

No. 64 of 2015.

*Securities Commission Act 2015.*

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No.      of 2015.

AN ACT

entitled

***Securities Commission Act 2015,***

Being an Act to establish the Securities Commission of Papua New Guinea to regulate the capital markets and practices relating to the offering of securities and derivatives to the public, and for related purposes.

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART I. - PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) For the purposes of -

- (a) Section 29 of the ***Organic Law on Provincial Governments and Local-level Governments***; and
- (b) Section 41 of the ***Organic Law on Provincial Governments and Local-level Governments***,

it is declared that this law relates to a matter of national interest.

(2) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C. (*qualified rights*) of the ***Constitution***, namely -

- (a) the right to liberty of the person conferred by Section 42; and
- (b) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (c) the right to freedom of expression and publication conferred by Section 46; and
- (d) the right to peacefully assemble and associate and to form or belong to, or not belong to, political parties, industrial organisations and other associations conferred by Section 47; and
- (e) the right to freedom of employment conferred by Section 48; and
- (f) the right to privacy conferred by Section 49; and
- (g) the right to freedom of information conferred by Section 51,

of the ***Constitution*** is a law that is made for the purpose of giving effect to the public interest in public welfare.

**2. INTERPRETATION.**

(1) In this Act, unless the contrary intention appears -

“appointment committee” means the Securities Appointment Committee referred to under Section 18;

“associated person” has the same meaning as provided in Section 3 of the *Capital Market Act 2015*;

“central depository” means a central depository established and approved by the Commission under the *Central Depositories Act 2015*;

“CEO” means Chief Executive Officer, or its equivalent under whatever name is used, of a corporation registered under the *Companies Act 1997*, as amended from time to time or a statutory corporation created by an Act of Parliament to deal in commercial or corporate matters;

“Chairman” means the Chairman of the Commission appointed under Section 9;

“clearing facility” means a facility approved under Section 30 of the *Capital Market Act 2015*;

“clearing house” has the same meaning under Section 31 of the *Capital Market Act 2015*;

“company” means a company within the meaning of the *Companies Act 1997*, and includes an overseas company within the meaning of that Act;

“corporation” has the same meaning as provided under Section 2 of the *Capital Market Act 2015*;

“Court” means the National Court;

“decision” includes a declaration, order, class orders or other decisions of the Commission;

“derivatives exchange” means a derivative exchange licensed by the Commission under Section 9 of the *Capital Market Act 2015*;

“distribute” means to make available, publish or circulate and includes dissemination by letter, newspaper, broadcasting, facsimile, computer transmission or image, television, cinematic film, mobile phone, records on social media network, email, internet or any other means capable of distributing information;

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

(a) any writing on any material; and

(b) information recorded or stored by means of a tape-recorder, computer, mobile phone, records on social media network or other electronic device and material subsequently derived from information so recorded or stored; and

(c) a book, graph or drawing; and

(d) a photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of equipment of being reproduced;

“exchange” means a body corporate that has been approved as a stock exchange or derivative under Section 9 of the *Capital Market Act 2015*;

“expert” means any person who holds himself out to be of a profession or calling that gives authority to a statement made by him and includes an accountant, lawyer, engineer, valuer, quantity surveyor or geologist, but does not include a person acting in his capacity as an auditor or as a director or officer of a body;

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- “foreign securities authority” means any foreign government or governmental body or regulatory organisation empowered by a foreign government to administer or enforce its laws related to securities matters;
- “license” means a License issued under Section 36 of the *Capital Market Act 2015*;
- “licensed person” means a holder of a license issued under Section 36 of the *Capital Market Act 2015*;
- “listed” has the same meaning as provided under Section 2 of the *Capital Market Act 2015*;
- “listed corporation” has the same meaning as provided under Section 2 of the *Capital Market Act 2015*;
- “listing rules” has the same meaning as provided under Section 2 of the *Capital Market Act 2015*;
- “money laundering” means a conduct which constitutes an offence of money laundering under Section 508B or 508C of the *Criminal Code Act 1974*;
- “OTC” means over-the-counter trading facility approved under Section 77 of the *Capital Market Act 2015*;
- “party” in relation to a proposed or discharged agreement, means a person who would be a party to the agreement if it were in effect;
- “person” includes a business name, a company or other body corporate, whether incorporated in the country or elsewhere or an unincorporated body of persons;
- “prescribed” means prescribed by this Act or *Capital Market Act 2015* or the *Central Depositories Act 2015*;
- “record” has the same meaning as provided under the *Capital Market Act 2015*;
- “Registrar” means the person holding the office of Registrar of Companies in accordance with the *Companies Act 1997*;
- “Securities Commission” and “Commission” means the Securities Commission of Papua New Guinea established by this Act;
- “security” or “securities” has the same meaning as provided under the *Capital Market Act 2015*;
- “specify” means where no manner of specifying is mentioned, specify from time to time in writing, and a power to specify includes the power to specify differently for different persons or different classes, categories or descriptions of persons;
- “stock market” or “stock exchange” means a stock exchange licensed by the Securities Commission under Section 9 of the *Capital Market Act 2015*;
- “trade repository” means a trade repository approved under Section 77 of the *Capital Market Act 2015*.

### **3. ACT BINDS THE STATE**

- (1) This Act binds the State.
- (2) A reference to this Act includes the Regulations, schedules, rules and guidelines made under this Act.

**PART II. - SECURITIES COMMISSION.**

*Division 1. - Establishment of the Securities Commission.*

**4. ESTABLISHMENT OF THE SECURITIES COMMISSION.**

- (1) The Securities Commission of Papua New Guinea is hereby established.
- (2) The Securities Commission -
  - (a) is a body corporate, with perpetual succession; and
  - (b) shall have a common seal; and
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may sue and be sued in its corporate name and style; and
  - (e) has the functions assigned to it by or under this Act or any other Act; and
  - (f) has the powers conferred on it by or under this or any other Act.
- (3) The Commission may own, possess, hold any proprietary rights, construct, purchase, provide, sell, dispose, rent, lease, hire, borrow, lend, accept, pledge, mortgage, exchange, transfer, accept transfer or take any action related to properties in or outside Papua New Guinea.

**5. COMMON SEAL.**

- (1) Pursuant to Section 4(2)(b), the common seal may, from time to time, be broken, changed, altered and made anew as the Commission may think fit.
- (2) Until a seal is provided by the Commission, a stamp bearing the words Securities Commission may be used and shall be deemed to be the common seal of the Commission.
- (3) The common seal shall be kept in the custody of the Chairman or such other person as may be authorised by the Commission, and shall be authenticated by either the Chairman or such authorised person or by any officer authorised by the Chairman in writing and all deeds, documents and other instruments purporting to be sealed with the said seal, authenticated as aforesaid, shall, until the contrary is proven, be deemed to have been validly executed.
- (4) All courts and persons acting judicially shall take judicial notice of the seal of the Commission affixed to a document and, until the contrary is proved, shall presume that it was duly fixed.

**6. INDEPENDENCE OF THE SECURITIES COMMISSION.**

The Chairman or the Securities Commission or the Board of Commissioners is not subject to direction or control by any persons, including the Appointment Committee, any member of the Appointment Committee or any other persons.

*Division 2. - The Objectives and Functions of the Securities Commission.*

**7. OBJECTIVES OF THE SECURITIES COMMISSION.**

In performing its functions and exercising its powers, the objectives of the Commission shall be -

- (a) to ensure the orderly administration of the capital markets in Papua New Guinea; and

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- (b) to ensure the sound conduct of business in the capital markets and over-the-counter centres; and
- (c) to elaborate policies which are directed to ensuring the fairness, efficiency and transparency of securities and derivatives markets in Papua New Guinea; and
- (d) to elaborate policies on money laundering and related activities in the capital market in Papua New Guinea; and
- (e) to study new avenues for development in the securities and derivatives market services sector, to respond to new challenges and to take full advantage of new opportunities for achieving economic sustainability and job creation; and
- (f) to ensure, in collaboration with the Bank of Papua New Guinea, the soundness and stability of the financial system in Papua New Guinea; and
- (g) to work out objectives, policies and priorities for the development of the securities and derivatives market in Papua New Guinea.

### **8. FUNCTIONS OF THE SECURITIES COMMISSION.**

The Securities Commission shall have such functions as are necessary to further most effectively its objectives and in particular, shall -

- (a) be responsible for the administration of the relevant Acts; and
- (b) license, regulate, monitor and supervise the conduct of business activities in the securities and derivatives market; and
- (c) set rules and guidelines governing the conduct of business in the securities and derivatives market, the OTC activities and money laundering and related activities in Papua New Guinea; and
- (d) issue orders, class orders or directives in relation to the conduct of business in the capital market, OTC activities or money laundering and related activities in Papua New Guinea; and
- (e) prepare and publish the Corporate Governance Code of companies registered in Papua New Guinea, both for public and exempted companies; and
- (f) ensure publicly listed companies and market intermediaries comply with the highest standard of corporate governance; and
- (g) identify and take measures to prevent and eliminate investment business abuse; and
- (h) establish norms and standards in order to preserve and maintain the good reputation of Papua New Guinea in the securities and derivatives market sector; and
- (i) promote public understanding of the securities and derivatives market, including awareness of the benefits and risks associated with different kinds of investment; and
- (j) carry out investigations and take measures to suppress illegal, dishonourable and improper practices, market abuse and financial fraud in relation to any activity in the securities and derivatives markets; and
- (k) carry out research, commission studies and disseminate information in the securities and capital market; and
- (l) collect, compile, publish and disseminate statistics in respect of the securities and capital market; and
- (m) establish and maintain such links and liaison with international agencies in the field of financial services and global business as may be necessary for the furtherance of its objectives; and

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- (n) ensure co-ordination and co-operation between public sector agencies and private sector corporations in engaging in the development of the securities and derivatives market; and
- (o) take measures for the better protection of investors in the securities and derivatives market; and
- (p) advise the Minister generally on any matter relating to the securities and derivatives market; and
- (q) do such acts or things as are incidental or conducive to the attainment of its objectives.

### *Division 3. - Chairman.*

#### **9. CHAIRMAN.**

- (1) The Securities Commission shall consist of the Chairman and the members of the Commission.
- (2) Upon this Act coming into operation, the person holding the office of the Chairman shall continue to be the Chairman, until his current term expires and subsequent appointments of the Chairman shall be made by the Head of State by notice published in the National Gazette upon the recommendation of the Appointment Committee pursuant to Section 18.
- (3) The Chairman may appoint a person to act as the Chairman during any period or during all periods when he is absent from the office, other than in the case of his removal or resignation.

#### **10. DUTIES OF THE CHAIRMAN.**

- (1) It is the duty of the Chairman to -
  - (a) ensure that the Securities Commission carries out the objectives and functions imposed on the Commission by this Act, the *Capital Market Act 2015*, the *Central Depository Act 2015*, or any other law of the Independent State of Papua New Guinea; and
  - (b) manage the Securities Commission and direct its affairs and in relation to the management of the Securities Commission and the direction of its affairs, to act honestly and in good faith to achieve the Securities Commission's objectives and policies; and
  - (c) inform the Minister on capital markets, its policies and other economic matters; and
  - (d) devote the whole of his professional time to the service of the Securities Commission; and
  - (e) not -
    - (i) occupy or hold any other paid office or employment; or
    - (ii) directly or indirectly hold more than 10 percent shares or other pecuniary interest in any securities or derivatives listed in any exchange; or
    - (iii) engage in the practice of any profession or business.

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(2) The Chairman has the authority to exercise the Securities Commission's powers for the purposes of achieving the objectives and functions of this Act, the *Capital Market Act 2015*, and the *Central Depository Act 2015* and implementing the policies of the Securities Commission.

### **11. DELEGATION.**

(1) The Chairman may, by notice in the National Gazette, delegate to an officer of the Commission, all or any of his powers and functions under this Act (except this power of delegation).

(2) Every delegation under Subsection (1), is revocable, in writing, at will and no such delegation affects the exercise of a power or the performance of a function by the Chairman nor relieves the Chairman of the primary duties and responsibilities imposed upon him under this Act, the *Capital Market Act 2015* or *Central Depository Act 2015*.

### **12. TERM OF OFFICE.**

(1) Subject to Section 9(3), the Chairman of the Commission shall be appointed for a term of seven years and is eligible to reappointment for such further terms.

(2) The Chairman may be removed from office by the Head of State only for reason of disability, bankruptcy or serious neglect of duty, upon the recommendation of the Appointment Committee.

(3) The Chairman shall hold office on such terms and conditions as are determined by Parliament in accordance with the recommendation from the Salaries and Remuneration Commission.

(4) Notwithstanding that the term of the Chairman has expired or the Chairman has resigned from his office, he shall be deemed to continue as the Chairman of the Commission for the purpose of deciding any inquiry, application or matter that was partly heard before the expiration of his term of office or before his resignation took effect, as the case may be.

(5) The Chairman shall be the Executive Chairman of the Commission and shall be charged with the day to day general administration of this Act, the *Capital Market Act 2015* and the *Central Depositories Act 2015* and the exercise of the functions and powers conferred by this Act, the *Capital Market Act 2015* and the *Central Depositories Act 2015* on the Securities Commission.

(6) The terms and conditions of the Chairman shall not, without the consent of the Chairman, be varied while the Chairman is in office so as to become less favourable to the incumbent.

### **13. LEAVE.**

Where the Chairman or a full time member of the Commission applies to the Minister for leave of absence, the Minister may grant such leave on such terms and conditions as to remunerations or otherwise as the Minister determines.

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### *Division 4. - Membership of the Board of Commissioners.*

#### **14. BOARD OF COMMISSIONERS.**

There shall be a Board of Commissioners of the Securities Commission with powers, duties and functions as set out in this Act, the *Capital Market Act 2015* and *Central Depository Act 2015*.

#### **15. FUNCTIONS OF THE BOARD OF COMMISSIONERS.**

(1) Subject to this Act, the *Capital Market Act 2015* and the *Central Depository Act 2015*, the Board of Commissioners is responsible for determining the policies of the Securities Commission, other than the regulation of the capital market system which shall be the responsibility of the Chairman.

(2) The Chairman shall submit a report on the proceedings and resolutions and the steps taken, if any, as a result of the proceedings and resolutions of the Board of Commissioners, every three months, to the Minister.

#### **16. MEMBERSHIP OF THE COMMISSION.**

(1) The Commission shall consist of not less than five, and not more than 10 members, of whom, at least one must be a lawyer of at least seven years practice experience.

(2) Members of the Commission, for the purposes of this Act, constitute the Board of the Commission.

(3) Subject to Section 17(3), all members of the Commission, except the Chairman shall be non-executive members.

(4) Notwithstanding Subsection (3), the Commission may engage a Commissioner on a full time basis for the purposes of conducting an inquiry, investigation or other public hearing under this Act.

#### **17. TERM OF OFFICE.**

(1) A commissioner shall be appointed for a term of four years and is eligible for re-appointment for such further terms.

(2) A full time member of the Commission shall hold office on such terms and conditions as are determined by the Parliament in accordance with the recommendation of the Salaries and Remuneration Commission.

(3) A member of the Commission other than a full time member shall receive such allowances and other benefits as are determined by the Salaries and Conditions Monitoring Committee, under the *Salaries and Conditions Monitoring Committee Act 1988*.

(4) Notwithstanding that the term of a member of the Commission has expired or that a member of the Commission has resigned his office, he shall be deemed to continue as a member of the Commission for the purpose of deciding any inquiry, application or matter that was partly heard before the expiration of his term of office or before his resignation took effect, as the case may be.

**18. APPOINTMENT OF CHAIRMAN AND MEMBERS OF THE BOARD OF COMMISSIONERS.**

(1) The Chairman and the members of the Board of Commissioners shall be appointed by the Head of State, acting with, and in accordance with, the advice of the Securities Commission of Papua New Guinea Appointment Committee consisting of -

- (a) the Prime Minister, who is the Chairman; and
- (b) the Leader of the Opposition who shall be the Deputy Chairman; and
- (c) the Minister responsible for Commerce and Industry or its successor; and
- (d) the Minister responsible for Treasury or, if the Prime Minister is the Minister, the Secretary responsible for Treasury; and
- (e) the Attorney-General; and
- (f) the Governor of the Bank of Papua New Guinea.

(2) Before the Appointment Committee advises the Head of State to appoint a person as Chairman or a member of the Board of Commissioners, the members of the Appointment Committee shall be satisfied that the person -

- (a) is qualified for the appointment to the Commission under Section 19; and
- (b) is not disqualified from being appointed to the Commission under Section 20 of this Act.

**19. QUALIFICATION OF APPOINTMENTS.**

(1) A person is not eligible for appointment as a Commissioner or the Chairman of the Commission unless he is a person of integrity, independence of mind and good reputation in the community.

(2) Subject to Subsection (1), a person is not eligible for appointment as a Commissioner or Chairman unless he has sound knowledge or experience in the securities and capital markets, commerce, economics, accountancy or law.

- (3) At least one of the persons appointed as a Commissioner -
  - (a) shall have international experience in the operation and administration of a capital market regulatory regime; and
  - (b) shall not be a resident of Papua New Guinea.

**20. DISQUALIFICATION FROM OFFICE.**

A person is not qualified to be, or remain as a Commissioner or Chairman of the Commission if he -

- (a) is a member, or candidate for election as a member, of the National Parliament, a member of a Provincial Assembly or a Local-level Government; or
- (b) is an office-holder or candidate as an office-holder in a registered political party; or
- (c) is an undischarged or insolvent person declared by a Court of competent jurisdiction; or
- (d) is of unsound mind based on a current medical opinion from a qualified medical practitioner; or
- (e) is sentenced to imprisonment for more than three months for any criminal offence, including misappropriation of properties belonging to another person whilst under his care and obligations; or

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- (f) is found guilty of misconduct in office under the *Organic Law on Duties and Responsibilities of Leadership*; or
- (g) has a substantial interest of over 10 percent of shares in a company listed on a stock exchange, or a related company to the public company or other unlisted securities regulated by the Commission.

### **21. RESIGNATION FROM OFFICE.**

(1) A member of the Commission including the Chairman may resign from office by giving to the Head of State, three months' notice in writing of his intention to do so.

(2) The period of three months specified in Subsection (1) is deemed to commence on the fourteenth day after the receipt, by the Head of State, of the notice except where the Head of State, acting with, and in accordance with, the advice of the Appointment Committee, by notice in writing to the member, fixes an earlier date for the commencement of that period.

(3) A member of the Commission may withdraw his resignation at any time before the period of three months referred to in Subsection (1) commences.

### **22. VACANCY.**

(1) The Office of the Chairman or the Office of a Commissioner becomes vacant if the person holding the office -

- (a) dies; or
- (b) resigns in accordance with Section 21; or
- (c) attains the age of 75 years; or
- (d) is not re-appointed at the end of a term of office; or
- (e) is removed from office in accordance with Section 23; or
- (f) is not qualified to remain a member of the Commission by virtue of Section 20.

(2) A vacancy in the membership of the Commission shall be filled as soon as practicable and in any event, within 28 days of the vacancy arising.

(3) Where -

- (a) a vacancy in the Office of the Chairman or a membership to the Commission arises as a result of the expiry of the term of office of the Chairman or a member of the Commission; and
- (b) the vacancy is not filled within 28 days of the vacancy arising; and
- (c) the Chairman or member of the Commission whose term has expired -
  - (i) has advised the Head of State in writing that he is willing to be re-appointed; and
  - (ii) is eligible for re-appointment,

then, with effect from the next day following the 28 days after the vacancy arose, the Chairman or the member shall be deemed to have been re-appointed to the Office of the Chairman or as a member of the Commission, as the case may be, for a further term.

(4) Pursuant to Subsection (3), the Head of State shall confirm the re-appointment of a Chairman or the member of the Commission within 14 days after the expiry of the 28 days.

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(5) In the event of a vacancy in the position of Chairman, the Head of State acting in accordance with the advice from the National Executive Council shall appoint a senior officer within the Commission to act as Chairman until such time a person is appointed as Chairman by the Head of State under Subsection (2).

### **23. REMOVAL.**

(1) The Court, on the application of the Minister, may remove or suspend the Chairman or a member of the Commission from office for -

- (a) misconduct under the Leadership Code; or
- (b) incapacity to perform his functions satisfactorily; or
- (c) material contravention of or failure to comply with the requirements of this Act or any other Act conferring action on the Commission.

(2) The Minister shall only bring an application under Subsection (1), acting with, and in accordance with, the advice of the Appointment Committee of the Commission.

(3) The Chairman or a member of the Commission may only be removed or suspended from office under this section or under Section 20.

### *Division 5. - Committees of the Commission.*

### **24. COMMITTEES.**

(1) The Commission may, from time to time, establish committees to advise the Commission or to exercise powers of the Commission in relation to any matter or class of matters to be exercised by the Commission.

(2) Each Committee may consist of a Commissioner as the Chairman and any other persons who are expert in the given area of work for which purpose the Committee was established.

(3) The Office of the Chairman shall provide a secretariat to a Committee established under this section.

(4) The Commission shall cause a notice to be published in the National Gazette, of the establishment of the Committee, the members of the Committee, the functions of the Committee and the remuneration (if any) payable to the members of the Committee.

(5) The Committee established under this section shall conduct its meeting as and when the need arises to deal with the specific matter for which it was established.

(6) The procedures of meeting of the Committee may be established by the Chairman of the Commission.

### *Division 6. - Meetings of the Commission.*

### **25. MEETINGS OF THE COMMISSION.**

(1) The Commission may meet as often as the business of the Commission requires, but in any event, once every three months.

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- (2) The meeting of the Commission may be convened by the Chairman.
  - (3) Notice of a meeting shall be provided to each Commissioner by the Chairman.
  - (4) The meetings of the Commission may be held at such place or places and at such times as the Chairman determines.
  - (5) At any meeting of the Commission, the quorum necessary for the meeting shall be five members.
  - (6) The Commission shall cause minutes of its meetings to be recorded and kept.
  - (7) Subject to any other provisions of this Act, the procedures of the meeting are as determined by the Chairman which shall be determined prior to the first meeting of the Commission and may be amended by the Chairman when required from time to time.
  - (8) If the Chairman so determines, a member or members of the Commission may, participate in and form part of the quorum at, a meeting of the Commission by means of the following methods of communication:
    - (a) telephone; or
    - (b) close circuit television; or
    - (c) any other method or form of communication as determined by the Chairman from time to time.
  - (9) A determination made by the Chairman under Subsection (8) may be made in respect of a particular meeting or meetings of the Commission or in respect of all meetings of the Commission.
  - (10) A resolution in writing signed by all of the members of the Commission who are entitled to vote on the resolution, including those members who are necessary to constitute a quorum, is a valid resolution of the Commission and is effective when signed by the last of those members or at such later time or in such later circumstances as the resolution provides.
  - (11) A resolution referred to in Subsection (10) may consist of several documents in the same form, each signed by one or more of the relevant members of the Commission.
- 26. DISCLOSURE OF INTEREST BY THE MEMBERS OF THE COMMISSION.**
- (1) A member of the Commission, including the Chairman shall, as soon as practicable after relevant facts or information may have come to his knowledge, inform the Commission in writing of -
    - (a) any direct or indirect pecuniary interest that he has acquired in any securities that the Commission regulates in Papua New Guinea or elsewhere; and
    - (b) any direct or indirect pecuniary interest in a matter being considered by the Commission.
  - (2) A disclosure under Subsection (1), shall be recorded in the interest register book of the Commission.

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### **30. THE COMMISSION TO INVITE OTHERS TO MEETINGS.**

The Commission may, invite any person to attend any meetings or deliberations of the Commission for the purposes of advising it on any matter under discussion, but any person so attending shall have no right to vote at the said meeting or deliberation.

### **31. DELEGATION OF FUNCTIONS AND POWERS.**

(1) The Commission may, by writing, delegate to a person all or any of its functions and powers, other than this power of delegation.

(2) Every delegation under this section is revocable at will and no delegation shall prevent the exercise of any function or power by the Commission.

## *Division 7. - Staff of the Commission.*

### **32. PERMANENT EMPLOYEES OF THE COMMISSION.**

(1) The Chairman may appoint such persons as he considers necessary as officers of the Commission, for the purposes of giving effect to this Act, the *Capital Market Act 2015*, *Central Depositories Act 2015* and any other Acts, regulations, guidelines, rules, standards or codes as the case may be.

(2) The Chairman and the employees or officers appointed under Subsection (1), constitute the staff of the Commission.

(3) Except for the Chairman and any full time Commissioners, the terms and conditions of engagement of an officer engaged under Subsection (1), are as determined by the Commission pursuant to the *Salaries and Conditions Monitoring Committee Act 1988*.

(4) Where an officer of the Commission who is engaged under Subsection (1), was immediately before his engagement, an officer of the Public Service, his service as an officer or employee of the Commission shall be counted as continuous service in the Public Service for the purpose of determining that member's rights, if any, in respect of -

- (a) leave of absence on the grounds of illness; and
- (b) furlough or pay in lieu of furlough, including pay to dependents on the death of the employee.

### **33. CASUAL EMPLOYEES.**

(1) The Commission may engage such persons as it considers necessary as temporary and casual employees of the Commission.

(2) All casual and temporary employees shall be engaged under a contract of employment, specifying their terms of engagement.

### **34. OTHER STAFF ARRANGEMENTS.**

The Commission may enter into agreements or arrangements for the use of the services of any staff of a department, a statutory authority or other public body.

**35. CONDUCT.**

An Office Manual shall provide the code of conduct and minimum requirements and standards of all officers of the Commission, including any casual or part-time employees under Section 33 and other staff on attachment to the Commission under Section 34.

**36. CONTRACT OF EMPLOYMENT.**

(1) The Chairman and all officers of the Commission shall be employed or engaged under a contract of employment.

(2) Notwithstanding Subsection (1), only officers above Grade 12 or equivalent under the Public Service General Orders are Contract Officers and are subject to terms and conditions as provided for under the contract of employment.

**37. ENGAGEMENT OF CONSULTANT.**

(1) Subject to Part VIII of the *Public Finances (Management) Act 1995*, the Commission may engage or appoint a person, who in its opinion possesses expert knowledge or is otherwise able to assist it in connection with the exercise of its functions, to make such inquiries or to conduct such research or to make such reports as may be necessary for the efficient carrying out of any of the functions of the Commission, as a consultant.

(2) An engagement under Subsection (1), shall be on such terms and conditions as the Commission determines.

(3) Subject to Subsection (2), the Commission may reimburse the consultant any expenses reasonably incurred from his own funds in rendering services to the Commission.

**PART III. - POWERS OF THE SECURITIES COMMISSION.**

*Division 1. - General Powers and functions of the Commission.*

**38. GENERAL POWERS AND FUNCTIONS OF THE COMMISSION.**

(1) Without limiting and notwithstanding any other provision of any other Act, the Commission shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions and duties and to enable it to achieve its objectives under Division II.2.

- (2) The powers under Subsection (1), shall include the power to -
- (a) issue rules, guidelines, notifications, directives, class orders or orders under this Act; and
  - (b) determine fees for application for an approval and renewal of licenses; and
  - (c) issue rules in relation to duties of sub-committee; and
  - (d) issue rules, orders and guidelines in relation to personnel, personnel relations system, placement, appointments, dismissal and discipline for personnel and officers of the Commission; and
  - (e) do any other activities to be implemented according to the objectives of this Act.

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(3) Except for orders, notifications, directions and exemptions, all rules and guidelines that are generally issued under this section shall come into force upon publication in the National Gazette.

(4) Pursuant to the provisions of Section 6, the Commission shall act independently in performing its statutory functions and duties and exercising its statutory powers under -

- (a) this Act; and
- (b) the *Capital Market Act 2015*; and
- (c) the *Central Depositories Act 2015*; and
- (d) any other Act that expressly provides for the functions, powers or duties of the Commission.

(5) Without limiting the generality of Subsection (2), the Commission has such other powers that are conferred on the Commission by any other law or an Act of Parliament.

(6) Any actions taken or brought by the Commission under Part V shall be brought within 12 years of the offence being committed.

(7) Nothing in the *Frauds and Limitations Act 1988* prevents the Commission from performing its functions under Subsection (6).

(8) The Commission shall, from time to time, task other persons or class of persons to perform certain duties and functions on its behalf for specific tasks within a specific time.

(9) Any such powers and functions of the Commission performed by persons appointed by the Commission under Subsection (8) are deemed to have been performed by the Commission.

### **39. EXEMPTIONS.**

The Securities Commission may, in its discretion and upon such terms and conditions (if any) as it thinks appropriate, by notice in writing, exempt any person or class of persons from compliance with any provisions of this Act, the *Capital Market Act 2015* and the *Central Depositories Act 2015*.

### *Division 2. - Other Powers of the Commission.*

### **40. POWERS TO OBTAIN RECORDS AND INFORMATION FROM THE BANKS AND FINANCIAL INSTITUTIONS.**

(1) The Commission, while in the cause of performing its regulatory functions, shall direct a bank or banks or a financial institution or institutions to -

- (a) freeze accounts of persons, corporations, incorporated or unincorporated entities held at a bank or a financial institution; and
- (b) provide to the Commission account statements, transactions, records and details and any or all information the Commission requires to perform its duties and functions.

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(2) A bank or financial institution which refuses to comply with a direction of the Commission is guilty of an offence.

Penalty: A fine not exceeding K10,000,000.00.

Default Penalty: K5,000.00 per day.

(3) A person to whom the directions under Subsection (1) was directed and who refused to comply with such directions is criminally guilty of willfully obstructing the Commission from performing its regulatory function.

Penalty: A fine not exceeding K5,000,000.00 or imprisonment for a term of not exceeding seven years, or both.

Default penalty: K5,000.00 per day.

### **41. COMMISSION MAY STATE CASE FOR THE OPINION OF THE COURT.**

(1) The Commission may, at any time, state a case for the opinion of the Court on any question of law arising in any matter before it.

(2) The Court shall hear and determine the question and remit the case, with its opinion, to the Commission.

### *Division 3. - Agreement with other Organisations.*

### **42. AGREEMENT WITH OTHER ORGANISATIONS.**

(1) The Commission may enter into such agreements with other regulatory bodies within Papua New Guinea or other foreign regulatory bodies, for the purposes of assisting the Commission to carry out its functions and meet its objectives under this Act or any other Act of Parliament.

(2) Any agreement referred to in this section may deal with -

- (a) matters relating to joint investigative efforts; or
- (b) reciprocal enforcement regimes; or
- (c) joint prosecutions; or
- (d) gathering and sharing of information; or
- (e) institutional strengthening and development of knowledge; or
- (f) such further matters that are convenient for the performance of the Commission, its functions and to give effect to its objectives.

(3) Any such agreements shall not be legally binding on the Commission and the Commission may withdraw from such agreement at any time it deems fit.

## **PART IV. - THE FINANCE OF THE COMMISSION.**

### **43. THE FUND.**

(1) There is established, for the purposes of this Act, a fund to be administered and controlled by the Commission.

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(2) The Treasury Department or a department that is responsible for budgets and appropriations shall pay to the Commission, as appropriated by Parliament in its annual budgets or any other supplementary budgets by the government, the funds of the Commission for the purpose of carrying out or giving effect to this Act.

(3) The Fund shall consist of -

- (a) such funds as may be provided, from time to time, for the purposes of this Act as appropriated by Parliament under Subsection (2); and
- (b) funds borrowed by the Commission for the purposes of meeting any of its obligations or discharging any of its duties; and
- (c) levies payable under Section 44; and
- (d) fees or other charges imposed by the Commission; and
- (e) all other funds which may, in any manner, become payable to or vested in the Commission in respect of any matter incidental to its functions and powers.

(4) Without limitation to any function or power of the Commission under this Act, Part VIII (other than Sections 51, 55, 56, 57 and 58) of the *Public Finances (Management) Act 1995* applies to and in relation to the Commission.

### **44. LEVIES.**

(1) In the case of every purchase and sale of securities recorded on a stock exchange or a derivatives exchange or notified to it under its rules, the trading of an open end unit trust fund or managed investment scheme, a trade repository, the purchaser and the seller shall each of them be liable to pay to the Commission a levy at such rate as may be specified by order of the Commission to be published in the National Gazette as a percentage of the consideration for such purchase and sale, and different rates may be specified in respect of different classes of securities.

(2) The stock exchange or derivatives exchange, the trustee or manager as the case may be, and the operator of a trade repository shall collect and account to the Commission for the levy referred to in Subsections (1) and (2).

(3) The amount of any levy payable under this section shall be recoverable as a civil debt due to the Commission.

(4) The Commission may, make rules providing for -

- (a) the payment of the levies under this section; and
- (b) the keeping, examination and audit of the accounts of all licensed persons dealing in securities, the exchange, trustee and the trade repository relating to the collection of such levies.

### **45. CONSERVATION OF THE FUND.**

The Commission shall conserve the Fund by performing its functions and exercising its powers under this Act to ensure that the total revenues of the Commission are sufficient to meet all sums properly chargeable to its revenue account, including depreciation and interest on capital, taking one year with another.

**46. EXPENDITURE TO BE CHARGED ON THE FUND.**

The Fund shall be expended for the purpose of -

- (a) paying any expenditure lawfully incurred by the Commission for legal and other fees and costs, the remuneration of officers and servants appointed and employed by the Commission, including the granting of loans, superannuation allowances or gratuities; and
- (b) paying any other expenses, costs or expenditure properly incurred or accepted by the Commission in the performance of its functions or the exercise of its powers under this Act; and
- (c) purchasing or hiring of equipment, machinery and any other materials, acquiring land and erecting buildings and carrying out any other works and undertakings in the performance of its functions or the exercise of its powers under this Act; and
- (d) repaying any moneys borrowed under this Act and the interest due on loans; and
- (e) generally, paying for expenses incurred in carrying out or giving effect to the provisions of this Act.

**47. COMMISSION'S FINANCIAL YEAR.**

The financial year of the Commission shall begin on 1 January and end on 31 December of each year.

**48. ANNUAL REPORT.**

The Commission shall, within 3 months after the end of each financial year, prepare a report on its activities during the financial year and send a copy of the report to the Minister who shall cause a copy of the report to be tabled in Parliament.

**49. ACCOUNTS.**

(1) The Commission shall cause proper accounts of the funds to be kept and shall, as soon as practicable after the end of each financial year, cause to be prepared for that financial year, a statement of accounts of the Commission which shall include a balance sheet and an account of income and expenditure.

(2) The Commission shall cause the statement of accounts to be audited by the Auditor-General.

(3) The Commission shall send a copy of the statement of accounts certified by the Auditor-General and a copy of the auditor's report to the Minister who shall table them in Parliament.

**50. POWER TO BORROW.**

The Commission may, from time to time, with the approval of the Minister, borrow at such rate of interest and for such period and upon such terms as to the time and method of repayment and otherwise as the Minister may approve, any sums required by the Commission for meeting any of its obligations or performing any of its functions.

**51. INVESTMENT.**

The funds of the Commission shall, in so far as they are not required to be expended by the Commission under this Act, be invested in such manner as the Commission deems fit.

**52. TRUST ACCOUNTS.**

(1) The Commission shall have trust accounts, to hold in trust, monies it received in the course of performing its powers and functions.

(2) The Commission shall charge a 10 percent commission from each specific funds held in its trust accounts at the time those funds are transferred to the legal or equitable beneficiaries.

**53. INCOME TAX.**

The income of the Commission is exempt from income tax for the purposes of the *Income Tax Act 1959* as amended from time to time.

**PART V. - INVESTIGATIONS, EXAMINATION AND INQUIRIES.**

*Division 1. - Investigations.*

**54. GENERAL POWERS OF INVESTIGATIONS.**

(1) The Commission may conduct such investigations where it has reason to suspect that there may have been a breach of any provisions of -

- (a) this Act; or
- (b) the *Capital Market Act 2015*; or
- (c) the *Central Depositories Act 2015*; or
- (b) the Takeovers and Mergers Code; or
- (e) the *Companies Act 1997*, only where necessary; or
- (d) a contravention of an Act of Parliament, being a contravention that -
  - (i) concerns the management or affairs of a body corporate, or a managed investment scheme or a unit trust; or
  - (ii) involves fraud or dishonesty and relates to a corporation or managed investment schemes, a unit trust or Securities.

(2) Where the Commission has reason to believe and suspect that unacceptable circumstances, including prudent corporate governance, may have occurred, the Commission may make such investigations as it thinks expedient.

**55. APPOINTMENT OF INVESTIGATING OFFICERS.**

(1) The Commission may appoint such number of persons or officers to be known as Investigating Officers as it considers necessary for the purposes of carrying out investigations of any offence under this Act, the *Capital Market Act 2015*, the *Central Depositories Act 2015* or any other Acts where the Commission is the enforcing authority.

(2) An Investigating Officer appointed under Subsection (1), shall have all the powers given to any person for the purposes of carrying out investigation of any offence under this Act, the *Capital Market Act 2015*, the *Central Depositories Act 2015* or any other Acts where the Commission is the enforcing authority.

**56. POWERS OF THE INVESTIGATING OFFICERS.**

(1) An Investigating Officer carrying out an investigation or inspection may enter any place or building and may, without a search warrant -

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- (a) inspect and make copies of or take extracts from any book, minutes, register or document; and
- (b) where he has reason to believe that an offence has been committed against a securities law, search for, seize, take possession of and detain any object, article, material, thing, account, book or other document, including any travel or other personal document, which may be used as evidence.

(2) An Investigating Officer may search any person whom he has reason to believe, has any object, article, material, thing, property, book, minute book, account, register, electronic storing device, or other documents including any travel or other personal documents necessary, for the purpose of investigating an offence under any securities laws or any other law that deals with securities.

(3) An Investigating Officer making a search of a person under Subsection (1) or (2), may seize, take possession of and detain any object, article, material, thing, property, book, minute book, account, register, electronic storing device, or other documents including any travel or other personal documents found upon such person for the purpose of investigations being carried out by him.

(4) An Investigating Officer may, by notice in writing, require any person to produce to him such article, material, thing, property, book, minute book, account, register, electronic storing device, or other documents including any travel or other personal documents as are in the custody or under the control of that person.

(5) An Investigating Officer may seize, take possession of and detain, for such duration as he deems necessary, any object, article, material, thing, property, book, minute book, account, register, electronic storing device, or other documents including any travel or other personal documents produce as required under Subsection (4).

(6) A person who -

- (a) fails to produce any such books, registers or documents as required by an Investigating Officer; or
  - (b) assaults, obstructs, hinders or delays an Investigating Officer while exercising any of the powers under this section; or
  - (c) refuses an Investigating Officer, while exercising his powers under this Part, access to any premises or part of the premises; or
  - (d) rescues or endeavours to rescue anything which has been duly seized,
- is guilty of an offence and shall be liable to a fine not exceeding K5,000,000.00 or imprisonment for a term not exceeding seven years, or both.

(7) An Investigating Officer may grant permission to any person to inspect any accounts, book or other documents seized and taken possession of by the Investigating Officer under Subsection (1), if such person is entitled to inspect such accounts, book or document under this Act.

(8) Subsection (1), shall not be construed as limiting or affecting any similar powers conferred on any person under any other law.

**57. PROCEDURE BY INVESTIGATING OFFICER ON SEIZURE OF PROPERTY.**

(1) A list of all things seized in the course of an investigation under Section 56, and of the place or building in which they are respectively found shall be recorded by the Investigating Officer conducting the search and signed by him.

(2) The occupant of the place or building entered under Subsection 56(1), or some other person on his behalf shall, in every instance, be permitted to attend during the inspection and a copy of the list prepared and signed under Subsection (1) shall be delivered to the occupant or other person at his request.

(3) An Investigating Officer shall, unless otherwise ordered by any court, on the close of investigations or any proceedings arising from the investigation, release any property seized, detained or removed by him or any other Investigating Officer, to such person as he determines to be lawfully entitled to the property, if he is satisfied that it is not required for the purpose of any prosecution or proceedings under any securities law, or for the purpose of any prosecution under any other law.

(4) A record, in writing, shall be made by the Investigating Officer who releases any property under Subsection (3), in respect of such release specifying the circumstances of, and the reason for, such release.

(5) Where the Investigating Officer is unable to determine the person who is lawfully entitled to the property or where there is more than one claimant to such property, the Investigating Officer shall report the matter to a Magistrate who shall then order that the property be dealt with as provided for in Section 58.

(6) For the purpose of this section and of Sections 58 and 59, "property" includes books and other documents.

**58. PROCEDURE BY MAGISTRATE IN RESPECT OF PROPERTY SEIZED.**

(1) Where a report is forwarded to the Magistrate by an Investigating Officer under Section 57(5), the Magistrate shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession of the property or, if such persons cannot be ascertained, respecting the custody and production of such property.

(2) Where the person entitled to the property is known, the Magistrate may order the property to be delivered to him on such conditions, if any, as the Magistrate thinks fit, and shall, if he makes such order, cause a notice to be served on such person informing the person of the terms of the order and requiring him to take delivery of the property within such period from the date of the service of the notice as the Magistrate may prescribe in such notice.

(3) Where the person to whom the property has been ordered to be delivered under Subsection (2), neglects or refuses to take delivery of such property within the period prescribed, the Magistrate may, where such property is subject to speedy and natural decay or where in his opinion its value is less than K1,000.00, direct that such property be sold and the net proceeds of such sale shall, on demand, be paid over to the person who is entitled to the property.

(4) Where the person entitled to the possession of such property is absent from the jurisdiction, and the property is subject to speedy and natural decay or the Magistrate to whom its seizure is reported is of the opinion that its sale would be for the benefit of the owner or that the value of such property is less than K1,000.00, the Magistrate may, at any time, direct it to be sold and Section 59(4), shall apply to the net proceeds of such sale.

(5) Where the person entitled to the property is unknown, the Magistrate may direct that the property be detained in the custody of the Commission.

(6) Notwithstanding Subsection (5), if the person entitled to the property is unknown and it is shown to the satisfaction of the Magistrate that -

- (a) such property is of no appreciable value, or that its value is so small as, in the opinion of the Magistrate to render impracticable the sale, as provided in Section 59; or
  - (b) the detention of such property in the custody of the Investigating Officer is unreasonable in view of the expense or inconvenience that would be involved,
- the Magistrate may order that such property be destroyed or otherwise disposed of, either on the expiration of such period after the publication of the notification referred to in Section 59(1), as he may determine or forthwith as he thinks fit.

#### **59. PROCEDURE IN RESPECT OF PROPERTY DETAINED IN INVESTIGATING OFFICER'S CUSTODY.**

(1) Where a Magistrate has directed under Section 58(5), that any property seized be detained in the custody of the Commission, the Chairman shall issue a public notification specifying the articles of which the property consists and requiring any person who has any claim to make such a claim within six months from the date of such public notification.

(2) Every notification under Subsection (1) shall, if the property has a value of K1,000.00 or more, be published in the National Gazette.

(3) If, within three months from the publication of a notification under Subsection (1), no person establishes a claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property may, after the expiration of three months, pass to and vest in the Commission.

(4) If, within six months from the publication of such notification under Subsection (1), no person has established a claim to such property, the ownership of such property or, if sold, the net proceeds of such sale shall, upon the expiration of such period of six months, pass to and become vested in the Commission.

(5) Where the property referred to in Subsection (1), is subject to speedy and natural decay or the Commission is of the opinion that its value is less than K1,000.00, or where its custody involves unreasonable expense and inconvenience, such property may be sold at any time, and Subsections (1), (2), (3) and (4) shall, as nearly as may be practicable, apply to the net proceeds of such sale as they apply to the property.

**60. SURRENDER OF TRAVEL DOCUMENTS.**

(1) Notwithstanding any law to the contrary, if an Investigating Officer has reason to believe that a person, who is the subject of an investigation in respect of an offence under a securities law suspected to have been committed by such person, is likely to leave this jurisdiction, the Investigating Officer, with the approval of the Commission, may by written notice require such person to surrender his passport, work permit, resident visa or any other travel document in his possession.

(2) A notice under Subsection (1) may be served personally on the person to whom it is addressed.

(3) A person on whom a notice under Subsection (1) is served shall comply with such notice forthwith, failing which, he may be arrested and taken before a Magistrate.

(4) Where a person is taken before a Magistrate under Subsection (3), the Magistrate shall, unless such a person complies with the notice under Subsection (1), or satisfies the Magistrate that he does not possess a travel document, by warrant, commit him to prison -

- (a) until the expiry of the period of 14 days from the date of his committal; or
  - (b) until he complies with the notice under Subsection (1),
- whichever occurs earlier.

(5) No legal proceedings shall be instituted or maintained against the State, an officer of the Commission, a public officer or any other person in respect of anything lawfully done under this section.

**61. SEARCH WARRANT.**

(1) A Magistrate may issue a warrant authorising a member of the Royal Papua New Guinea Constabulary, whether or not named in the warrant, together with the Investigating Officer, with such assistance, and by such force, as is necessary and reasonable -

- (a) to enter on or into the premises; and
- (b) to search the premises; and
- (c) to break open and search anything, whether a fixture or not, in or on the premises; and
- (d) to take possession of, or secure against interference, books that appear to be any or all of those books.

(2) A warrant under this section must -

- (a) specify the premises and books referred to in Subsection (1); and
- (b) state whether entry is authorised to be made at any time of the day or night or only during specified hours; and
- (c) state that the warrant ceases to have effect on a specified day that is not more than 14 days after the day of issue of the warrant.

**62. FORCEFUL ENTRY WITHOUT A WARRANT.**

(1) The Investigating Officer or a person authorised by the Commission in writing may forcefully enter a premise without a search warrant and seize any particular documents, books, papers, files, electronic devices, computers and other electronic devices used for storage and production of information or any data that may be necessary or desirable for the Commission to obtain for or in connection with the performance of its functions.

(2) The Commission may only apply Subsection (1), in the event that -

- (a) there is a real possibility that the person would conceal the information before the Commission search the premises with a warrant; or
- (b) the person is likely to leave Papua New Guinea with the documents, books, papers, files, electronic devices, computers and other electronic devices used for storage and production of information or any data that the Commission may require in connection with the performance of its functions; or
- (c) the person has not been complying with lawful directives of the Commission to provide to the Commission, documents, books, papers, files, electronic devices, computers and other electronic devices used for storage and production of information or any data in his possession.

(3) The Investigating Officer, with the assistance of the Police, may, without a warrant, detain a person or persons in a police lock up facility, whom the Commission thinks would conceal any documents, books, papers, files, electronic devices, computers and other electronic devices used for storage and production of information or any data that the Commission may require in connection with the performance of its functions.

(4) The Commission may detain the person under Subsection (3), without bail and without laying of any charges for not more than 48 hours before releasing him.

(5) Whilst the person or persons under Subsection (3) are detained, the Investigating Officer may enter the premises of the person or persons without any warrant and seize any documents, books, papers, files, electronic devices, computers and other electronic devices used for storage and production of information or any data that the Commission may require in connection with the performance of its functions.

**63. DESTRUCTION, CONCEALMENT, MUTILATION AND ALTERATION OF RECORDS.**

Any person who -

- (a) destroys, conceals, mutilates or alters; or
- (b) sends or attempts to send or conspires with any other person to remove from his premises or send out of the country, any record or account in his possession that is required to be produced under this Part with intent to defraud any person, or to prevent, delay or obstruct the carrying out of an examination, audit or investigation, or the exercise of any power under this Act,

is liable to a fine not exceeding K10,000,000.00 or to imprisonment for a term not exceeding ten years, or both.

**64. THE COMMISSION MAY NOT GIVE A COPY OF BOOK RELATING TO A REGISTERED SCHEME TO ANOTHER PERSON.**

(1) The Commission may not give to a person or a statutory organisation a copy of any book in its possession that relates to a registered securities scheme, unless that person or organisation requires the information for the purposes of an investigation.

(2) If a copy of a book is given to a person under Subsection (1), subject to conditions, the person, and any other person who has possession, custody or control of the copy or a copy of the book, must comply with the conditions.

**65. REPORT ON INVESTIGATION.**

(1) At the end of an investigation, the Commission shall prepare a final report about the investigation.

(2) A report under this section shall set out -

- (a) the Commission's findings about the matters investigated; and
- (b) the evidence and other material on which those findings are based; and
- (c) such other matters relating to, or arising out of, the investigation as the Commission thinks fit.

(3) Where a report or part of a report under this Division relates to a serious breach or contravention of any other laws, the Commission may give a copy of the report to -

- (a) the Royal Papua New Guinea Constabulary; or
- (b) the Public Prosecutor; or
- (c) the Internal Revenue Commission; or
- (d) the Papua New Guinea Customs Service; or
- (e) the Ombudsman Commission of Papua New Guinea; or
- (f) another law enforcement agency of the State.

(4) No report or an extract of the report shall be distributed or published except in exceptional circumstances where the Commission sees justifiable to do so.

(5) The Commission may use the information gathered in the investigations to -

- (a) prosecute persons who have breached any provisions of the securities law; or
- (b) file civil proceedings under this Act, the *Capital Market Act 2015* or the *Central Depositories Act 2015*, as the case may be.

***Division 2. - Examination.***

**66. POWER TO CALL FOR EXAMINATION.**

(1) Where the Commission, under any securities law, suspects or believes on reasonable grounds that a person can give information that is relevant to a matter that the Commission is investigating, the Commission may, by notice in writing to such person, require such person -

- (a) to give to the Commission all reasonable assistance in connection with the investigation; and

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(b) to appear before the Commission to be examined orally.

(2) The Commission, when exercising its authority under Subsection (1)(b), shall reduce into writing any statement made by the person examined under Subsection (1).

(3) A person referred to in Subsection (1), is legally bound to answer all questions put to him by the Commission and to state the truth, whether or not the statement is made wholly or partly in answer to questions, and shall not refuse to answer any question on the ground that it tends to incriminate him.

(4) A statement made by a person under this section shall be taken down in writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him and after he had been given an opportunity to make any correction.

(5) Where the person examined refuses to sign or affix his thumb print on the statement, the Investigating Officer shall endorse the statement under his hand and state the fact of such refusal and the reason for refusal, if any, stated by the person examined.

(6) A statement made and recorded under this section is admissible as evidence in any Court proceeding.

(7) Any person who -

- (a) fails to appear before the Commission as required under Subsection (1); or
- (b) refuses to answer any question put to him by the Commission as required under Subsection (3); or
- (c) knowingly furnishes to the Commission information or a statement that is false or misleading in any material particular,

is guilty of an offence and is liable to a fine not exceeding K2,000,000.00 or imprisonment for a term not exceeding seven years, or both.

### **67. EXAMINATION OF LICENSED PERSONS.**

(1) The Commission may, from time to time, examine without any prior notice, the books or other documents, accounts and transactions of a licensed person.

(2) For the purposes of this section "licensed person" means -

- (a) a holder of a Capital Market License issued under Section 36 of the *Capital Market Act 2015*; and
- (b) a central depository, an authorised depository agent or an authorised nominee as defined in the *Central Depositories Act 2015*.

### **68. PRODUCTION OF LICENSED PERSONS' BOOKS.**

(1) For the purposes of an examination under Section 67, the licensed person under examination and its directors and officers shall accord any person carrying out the examination, access to all its books or other documents and accounts, including documents of title to its assets, all securities held by it in respect of securities transactions, all its cash, and to all such documents, information and facilities as may be required by that person for the purpose of the examination, and shall produce to that person all such books or other documents, accounts, titles, securities or cash and give all such information, as he may require.

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(2) Notwithstanding Subsection (1), any person authorised by the Commission in writing for this purpose may, take possession of any books or other documents, accounts, titles, securities or cash to which he has access under Subsection (1), if in his opinion -

- (a) the inspection of them, the copying of them, or the taking of extracts from them, cannot reasonably be undertaken without taking possession of them; or
- (b) they may be interfered with or destroyed unless he takes possession of them; or
- (c) they may be needed as evidence in any legal proceedings, whether civil or criminal, which may be instituted under or in connection with any securities law or any other law.

(3) A person or a licensed person or a director or officer of the licensed person who fails to -

- (a) allow access to, give possession or produce its books or other documents, accounts, titles, securities or cash; or
- (b) give information or facilities, in accordance with Subsections (1), and (2); or
- (c) assist the person who is conducting the examination,

is guilty of an offence.

Penalty: A fine not exceeding K5,000,000.00 or imprisonment for a term not exceeding seven years, or both.

### **69. EXAMINATION TO TAKE PLACE IN PRIVATE.**

(1) The examination shall take place in private and the Commission may give directions about who may be present during an examination, or during a part of it.

(2) No other person shall be present at the examination unless he or she -

- (a) is the examiner, the examinee or a member of the Commission; or
- (b) a staff member of the Commission; or
- (c) is entitled to be present by virtue of -
  - (i) a direction under Subsection (1); or
  - (ii) being the lawyer of the examinee.

(3) A person who willfully refuses to comply with this section is guilty of an offence.

Penalty: A fine of not exceeding K500,000.00 or imprisonment for a term not exceeding three years, or both.

Default Penalty: K1,000.00 every day.

### **70. EXAMINEE'S LAWYERS MAY ATTEND.**

(1) The examinee's lawyer may be present at the examination and may, at such times during the examination as the Commission or its examiner determines -

- (a) address the examiner; or
- (b) examine the examinee,

about matters which the examiner has examined.

(2) If, in the examiner's opinion, a person is trying to obstruct the examination by exercising rights under Subsection (1), the examiner may require the person to stop addressing the examiner, or examining the examinee, as the case requires.

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### **71. APPLICATION OF EVIDENCE FROM THE RECORD.**

(1) The Commission may use the evidence obtained in the examination to file civil proceedings under Section 84 or 101.

(2) A person, other than the Commission, who uses the content of the report to question or otherwise attack the personal credibility of the person who is the subject of the examination, before the Commission finding any guilt of the examinee, is guilty of an offence.

Penalty: A fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

Default Penalty: K5,000.00 every day.

### *Division 3. - Inquiries.*

### **72. POWER TO CONDUCT INQUIRY.**

(1) The Commission may conduct inquiries for the purposes of the performance of any of its powers and functions, under this Act or any other law, if the Commission considers an inquiry is necessary or desirable for the purposes of carrying out its regulatory functions.

(2) Nothing in this Division prevents the Commission from seeking the assistance of the National Government to convene an inquiry under the *Commission of Inquiry Act 1951*, if the issues for the inquiry also cover issues other than that of the capital markets.

### **73. NOTICE OF INQUIRY.**

(1) The Commission may publish a notice of an inquiry in the National Gazette and a daily newspaper circulating generally in the country.

(2) A notice under Subsection (1), shall specify -

- (a) the purpose of the inquiry; and
- (b) the period during which the inquiry is to be held; and
- (c) the period within which, and the form in which members of the public may make submissions, including details of public hearings; and
- (d) the matters that the Commission would like submissions to deal with.

(3) The Commission may publish the terms of reference of any inquiry in the National Gazette.

### **74. GENERAL DISCRETION TO CONDUCT INQUIRIES IN PUBLIC OR PRIVATE.**

(1) The Commission may direct that an inquiry into a matter takes place in public or in private.

(2) In exercising its discretion under Subsection (1), the Commission shall have regard to -

- (a) whether evidence that may be given, or a matter that may arise, during the hearing is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence; and

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- (b) any unfair prejudice to a person's reputation that would be likely to be caused if the hearing took place in public; and
- (c) whether it is in the public interest that the hearing take place in public; and
- (d) any other relevant matter.

### **75. THE COMMISSION MAY RESTRICT PUBLICATION OF CERTAIN MATERIAL.**

(1) Where, at a hearing that is taking place in public or in private, the Commission is satisfied that it is desirable to do so, the Commission may give directions preventing or restricting the publication of evidence given before the Commission, or of matters contained in documents lodged with the Commission.

(2) In determining whether or not to give a direction under Subsection (1), the Commission shall have regard to -

- (a) whether evidence that has been or may be given, or a matter that has arisen or may arise, during the hearing, is of a confidential nature or relates to the Commission, or to the alleged or suspected commission, of an offence against any other Acts of Parliament; and
- (b) any unfair prejudice to a person's reputation that would be likely to be caused unless the Commission exercises its powers under this section; and
- (c) whether it is in the public interest that the Commission exercises its powers under this section; and
- (d) any other relevant matter.

### **76. WHO MAY BE PRESENT WHEN AN INQUIRY TAKES PLACE IN PRIVATE.**

(1) The Commission may give directions as to who may be present during a hearing or an inquiry that is to take place in private.

(2) A direction under Subsection (1), does not prevent a lawyer who represents an interested person or party in the hearing from appearing before the Commission during the hearing.

(3) Where the Commission directs that a hearing take place in private, a person shall not be present at the hearing unless he or she -

- (a) is a member of the Commission; or
- (b) is a staff member approved by the Commission; or
- (c) is entitled to be present by virtue of -
  - (i) a direction under Subsection (1); or
  - (ii) the party interested in the inquiry.

Penalty: A fine not exceeding K500,000.00 or imprisonment for a term not exceeding three years, or both.

### **77. INVOLVEMENT OF A PERSON ENTITLED TO APPEAR AT A HEARING.**

(1) The Commission shall appoint a place and time for the inquiry and cause written notice of that place and time to be given to a person who is entitled to be at a hearing.

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(2) If the person does not wish to appear at the hearing, the person may, before the day of the hearing, lodge with the Commission any written submissions that the person wishes the Commission to take into account in relation to the matter concerned.

(3) Notwithstanding Subsection (2), a person who is issued with a summons under Section 78 to give evidence shall appear before the Commission, until he is discharged by the Commission.

### **78. POWER TO SUMMON WITNESSES AND TAKE EVIDENCE.**

- (1) The Commission may, by written summons in the prescribed form given to a person -
- (a) require the person to appear before the Commission at a hearing to give evidence, to produce specified documents or to do both; and
  - (b) require the person to attend from day to day unless excused, or released from further attendance, by the Commission.

(2) At a hearing, the Commission may take evidence on oath or affirmation, and for that purpose the Commission may -

- (a) require a witness at the hearing to either take an oath or make an affirmation; and
- (b) administer an oath or affirmation to a witness at the hearing.

(3) The oath or affirmation to be taken or made by a person for the purposes of this section, is an oath or affirmation that the evidence the person will give will be true.

- (4) The member presiding at a hearing -
- (a) may require a witness at the hearing to answer a question put to the witness; and
  - (b) may require a person appearing at the hearing pursuant to a summons issued under this section to produce a document specified in the summons.

(5) The Commission may permit a witness at a hearing to give evidence by tendering, and if the Commission so requires, verifying by oath, a written statement.

### **79. PROCEEDINGS AT HEARINGS.**

(1) A hearing shall be conducted with as little formality and technicality and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Commission permits.

- (2) At a hearing, the Commission -
- (a) is not bound by the rules of evidence; and
  - (b) may, on such conditions as it thinks fit, permit a person to intervene; and
  - (c) must observe the rules of natural justice.

(3) At a hearing before the Commission, one member of the Commission may preside over the inquiry.

(4) At a hearing, a natural person may appear in person or with a lawyer of his choice.

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(5) A body corporate may be represented at a hearing by an officer or employee of the body corporate or by its lawyers.

(6) An unincorporated association, or a person in his capacity as a member of an unincorporated association may be represented at a hearing by a member, officer or employee of the association or by its lawyer.

### **80. REFERENCE TO COURT OF QUESTION OF LAW ARISING AT HEARING.**

(1) The Commission may, on its own motion or at a person's request, refer to the Court for a decision relating to a question of law arising at a hearing.

(2) Where a question has been referred under Subsection (1), the Commission shall not, in relation to a matter to which the hearing relates -

- (a) give a ruling or determination while the reference is pending a decision to which the question is relevant; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the Court's opinion on the question.

(3) Where a question is referred under Subsection (1) -

- (a) the Commission shall send to the Court all documents that were before the Commission in connection with the hearing; and
- (b) at the end of the proceeding in the Court in relation to the reference, the Court shall cause the documents to be returned to the Commission.

### **81. PROTECTION OF MEMBERS.**

(1) A member has, in the performance or exercise of any of his or her functions and powers as a member in relation to a hearing, the same protection and immunity as a Justice of the National Court.

(2) A delegate of a member has, in the performance or exercise of any delegated function or power in relation to a hearing, the same protection and immunity as a Justice of the National Court.

(3) A lawyer or other person appearing on a person's behalf at a hearing has the same protection and immunity as a lawyer has in appearing for a party in a proceeding in the National Court.

(4) Subject to this Act, a person who is required by a summons under Section 78 to appear at a hearing, or a witness at a hearing, has the same protection as a witness in a proceeding in the National Court.

### **82. REPORTS.**

(1) The Commission shall deliver a copy of the final report on the inquiry to the Minister.

(2) The Minister shall table the report in next session of Parliament after the release of the report by the Commission.

*Division 5. - Evidentiary use of certain material.*

**85. STATEMENTS MADE AT AN EXAMINATION: PROCEEDINGS AGAINST EXAMINEE.**

(1) A statement that a person makes during an examination under Division 2 of this Part is admissible in evidence against the person in a proceeding unless -

- (a) the statement is not admissible in evidence against the person in the proceeding; or
- (b) the statement is not relevant to the proceeding and the person objects to the admission of evidence of the statement; or
- (c) the statement is qualified or explained by some other statement made at the examination, evidence of the other statement is not tendered in the proceeding and the person objects to the admission of evidence of the first-mentioned statement; or
- (d) the statement discloses a matter in respect of which the person could claim legal professional privilege in the proceeding if this subsection did not apply in relation to the statement, and the person objects to the admission of evidence of the statement.

(2) Subsection (1), applies in relation to a proceeding against a person even if it is heard together with a proceeding against another person.

(3) Where a written record of an examination of a person is signed by the person under Subsection (2), or authenticated in any other prescribed manner, the record is, in a proceeding, *prima facie* evidence of the statements it recorded, but nothing in this Part limits or affects the admissibility, in the proceeding of other evidence, of statements made at the examination.

**86. STATEMENTS MADE AT AN EXAMINATION: OTHER PROCEEDINGS.**

Where direct evidence by a person (the absent witness) of a matter would be admissible in a proceeding, a statement made by the person during his examination which establishes the matter, is admissible in the proceeding as evidence of that matter -

- (a) if it appears to the Court or tribunal that -
  - (i) the absent witness is dead or is unfit, because of physical or mental incapacity, to attend as a witness; or
  - (ii) the absent witness is outside the country and it is not reasonably practicable to secure his attendance; or
  - (iii) all reasonable steps have been taken to find the absent witness but he cannot be found; or

(b) if it does not so appear to the Court or tribunal, unless another party to the proceeding requires the party tendering evidence of the statement to call the absent witness as a witness in the proceeding and the tendering party does not so call the absent witness.

**87. WEIGHT OF EVIDENCE ADMITTED UNDER SECTIONS 66 AND 69.**

(1) This section applies where evidence of a statement made by a person at an examination of the person under Section 66 or 69 is admitted in a proceeding.

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- (2) In deciding how much weight (if any) to give to the statement as evidence of a matter, regard is given to -
- (a) how long after the matters to which it relates to the statement was made; and
  - (b) any reason the person may have had for concealing or misrepresenting a material matter; and
  - (c) any other circumstances from which it is reasonable to draw an inference about how accurate the statement is.
- (3) Where the person is not called as a witness in the proceeding -
- (a) evidence that would, if the person had been so called, have been admissible in the proceeding for the purpose of destroying or supporting his credibility is so admissible; and
  - (b) evidence is admissible to show that the statement is inconsistent with another statement that the person has made at any time.

### **88. OBJECTION TO ADMISSION OF STATEMENTS MADE AT EXAMINATION.**

- (1) A party (the adducing party) to a proceeding may, not less than 14 days before the first day of the hearing of the proceeding, give to another party to the proceeding written notice that the adducing party -
- (a) will apply to have admitted in evidence in the proceeding specified statements made at an examination; and
  - (b) for that purpose, will apply to have evidence of those statements admitted in the proceeding.
- (2) A notice under Subsection (1), shall set out, or be accompanied by writing that sets out, the specified statements.
- (3) Within 14 days after a notice is given under Subsection (1), the other party may give to the adducing party a written notice -
- (a) stating that the other party objects to specified statements being admitted in evidence in the proceeding; and
  - (b) specifies, in relation to each of those statements, the grounds of objection.
- (4) The period prescribed by Subsection (3), may be extended by the court or tribunal or by agreement between the parties concerned.
- (5) On receiving a notice given under Subsection (3), the adducing party shall give to the court or tribunal a copy of -
- (a) the notice under Subsection (1), and any writing that Subsection (2), required to accompany that notice; and
  - (b) the notice under Subsection (3).
- (6) Where Subsection (5), is complied with, the court or tribunal may either -
- (a) determine the objections as a preliminary point before the hearing of the proceeding begins; or
  - (b) defer determination of the objections until the hearing.

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- (7) Where a notice has been given in accordance with Subsections (1) and (2), the other party is not entitled to object at the hearing of the proceeding to a statement specified in the notice being admitted in evidence in the proceeding, unless -
- (a) the other party has, in accordance with Subsection (3), objected to the statement being so admitted; or
  - (b) the court or tribunal gives the other party leave to object to the statement being so admitted.

### **89. EXCEPTIONS TO ADMISSIBILITY OF REPORT.**

(1) This section applies where a party to a proceeding tenders a copy of a report as evidence against another party.

(2) In a proceeding, a copy of a report is not admissible under Section 87 as evidence against the other party, unless the Court or tribunal is satisfied that -

- (a) a copy of the report has been given to the other party; and
- (b) the other party and his lawyer have had a reasonable opportunity to examine that copy and has taken its contents into account in preparing their case.

(3) Before or after the copy referred to in Subsection (1), is admitted in evidence, the other party may apply to cross-examine, in relation to the report, a specified person who, or two or more specified persons each of whom -

- (a) was concerned in preparing the report or making a finding about a fact or matter that the report states the Commission to have found to exist; or
- (b) whether or not pursuant to a requirement made under this Part, gave information, or produced a book, on the basis of which, or on the basis of matters including which, such a finding was made.

(4) The Court or tribunal may grant an application made under Subsection (3), unless it considers that, in all the circumstances, it is not appropriate to do so.

(5) Where -

- (a) the Court or tribunal grants an application or applications made under Subsection (3); and
- (b) a person to whom the application or any of the applications relate, or two or more such persons, is or are unavailable, or does not or do not attend, to be cross-examined in relation to the report; and
- (c) the Court or tribunal is of the opinion that to admit the copy under Subsection (3), in the proceeding as evidence against the other party without the other party having the opportunity so to cross-examine the person or persons would unfairly prejudice the other party,

the Court or tribunal shall refuse so to admit the copy, or shall treat the copy as not having been so admitted, as the case requires.

### **90. MATERIAL OTHERWISE ADMISSIBLE.**

Nothing in this Division renders evidence inadmissible in a proceeding in circumstances where it would have been admissible in that proceeding if this Division had not been enacted.

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### *Division 6. - Miscellaneous.*

#### **91. RECOVERY OF EXPENSES OF INVESTIGATION.**

- (1) Where -
- (a) a person is convicted of an offence against a law; or
  - (b) a judgment is awarded, or a declaration or other order is made, against a person in a court; or
  - (c) a person is convicted of an offence against Division 4; or
  - (d) a judgment is awarded, or a declaration or other order is made, against a person under Division 2; or
  - (e) a proceeding begun as a result of an investigation under Division 1,
- the Commission may make one of the following orders:
- (f) an order that the person pay the whole, or a specified part, of the expenses of the investigation; or
  - (g) an order that the person reimburse the Commission to the extent of a specified amount of such of the expenses of the investigation as the Commission has paid; or
  - (h) an order that the person pay, or reimburse the Commission in respect of, the whole, or a specified part, of the cost to the Commission of making the investigation, including the remuneration of a member or staff member concerned in the investigation.
- (2) An order under this section must be in writing and shall specify when and how the payment or reimbursement is to be made.
- (3) A person who fails to comply with this section is guilty of an offence.
- Penalty: A fine not exceeding K500,000.00 or imprisonment for a term not exceeding three years, or both.
- (4) The Commission may recover, in a court of competent jurisdiction, as a debt due to the Commission, the amount payable under an order made under this section if it is not paid in accordance with the order.
- (5) A report under Division 1 may include recommendations about the making of orders under this section.

#### **92. ENFORCEMENT OF UNDERTAKINGS.**

- (1) The Commission may accept a written undertaking given by a person in connection with a matter in relation to which the Commission has a function or power under this Act.
- (2) The person may withdraw or vary the undertaking at any time, but only with the Commission's consent.
- (3) Where the Commission considers that the person who gave the undertaking has breached any of its terms, the Commission may apply to the Court for an order under Subsection
- (4).

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- (4) Where the Court is satisfied that a person has breached a term of the undertaking, the Court may make all or any of the following orders:
- (a) an order directing the person to comply with that term of the undertaking; or
  - (b) an order directing the person to pay to the Commission an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach; or
  - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach; or
  - (d) any other order that the Court considers appropriate.

### *Division 7. - Offences.*

#### **93. OFFENCES.**

A person who -

- (a) having been served a notice requiring him to appear before the Commission for the purposes of any matter, refuses or willfully neglects to appear before the Commission, or to take an oath or make an affirmation as a witness, or to answer any question put to him concerning the matter, or to produce to the Commission any book or document that he is required to produce; or
  - (b) deceives or attempts to deceive or knowingly misleads the Commission on any evidence given or otherwise proffered to it; or
  - (c) obstructs or hinders the Commission in the exercise of a power under this Part; or
  - (d) breaches any term or condition imposed by the Commission, or uses the material for unauthorised purpose,
- is guilty of an offence.

Penalty: A fine not exceeding K5,000,000.00 or imprisonment for a term not exceeding seven years, or both.

#### **94. FALSE INFORMATION.**

(1) A person shall not -

- (a) in purported compliance with a requirement made under this Part; or
  - (b) in the course of an examination,
- give information, or make a statement, that is false or misleading in a material particular.

Penalty: A fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(2) A person shall not, at a hearing, give evidence that is false or misleading in a material particular.

Penalty: A fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(3) It is a defence to a prosecution for a contravention of Subsection (1) or (2), if it is proved that the defendant, when giving the information or evidence or making the statement, believed on reasonable grounds that it was true and not misleading.

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(4) The burden of proof in this Division is that of a criminal burden under the Criminal Code.

### **95. OBSTRUCTING PERSON ACTING UNDER THIS PART.**

(1) A person shall not engage in conduct that results in the obstruction or hindering of a person -

- (a) in the exercise of a power under this Part; or
- (b) who is executing a warrant issued under Section 61.

Penalty: A fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(2) The occupier or the person in charge of the premises, that a person enters under a warrant issued under Section 61, shall not intentionally or recklessly fail to provide all reasonable facilities and assistance for the effective exercise of the powers under the warrant.

Penalty: A fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

### **96. CONTEMPT OF THE COMMISSION.**

(1) A person shall not engage in conduct that results in -

- (a) the obstruction or hindering of the Commission or a member in the performance or exercise of any of the Commission's functions and powers; or
- (b) the disruption of a hearing of the Commission.

Penalty: A fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(2) A person shall not defy a direction, order or decision of the Commission in the course of performing its regulatory powers and functions.

Penalty: A fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

### **97. CONCEALING BOOKS RELEVANT TO INVESTIGATION.**

(1) Where the Commission is investigating or is about to investigate a matter, a person shall not, engage in conduct that results in the concealment, destruction, mutilation or alteration of a book relating to that matter.

Penalty: A fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(2) It is a defence to a prosecution for a breach of Subsection (1), if it is proved that the defendant did not intend to defeat the purposes of the Commission or to delay or obstruct an investigation or a proposed investigation by the Commission.

**98. POWERS OF COURT WHERE NON-COMPLIANCE WITH PART.**

(1) This section applies where the Commission is satisfied that a person has, without reasonable excuse, failed to comply with a requirement of this Part, other than Division 6.

(2) The Commission may file proceedings in the National Court either as a criminal proceedings or civil proceedings depending on the nature of the default.

(3) If the Court finds the person guilty or finds that the person has willfully failed to comply with a lawful direction of the Commission, the Court shall impose specific penalties as set out in specific provisions of this Act, depending on the nature of the offence.

**PART VI. - DISCLOSURE OF INFORMATION.**

**99. NOTICE TO AUDITORS CONCERNING INFORMATION AND BOOKS.**

(1) Subject to Subsection (2), the Commission may give an auditor a written notice requiring the auditor -

(a) to give specific information; or

(b) to produce specified books,

to a specific member of the Commission or a staff member of the Commission at a specified place and time.

(2) The power in Subsection (1) may only be exercised for the purposes of the performance or exercise of the Commission's functions relating to enforcement of performance of its regulatory functions.

(3) Without limiting Subsection (1), a notice under Subsection (4) may require the auditor to give information or produce books, even if doing so would involve a breach of an obligation of confidentiality that the auditor owes to its clients or persons of which the said books and information are or may be associated with.

(4) The Commission may, by written notice to an auditor who has received a notice under Subsection (1), extend the period within which the auditor shall give the information or produce the books to which the notice under that subsection relates.

(5) A person who fails to comply with the notice under Subsection (1) or (2), is guilty of an offence.

Penalty: A fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

Default Penalty: K1,000.00 every day.

**100. NOTICE TO PRODUCE BOOKS.**

(1) The Commission may give -

(a) a person or corporation involved in the issuances of securities to the public; or

(b) a board member of the entity under Paragraph (a) above; or

(c) a nominee controlled by a person or two or more persons; or

## *Securities Commission*

(d) any other person who, in the Commission's opinion, has been a party to a dealing in the securities,  
a written notice requiring delivery of books to a member of the Commission or a staff of the Commission relating to -

- (e) the business or affairs of the person or corporation; or
- (f) a dealing in securities; or
- (g) advice given, or an analysis or report issued or published about the financial product; or
- (h) the character or financial position of, or business carried on by a person referred to in Paragraphs (a) to (d); or
- (i) an audit of, or a report of an auditor about, a dealing in the financial products or accounts or records of a person who either carries on or has carried on, either alone or together with any person or persons, a securities business, or who is a representative of such a company.

(2) The Commission may give a written notice requiring the production to the Commission or a specified member or staff member of the Commission, at a specified place and time, of specified books relating to -

- (a) the provision of any services or its operation; or
- (b) other documents that the Commission may require to perform its functions.

(3) A reference in Subsection (1), to dealing in securities, or to a business carried by a person, includes a person, or a person as a trustee, as the case may be.

### **PART VII. - GENERAL.**

#### **101. THE COMMISSION MAY FILE PROCEEDINGS IN THE NATIONAL COURT.**

(1) The Commission may, on behalf of a unit holder, an investor or a beneficiary to a security or class of securities, file civil proceedings in the National Court to recover any assets, securities, properties or its value in money form, from an issuer, promoter, trustee, manager or any person dealing with securities or related matters.

(2) Subject to Subsection (1), the Commission may file proceedings in the National Court under the provisions of the *Proceeds of Crimes Act 2005* and the *Fairness of Transactions Act 1993*, in relation to securities regulated by the Commission under this Act.

#### **102. THE COMMISSION MAY PROSECUTE CRIMINAL OFFENCES IN THE NATIONAL COURT.**

(1) The Commission may, with the consent of the Public Prosecutor, prosecute any criminal offences committed under this Act.

(2) The Commission may liaise with the Public Prosecutor on the procedures in the prosecuting of an offence under Subsection (1).

#### **103. GENERAL PENALTY.**

(1) A person who contravenes a requirement or any provision of this Act is guilty of an offence.

(2) Where no penalty is expressly provided for an offence under this Act, a person who is guilty of the offence shall be liable to a fine not exceeding K15,000,000.00 or imprisonment for a term not exceeding 15 years, or both.

(3) Where in the case of a continuing offence, after judgment, the person shall be liable to a daily fine not exceeding K5,000.00 for every day during which the offence continues.

#### **104. OFFENCES BY BODY CORPORATE.**

(1) Where a person convicted in respect of any offence under this Act is a body corporate, it shall only be liable to the imposition of a fine provided for in the Act.

(2) Subject to Subsection (1), a person who, at the time of the commission of the offence, was a Director, Chief Executive Officer, Chief Financial Officer or the Secretary of the body corporate or was purporting to act in such capacity shall be deemed to be guilty of that offence.

#### **105. COMPOUNDING OF OFFENCES.**

(1) The Chairman of the Commission may compound any offence under this Act, the *Capital Market Act 2015*, the *Central Depository Act 2015* or the regulations made under this Act, the *Capital Market Act 2015* or the *Central Depository Act 2015*, by accepting from the person reasonably suspected of having committed such an offence a sum of money not exceeding such amount as may be prescribed.

(2) Upon receipt of the sum of money referred to in Subsection (1), no further proceedings shall be taken against such person in respect of such offence and where possession has been taken of any books, such books shall be released, subject to such conditions as may be imposed in accordance with the conditions of the compounding.

(3) All monies received under this section shall be paid into the Fund of the Commission pursuant to Section 43.

#### **106. PROTECTION OF INFORMERS AND INFORMATION.**

(1) Where a complaint is received by the Commission, the information referred to in the complaint and the identity of the person from whom such information is received shall be confidentially classified information between the Commission and the person who lodged the complaint.

(2) Subject to Subsection (1), every information, including the identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, shall not be disclosed or be ordered or required to be disclosed in any civil, criminal or other proceedings in any Court, tribunal or other authority.

(3) If any book, paper or other document, or any visual or sound recording, or other matter or material which is given in evidence, or liable to inspection in any civil, criminal or other proceedings in any Court, tribunal or other authority, contains any entry or other matter in which any person who gave the information is named or described or shown, or which might lead to his discovery, the Court or tribunal or authority before which the proceedings are held shall cause all parts or passages to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect such person from discovery.

(4) A person who gives the information referred to in Subsection (1), knowing that the information is false, is guilty of an offence and is liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

(5) Subsections (1), (2) and (3) shall not apply to any investigation into, or prosecution of, any offence under Subsection (4).

**107. OFFENCES UNDER SECURITIES LAW ARE INDICTABLE OFFENCES.**

An offence punishable under a securities law shall be an indictable offence, unless specifically provided otherwise by a provision of such law.

**108. DUTY OF INVESTIGATING OFFICER TO HAND OVER ARRESTED PERSON TO THE POLICE.**

If an Investigating Officer appointed under Section 55(1), makes an arrest under Section 60(3), he shall, without unnecessary delay, hand over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and the person arrested shall be dealt with in accordance with the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

**109. DETENTION OF PERSON ARRESTED.**

Notwithstanding any other provision in any other law relating to criminal procedure, a Magistrate authorising the detention of a person arrested under Section 62, shall authorise the detention of the person arrested in the custody of the police.

**110. POWER TO ENGAGE PERSONS TO RENDER ASSISTANCE.**

The Commission may, either generally or in a particular matter, engage, under such terms and conditions of engagement as the Commission may determine from time to time, any person who is not an officer of the Commission to render such assistance as the Commission may require or specify in connection with the performance of its functions, or the discharge of its duties under a securities law, or to perform or discharge the same on behalf of and in the name of the Commission.

**111. POWER TO REVIEW.**

(1) The Commission may review its own decision under this Act upon an application made by any person who is aggrieved by the decision.

(2) An application to the Commission to review its own decision shall be made within 30 days after the aggrieved person is notified of the decision.

(3) The procedures under Sections 114(3), (4), (5) and (6) are applicable to an appeal under Subsection (2).

**112. DECISION OF COMMISSION SHALL BE FINAL.**

(1) Except as otherwise provided in this Act, any decision made by the Commission under this Act, whether an original decision by it or a decision upon being reviewed under Section 111(1), shall be final.

(2) Subject to Subsection (1), any person who is not satisfied with the decision of the Commission may file an appeal against the decision of the Commission in the National Court.

**113. OBLIGATION OF SECRECY.**

(1) Except for any of the purposes of this Act, the *Capital Market Act 2015*, or the *Central Depositories Act 2015*, or for the purpose of any civil or criminal proceedings under any other law or where otherwise authorised by the Commission, no member of the Commission or any of its committees or any officer, servant or agent of the Commission or any person attending any meeting of the Commission or any of its committees shall disclose any information which has been obtained by him in the course of his duties and which is not published under this Act.

(2) A person who contravenes Subsection (1) is guilty of an offence and is liable to a fine not exceeding K10,000,000.00 or imprisonment for a term not exceeding ten years, or both.

**114. APPEALS TO COURT ONLY ON QUESTIONS OF LAW.**

(1) Subject to Subsections (2) to (6), every decision of the Commission shall be final and binding.

(2) Where a person is dissatisfied with any determination, of the Commission as being erroneous on a point of law, he may appeal to the Court by way of a case stated for the opinion of the Court on a question of law only.

(3) Within 14 days after the date of the determination, the appellant shall lodge a notice of appeal with the Commission, and the appellant shall deliver or post a copy of the notice to every other party to the proceedings.

(4) Within 14 days after the lodging of the notice of appeal, or within such further time as the Commission may, in its discretion, allow, the appellant shall state in writing and lodge with the Commission, a case setting out the facts and the grounds of the determination and specify the question of law on which the appeal is made, and the appellant shall forthwith deliver or post a copy of the case to every other party to the proceedings.

(5) The Court may, in its discretion, on the application of the appellant or intending appellant, extend any time prescribed or allowed under this section for the lodging of a notice of appeal.

(6) Subject to the provisions of this section, the case shall be dealt with in accordance with rules of the Court.

**115. PROCEEDINGS PRIVILEGE.**

(1) No civil or criminal proceedings shall be brought against -

- (a) the Commission; or
- (b) the Chairman or Registrar; or
- (c) the Commissioners; or
- (d) any employee of the Commission or Registrar; or
- (e) any expert appointed by the Commission,

for anything, it or they may do or fail to do in the course of the exercise or intended exercise of its or their functions, unless it is shown that it or they acted in bad faith.

(2) Neither the Chairman, the Commissioners nor an employee of the Commission, or any agent, or an expert appointed by the Commission, shall be required to give evidence in a Court, or in a proceeding of a judicial nature, in respect of anything coming to his knowledge in the course of the performance of his duties and functions under this Act.

- (3) Nothing in Subsection (1) or (2), applies in respect of proceedings for -
- (a) an offence against Sections 86, 87(1), 89, 90, 91, 92 or 93(1) of the *Criminal Code Act* (Chapter 262); or
  - (b) the offence of conspiring to commit an offence against Sections 86, 87(1), 89, 90, 91, 92 or 93(1) of the *Criminal Code Act* (Chapter 262); or
  - (c) the offence of attempting to commit an offence against Sections 86, 87(1), 89, 90, 91, 92 or 93(1) of the *Criminal Code Act* (Chapter 262).

(4) Anything said, or any information supplied, or an electronic device, computer, or any book or document produced, by any person in the course of any proceedings before the Commission shall be privileged in the same manner as if the proceedings were proceedings in a Court.

#### **116. REGULATIONS.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act prescribing all matters that are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **PART VIII. - REPEAL PROVISIONS.**

#### **117. REPEAL.**

- (1) The *Securities Act 1997* is hereby repealed.
- (2) The *Securities Regulation 1998* is hereby repealed.
- (3) The *Takeovers Code 1998* is hereby repealed.

### **PART IX. - SAVING AND TRANSITIONAL PROVISIONS.**

#### **118. APPLICATIONS, MATTERS, ETC., NOT TO ABATE.**

Where, immediately before the coming into operation of this Act, any application or matter was pending or existing before the Commission, it does not, on the coming into operation of this Act, abate or discontinue, but may be continued as if this Act had not been made.

#### **119. APPEALS, ACTIONS, ETC., NOT TO ABATE.**

Where, immediately before the coming into operation of this Act, any appeal, action, arbitration or proceeding was pending, or any cause of action was pending or existed, such action, arbitration or proceeding or cause of action does not abate and is not affected by the coming into operation of this Act, but it may be prosecuted, continued and enforced as if this Act had not been made.

## 120. REFERENCES TO REPEALED ACTS.

A reference in any Act, regulation, rule, by-law, instrument or document to the repealed Act or any provision of the repealed Act shall, unless the contrary intention appears, be read and construed as a reference to this Act, or the corresponding provision, if any, of this Act.

## 121. TRANSITIONAL AND SAVINGS.

(1) All actions, rules, regulations, orders, directions, notifications, approvals, decisions, guidelines and other executive acts howsoever called, made, given or done under, or in accordance with, or by virtue of the repealed Act before the coming into operation of this Act, to the extent that they are affected by this Act shall be deemed to have been made, given or done under, or in accordance with this Act, and shall continue to remain in full force and effect in relation to whom they apply until amended, revoked, repealed or rescinded under, or in accordance with this Act.

(2) Nothing in the repealed Act or this Act shall affect any person's liability to be prosecuted or punished for offences committed under the repealed Act before the coming into operation of this Act or any proceeding brought or sentence imposed before that day in respect of such offence.

(3) Nothing in this Act shall -

- (a) affect the validity of any securities issued before the coming into operation of this Act; or
- (b) apply in relation to an issuer or any other person in respect of any securities that have been issued or offered for subscription or purchase or in respect of which an invitation to subscribe for or purchase securities has been made before the coming into operation of this Act.

## 122. DIFFICULTIES WITH TRANSITIONAL PROVISIONS.

Where a difficulty arises in respect of the transitional provisions in this Part, the Head of State, acting on advice, may, by regulation -


- (a) make such modifications to those provisions as may appear necessary for preventing anomalies during the transition to the provisions of this Act from the provisions of the repealed Acts; and
- (b) make such incidental, consequential and supplementary provisions as may be necessary or expedient for the purpose of giving full effect to those transitional provisions, and any such modifications or provisions made by the Head of State, acting on advice, have, and shall be deemed always to have had, the same force and effect as if they had been enacted by way of an amendment to this Part, and on publication of the Regulation in the National Gazette, this Part shall be amended accordingly.

## 123. FIDELITY FUND CONVERTED TO CAPITAL MARKET COMPENSATION FUND.

The funds comprising of the Fidelity Fund established under Part III of the repealed *Securities Act 1997* shall constitute the Capital Market Compensation Fund established under Part IX of the *Capital Market Act 2015*.

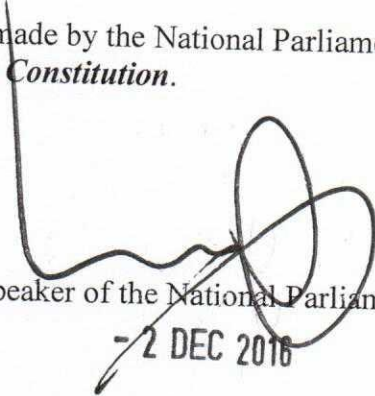
*Securities Commission*

I hereby certify that the above is a fair print of the *Securities Commission Act 2015* which has been made by the National Parliament.

  
Acting Clerk of the National Parliament.

- 2 DEC 2016

I hereby certify that the *Securities Commission Act 2015* was made by the National Parliament on 27 October 2015, by an absolute majority as required by the *Constitution*.

  
Acting Speaker of the National Parliament.

- 2 DEC 2016