(b) the Commission so determines, having regard to the volume or frequency of trading in such securities.

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

PART 8

REGISTRATION OF CORPORATE ISSUERS

Registration statement

96. (1) In this Part, "public company" has the same meaning as in the Companies Act[††].

(2) From 8th November 2001, all public companies will become reporting issuers and shall, within 90 days from that date, or within such other period as the Commission may specify, file with the Commission a registration statement in the form specified by the Commission.

[††] Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

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(3) A company which proposes to issue securities to the public shall register with the Commission as a reporting issuer and file a registration statement in the form and within the period specified by the Commission.

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

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

Annual reports

97. (1) A reporting issuer shall, within 120 days after the end of its financial year—

(a) file with the Commission a copy of its annual report containing such information as the Commission may specify; and

(b) forward to each holder of its securities such financial statements as the Commission may specify.

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

(3) Unless specifically authorised by the Commission to the contrary, where a material change occurs in the affairs of a reporting issuer it shall, as soon as practicable but in any event no later than 7 days after the change occurs, issue a press release (to be filed with the Commission) authorised by a director of the issuer that discloses the nature and substance of the change.

PART 9

COLLECTIVE INVESTMENT SCHEMES

Interpretation

98. (1) In this Part—

"collective investment scheme" means—

(a) a unit trust;

(b) an investment company;

(c) investment contracts, investment programmes or any other arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income; and

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(d) any scheme that the Commission may deem to be a collective investment scheme for the purpose of this Act;

"custodian" means any person to whom the property of the scheme is entrusted for safekeeping;

"investment company" means a scheme under which—

(a) the property of the scheme belongs beneficially to, and is managed by or on behalf of, the company having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that company; and

(b) the rights of the participants are represented by shares in or securities of that company which—

(i) the participants are entitled to have redeemed or repurchased by or out of funds provided by that company, or

(ii) can be sold by the participants on a recognised securities exchange at a price related to the value of the property to which they relate;

"participants" means the persons who participate in a collective investment scheme, and includes members of an investment company;

"trustee", in relation to a unit trust, means the person holding the property of the scheme on trust for the participants;

"unit trust" means a scheme under which the property of the scheme is held on trust for the participants and where—

(a) the property of the scheme belongs beneficially to the participants and is managed on their behalf by a management company; and

(b) the rights of the participants are represented by units in the scheme which the participants are entitled to have redeemed or repurchased from them by, or out of moneys provided by, the management company;

"units" means the rights or interests (however described) of the participants in a collective investment scheme.

(2) The arrangements referred to in the definition of collective investment scheme in paragraph (1)(c) must be such that the participants do not have day to day control of the management of the property of the scheme and the arrangements must satisfy at least one of the following conditions—

(a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;

(b) the property in question is managed as a whole by or on behalf of the operator of the scheme.

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(3) The following are not collective investment schemes—

(a) arrangements operated by a person otherwise than by way of business;

(b) arrangements the purpose of which is the provision of clearing services and which are operated by a person licensed for that purpose by the Commission;

(c) contracts of insurance;

(d) pension schemes;

(e) such other arrangements as may be determined by the Commission.

Custodian and management company of collective investment scheme

99. Subject to the provisions of this Part, no person shall carry on business, or hold himself out as carrying on business, as—

(a) a custodian; or

(b) a management company;

of a collective investment scheme unless that person is licensed to do so by the Commission under this Part.

Custodian of collective investment scheme

100. (1) No person shall carry on business in Anguilla of taking property or assets into custody for safe keeping on behalf of participants of a collective investment scheme, or hold himself out as carrying on that business unless that person is a licensed custodian of a collective investment scheme.

(2) No custodian of a collective investment scheme shall operate other than in accordance with a licence granted and with regulations made under this Act.

Grant of custodian of collective investment scheme licence

101. (1) The Commission may grant a custodian of a collective investment scheme licence to a company which applies in the prescribed manner and pays the prescribed fee.

(2) A licence granted under this section may be granted subject to such terms and conditions as the Commission considers necessary for the protection of participants.

(3) The Commission shall refuse to grant a custodian of a collective investment scheme a licence unless the applicant is a company and—

(a) is a bank or financial institution licensed under the Banking Act[‡‡];

(b) is a trust company which is a subsidiary of such bank or financial institution;

(c) is a company other than a company referred to in paragraph (b) that has the prescribed minimum paid-up capital and the Commission is satisfied that the applicant has the

‡‡ Banking Act, 2015 (Act 6/2015) *repealed* the Banking Act, R.S.A. c. B11.

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experience necessary to enable it to conduct its business and to carry out its obligations as a custodian of a collective investment scheme;

(d) complies with the insurance requirement under section 79;

(e) satisfies the Commission that it is a fit and proper person to be licensed as a custodian of a collective investment scheme;

(f) will be able, if licensed, to comply with the financial resources regulations made under section 75 that may apply to the applicant; or

(g) has specified premises under section 102(1)(b) that are suitable for keeping records or other documents.

(4) In considering whether an applicant is a fit and proper person to be licensed as a custodian of a collective investment scheme, the Commission—

(a) shall have regard to, in respect of each of its directors and officers—

(i) his financial status,

(ii) his educational or other qualifications or experience having regard to the nature of his application,

(iii) his ability to perform his proposed function efficiently, honestly and fairly, and

(iv) his reputation, character, financial integrity and reliability; and

(b) may take into account any matter relating to—

(i) any person who is or is to be employed by, or associated with, the applicant for the purposes of the business to which the application relates,

(ii) any person who will be acting as a representative in relation to such business, and

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

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

(6) In subparagraph (4)(b)(iii), "substantial shareholder", in relation to a company, means a person who has an interest in shares in the company—

(a) the stated value of which is equal to or more than 5% of the issued share capital of the company; or

(b) which entitles the person to exercise or control the exercise of 5% or more of the voting power at a general meeting of the company.

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(7) The Commission—

(a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and

(b) if it refuses an application for a licence, shall notify the applicant in writing of the refusal and the reasons for it.

Application for custodian of collective investment scheme licence

102. (1) An application for a custodian of a collective investment scheme licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall—

(a) give the Commission information it reasonably requires—

(i) about the services which the applicant will hold himself out as being able to provide if the application is approved,

(ii) about the business which the applicant proposes to carry on and to which the application relates, and about any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business, and

(iii) to enable the Commission to consider the matters referred to in section 101(3) and (4); and

(b) specify the location of all premises at which the records or other documents of the business for which the application is made are to be kept.

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

Managing property of a collective investment scheme

103. (1) No person shall carry on business in Anguilla of managing the property or assets of a collective investment scheme, or hold itself out as carrying on that business, unless that person is a licensed management company of a collective investment scheme.

(2) No management company shall operate other than in accordance with a licence granted and regulations made under this Act.

Grant of management company of a collective investment scheme licence

104. (1) The Commission may grant a management company of a collective investment scheme licence to a company which applies in the prescribed manner and pays the prescribed fee.

(2) A licence granted under this section may be granted on such terms and conditions as the Commission considers necessary for the protection of participants.

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(3) The Commission shall refuse to grant a management company of a collective investment scheme licence unless the applicant is a company which—

(a) has the prescribed minimum paid-up capital and the Commission is satisfied that the applicant has the experience necessary to enable it to conduct its business and to carry out its duties as a management company of a collective investment scheme;

(b) complies with the insurance requirement under section 79;

(c) satisfies the Commission that it is a fit and proper person to be licensed as a management company of a collective investment scheme;

(d) will be able, if licensed, to comply with the financial resources regulations made under section 75 that may apply to it; and

(e) has specified premises under section 105(1)(b) that are suitable for keeping records or other documents.

(4) In considering whether an applicant is a fit and proper person to be licensed as a management company of a collective investment scheme, the Commission—

(a) shall have regard to, in respect of each of its directors and officers—

(i) his financial status,

(ii) his educational or other qualifications or experience having regard to the nature of his application,

(iii) his ability to perform his proposed function efficiently, honestly and fairly, and

(iv) his reputation, character, financial integrity and reliability; and

(b) may take into account any matter relating to—

(i) any person who is or is to be employed by, or associated with, the applicant for the purposes of the business to which the application relates,

(ii) any person who will be acting as a representative in relation to such business, and

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

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

(6) In subparagraph (4)(b)(iii), "substantial shareholder", in relation to a company, means a person who has an interest in shares in the company—

(a) the stated value of which is equal to or more than 5% of the issued share capital of the company; or

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(b) which entitles the person to exercise or control the exercise of 5% or more of the voting power at a general meeting of the company.

(7) The Commission—

(a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and

(b) if it refuses an application for a licence, shall notify the applicant in writing of the refusal and the reasons for it.

Application for management company of a collective investment scheme licence

105. (1) An application for a management company of a collective investment scheme licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall—

(a) give the Commission information it reasonably requires—

(i) about the services which the applicant will hold itself out as being able to provide if the application is approved,

(ii) about the business which the applicant proposes to carry on and to which the application relates, and about any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business, and

(iii) to enable the Commission to consider the matters referred to in section 104(3) and (4); and

(b) specify the location of all premises at which the records or other documents of the business for which the application is made are to be kept.

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

Restrictions on promotion

106. (1) No person shall—

(a) issue or cause to be issued any advertisement inviting persons to become or to offer to become participants in a collective investment scheme, or containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in a scheme; or

(b) advise or procure any person to become or to offer to become a participant in a scheme;

unless the collective investment scheme is authorised by the Commission under this Act and in accordance with regulations made under this Act.

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

(a) in the case an individual, to a fine of $100,000 or to imprisonment of 2 years or to both;

(b) in the case of company, to a fine of $200,000;

and if the offence is a continuing offence, the individual or company is liable to a further fine of $1,000 for every day that the offence continues after the conviction.

Authorisation of schemes by Commission

107. (1) If the scheme complies with regulations made under section 108, the Commission may, on an application being made in the prescribed form and manner and after being furnished with all such information as it may require and the prescribed fee, authorise a collective investment scheme for the purposes of this Act.

(2) An authorisation under subsection (1) may be granted subject to such terms and conditions as the Commission considers to be necessary for the protection of investors.

(3) The Commission shall inform the applicant of its decision on the application not later than 90 days after the date on which the application was received or, if within that period the Commission has required the applicant to furnish further information in connection with the application, from the date on which that information is furnished.

Regulation of collective investment schemes

108. (1) The Minister may, on the recommendation of the Commission, make regulations with regard to—

(a) the criteria for and conditions of the authorisation of collective investment schemes;

(b) the constitution and management of collective investment schemes, the powers and duties of the manager and custodian of a scheme and the rights and obligations of the participants in a scheme;

(c) the promotion, marketing and distribution of units;

(d) the issue and redemption of units;

(e) the provision of management or custodial services, or any other services for or in connection with a scheme;

(f) restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;

(g) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;

(h) requiring the preparation of periodical reports with respect to the scheme and the submission of those reports to the participants and to the Commission; and

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(i) any fee, remuneration or reward payable or receivable for any services referred to in paragraph (e).

(2) Regulations made under this section may make provisions as to different classes of collective investment schemes and may make different provisions in relation to schemes falling within each class so specified.

Revocation of authorisation

109. (1) The Commission may revoke its authorisation of a collective investment scheme if it determines—

(a) that any of the requirements for the granting of authorisation is no longer satisfied;

(b) that it is undesirable in the interests of the participants or potential participants that the scheme should continue to be authorised; or

(c) without prejudice to paragraph (b), that the manager or custodian of the scheme has contravened any provision of this Act or, in purported compliance with any such provision, has furnished the Commission with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act.

(2) For the purposes of paragraph (1)(b), the Commission may take into account any matter relating to the scheme, the manager or custodian, a director or controller of the manager or custodian or any person employed by or associated with the manager or custodian in connection with the scheme.

Winding up

110. (1) Where the Commission revokes its authorisation of a collective scheme under section 109, the Commission may apply to the High Court to appoint a person to wind up the scheme.

(2) On the application under this section the High Court may make such order as it sees fit.

(3) The Commission shall give written notice of the making of an application under this section to the manager and custodian and shall take such steps as it considers appropriate for bringing the making of the application to the attention of the participants.

PART 10

INSIDER DEALING AND OTHER MARKET ABUSES

Insiders

111. (1) For the purposes of this Part, an individual has information as an insider if—

(a) it is inside information, and that individual knows that it is inside information; and

(b) that individual has the information, and knows that he or she has the information, from an inside source.

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(2) For the purposes of subsection (1), an individual has information from an inside source if—

(a) the individual has it through—

(i) being a director, employee or shareholder of an issuer of securities, or

(ii) having access to the information by virtue of that individual's employment, office or profession; or

(b) the direct or indirect source of the individual's information is a person referred to in paragraph (a).

Inside information

112. For the purposes of this Part—

(a) "inside information" means information which—

(i) relates to particular securities or to a particular issuer of securities and not to securities generally or to issuers of securities generally,

(ii) is specific or precise,

(iii) has not been made public, or

(iv) if it were made public would be likely to have a significant effect on the price of any securities; and

(b) securities are "price-affected securities", in relation to inside information, if the information would, if made public, be likely to have a significant effect on the price of the securities.

Information "made public"

113. (1) For the purposes of section 112, "made public", in relation to information, shall be construed in accordance with the following provisions of this section, but these provisions shall not be exhaustive as to the meaning of that expression.

(2) Information is made public if—

(a) it is published in accordance with the rules of a securities exchange for the purpose of informing investors and their professional advisers;

(b) it is contained in records which by virtue of any enactment are open to inspection by the public;

(c) it can be readily acquired by those likely to deal in any securities—

(i) to which the information relates, or

(ii) of an issuer to which the information relates; or

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(d) it is derived from information which has been made public.

Offence of insider dealing

114. (1) A person who has information as an insider commits the offence of insider dealing if that person—

(a) deals in securities that are price-affected in relation to that information;

(b) encourages another person to deal in securities that are (whether or not that other person knows it) price-affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place; or

(c) discloses the information, otherwise than in the proper performance of the functions of that individual's employment, office or profession, to another person.

(2) A person who commits an offence under subsection (1) is liable on summary conviction—

(a) to a fine of $500,000 or to imprisonment for 5 years or to both; and

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

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

(a) liable to compensate any person for any direct loss incurred by that person as a result of the insider dealing unless that other person was a party to the insider dealing; and

(b) accountable to the company for any direct benefit or advantage received or receivable as a result of the insider dealing.

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

False trading

115. (1) A person commits an offence if that person, in Anguilla or elsewhere, creates, or does anything that is intended or knows that it is likely to create, a false or misleading appearance—

(a) of active trading in securities on a licensed securities exchange; or

(b) in the price of securities traded on a licensed securities exchange.

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

(a) carries out, either directly or indirectly, a sale or purchase of securities that does not involve a change in the beneficial ownership of them, or offers to do so;

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(b) offers to sell securities at a price that is substantially the same as the price at which that person has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to buy the same or substantially the same, number of them; or

(c) offers to buy the securities at a price that is substantially the same as the price at which that person has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same, number of them.

Price rigging

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

Market manipulation

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

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

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

(c) stabilises, or is likely to stabilise, their market price with the intention of inducing other persons to sell or purchase, or refrain from selling or purchasing, securities issued by the same company or by a related company.

Use of deceptive statements as inducements

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

(a) by making or publishing any statement, promise or forecast that that person knows to be misleading, false or deceptive;

(b) by any dishonest concealment of material facts; or

(c) by recklessly making or publishing any statement, promise or forecast that is false or misleading.

Fraudulent transactions

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

(a) employs any device, scheme or artifice to defraud that other person; or

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

False or misleading statement inducing securities transactions

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

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

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

Penalties for offences under sections 115 to 120

121. A person who commits an offence under section 115, 116, 117, 118, 119 or 120 is liable on summary conviction—

(a) in the case of an individual, to a fine of $200,000 or to imprisonment for 3 years or to both;

(b) in the case of a company, to a fine of $400,000.

Liability to pay damages

122. (1) A person who is convicted of an offence under section 115, 116, 117, 118, 119 or 120 shall, in addition to criminal liability for the offence, be liable, at the suit of any person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the act or transaction which comprises or is the subject of the offence, to an action for damages in respect of the loss concerned.

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

PART 11

DISCLOSURE OF SHAREHOLDINGS OF DIRECTORS AND SUBSTANTIAL SHAREHOLDERS

Interpretation

123. In this Part—

"associated person" shall be construed in accordance with section 90(2);

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"director" includes—

(a) a person occupying the position of a director (by whatever name called); and

(b) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors are accustomed to act;

"interest in securities" shall be construed in accordance with section 90;

"securities" means securities which are listed on a securities exchange licensed by the Commission;

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

(a) the stated value of which is more than 5% of the issued share capital of the issuer; or

(b) which entitles the person to exercise or control the exercise of more than 5% of the voting power at a general meeting of the issuer.

Notification of interests of directors and substantial shareholders

124. Where, on 8th November 2001, a director or substantial shareholder of an issuer is interested in securities of that issuer or another issuer that is an associated person, he shall notify the issuer within 14 days in writing of his interest in such securities giving particulars of the number of securities of every class.

Change in director's interest in securities

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

(a) any event in consequence of which he becomes or ceases to be interested in securities of the issuer or of an associated person;

(b) the entering into by him of a contract to buy or sell any such securities;

(c) the assignment by him of a right granted to him or to any member of his family by the issuer to subscribe for securities of the issuer;

(d) the grant to him by an associated company of the issuer to subscribe for securities of that associated person, the exercise or the assignment of such a right;

stating the number or amount and class of securities involved.

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

(a) the date on which the right is granted;

(b) the period during which or the time at which the right is exercisable;

(c) the consideration for the grant; and

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(d) in the case of the exercise of the right, the number of securities in respect of which it is exercised, and the name in which such securities are registered.

Obligation to notify acquisition or change in substantial shareholding

126. Any person who—

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

(b) being a shareholder of an issuer, acquires an interest in further shares so as to become a substantial shareholder;

(c) being a substantial shareholder of an issuer—

(i) acquires an interest in additional shares of the issuer,

(ii) reduces his number of shares of the issuer but remains a substantial shareholder, or

(iii) ceases to be a substantial shareholder of the issuer;

shall notify the issuer in writing of the occurrence of the event resulting in his change of interest within 14 days of the date on which it occurred, and the number of shares in which he has become interested or ceased to be interested.

Extension to spouses and children

127. (1) For the purposes of sections 124, 125 and 126, an interest in securities of the spouse and minor child (such child not being a director) of a director or substantial shareholder of an issuer shall be treated as being the substantial shareholder's interest, as the case may be.

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

Register of interests of directors and substantial shareholders

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

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

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

Notification to securities exchange and Commission

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

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

Offences

130. A person who contravenes any provision of this Part, or who—

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

(b) recklessly makes a statement which is false; or

(c) fails to supply any particulars which that person is required to supply;

commits an offence.

PART 12

INFORMATION, INSPECTION AND INVESTIGATION

Power of Commission to call for information

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

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

Right to exchange information

132. (1) The Commission, a securities exchange, a clearing agency and other regulatory bodies shall have the right to supply each other with information about their securities business and—

(a) in the case of a securities exchange, information on the securities business of any of its members; and

(b) in the case of a clearing agency, information on the securities business of any of its participants.

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

(a) in the case of a securities exchange, the securities business of any of its members; and

(b) in the case of a clearing agency, the securities business of any of its participants.

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

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Information relating to transactions

133. (1) The Commission or a person authorised in writing by the Commission for the purpose of this section may require—

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

(b) a person whom the Commission or the person authorised has reasonable grounds to believe holds securities;

(c) a person whom the Commission or the person authorised has reasonable grounds to believe has a beneficial interest in securities;

(d) a person whom the Commission has reasonable grounds to believe has acquired or disposed of securities directly or through a nominee, trustee or agent, and whether as beneficial owner, nominee, trustee, agent or otherwise;

(e) a licensee;

to disclose to the Commission or the person authorised by the Commission the information referred to in subsection (2) in relation to an acquisition, disposal or holding of securities.

(2) The information that may be required under subsection (1) is—

(a) the name, address, telephone number and occupation of the person, or other particulars that are capable of establishing the identity of the person, from, to or through whom, or on whose behalf, the securities were acquired, disposed of or were or are held;

(b) the quantity of securities so acquired, disposed of or held; and

(c) the instructions given to or by the person referred to in paragraph (a) in relation to the securities.

(3) A person commits an offence if that person—

(a) without reasonable excuse fails to disclose to the Commission or the authorised person information required to be disclosed under this section and which is in his possession or under his control; or

(b) furnishes to the Commission or the authorised person in purported compliance with the requirement of disclosure under this section information which the person knows to be false or misleading in a material particular, where the Commission or an authorised person requires information under subsection (1).

Power of Commission to inspect

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

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(2) The Commission may appoint any person (the "authorised person") to exercise the powers of the Commission under this section.

(3) In the exercise of his powers under this section, an authorised person may—

(a) enter the licensee's premises notified to the Commission under sections 48(1)(c), 51(1)(c), 54(1)(c), 57(1)(b), 102(1)(b) or 105(1)(b), as the case may be;

(b) require the licensee, or any other person whom he reasonably believes is in possession of or has under his control any record or other document referred to in subsection (1), to produce it to him;

(c) inspect and make copies, or take extracts from, and where necessary in an appropriate case to take possession of, such records or other documents.

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

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

Power of Commission to investigate

135. (1) Where the Commission has reasonable grounds to believe that—

(a) an offence under this Act or regulations made under this Act has been committed;

(b) a person may have committed a breach of trust, fraud or misconduct—

(i) in dealing in securities,

(ii) in the management of investment in securities, or

(iii) in giving advice as regards the acquisition, disposal, purchase or sale, or otherwise investing in, any security; or

(c) the manner in which a person has engaged or is engaging in any of the activities referred to in paragraph (b) is not in the interest of the investing public or the public interest;

the Commission may in writing appoint a person (the "investigator") to investigate any matter referred to in paragraphs (a) to (c) and to report the results of the investigation to the Commission.

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

(a) produce to the investigator, within such time and at such place as he may reasonably require, any document specified by the investigator which is, or may be, relevant to the investigation, and which is in his possession or under his control;

(b) if so required by the investigator, give to him such explanation or further particulars in respect of a document produced in compliance with a requirement under paragraph (a) as the investigator shall specify; and

(c) attend before the investigator at such time and place as the investigator may reasonably require in writing, and answer truthfully and to the best of his ability under oath (which oath the investigator is hereby empowered to administer) such questions relating to the matters under investigation as the investigator may put to him.

(3) A person commits an offence if, without reasonable excuse, that person—

(a) fails to produce a record or other document which that person is required to produce under paragraph (2)(a);

(b) fails to give an explanation or particulars required under paragraph (2)(b);

(c) fails to comply with a requirement under paragraph (2)(c) to attend before the investigator; or

(d) fails to answer a question put to him by the investigator under paragraph (2)(c), or in answering the question says anything which that person knows to be false or misleading in a material particular or who in so answering recklessly makes a false statement.

Instituting disciplinary proceedings

136. Where it appears to the Commission, in the light of an inspection under section 134 or an investigation under section 135, that—

(a) there are circumstances suggesting that a licensee may not be a fit and proper person to continue to hold a licence;

(b) there has been a contravention by a licensee of this Act or any regulations made under this Act; or

(c) it is desirable for the protection of investors,

and the Commission decides that the matter should be the subject of disciplinary proceedings, the Commission shall refer the matter to the Disciplinary Committee for a determination.

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Power of Commission to require production of records and documents concerning listed companies

137. (1) Where it appears to the Commission that there are circumstances suggesting that—

(a) the business of a company, which is or was at the relevant time listed, has been or is being conducted—

(i) with intent to defraud its creditors, or the creditors of another person,

(ii) for a fraudulent or unlawful purpose, or

(iii) in a manner oppressive to any of its members;

(b) a company was formed for a fraudulent or unlawful purpose;

(c) the persons concerned with the formation of a company or the management of its affairs have in relation to the formation or management been guilty of fraud, misfeasance or other misconduct towards it or its members; or

(d) the members of a company have not been given all the information with respect to its affairs that they might reasonably expect;

the Commission may give directions to—

(e) the company;

(f) a subsidiary of the company;

(g) a company that is substantially under the control of the same person as is the company;

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

(2) The Commission may, when acting under subsection (1), authorise a person, on producing (if required to do so) evidence of his authority, to require a company referred to in subsection (1) to produce to him records and documents specified by him.

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

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

(a) if the records and documents are produced—

(i) to take copies of them or extracts from them, and

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(ii) to require that person, or any other person who is a present or past officer of the company, or is or was at any time employed by the company, to provide an explanation of any of the records or documents; or

(b) if the records and documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

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

Remedy in cases of unfair prejudice by listed companies

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

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

(a) make an order restraining the carrying out of the act or conduct;

(b) order that the company shall bring in its name the proceedings the High Court thinks fit against the persons, on the terms the High Court orders;

(c) appoint a receiver or manager of the whole or a part of the company's property or business and may specify the powers and duties of the receiver or manager and fix his remuneration;

(d) make any other order it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

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

Destruction of documents

139. A person who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any document, which he knows or ought to know is relevant to an inspection under section 134 or an investigation under section 135, commits an offence and is liable on summary conviction—

(a) in the case of any individual, to a fine of $50,000 or to imprisonment for 1 year or to both; and

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(b) in the case of a company, to a fine of $100,000.

Establishment of Disciplinary Committee

140. (1) There is hereby established, for the purposes of this Act, a Disciplinary Committee.

(2) Subject to subsection (4), the Disciplinary Committee shall consist of 5 members appointed by the Monetary Council as follows—

(a) one member with at least 10 years standing as an attorney-at-law who shall be the Chairman of the Committee, selected from persons nominated by the OECS Bar Association;

(b) four other members with recognised standing and experience in law, securities, accounting, banking, economics, commerce and industry or finance comprising—

(i) one member selected from among persons nominated by Stock Exchanges, and

(ii) three members selected from among persons nominated by the Chambers of Industry and Commerce, the Institutes of Chartered Accountants or from such other relevant business or professional bodies of the territories of the Participating Governments.

(3) The members of the Disciplinary Committee shall hold office for a period of 3 years but are eligible for re-appointment.

(4) No member or staff of the Commission shall be appointed to be a member of the Disciplinary Committee.

(5) The office of a member of the Disciplinary Committee is vacated—

(a) upon the death of the member;

(b) if the member is adjudged bankrupt;

(c) if the member is absent from 3 consecutive meetings of the Disciplinary Committee without reasonable excuse or the permission of the Disciplinary Committee;

(d) if the member is certified by a Medical Board or Tribunal or declared by a court of competent jurisdiction to be mentally or physically incapable of performing the duties of a member of the Disciplinary Committee;

(e) if the member is convicted of fraud or any other offence involving dishonesty;

(f) at any time by the member resigning from office, by letter addressed and sent to the Chairperson of the Monetary Council and copied to the Secretary of the Commission.

(6) The Disciplinary Committee may act notwithstanding a vacancy among its members or any disability affecting any member.

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(7) The Monetary Council may, by instrument in writing, revoke the appointment of any member of the Disciplinary Committee if the Monetary Council considers such revocation to be desirable for the effective performance by the Disciplinary Committee of its functions.

(Act 10/2005, s.3)

Jurisdiction of Disciplinary Committee

141. (1) The Disciplinary Committee shall hear and determine disciplinary proceedings against a licensee referred to it by the Commission under section 136.

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

(a) issue a private warning or reprimand;

(b) issue a notice of public censure;

(c) issue an order requiring the licensee to cease and desist from the activity or non-activity causing the licensee to be in contravention;

(d) issue an order debarring the licensee from carrying on securities business whilst the contravention subsists; or

(e) recommend to the Commission the revocation of the licence issued to the licensee.

(3) The procedure and related matters concerning the exercise of the jurisdiction of the Disciplinary Committee shall be as prescribed.

(Act 10/2005, s.4)

Disciplinary offences

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

PART 13

TAKEOVERS

Takeover offers

143. (1) In this Part, a "takeover offer" means an offer to acquire by or on behalf of a company or individual (the "offeror")—

(a) all the shares, or all the shares of any class, in a company (the "offeree company") other than shares which at the date of the offer are already held by the offeror; or

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(b) such shares in the offeree company which will result in the offeror acquiring effective control of the offeree company.

(2) For the purposes of subsection (1), "acquiring effective control" means the acquiring of shares in an offeree company which (together with shares, if any, already held by the offeror or by any other person that is deemed by virtue of section 144 to be related to the offeror) carry the right to exercise, or control the exercise of, more than 50% of the rights attached to the voting shares of the offeree company.

When companies deemed to be related

144. Where a company—

(a) is the holding company of another company;

(b) is the subsidiary of another company; or

(c) is a subsidiary of the holding company of another company;

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

Conduct of takeovers

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

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

PART 14

SELF-REGULATORY ORGANISATIONS

Licensing requirement

146. (1) No person shall carry on business as a securities exchange or clearing agency, or carry on activities as an association of securities companies or investment advisers, except under and in accordance with a self-regulatory organisation licence granted by the Commission under this Part.

(2) An application under subsection (1) shall be made in the form prescribed by the Commission.

(3) The Eastern Caribbean Securities Exchange Limited and the Eastern Caribbean Central Securities Depository Limited are deemed to be licensed under this Part as self-regulatory organisations.

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Grant of self-regulatory organisation licence

147. Upon receipt of an application duly made under section 146, the Commission may grant a licence if it is satisfied that the applicant—

(a) proposes to engage in the securities business;

(b) is a company;

(c) is incorporated in Anguilla or incorporated in any other State and registered in Anguilla; and

(d) has a body of rules for the governance of its members which rules comply with the requirements of this Part and are in all respects acceptable to the Commission.

Required rules

148. (1) The rules of an applicant for a self-regulatory organisation licence shall contain provisions—

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

(b) relating to the discipline of a member or employee of a member who contravenes its rules or this Act or regulations made under this Act and, without limiting the general effect of the foregoing, may provide for censure, fine, suspension, expulsion, limitation of activities, functions or operations, suspension of or exclusion from employment;

(c) specifying the procedure for disciplinary proceedings; and

(d) for such other matters as may be prescribed.

(2) The rules of an applicant for licensing as a self-regulatory organisation shall contain provisions designed to prevent deceptive and manipulative acts and practices and to promote fair trading practices and to facilitate an efficient market.

(3) The rules of an applicant for licensing a clearing agency as a self-regulatory organisation shall contain provisions designed—

(a) to develop and operate a prompt and accurate clearance and settlement system; and

(b) to safeguard money and securities in its custody or under its control or for which it is responsible.

(4) The rules of an applicant—

(a) shall not permit unfair discrimination among persons who use its facilities;

(b) shall not restrain competition to an extent not necessary to achieve the objectives specified in subsections (1), (2) and (3).

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Application of other sections to this Part

149. Sections 12 and 16 shall apply *mutatis mutandis* to this Part.

Appointment of auditor

150. (1) A self-regulatory organisation shall, with the approval of the Commission, appoint auditors.

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

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

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

(3) A person shall not be qualified for appointment under subsection (1) or (2) unless he is an accountant.

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

Keeping and inspection of records

151. (1) A self-regulatory organisation shall—

(a) make and keep such records in such form and for such periods as the Commission may determine; and

(b) file with the Commission prescribed reports in the prescribed form.

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

(a) inspect the records of a self-regulatory organisation and to examine the financial affairs of that organisation or any of its members;

(b) prepare such financial or other reports as the Commission requires.

(3) A self-regulatory organisation shall—

(a) produce and provide a person authorised by the Commission under subsection (2) with a copy of any record referred to in subsection (1) or any other record that he reasonably requests; and

(b) answer any question he asks concerning those records.

Sanctions

152. (1) Where a self-regulatory organisation—

(a) contravenes its rules, this Act or regulations made under this Act;

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(b) is unable to comply with its rules, this Act or regulations made under this Act; or

(c) fails or is unable to enforce its rules, any provision of this Act or of regulations made under this Act that it is required to administer or enforce, or fails to comply with an order or direction of the Commission;

the Commission may make an order—

(d) censuring the organisation;

(e) limiting its activities, functions or operations; or

(f) suspending or revoking its licence.

(2) Where a director or officer of a self-regulatory organisation contravenes the rules of the organisation or the provisions of this Act or a regulation made under this Act, the Commission may direct the organisation to censure him or suspend or remove him from office or employment with the organisation.

Disputes between member companies

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

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

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

(4) Where the Commission adjudicates in a matter referred to it under subsection (3), the decision of the Commission shall be final.

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

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PART 15

UNCERTIFICATED SECURITIES

Transfer of uncertificated securities

154. (1) Notwithstanding the provisions of the Companies Act[§§], the ownership of or rights in corporate securities which are listed or proposed to be listed may, subject to the provisions of this Part, be evidenced and transferred without a written instrument.

(Act 10/2005, s.5)

(2) The Minister may, on the recommendation of the Commission, make regulations—

(a) providing for procedures for recording and transferring title to securities;

(b) providing for the regulation of those procedures and the persons responsible for or involved in their operation;

(c) containing such safeguards as appear to the Minister appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented;

(d) providing for the transmission of title to securities by operation of law;

(e) providing for recording liens held by companies pursuant to their articles of association to be recorded and procedures in respect thereof;

(f) providing for recording of charges and transfer of such charges in respect of securities and the procedures in respect thereof; and

(Act 10/2005, s.5)

(g) including such supplementary, incidental and transitional provisions as appear to the Minister to be necessary or expedient.

(Act 10/2005, s.5)

(3) Regulations may make provision with respect to the persons responsible for the operation of the new procedures—

(a) as to the consequences of their insolvency or incapacity; and

(b) as to the transfer from them to other persons of their functions in relation to the new procedures.

(4) Regulations may make different provisions for different cases.

[§§] Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

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PART 16

LISTING AND TRADING FOREIGN SECURITIES, LICENSING AND EXCHANGE MEMBERSHIP OF FOREIGN MARKET PARTICIPANTS

Listing and trading foreign securities

155. The securities of a foreign company or a foreign government may be listed and traded on a securities exchange licensed by the Commission as provided in this Part.

(Act 10/2005, s.6)

Application of other Parts

156. Except as expressly exempted or modified by the provisions of this Part, the provisions of all other Parts of this Act and all Regulations made under this Act shall apply *mutatis mutandis* to the listing and trading of foreign securities.

(Act 10/2005, s.6)

Interpretation

157. In this Part—

"foreign company" includes a company, limited partnerships, unit trust or other business entity, which is incorporated or otherwise established under the laws of a jurisdiction other than a Member territory;

"foreign custodian" means a custodian incorporated in and governed by the laws of a country other than a Member territory;

"foreign government" means a government or political subdivision of a government other than one of a Member territory;

"foreign individual" means any individual who is a citizen of, resident of, or belonger to any country other than a Member territory;

"foreign investment adviser" means an investment adviser incorporated in and governed by the laws of a country other than a Member territory;

"foreign securities exchange" means a licensed securities exchange, incorporated in and governed by the laws of a country other than a Member territory;

"foreign securities registry" includes a share registry incorporated in and governed by the laws of a country other than a Member territory;

"foreign security" means a security issued by a foreign company or foreign government;

"Member territory" has the meaning assigned to it in the Agreement.

(Act 10/2005, s.6)

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Approval of the Commission required

158. (1) A securities exchange may list or trade foreign securities with the approval of the Commission in particular cases or classes of cases.

(2) Part 4 of this Act shall apply to a foreign broker dealer or limited service broker carrying on the business of dealing in securities pursuant to subsection (3).

(3) Subject to subsection (5), a foreign broker dealer or limited service broker who intends to carry on business in Anguilla dealing in securities, or who holds himself out as carrying on that business must be licensed by the Commission pursuant to Part 4 of this Act.

(4) A foreign broker dealer or limited service broker licensed by a foreign securities regulatory commission seeking to trade securities on a securities exchange licensed by the Commission may, upon registration with the Commission, become a member of a licensed securities exchange, if that foreign broker dealer or limited service broker—

(a) meets the securities exchange's requirements for membership as set out in its rules; and

(b) trades securities on its own account or on behalf of foreign persons.

(5) The Commission may grant an exemption from the requirements of Part 4 of this Act to a foreign broker dealer or limited service broker who registers with the Commission pursuant to subsection (4).

(6) A foreign broker dealer or limited service broker carrying on the business of dealing in securities in Anguilla shall have an agent resident in Anguilla.

(7) A foreign investment adviser licensed by a foreign securities regulatory commission must be licensed as an investment adviser under sections 53 and 54, if and only if the foreign investment adviser conducts business or holds himself out as conducting business in a Member territory.

(8) A principal of a foreign broker dealer, or limited service broker licensed by a foreign securities regulatory commission, must be licensed as a principal under sections 59 and 60, if and only if such principal conducts business or holds himself out as conducting business in a Member territory.

(9) A representative of a foreign broker dealer or limited service broker licensed by a foreign securities regulatory commission, must be licensed as a representative under sections 61, 62 and 63, if and only if he conducts business or holds himself out as conducting business in a Member territory.

(10) The term "conducting business or holds himself out as conducting business" as used in subsections (7), (8) and (9) shall include but not be limited to—

(a) use of the telephone, telegraph, mail, Internet, e-mail or any other means to communicate with investors or potential investors located in a Member territory, whether on a regular or sporadic basis;

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(b) visiting investors or potential investors in a Member territory, whether singly or in groups, to communicate with them about an investment in securities, whether on a regular or sporadic basis;

(c) registration as a principal or representative with a securities exchange in connection with a foreign broker dealer or limited service broker's membership in a securities exchange; or

(d) engaging in any other activity or combination of activities described in—

(i) section 46 in the case of foreign broker dealers or limited service brokers, or

(ii) section 52 in the case of foreign investment advisers, if any part of the activity or activities takes place in a Member territory or is designed or intended to communicate with the persons present in a Member territory.

(11) A person is subject to the requirements of subsections (7), (8) and (9) if the person participates in any of the activities referred to in subsection (10) even if he is not physically present in a Member territory when he participates in the activity.

(12) The Commission may license a foreign company as a broker dealer, limited service broker, or investment adviser in particular cases or classes of cases.

(Act 10/2005, s.6)

Public offer

159. In determining whether or not a public offer of foreign securities has been made in a Member territory, or whether the requirements of this Act relating to public offers apply in a particular case, the listing or trading of foreign securities on a securities exchange shall not be taken into account.

(Act 10/2005, s.6)

Registration with the Commission

160. (1) The listing and trading of foreign securities on a securities exchange pursuant to this Part shall not, either by itself or in conjunction with other activities by a person, require the issuer of the foreign securities to register with the Commission under section 96.

(2) Subsection (1) shall not be interpreted to exempt issuers and offerors who are otherwise required to register with the Commission from the registration requirements of section 96.

(Act 10/2005, s.6)

Insider dealing and other market abuses

161. The provisions of Part 10 of this Act shall not apply to the conduct of a foreign company occurring on a foreign securities exchange or otherwise occurring in a foreign jurisdiction, unless the Commission determines on consultation with the securities exchange where the security of the foreign company is listed, that such conduct has a significant impact on the market in Anguilla.

(Act 10/2005, s.6)

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Disclosure of shareholding of directors and substantial shareholders

162. (1) Subject to the provisions of subsection (2), the provisions of Part 11 of this Act shall not apply to foreign securities listed or traded on a securities exchange.

(2) If the Commission determines, after an investigation, that the law of a foreign issuer's jurisdiction of incorporation, or other laws that are applicable to the conduct of the foreign issuer, its directors and substantial shareholders are not adequate to protect the interests of the investing public in the Member territory, the Commission may require the issuer of foreign securities listed on a securities exchange and its directors and substantial shareholders to comply with Part 11 of this Act.

(Act 10/2005, s.6)

Application of Part 12

163. The provisions of Part 12 of this Act shall apply—

(a) in the case of foreign securities listed or traded on a licensed securities exchange, only to the acts of the issuer within the Member territory or to transactions effected on or information provided to, that securities exchange; and

(b) in the case of a foreign broker dealer, limited service broker, investment adviser or the principal or representative of such a person, only to acts of the licensee within the Member territory or to transactions effected on, or information provided to, a securities exchange.

(Act 10/2005, s.6)

Transfer and ownership of foreign securities

164. Notwithstanding any other provision of any law to the contrary—

(a) the exclusive method of transferring the ownership of foreign securities listed and traded on a securities exchange shall be a transfer made in accordance with the rules and procedures of a clearing agency licensed under section 24 where the foreign securities are transferred; and

(b) the exclusive method of determining the ownership of foreign securities listed and traded on a securities exchange shall be the records of a securities registry licensed under section 41 where the foreign securities are registered.

(Act 10/2005, s.6)

Custodians and share registries for foreign securities

165. (1) Foreign securities listed and traded on a licensed securities exchange may be held by a foreign custodian and registered with a foreign securities registry pursuant to a written contract between the foreign custodian or foreign securities registry and a custodian licensed under section 56 or a securities registry licensed under section 41.

(2) A securities exchange may, by rules, determine the form and content of the contracts referred to in subsection (1).

(Act 10/2005, s.6)

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Simplified listing and membership procedures in certain cases

166. (1) A securities exchange may, with the approval of the Commission, adopt rules for expedited and simplified listing procedures for foreign securities that are already listed on a foreign securities exchange if the foreign securities exchange has suitable listing, compliance and regulatory standards and practices.

(2) A securities exchange may, with the approval of the Commission, adopt rules for expedited and simplified membership procedures for foreign broker dealers or foreign limited service brokers that are already subject to regulation in a suitable jurisdiction if that jurisdiction is recognized for the purposes of this Part by the Commission as having suitable standards, compliance practices and regulatory supervision of its broker dealers.

(Act 10/2005, s.6)

PART 17

MISCELLANEOUS

Immunity

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

(Act 10/2005, s.7)

Offences and penalties

168. (1) A person who commits an offence under section 20(3), 39(3), 66(5), 68(2), 76(5), 81(2), 86(4), 87(2), 88(2), 130, 133(3), 134(5), 135(3) or 137(5) is liable on summary conviction—

(a) in the case of an individual, to a fine of $50,000 or to imprisonment for 1 year or to both; and

(b) in the case of a company, to a fine of $100,000;

and if the offence is a continuing offence, the individual or company is liable to a further fine of $1,000 for every day that the offence continues after conviction.

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

(a) in the case of an individual, to a fine of $100,000;

(b) in the case of a company, to a fine of $200,000.

Orders of the High Court

169. (1) Where, on the application of the Commission, it appears to the High Court that a person has contravened this Act or the conditions of any licence, or is about to do an act with respect to dealing in securities that, if done, would be such a contravention, the High Court may, without

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prejudice to any order it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders—

(a) an order restraining a person from acquiring, disposing of, or otherwise dealing with any securities specified in the order;

(b) in relation to a broker dealer, limited service broker, investment adviser or custodian, an order appointing a person to administer its property;

(c) an order declaring the contract, if any, relating to any securities to be void or voidable;

(d) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;

(e) any ancillary order which it considers necessary in consequence of the making of any other order under this section.

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

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

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

Civil action

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

Right of appeal

171. (1) An interested person who is aggrieved by a decision or action of the Commission or of the Disciplinary Committee may appeal to the High Court within 30 days of the decision or action, on the grounds that—

(a) the decision of the Commission or the Disciplinary Committee as the case may be was based on an error of law or a misinterpretation of this Act or the Regulations made under this Act;

(b) the Commission (where it is required by this Act or by general legal principles to observe the rules of natural justice) or the Disciplinary Committee as the case may be misdirected or misconducted itself contrary to the rules of natural justice; or

(c) the decision of the Commission or the Disciplinary Committee as the case may be was against the weight of the evidence.

(2) Within 7 days of the filing of the appeal in the High Court, the appellant must serve written notice of the appeal on the Commission or the Disciplinary Committee as the case may be

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which must be named as the Respondent in the appeal and is entitled to appear and to be heard on the merits of the appeal.

(3) A written notice of appeal (other than in respect of costs only) shall set out each matter or charge relevant to the appeal, the ground or grounds of appeal in relation to each matter or charge and a brief statement of the matters relied on in respect of each ground of appeal.

(4) On hearing the parties to an appeal, the High Court may confirm, reverse or vary the decision or action appealed against and may make an order which the Respondent could have made or it may remit the case to the Respondent for further proceedings subject to any conditions which the High Court thinks fit.

(5) A decision or action that is subject to appeal under this section takes effect immediately but the High Court may grant a stay pending the hearing of the appeal.

(6) An appeal shall lie to the Court of Appeal from any decision of the High Court made pursuant to this section.

(7) For the purposes of subsection (1), "an interested person" means a person having a right, claim, legal share, duty or liability connected with the subject-matter of a decision or action of the Commission or Disciplinary Committee.

(Act 10/2005, s.8)

Winding-up orders

172. If, in the case of a company licensed under this Act, it appears to the Commission that it is necessary for the protection of investors that the company should be wound up under the Companies Act[***], the Commission may present a petition for it to be wound up under that Act on the ground that it is just and equitable that it should be wound up.

Receiving orders

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

Regulations

174. (1) Without limitation to specific provisions in this Act enabling the Minister to make regulations, the Minister may make regulations, on the recommendation of the Commission, for or with respect to—

(a) applications for licences, the issue of licences and incidental matters;

(b) the display of licences and the issue of duplicate licences;

[***] Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

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(c) the qualifications, experience and training required of licensees, the examinations that applicants for licences may be required to take, and the circumstances in which they may be excused from such requirements;

(d) the making of annual or other regular returns to the Commission by licensees;

(e) the conditions subject to which securities may be listed and the circumstances in which dealings in listed securities shall be suspended;

(f) insider dealings and market manipulation;

(g) the particulars to be recorded in relation to accounts to be kept for the purposes of this Act, and the particulars to be recorded in profit and loss accounts and balance sheets;

(h) the information to be contained in auditors' reports required to be filed under this Act;

(i) the remuneration of an auditor appointed, and the costs of an audit carried out, under this Act;

(j) the form and content of advertisements relating to securities business, and may restrict who may issue such advertisements;

(k) the licensing and supervision of clearing agencies and persons providing securities registration, transfer or custodian services;

(l) the authorisation and regulation of self-regulatory organisations;

(m) fees, charges or levies to be paid in respect of matters arising under or provided for or authorised by this Act;

(n) the listing and trading of foreign securities ;

(Act 10/2005, s.9)

(o) the licensing of foreign broker dealers and limited service brokers;

(Act 10/2005, s.9)

(p) the licensing of foreign investment advisers;

(Act 10/2005, s.9)

(q) the licensing of principals and representatives of foreign intermediaries;

(Act 10/2005, s.9)

(r) such matters required under this Act to be prescribed;

(Act 10/2005, s.9)

(s) the better carrying out of the purposes and provisions of this Act;

(Act 10/2005, s.9)

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(t) any supplementary, incidental and transitional provisions as appear to the Minister as necessary or expedient.

(Act 10/2005, s.9)

(2) The regulations may provide that a contravention of any specified provision shall be an offence and may provide financial penalties of—

(a) in the case of an individual, $100,000; and

(b) in the case of a company, $300,000;

and if the offence is a continuing offence, the individual or company is liable to a further fine of $500 for every day that the offence continues after conviction.

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

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

Rules

175. The Commission may make rules for procedural and implementation matters—

(a) where the Act or Regulations provide that they are to be, or may be, prescribed by the Commission; and

(b) for the better carrying out of the purposes and provisions of this Act and any regulations made under this Act.

Forms

176. The Commission may, by notice in the *Gazette*, specify forms that are required to be used for any purpose under this Act.

Guidance notes

177. The Commission may from time to time issue such guidance notes, bulletins, advice or other regulatory statements as it may consider necessary or desirable for the administration of this Act.

International identification numbers

178. The Eastern Caribbean Central Securities Depository Limited is authorised to issue international identification numbers for any securities listed on any securities exchange licensed under this Act.

Citation

179. This Act may be cited as the Securities Act, Revised Statutes of Anguilla, Chapter S13.

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SCHEDULE

EASTERN CARIBBEAN SECURITIES REGULATORY COMMISSION AGREEMENT

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AGREEMENT ESTABLISHING

THE

EASTERN CARIBBEAN SECURITIES REGULATORY COMMISSION

PREAMBLE

An Agreement made on the 24th day of November, 2000 between the Governments of Anguilla, Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines (hereinafter referred to as "the Participating Governments").

WHEREAS it is desired to promote the development of and to provide for the regulation of a regional securities market in the territories of the Participating Governments and to establish the Eastern Caribbean Securities Regulatory Commission (ECSRC) as an independent and autonomous regional regulatory body.

IT IS HEREBY AGREED as follows:

PART I

PRELIMINARY

ARTICLE 1

TITLE

This Agreement may be cited as the Eastern Caribbean Securities Regulatory Commission Agreement, 2000.

ARTICLE 2

INTERPRETATION

In this Agreement—

"the Act" means any Act governing securities;

"Central Bank" means the Eastern Caribbean Central Bank established under the Eastern Caribbean Central Bank Agreement, 1983;

"Eastern Caribbean Central Bank Agreement, 1983" means the Agreement establishing the Eastern Caribbean Central Bank done at Port-of-Spain on the 5th day of July, 1983;

"Commission" means the Eastern Caribbean Securities Regulatory Commission (ECSRC) established under Article 3;

"Commissioner" means a member of the Commission;

"licensee" means a person licensed under the Act;

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"Monetary Council" means the Monetary Council established under Article 7 of the Eastern Caribbean Central Bank Agreement, 1983;

"Member territory" means a territory of a Participating Government;

"Participating Government" means a Government which is a party to this Agreement;

PART II

ESTABLISHMENT, PURPOSES, POWERS AND DUTIES OF THE COMMISSION

ARTICLE 3

ESTABLISHMENT OF COMMISSION

(1) There is hereby established a body to be known as the Eastern Caribbean Securities Regulatory Commission (ECSRC) which shall be a body corporate having perpetual succession.

(2) The establishment of the Commission shall take effect in accordance with the provisions of Article 38.

ARTICLE 4

PURPOSES OF THE COMMISSION

The purposes of the Commission are—

(a) to licence any person engaged in securities business and to monitor and supervise the conduct of such business by a licencee;

(b) to promote investor protection through promotion of the highest standards of professional and other activities within the securities market;

(c) to maintain effective compliance and enforcement programmes supported by adequate statutory powers;

(d) to promote the growth and development of the capital markets.

ARTICLE 5

POWERS OF THE COMMISSION

For the attainment of its purposes the Commission may—

(a) acquire and dispose of property of any description,

(b) make contracts or enter into other agreements,

(c) receive and expend money,

(d) grant licences in accordance with the Act,

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(e) require the payment of fees,

(f) do all such other things as are required or incidental to the attainment of its purposes.

ARTICLE 6

DUTIES OF THE COMMISSION

The duties of the Commission are to—

(a) take all reasonable steps to ensure that any Act to govern securities and any rules or regulations made under such an Act are complied with;

(b) licence, supervise and regulate the activities of securities exchanges, clearing agencies, securities depositories, securities registries and self-regulatory organisations;

(c) licence, supervise and regulate collective investment schemes;

(d) licence and regulate self-regulatory organisations;

(e) set standards of competence for licensees whether by way of examination or otherwise;

(f) approve the rules of securities exchanges, clearing agencies, securities depositories, securities registries and self-regulatory organisations;

(g) monitor and enforce rules for the conduct of business of licensees including suspension and revocation of licenses in accordance with the Act;

(h) promote and encourage high standards of investor protection and integrity among licensees, and to encourage the promulgation by licensees of balanced and informed advice to their customers and to the public generally;

(i) support the operation of an orderly, fair and properly informed securities market;

(j) regulate the manner of trading and the range of securities traded on securities exchanges;

(k) take all reasonable steps to safeguard and protect the interests of investors in securities and to suppress illegal, dishonourable and improper practices in dealings in securities and in providing advice or other services relating to securities;

(l) co-operate with and assist other regulatory authorities that are concerned with securities or with operations of companies;

(m) exercise and perform such other duties as may be conferred or imposed upon it.

ARTICLE 7

PLACE OF OFFICE AND ESTABLISHMENT OF AGENCIES

(1) The Commission shall have its principal office in one of the Member territories as the Council may by majority vote determine.

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(2) The Commission may establish agencies and may appoint agents in any Member territory and elsewhere.

ARTICLE 8

ADDRESS AND SERVICE OF DOCUMENTS

(1) The Commission shall at all times have a fixed address in one of the Member territories for the service of documents on the Commission.

(2) All documents to be served on the Commission may be served by leaving the same at or by sending the same by registered post to the Commission at its fixed address.

(3) The address for service of documents on the Commission shall be published in the Official *Gazette* of the Member territories.

ARTICLE 9

PROTECTION OF PERSONS DEALING WITH THE COMMISSION AND ITS AGENTS

(1) A person who deals with the Commission shall not be affected by any irregularity of procedure in connection with the authorisation of the transaction by a meeting of the Commission or by the non-fulfillment of any condition imposed by this Agreement in connection with the transaction.

(2) A person who deals with another person who is held out by the Commission as having authority to act on the Commission's behalf in connection with any transaction may treat the Commission as bound by the acts of that other person done within the apparent authority of that person even though that person has not been authorised by the Commission to do those acts on its behalf so long as that person has no knowledge whether actual or constructive, that that other person has not been so authorised by the Commission.

ARTICLE 10

CUSTODY AND USE OF COMMON SEAL

(1) The Commission shall have a Common Seal.

(2) The Commission shall provide for the safe custody of the Common Seal of the Commission.

(3) The Common Seal of the Commission shall be affixed to instruments pursuant to a resolution of the Commission and by and in the presence of—

(a) the Chairperson or, in the absence of the Chairperson, the Deputy Chairperson; and

(b) one other Commissioner or the Secretary.

(4) All documents made by the Commission other than those required by law to be under Seal and all decisions of the Commission may be signified under the hand of the Chairperson, the Deputy Chairperson or the Secretary.

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ARTICLE 11

OFFICIAL SEAL

(1) The Commission shall have an Official Seal, which shall be a facsimile of its Common Seal, for use in any Member territory other than where the principal office of the Commission is situated, with the addition on its face of the name of every Member territory where it is to be used.

(2) The Official Seal when duly affixed to a document has the same effect as the Common Seal of the Commission.

(3) The Commission may by writing under its Common Seal, authorise any person appointed for the purpose in a Member territory to affix the Official Seal to any deed or other document to which the Commission is a party in the Member territory.

(4) The person affixing the Official Seal shall certify in writing the date on which and the place at which it is affixed.

PART III

MEMBERS OF THE COMMISSION

ARTICLE 12

COMPOSITION OF COMMISSION

(1) The Commission shall consist of five (5) Commissioners who shall be appointed by the Monetary Council by majority vote.

(2) The appointments made under this article shall comprise the following:

(a) two (2) Commissioners from persons nominated by the Member territories;

(b) two (2) Commissioners from persons nominated by the Chambers of Industry and Commerce, the Institutes of Chartered Accountants and the Bar Associations or from such other relevant professional bodies of the Member territories; and

(c) one (1) Commissioner nominated by the Central Bank.

(3) Persons nominated as Commissioners shall be persons of recognised standing and experience in securities and related matters or in any one of the following areas:

(a) law;

(b) accountancy;

(c) banking;

(d) economics;

(e) commerce and industry; or

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(f) finance.

(4) The Commissioners shall be paid such remuneration as may be determined by the Monetary Council.

ARTICLE 13

CHAIRPERSON, DEPUTY CHAIRPERSON AND SECRETARY

(1) Two of the members of the Commission shall, in and by the terms of their respective appointments by the Monetary Council, be appointed as the Chairperson and Deputy Chairperson of the Commission.

(2) The Commission shall appoint a suitable person to serve as Secretary to the Commission.

ARTICLE 14

APPOINTMENT OF COMMISSIONERS TO BE NOTIFIED IN THE *GAZETTE*

The appointment of all Commissioners including the Chairperson, Deputy Chairperson and the termination of any such appointment shall be published in the Official *Gazette* of the Member territories.

ARTICLE 15

TERMS OF OFFICE OF CHAIRPERSON, DEPUTY CHAIRPERSON AND OTHER COMMISSIONERS

(1) The Chairperson of the Commission shall hold office for a period of five years from the date of appointment as a Commissioner.

(2) The Deputy Chairperson of the Commission shall hold office for the period as specified in the instrument of appointment.

(3) A Commissioner (other than the Chairperson and the Deputy Chairperson) shall, subject to this Article, hold office for a period of three years from the date of appointment as Commissioner: Except that such a Commissioner may be appointed for a period of less than three years so as to assist in providing continuity of experience as a Commissioner.

(4) Upon the expiry of the period of appointment a Commissioner shall be eligible for reappointment.

(5) A Commissioner appointed to fill a vacancy shall hold office for the unexpired term of the predecessor.

ARTICLE 16

VACATION OF AND REMOVAL FROM OFFICE OF COMMISSIONERS

(1) The office of a Commissioner is vacated—

(a) upon the death of the Commissioner;

(b) if the Commissioner is adjudged bankrupt;

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(c) if the Commissioner is absent from three consecutive meetings of the Commission without its permission or reasonable excuse;

(d) if the Commissioner is certified by a Medical Board or Tribunal or declared by a Court to be mentally or physically incapable of performing the duties of a Commissioner;

(e) if the Commissioner is convicted of fraud or any other offence involving dishonesty;

(f) at any time by the Commissioner resigning from office by letter sent to the Chairperson of the Monetary Council and copied to the Secretary of the Commission.

(2) The Monetary Council may by notice in writing remove from office any member of the Commission whose removal appears to it to be desirable for the effective performance of the Commission of its duties or for the preservation of the integrity of the Commission.

(3) Notice of any removal under paragraph (2) shall be given to the Government of the Member territory or such other body by which the Commissioner was nominated and the Government or such other body shall within thirty days of such notice submit nominations to the Monetary Council for a replacement.

(4) The Commission may act notwithstanding a vacancy among its members or any disability affecting any Commissioner.

ARTICLE 17

MEETINGS OF COMMISSION

(1) Meetings of the Commission shall be held as often as may be necessary for the performance of its duties and in any event at least once every quarter, and such meetings shall be held at such places, times and days as the Commission may determine.

(2) Notice of all meetings shall be given to each Commissioner.

(3) The Chairperson of the Commission may at any time call a meeting of the Commission and shall call a special meeting to be held within seven days of the receipt of a written request for that purpose addressed to the Chairperson by not less than two Commissioners.

(4) At a meeting of the Commission—

(a) the Chairperson of the Commission shall preside;

(b) if the Chairperson of the Commission is not present, the Deputy Chairperson shall preside; or

(c) if neither the Chairperson of the Commission nor the Deputy Chairperson is present, the members present shall choose one of their number to preside.

(5) The quorum for a meeting of the Commission is three (3) Commissioners.

(6) Every question for decision at a meeting of the Commission shall be determined by a majority of votes of the members present and, in the event that voting is equally divided, the Chairperson of the meeting shall have a casting vote.

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(7) A Commissioner shall be deemed to be present at a meeting of the Commission or of a committee if the Commissioner participates by telephone or other electronic means and all Commissioners participating in the meeting are able to hear each other.

(8) A resolution in writing signed by all the Commissioners entitled to receive notice of a meeting of the Commission or of a committee of the Commission shall be valid and effectual as if it had been passed in a meeting of the Commission or (as the case may be) a committee of the Commission duly convened and held and may consist of several documents in the like form each signed by one or more Commissioners.

(9) Minutes of each meeting of the Commission shall be kept and shall be confirmed by the Commissioners as soon as practicable at a subsequent meeting.

ARTICLE 18

ADMINISTRATION

(1) The Commission shall organise and regulate its administration, procedure and business in such manner as it considers will best ensure the performance of its functions and the proper exercise of its powers.

(2) The Commission may make rules governing its own procedure and such rules shall be binding on the Commission.

ARTICLE 19

COMMITTEES

(1) The Commission may, in the exercise of its duties establish standing or special committees and may refer or assign to a committee any matter for consideration, inquiry or management by the Commission.

(2) The Commission may appoint a person to be a member of a committee whether that person is a member of the Commission or not, and may appoint a member of the committee to be the Chairperson.

Provided that where a member of the Commission has been appointed to serve on a committee that member shall be the Chairperson of the committee.

(3) Any reference or assignment under paragraph (1) and every appointment under paragraph (2) may be withdrawn or revoked by the Commission at any time, and no such reference or assignment shall prevent the exercise by the Commission of any of its duties.

(4) Subject to paragraph (2), a committee established under this Article may elect one of its members to be the Chairperson and, subject to any specific or general direction of the Commission, may regulate its own procedure and business.

(5) Meetings of a committee shall be held at such times and places as the Chairperson of that committee may determine or as the Commission may direct.

(6) Each committee shall keep minutes of its meetings and shall keep the Commission informed of its activities.

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ARTICLE 20

DELEGATION

(1) The Commission may delegate any of its duties, other than its power to delegate under this Article to—

(a) a committee established under Article 19; or

(b) any body or authority approved by the Monetary Council.

(2) The Commission may revoke a delegation.

(3) A delegation under this Article does not preclude the exercise by the Commission of any of the duties so delegated.

ARTICLE 21

DISCLOSURE OF INTEREST

(1) A Commissioner who is in any way interested, whether directly or indirectly, in any transaction or arrangement with the Commission or in which the Commission is interested or whose material, pecuniary or proprietary interest in a company, partnership, undertaking or other business is likely to be affected by a decision of the Commission shall disclose the nature of his interest at the first meeting of the Commission at which he is present after the relevant facts come to his knowledge.

(2) A disclosure under paragraph (1) shall be recorded in the minutes of the meeting and after the disclosure the Commissioner making it shall not vote on the matter and, unless the Commission otherwise directs, shall not be present or take part in the proceedings of any meeting at which the matter is being discussed or decided by the Commission.

(3) A Commissioner shall be treated as having an indirect interest in any transaction or arrangement with the Commission or in which the Commission is interested if he is a director, shareholder, trustee, agent or employee of the company or undertaking that is a party to the contract or proposed contract with the Commission or where his spouse, parent, child, step-child, brother or sister or the parent, child, step-child, brother or sister of his spouse holds an interest in that company or undertaking.

(4) For the purpose of this Article, a general notice given to the Commission by a Commissioner to the effect that he is a member of or otherwise associated with a specified company or undertaking and is to be regarded as interested in any contract which may after the date of the notice be made with that company or undertaking shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

ARTICLE 22

STAFF

(1) The Commission may employ, on such terms and conditions as it thinks fit, such professional, technical and other officers, and such other staff, as may be necessary for the exercise and discharge of its duties.

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(2) The Secretary shall assist the Commission in all respects and in such manner as the Commission may from time to time require in the discharge of its duties.

ARTICLE 23

CONFIDENTIALITY

(1) Every member, officer and employee of the Commission shall—

(a) at all times preserve and aid in preserving confidentiality with regard to all matters coming to his knowledge in the performance of his duties; and

(b) except for the purpose of the performance of his duties or under legal obligation, not at any time, communicate any confidential matter to any person nor permit, unless under legal obligation, any person to have access to any records in the possession, custody or control of the Commission.

(2) Every member, officer and employee of the Commission shall be required to take an oath of secrecy.

PART IV

FINANCIAL MATTERS

ARTICLE 24

FUNDING

The Commission shall be funded by—

(a) the payment to the Commission of any fees or other charges in relation to—

(i) an application to the Commission for any licence, authorisation, approval, exemption, waiver or modification;

(ii) any duties exercised by the Commission or by a committee established by the Commission;

(iii) the approval of prospectuses;

(iv) the monitoring of the continuing disclosure obligations of issuers;

(v) anything done in the performance of a function relating to take overs;

(vi) any other matter for which provision is made under the Act;

(b) the payment to the Commission of a levy, as may be prescribed, in respect of every purchase and sale of securities recorded by a securities exchange or notified under its rules;

(c) such sums of money or such other assets as may accrue to or vest in the Commission from time to time, whether in the course of the exercise of its duties or otherwise; and

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(d) such sums as may be paid to the Commission from time to time by a Participating Government by way of appropriation or subvention.

ARTICLE 25

RESERVE FUND

(1) The Commission may establish a Reserve Fund into which may be paid:

(a) fees, levies or any penalties imposed or charged under the Act;

(b) any sums appropriated by a Participating Government for this purpose; and

(c) any other sums which the Commission with the approval of the Monetary Council may determine.

(2) The Commission may withdraw any funds from the Reserve Fund for the purpose of exercising its duties under the Act.

(3) The funds in the Reserve Fund may be invested by the Commission on such terms and conditions as may be determined by the Commission. Except that the Commission shall not invest its funds in securities offered by any person under its supervision or regulation.

(4) No disbursement from the Reserve Fund may be made by the Commission within the first five years of the establishment of the Reserve Fund.

ARTICLE 26

FINANCIAL YEAR AND ESTIMATES

(1) The financial year of the Commission shall begin on 1 April and end on 31 March in each year, or such other period as the Monetary Council may determine except that the first financial year of the Commission shall begin on the establishment of the Commission under Article 3 and end on the following 31 March or such other date as the Monetary Council may decide.

(2) The Commission shall not later than 31 December in each financial year or at least three months before the end of its financial year submit to the Monetary Council for its approval estimates of its income and expenditure for the next financial year.

(3) The Commission shall discharge its functions to ensure that its revenue is not less than sufficient to meet all sums properly chargeable to its revenue account.

(4) Any excess of the revenue of the Commission for any financial year over the sum properly chargeable to its revenue account for that year shall be applied by the Commission for the purposes of the Commission.

(5) Where any deficit arises on the operations of the Commission or is budgeted for in the Estimates of expenditure of the Commission the Participating Governments shall provide a subvention to the Commission to meet the deficit in such proportion as may be determined by the Monetary Council.

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ARTICLE 27

ACCOUNTS

(1) The Commission shall keep proper accounts and records of its transactions.

(2) The Commission shall, as soon as practicable after the end of each financial year, prepare a statement of the accounts of the Commission for the financial year including an income and expenditure account and balance sheet.

ARTICLE 28

AUDITORS AND AUDIT

(1) The Commission shall with the approval of the Monetary Council, appoint auditors.

(2) The Commission shall, as soon as practicable after the end of each financial year, submit the statement of accounts prepared for the year under Article 28 to the auditors for audit.

(3) The auditors shall prepare a report on the accounts and send the report to the Commission who shall, as soon as practicable after its receipt, send a copy of the report and a copy of the statement of accounts to the Monetary Council.

(4) The auditors shall include in the report—

(a) a statement whether, in their opinion, the income and expenditure account for the financial year to which the report relates give a true and fair view of the Commission's income and expenditure;

(b) a statement whether, in their opinion, the balance sheet for the financial year gives a true and fair view of the Commission's financial affairs at the end of that financial year.

(5) An auditor appointed by the Commission has a right of access at all reasonable times to the books, accounts, vouchers and other records of the Commission and is entitled to require from officers of the Commission such information and explanations as he considers necessary for the performance of his duties as auditor.

ARTICLE 29

ANNUAL REPORT

(1) The Commission shall, not later than three months after the end of each financial year of the Commission, prepare and submit a report on its activities during the financial year to the Monetary Council.

(2) The Monetary Council may at any time request the Commission to provide it with information concerning any matter relating to the duties of the Commission and the Commission shall provide the information requested within fourteen days of such request.

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PART V

MISCELLANEOUS

ARTICLE 30

CONSULTATION AND CO-OPERATION

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

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

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

ARTICLE 31

RULES

(1) The Commission may make rules—

(a) respecting the calling of and conduct of business at meetings of the Commission;

(b) respecting procedures for the initiation and holding of hearings by the Commission in accordance with the Act;

(c) respecting the procedure for appeals and review of orders of its delegates and self-regulatory organisations;

(d) with the approval of the Monetary Council, establishing a code of conduct governing the activities of Commissioners and the officers and employees of the Commission in order to avoid conflicts of interest and other practices that the Commission considers undesirable;

(e) respecting any other matter relating to the organisation, procedure, administration or practice of the Commission.

(2) As soon as practicable after the making of any rules, the Commission shall submit a copy of same to the Monetary Council.

ARTICLE 32

AMENDMENTS

(1) An amendment to the Agreement may be proposed to the Monetary Council by the Commission and shall be effective when it is agreed to by all the Participating Governments.

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(2) All amendments to the Agreement shall be published in the official *Gazette* of Member Territories.

ARTICLE 33

DISPUTES

(1) Any dispute between the Participating Governments concerning this Agreement or between the Commission and a participating Government, shall be submitted to arbitration by a tribunal of arbitrators appointed pursuant to paragraph (2).

(2) (a) If the dispute is between only two parties, each party shall be entitled to appoint one arbitrator, and the two parties shall together appoint a third arbitrator, who shall be the Chairperson of the tribunal;

(b) If the dispute is between three or more parties, each party shall be entitled to appoint one arbitrator and all the parties shall together appoint an additional arbitrator, who shall be the Chairperson of the tribunal.

(3) If, within thirty days of receipt of the request for arbitration, any party has not appointed an arbitrator or if within thirty days of the appointment of the arbitrators the parties have not appointed the third arbitrator or, as the case may be, the additional arbitrator, any party to the dispute may request the Chief Justice of the Eastern Caribbean States Supreme Court, or such other person of authority as may be prescribed by the Monetary Council to make the required appointment.

(4) The procedure of the tribunal shall be fixed by the arbitrators, but the Chairperson of the tribunal shall have full power to settle all questions of procedure in any case of disagreement with respect thereto.

(5) A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties.

(6) The Chairperson of the tribunal shall be entitled to vote, and in the event of a tie, the Chairperson shall have a casting vote.

ARTICLE 34

IMMUNITIES AND PRIVILEGES

(1) To enable the Commission to fulfil the functions with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Commission in the territory of each Participating Government.

(2) The Commission, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings by the terms of any contract.

(3) Property and assets of the Commission shall be immune from search, requisition, confiscation, expropriation or any other form of seizure.

(4) The archives of the Commission shall be inviolable.

(5) To the extent necessary to carry out the provisions of this Agreement, all property and assets of the Commission shall be free from restrictions, regulations, control and moratoria of any nature.

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(6) The official communications of the Commission shall be accorded by Participating Governments the same treatment as the official communications of other Participating Governments.

(7) The Commissioners, officers and employees of the Commission:

(a) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Commission waives this immunity;

(b) not being local nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchanges restrictions as are accorded by Participating Governments to the representatives, officials and employees of comparable rank of other Participating Governments;

(c) shall be granted the same treatment in respect of travelling facilities as is accorded by Participating Governments to representatives, officials and employees of comparable rank of other Participating Governments.

(8) (a) The Commission, its assets, property, income and its business, shall be immune from all taxation and from all customs duties in respect of goods acquired by, or service rendered to it for its own use. The Commission shall also be immune from liability for the collection or payment of any tax duty in respect thereof except when it resells a good acquired by it to a member of the public.

(b) No tax shall be levied on or in respect of salaries or emoluments, including pensions and gratuities, paid by the Commission to the Commissioners, officers and employees of the Commission.

ARTICLE 35

ACCESSION

(1) After the entry into force of this Agreement, a territory which is not a signatory to this Agreement may in the discretion of the Monetary Council be permitted to accede to this Agreement on such terms and conditions as the Monetary Council may determine.

(2) Any such territory shall deposit on or before a date appointed by the Monetary Council an Instrument of Accession with the Commission which shall signify such deposit and the date thereof to the parties to this Agreement.

ARTICLE 36

SIGNATORIES

This Agreement shall be open for signature by any Participating Government.

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ARTICLE 37

RATIFICATION

This Agreement shall be subject to ratification by the signatory Participating Governments in accordance with their respective constitutional procedures. Instruments of Ratification shall be deposited with the Director General of the Organisation of Eastern Caribbean States who shall transmit certified copies to each Participating Government.

ARTICLE 38

ENTRY INTO FORCE

This Agreement shall enter into force upon the deposit of five Instruments of Ratification and Participating Governments undertake to take all steps necessary for the implementation of this Agreement.

IN WITNESS WHEREOF the representatives of the Participating Governments being duly authorised in their behalf, have signed this Agreement.

DONE AT Old Town, Montserrat this 24th day of November 2000.

[Signatures omitted]

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