

## Prevention of Fraud (Investments) Bill, 1949.

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### EXPLANATORY NOTE.

THE object of this Bill is to prevent fraud in dealings in securities (securities being defined as including (*inter alia*) shares and debentures of corporations and novel forms of securities created by sole traders, firms and companies with a view of avoiding the requirements of the Companies Act, 1936, respecting prospectuses) and, with this end in view, to provide—

- (a) that persons (whether as principals or agents) dealing in securities, except in the cases of certain persons and certain classes of transactions, must be licensed and must make deposits with the Colonial Treasurer or furnish guarantees;
- (b) that the Governor may by proclamation published in the Government Gazette exempt any person or any security or any class of security from the provisions of the Bill;
- (c) for the regulation of the business of dealing in securities;
- (d) that any person who, by any statement, promise or forecast, which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making of any statement, promise or forecast induces or attempts to induce another person to enter into a dealing relating to securities, shall be guilty of an offence punishable by imprisonment;
- (e) restrictions on the distribution of circulars relating to investments in securities;
- (f) for a register of persons licensed in pursuance of the Bill to be kept by the Registrar-General.

No. , 1949.

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## A BILL

To provide for regulating the business of dealing in securities; to make general provision for preventing fraud in connection with dealings in investments; and for purposes connected therewith.

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**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of  
 5 the same, as follows:—

### PART I.

#### PRELIMINARY.

**1.** (1) This Act may be cited as the "Prevention of Fraud (Investments) Act, 1949."

Short title,  
and division  
into Parts.

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(2) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY—ss. 1, 2.

PART II.—REGULATION OF THE BUSINESS OF  
DEALING IN SECURITIES—ss. 3-11.

5 PART III.—GENERAL PROVISIONS FOR THE PREVEN-  
TION OF FRAUD—ss. 12, 13.

PART IV.—EXEMPTIONS—ss. 14, 15.

PART V.—SUPPLEMENTARY PROVISIONS—ss. 16-19.

2. (1) In this Act, unless the context or subject matter  
10 otherwise indicates or requires:—

“Appointed day” means such day as the Governor  
may appoint by proclamation published in the  
Gazette.

Interpre-  
tation.

cf. 2 & 3  
Geo. 6, c. 16,  
s. 26.

15 “Co-operative society” means a society registered in  
pursuance of the Co-operation Act, 1923-1948.

“Corporation” means any body corporate, incor-  
porated whether in New South Wales or  
elsewhere.

20 “Dealing in securities” means doing any of the  
following things (whether as a principal or as  
an agent), that is to say, making or offering to  
make with any person, or inducing or attempting  
to induce any person to enter into or offer to  
enter into—

25 (a) any agreement for, or with a view to  
acquiring, disposing of, subscribing for  
or underwriting securities, or

30 (b) any agreement the purpose or pre-  
tended purpose of which is to secure  
a profit to any of the parties from the  
yield of securities or by reference to  
fluctuations in the value of securities,  
and “deal in securities” shall be construed  
accordingly.

35 “Debentures” means any debentures, debenture  
stock or bonds of a corporation or of a company  
formed for mining purposes under or in  
pursuance

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pursuance of the Mining Partnerships Act, 1900, or any Act repealed by that Act, whether constituting a charge on the assets of the corporation or company or not.

- 5       “Exempted dealer” means any person declared by the Governor to be an exempted dealer for the purposes of this Act by a proclamation published in the Gazette and for the time being in force.
- 10       “License” means a license under this Act.
- “Municipal corporation” means any council within the meaning of the Local Government Act, 1919, as amended by subsequent Acts, and includes a county council within the meaning of the said
- 15       Act, as so amended.
- “Prescribed” means prescribed by this Act or by the regulations.
- “Principal’s license” means a license authorising the holder thereof to carry on the business of
- 20       dealing in securities.
- “Prospectus” has the same meaning as in the Companies Act, 1936-1949.
- “Registered company” means a company formed and registered under the Companies Act, 1936-
- 25       1949, or deemed to be formed and registered under that Act.
- “Regulations” means regulations made under this Act.
- “Representative’s license” means a license authorising the holder thereof to deal in securities as a servant or agent of any holder of a principal’s license for the time being in force.
- 30       “Securities” means—
- (a) shares or debentures, or rights or interests (described whether as units or otherwise) in any shares or debentures;
- 35       (b)

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- (b) securities of the Government of any part of His Majesty's dominions or the Government of any foreign or other state;
- 5 (c) any interests or documents—
- (i) which confer or purport to confer upon any persons, whether directly or indirectly, any right of enjoyment in or benefit from the property, income, profits or services of a corporation or proposed corporation or partnership (excepting the interest of a partner as such) or sole trader, or which create in favour of any persons against a corporation or proposed corporation or partnership or sole trader any claim, present or future, certain or contingent, or ascertained or sounding only in damages; and
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- (ii) which form or result from or evidence a series or class of similar transactions in respect of which any such persons have common related interests;
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- (d) rights or interests created in pursuance of or for the purpose of any arrangements the purpose or effect, or pretended purpose or effect, of which is to provide facilities for the participation by persons in profits or income alleged to arise or to be likely to arise, from the acquisition, holding, management or disposal of any property, including rights or interests (described whether as units or otherwise) which may be acquired under any unit trust scheme; or
- 30
- 35
- (e)

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5 (e) any document creating or evidencing any right to exchange any right or interest whatsoever for any kind of security as defined in the foregoing provisions of this definition.

10 “Shares” means shares in the share capital of a corporation or proposed corporation or stock of a corporation or proposed corporation or shares in any company formed or to be formed for mining purposes under or in pursuance of the Mining Partnerships Act, 1900, or in any company so formed under or in pursuance of any Act repealed by that Act.

“Statutory corporation” means—

- 15 (a) a corporation incorporated by an Act of the Parliament of the State, or  
(b) any other corporation, being a corporation to which functions in respect of the carrying on of an undertaking are entrusted by such an Act or by an order made under, or confirmed by, such an Act;  
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25 but, save as is provided in paragraph (b) of this definition, does not include any company within the meaning of the Companies Act, 1936-1949.

30 “Unit trust scheme” means any arrangements made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever.

(2) Any reference in this Act to the holder of a  
35 license shall, in relation to a principal's license, be construed as a reference to the person named in the license as being thereby authorised to carry on the business of dealing in securities, and, in relation to a representative's

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representative's license, be construed as a reference to the person named in the license as being thereby authorised to deal in securities as a servant or agent of any holder of a principal's license.

5 (3) Any reference in this Act to a servant of, or to a person employed by, any person shall, in relation to a corporation, be construed as including a reference to any director or officer of the corporation; and any  
10 reference in this Act to leaving or entering the service of a person shall be construed accordingly.

(4) For the purposes of this Act, a person shall be deemed to be a director of a corporation if he occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose  
15 directions or instructions the directors of the corporation or any of them act:

Provided that a person shall not, by reason only that the directors of a corporation act on advice given by him in a professional capacity, be taken to be a person  
20 in accordance with whose directions or instructions those directors act.

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PART II.

REGULATION OF THE BUSINESS OF DEALING IN SECURITIES.

25 **3.** (1) Subject to the provisions of section four of this Act, no person shall, on or after the appointed day,

Licensing  
of dealers  
in securities.  
cf. 2 & 3  
Geo. 6, c. 16,  
s. 1.

(a) carry on or purport to carry on the business of dealing in securities except under the authority of a principal's license, that is to say, a license  
30 under this Act authorising him to carry on the business of dealing in securities; or

(b) in the capacity of a servant or agent of any person carrying on or purporting to carry on that business, deal or purport to deal in securities except under the authority of a  
35 representative's license, that is to say, a license under

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under this Act authorising him to deal in securities as a servant or agent of any holder of a principal's license for the time being in force.

(2) Any person who contravenes this section shall  
 5 be liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds or to both such imprisonment and such fine or, on summary conviction, to  
 10 imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

(3) Proceedings for an offence under this section shall not be instituted except by, or with the consent of, the Minister:

15 Provided that this subsection shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remanding, in custody or on bail, of any person charged with such an offence, notwithstanding that the necessary  
 20 consent to the institution of proceedings for the offence has not been obtained.

4. (1) The restrictions imposed by section three of this Act in relation to dealing in securities shall not apply to the doing of anything by, or on behalf of,—

- 25 (a) the Commonwealth Bank of Australia; or  
 (b) any responsible Minister of the Crown whether a Minister of the State of New South Wales or of the Commonwealth of Australia; or  
 30 (c) any Government Department of the said State or Commonwealth; or  
 (d) any statutory corporation or municipal corporation; or  
 (e) any co-operative society; or  
 (f) any exempted dealer.

35 (2) For the purpose of determining whether or not a person has contravened any of the restrictions imposed by section three of this Act, no account shall be taken of  
 his

Saving for certain transactions, cf. 2 & 3 Geo. 6, c. 16, s. 2; Act No. 7, 1935, s. 3.



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his having done any of the following things (whether as a principal or as an agent), that is to say,—

- (a) effecting transactions with, or through the agency of,—
  - 5           (i) such a person or Department as is mentioned in paragraph (a), paragraph (b), paragraph (c), paragraph (d), paragraph (e), or paragraph (f) of subsection one of this section, or a
  - 10           person acting on behalf of such a person or Department as is so mentioned; or
  - (ii) the holder of a license;
- (b) issuing any prospectus relating to shares or debentures, being a prospectus to which section one hundred and thirty-seven or section three hundred and forty-one of the Companies Act, 1936-1949, applies;
- (c) issuing any document relating to shares in or debentures of a corporation incorporated in the State which is not a registered company, being a document which—
  - 20           (i) would, if the corporation were a registered company, be a prospectus to which section one hundred and thirty-seven of the Companies Act, 1936-1949, applies; and
  - 25           (ii) contains all the matters which, by virtue of section three hundred and forty-one of the said Act, it would have to contain and is issued with the consents which, by virtue of section three hundred and forty-two of the said Act, would be required if the corporation were a company incorporated outside the State
  - 30           and the document were a prospectus issued by that company; and
  - 35           (d)

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(d) issuing any form of application for shares in, or debentures of, a corporation together with—

5 (i) a prospectus which complies with the requirements of section one hundred and thirty-seven or Part XIII of the Companies Act, 1936-1949; or

10 (ii) in the case of a corporation incorporated in the State which is not a registered company, a document containing all the matters mentioned in subparagraph (ii) of paragraph (c) of this subsection,

or of his having, as a principal, acquired, subscribed for or underwritten securities, or effected transactions with a person whose business involves the acquisition  
15 and disposal, or the holding, of securities (whether as a principal or as an agent).

Nothing in this subsection shall be construed as authorising any person to hold himself out as carrying on the business of dealing in securities.

20 **5.** (1) Every person who desires to obtain a license or renewal of a license shall make application in the prescribed form.

Application  
for license.  
cf. Act  
No. 7,  
1935, s. 7.

(2) The application shall be lodged with the clerk of the court of the petty sessions district within which  
25 the applicant proposes to carry on business or if there is more than one such court then with the clerk of the court within such district nearest to the place where the applicant proposes to carry on business.

(3) Upon the receipt of an application for the  
30 grant or the renewal of a license under this Act the clerk shall forthwith notify the officer in charge of police at the nearest police station who shall inquire into and report upon the character and business reputation of the applicant.

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(4) Where the officer in charge of police objects to the grant of the application the clerk of the court shall notify the applicant that the grant of the application will be objected to, and shall set out shortly in the notice the nature of the objection proposed to be made.

(5) No application shall be heard until after the expiration of seven days after the lodging of the application.

(6) No application shall be heard except by a court of petty sessions holden before a stipendiary magistrate.

(7) Every application shall be heard in open court, and the consideration of the application shall be deemed to be a judicial proceeding.

(8) Where the court grants an application for a license or renewal of a license the clerk of the court shall, on payment to him of the prescribed annual fee, issue the license.

(9) A license—

- (a) shall be in the form prescribed;
- (b) shall set forth the true name and place of abode of the person taking out the same;
- (c) shall, in the case of a principal's license, show the name under which such person is thereby authorised to carry on the business of dealing in securities;
- (d) shall, unless sooner revoked, be in force for twelve months from the appointed day where the license is issued before such day and in any other case for twelve months from the date of its issue; and
- (e) may be renewed and on each renewal shall take effect for a further period of twelve months.

(10) No principal's license shall authorise the holder thereof to carry on the business of dealing in securities—

- (a) under any name which in the opinion of the court of petty sessions is likely or intended to be misleading; or

(b)

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(b) under any name except—

(i) his true name; or

5 (ii) where he is a partner in a firm which is registered pursuant to the Business Names Act, 1934-1949, his true name with the addition of the words “carrying on business as (*here insert the name of the firm*)”; or

10 (iii) where at the commencement of this Act he or a firm in which he is a partner was registered under a business name under the Business Names Act, 1934-1949, and under that business name was carrying on a business concerned  
15 either wholly or in part with dealing in securities, his business name with the addition of his true name.

6. (1) Subject to the provisions of this section, the court shall not grant an application for a principal's  
20 license or for the renewal of a principal's license unless the sum of five hundred pounds has been, and remains, deposited by the applicant with the Colonial Treasurer.

Deposits or guarantees required in connection with applications for principal's license.

(2) Where any sum has been deposited under this section, then—

cf. 2 & 3  
Geo. 6, c. 16,  
s. 4.

25 (a) in the event of the depositor becoming bankrupt, the amount of the deposit shall be paid to the trustee in bankruptcy; or

30 (b) if, in a case where the depositor is a corporation, the corporation is ordered to be wound up by, or under the supervision of, the court, the amount of the deposit shall be repaid to the corporation,

and the Governor may by regulations determine the circumstances in which, apart from the preceding  
35 provisions of this subsection, a sum deposited under this section may be withdrawn; but, save as aforesaid, no person shall be entitled to withdraw or transfer any deposit made under this section.

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(3) The Governor may make such regulations as appear to him to be necessary with respect to the investment of sums deposited under this section, the deposit of securities in lieu of money, the payment to  
5 the depositor of the interest or dividends from time to time accruing due on any securities in which a deposit under this section is for the time being invested, or on any securities deposited under this section in lieu of money, and the realisation of such securities as aforesaid  
10 in specified circumstances.

(4) Upon any application for a principal's license or for the renewal of a principal's license the court may dispense with the necessity of making a deposit under this section in relation to the application—

- 15 (a) if there is lodged with the clerk of the court by a person approved for the purpose by the court an undertaking under seal in the prescribed form that, in consideration of the court granting that application, the person giving the undertaking  
20 will, upon the occurrence of the following event at any time before a renewal or further renewal, as the case may be, of the license granted upon that application is granted to the holder of the license referred to in the undertaking, that is  
25 to say, the holder becoming bankrupt or, in a case where the holder is a corporation, the corporation being ordered to be wound up by, or under the supervision of, the court, pay the sum of five hundred pounds to the trustee in  
30 bankruptcy or to the corporation, as the case may be; or
- (b) if the court is satisfied that the applicant has at  
35 all times since the beginning of the year one thousand nine hundred and forty-nine been carrying on in New South Wales the business of dealing in securities, and that it would cause him undue hardship to make a deposit under this section.

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(5) In the event in which, by virtue of an undertaking given under subsection four of this section, any sum becomes payable to a trustee in bankruptcy or to a corporation, the trustee in bankruptcy or the corporation, as the case may be, shall have the power and duty to recover that sum from the person by whom it is payable; but if, in a case where any sum is paid in pursuance of such an undertaking, it is found upon the administration in bankruptcy or the winding-up that the assets of the bankrupt or the corporation exceed the amount required to meet his or its debts and liabilities (including the costs and expenses of the administration or winding-up), the amount of the excess or the amount of the sum so paid, whichever is the less, shall be repaid by the trustee in bankruptcy or corporation to, or to the personal representative of, the person by whom the undertaking was given.

7. (1) The court may refuse to grant an application for a license or for the renewal of a license, if—

Refusal and  
revocation  
of licenses.

(a) the applicant has not, on the occasion of the application or, as the case may be, at any prescribed time during the currency of the license sought to be renewed, furnished to the court such information relating to him, and to any circumstances likely to affect his method of conducting business, as may be prescribed, being information verified in such manner whether by statutory declaration or otherwise as may be prescribed; or

cf. 2 & 3  
Geo. 6, c. 16,  
s. 5.

(b) it appears to the court that—

(i) by reason of the applicant, or any person employed by, or associated with, the applicant for the purposes of his business—

(a) having been convicted within His Majesty's dominions of an offence his conviction for which necessarily

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necessarily involved a finding that he acted fraudulently or dishonestly, or

(b) having been convicted of an offence under this Act, or

(c) having committed a breach of any regulations made under this Act for regulating the conduct of business by holders of licenses, or

(ii) by reason of any other circumstances whatsoever which either are likely to lead to the improper conduct of business by, or reflect discredit upon the method of conducting business of, the applicant or any person so employed by or associated with him as aforesaid,

the applicant is not, or, as the case may be, is no longer, a fit and proper person to hold a license;

and the court may also revoke a principal's license at any time, if the holder of the license is not carrying on in the State the business of dealing in securities.

(2) On the information of a member of the police force of or above the rank of sergeant any holder of a license may be summoned before a court of petty sessions holden before a stipendiary magistrate to show cause why his license should not be revoked and why he should not be disqualified either permanently or temporarily from holding a principal's license or a representative's license, as the case may be, on any of the grounds mentioned in subsection one of this section and upon being satisfied of the truth of any of the grounds aforesaid the court may order that such license be delivered up forthwith and revoked and that the holder thereof be disqualified either permanently or for such period as the court specifies from holding either a principal's license or a representative's license under this Act.

cf. Act. No. 7, 1935, s. 14 (1) (2).

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(3) Where the court refuses any application under subsection one of this section or makes an order under subsection two of this section the applicant or the holder of the license, as the case may be, may appeal in accordance with the rules of court to the District Court in the locality in which the applicant or the holder of the license, as the case may be, resides.

Appeal.  
cf. Act  
No. 7, 1935,  
s. 14 (3).

Every such appeal shall be in the nature of a rehearing.

Notice of appeal shall be given to such persons as may be prescribed by rules of court, or as the District Court may direct.

8. (1) The Governor may make regulations regulating the conduct of business by holders of licenses, and in particular, but without prejudice to the generality of the foregoing provisions of this subsection, such regulations may make provision for all or any of the following matters, that is to say:—

Regulations  
with respect  
to conduct  
of business  
of licensed  
dealers.  
cf. 2 & 3  
Geo. 6, c. 16,  
s. 7.

- (a) for determining the class of persons in relation to whom, and the manner and circumstances in which, any holder of a license may deal in securities;
- (b) for prescribing forms of contracts which may be used in making contracts under the authority of a license, and directing that where any contract is made under the authority of a license otherwise than in the appropriate form prescribed by the regulations, the holder of the license shall, for the purposes of the provisions of this Act relating to the refusal of applications for licenses and renewals of licenses and revocation of licenses, be deemed to have committed a breach of the regulations;
- (c) for prescribing the books, accounts and other documents which shall be kept by the holder of a principal's license in relation to any dealing in securities under the authority of such a license;
- (d) for requiring the holder of a principal's license to produce, for inspection by, or by an agent of, the person with whom he has made any agreement



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5 agreement by way of a dealing in securities under the authority of such a license as aforesaid, such contract notes and vouchers as may be prescribed by the regulations, and to furnish to that person, on demand and on payment of the prescribed fee, copies of entries in books kept by the holder which relate to the transaction,

but no such regulations shall be made so as to come  
10 into operation before the appointed day.

(2) A person shall not be guilty of an offence by reason only of a breach of regulations made under this section.

9. The clerk of petty sessions shall within seven days  
15 after the issue of a license or renewal or revocation thereof under this Act notify the Registrar-General of such issue, renewal or revocation and of such other particulars with respect thereto as may be prescribed and the Registrar-General shall keep a register of all  
20 such licenses and of all renewals and revocations of licenses and of such prescribed particulars, which register shall be available for perusal by any member of the public upon payment of the fee prescribed in that behalf under the provisions of the Conveyancing Acts, 1919-1943.

Register to be kept by Registrar-General.

cf. Act No. 7, 1935, s. 13.

25 10. (1) The holder of any principal's license shall forthwith lodge with the court from which the license issued a notice in writing of any change which, while the license is in force, may occur in the address or addresses at which he carries on the business of dealing in securities.

Information to be furnished by holders of licenses.

cf 2 & 3 Geo. 6, c. 16, s. 8.

30 (2) If, at any time while a principal's license granted to a corporation is in force, any person becomes or ceases to be a director of the corporation, the corporation shall forthwith lodge with the court from which the license issued a notice in writing of the name and address  
35 of that person and also in the case of a person becoming a director his nationality or the fact that he has no nationality.

(3)

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(3) If, at any time while a representative's license is in force, the holder of the license leaves or enters the service of, or becomes or ceases to be an agent of, any person, he shall forthwith lodge with the court from  
5 which the license issued a notice in writing of the name and address of that person.

(4) The clerk of the court at which any such notice as is referred to in subsection one, two or three of this section is lodged shall record such notice and advise the  
10 Registrar-General who shall enter the particulars contained in such notice in the register kept by him pursuant to section nine of this Act.

(5) If any person fails to comply with any of the provisions of subsections one, two and three of this  
15 section, he shall be liable on summary conviction to a fine not exceeding fifty pounds.

**11.** (1) Every holder of a principal's license shall paint or affix and keep painted or affixed on his place or places of business (or, in the case of a corporation, on  
20 the principal office of the corporation in the State and on the premises of every branch or agency of the corporation in the State) so as to be easily read from outside such place or places or principal office or premises, the name under which such holder is authorised by his  
25 license to carry on the business of dealing in securities.

As to displaying notice on places of business, etc.  
cf. Act No. 7, 1935, s. 16.

(2) Any person—

- (a) who commits any contravention of or fails to comply with any of the provisions of subsection one of this section; or
- 30 (b) who, not being the holder of a principal's license, keeps up or exhibits on or near to his office, house or place of business or exhibits anywhere or allows to remain unobliterated any sign, writing, painting or other mark implying that  
35 such office, house or place of business is that of a person licensed to deal in securities,

shall be liable on summary conviction to a fine not exceeding fifty pounds.

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## PART III.

## GENERAL PROVISIONS FOR THE PREVENTION OF FRAUD.

**12.** (1) Any person who, by any statement, promise or forecast which he knows to be misleading, false or  
 5 deceptive, or by any dishonest concealment of material facts, or by the reckless making of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person—

Penalty for fraudu-  
lently  
inducing  
persons to  
invest  
money.

cf. 2 & 3  
Geo. 6,  
c. 16, s. 12.

- (a) to enter into or offer to enter into—
- 10 (i) any agreement for, or with a view to, acquiring, disposing of, subscribing for or underwriting securities; or
- 15 (ii) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
- 20 (b) to enter into or offer to enter into an agreement the purpose, or pretended purpose, of which is to secure a profit to any of the parties by reference to fluctuations in the value of any property other than securities,

shall be guilty of an offence, and liable, on conviction on  
 25 indictment, to imprisonment for a term not exceeding seven years.

(2) Any person guilty of conspiracy to commit an offence under subsection one of this section shall be punishable as if he had committed such an offence.

**13.** (1) Subject to the provisions of this section, no  
 30 person shall, on or after the appointed day—

Restriction  
on distribu-  
tion of circu-  
lars relating  
to invest-  
ments.

cf. 2 & 3  
Geo. 6, c. 16,  
s. 13.

- (a) distribute or cause to be distributed any documents which, to his knowledge, are circulars containing—
- 35 (i) any invitation to persons to do any of the acts mentioned in paragraphs (a) and (b) of subsection one of section twelve of this Act; or

(ii)

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- (ii) any information calculated to lead directly or indirectly to the doing of any of those acts by the recipient of the information; or
- 5 (b) have in his possession for the purpose of distribution any documents which, to his knowledge, are such circulars as aforesaid, being documents of such a nature as to show that the object or principal object of distributing them
- 10 would be to communicate such an invitation or such information as aforesaid.
- (2) Subsection one of this section shall not apply—
- 15 (a) in relation to any distribution of a prospectus relating to shares or debentures, being a prospectus to which section one hundred and thirty-seven or section three hundred and forty-one of the Companies Act, 1936-1949, applies, or in
- 20 relation to any distribution of a document relating to shares in or debentures of a corporation incorporated in the State which is not a registered company, being a document which—
- (i) would, if the corporation were a registered company, be a prospectus to
- 25 which the said section one hundred and thirty-seven applies, and
- (ii) contains all the matters which, by virtue of the said section three hundred and forty-one, it would have to contain and
- 30 is issued with the consents which, by virtue of section three hundred and forty-two of the said Act, would be required if the corporation were a company incorporated outside the State
- 35 and the document were a prospectus issued by that company; or

(b).

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- (b) in relation to any issue of a form of application for shares in, or debentures of, a corporation, together with—
- 5           (i) a prospectus which complies with the requirements of section one hundred and thirty-seven or Part XIII of the Companies Act, 1936-1949, or
- 10           (ii) in the case of a corporation incorporated in the State which is not a registered company, a document containing all the matters mentioned in subparagraph (ii) of paragraph (a) of this subsection,
- 15           or in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or
- (c) in relation to any distribution of documents which is required or authorised by or under any Act other than this Act; or
- 20           (d) in relation to any distribution of such other class of documents as may be prescribed.
- (3) This section shall not prohibit the distribution or possession of any document by reason only—
- 25           (a) that it contains an invitation or information—
- (i) made or given with respect to any securities by or on behalf of the holder of a principal's license; or
- 30               (ii) made or given with respect to any securities by or on behalf of the Commonwealth Bank of Australia or any exempted dealer, or
- 35               (iii) made or given by or on behalf of a corporation to holders of securities of, or to persons employed by, or to creditors of, that corporation or any other corporation which, in relation to the first mentioned corporation, is a subsidiary company as defined by section

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- section one hundred and seven of the Companies Act, 1936-1949, with respect to securities of the first mentioned corporation or of any such other corporation as aforesaid, or
- 5 (iv) made or given by or on behalf of the Government of any part of His Majesty's dominions or the Government of any foreign or other state, or by or
- 10 on behalf of any statutory corporation or municipal corporation, with respect to securities of that Government or corporation, or
- 15 (v) made or given by or on behalf of any co-operative society with respect to shares of the society, or loans or deposits which may be made to or with the society, or
- 20 (vi) made or given to beneficiaries under a trust by or on behalf of a person acting in the capacity of a trustee of that trust, or
- 25 (vii) made or given with respect to any securities in connection only with a sale or proposed sale of those securities by auction, or
- 30 (b) that it contains an invitation or information which a person whose ordinary business or part of whose ordinary business it is to buy and sell any property other than securities (whether as a principal or as an agent) may make or give in the course of the business of buying and selling such property:

Provided that nothing in paragraph (a) of this sub-section shall authorise the doing of anything in respect of securities created in pursuance of any unit trust scheme.

(4) Documents shall not, for the purposes of this section, be deemed not to be circulars by reason only

40 that they are in the form of a newspaper, journal, magazine

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magazine or other periodical publication; but a person shall not be taken to contravene this section by reason only that he distributes, or causes to be distributed, to purchasers thereof, or has in his possession for the  
5 purpose of distribution to purchasers thereof, copies of any newspaper, journal, magazine or other periodical publication.

(5) A person shall not be taken to contravene this section by reason only that he distributes documents to  
10 persons whose business involves the acquisition and disposal, or the holding, of securities (whether as principal or as agent), or causes documents to be distributed to such persons, or has documents in his possession for the purpose of distribution to such  
15 persons.

(6) Any person who contravenes this section shall be liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds or to both such imprison-  
20 ment and such fine or, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

(7) Proceedings for an offence under this section  
25 shall not be instituted except by, or with the consent of, the Minister:

Provided that this subsection shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or  
30 the remanding, in custody or on bail, of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

(8) If a justice of the peace is satisfied by  
35 information on oath that there is reasonable ground for suspecting that, at any such premises as may be specified in the information, a person has any documents in his possession in contravention of this section, the justice may grant a warrant under his hand empowering any  
40 constable to enter the premises, if necessary by force, at  
any

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any time or times within one month from the date of the warrant, and to search for, and seize and remove, any documents found therein which he has reasonable ground for believing to be in the possession of a person in  
5 contravention of this section.

(9) Any document seized under this section may be retained for a period of one month or, if within that period there are commenced any proceedings for an offence under this section to which the document is  
10 relevant, until the conclusion of those proceedings.

(10) Where any person is convicted of an offence under this section, the court dealing with the case may make an order authorising the destruction, or the disposal in any other specified manner, of any documents produced  
15 to the court which are shown to its satisfaction to be documents in respect of which the offence was committed:

Provided that an order under this subsection shall not authorise the destruction of a document, or the disposal of a document in any other manner, until the conclusion  
20 of the proceedings in the matter of which the order is made.

(11) Subject to the provisions of subsections nine and ten of this section, section thirty of the Police Offences Act, 1901-1947, shall apply to goods which have  
25 come into the possession of the police in consequence of a seizure under this section, as it applies to goods which have come into the possession of the police in the circumstances mentioned in that section.

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PART IV.

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## EXEMPTIONS.

14. (1) The Governor may from time to time by proclamation published in the Gazette exempt any security or any class of securities from such of the provisions of this Act as may be specified in such  
35 proclamation.

Exemption  
of  
securities.

(2)



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(2) The Governor may, by proclamation published in the Gazette, revoke any proclamation made or issued under subsection one of this section.

**15.** (1) The Governor may from time to time by proclamation published in the Gazette declare any person to be an exempted dealer for the purposes of this Act, subject to the following conditions being fulfilled so long as the proclamation is in force, that is to say:—

Exemption  
of certain  
dealers.  
cf. 2 & 3  
Geo. 6, c. 16,  
s. 15.

(a) the main business of that person must consist of one or more of the following activities—

(i) carrying on some business other than the business of dealing in securities, and

(ii) dealing in securities in one or more of the ways mentioned in subsection two of this section; and

(b) the greater part of any business of dealing in securities done by him in the State otherwise than in one of the ways referred to in subparagraph (ii) of paragraph (a) of this subsection must be effected with, or through the agency of, one or more of the following persons, that is to say:—

(i) the Commonwealth Bank of Australia, a statutory corporation, a municipal corporation or an exempted dealer,

(ii) a person acting on behalf of such a person as is mentioned in subparagraph (i) of this paragraph, and

(iii) the holder of a license.

(2) The ways of dealing in securities referred to in subparagraph (ii) of paragraph (a) of subsection one of this section are as follows, that is to say:—

(a) issuing any document which is, or is deemed to be, a prospectus within the meaning of the Companies Act, 1936-1949;

(b)

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(b) making or offering to make with any person an agreement for, or with a view to, the underwriting of securities;

5 (c) making any invitation to persons to subscribe for securities, or to purchase securities on the first sale thereof;

10 (d) making any invitation to persons to subscribe for, or purchase, securities of the Government of any part of His Majesty's dominions or the Government of any foreign or other state, or securities of any statutory corporation or municipal corporation;

15 (e) effecting any transaction with a person whose business involves the acquisition and disposal, or the holding of securities, being a transaction with that person as a principal:

Provided that a person shall not, by reason only of his having made such an invitation as is mentioned in paragraph (c) of this subsection, be taken to have dealt  
20 in securities in one of the ways referred to in subparagraph (ii) of paragraph (a) of subsection one of this section, if permission to deal in such securities as were the subject of the invitation has not been granted by the Sydney Stock Exchange within the period of three  
25 months beginning with the date on which the invitation was made, or within such longer period, if any, beginning with that date as the Minister thinks fit.

(3) If, with respect to any exempted dealer, the Minister considers that the proclamation declaring him  
30 to be an exempted dealer ought to be revoked on either of the following grounds, that is to say,—

(a) that the conditions subject to which the proclamation was made have not been fulfilled in his case; and

35 (b) that the circumstances relevant to the making of the proclamation have materially changed since the making thereof,

the

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the Minister may serve on the exempted dealer a written notice that he is considering the making of a recommendation to the Governor to revoke the proclamation on that ground, specifying particulars of the non-fulfilment  
 5 of the said conditions or of the change of the said circumstances, as the case may be, and inviting the exempted dealer to make to him, within the period of one month from the date of the service of the notice, any representations in writing which he desires to make with  
 10 respect to the proposed revocation of the proclamation.

Before deciding whether or not to recommend the revocation of the proclamation, the Minister shall take into consideration any representations so made by the exempted dealer and, if the exempted dealer so requests,  
 15 afford him an opportunity of being heard by a person appointed by the Minister for that purpose within that period.

The Governor may revoke the proclamation after the expiration of the said period by a proclamation published  
 20 in the Gazette.

(4) As soon as practicable after any proclamation is published in pursuance of this section, particulars thereof shall be notified to the Registrar-General who shall enter the particulars in a register kept by him for  
 25 the purpose, which register shall be available for perusal by any member of the public upon payment of the fee prescribed in that behalf under the provisions of the Conveyancing Acts, 1919-1943.

## PART V.

## 30 SUPPLEMENTARY PROVISIONS.

**16.** Any person who, in furnishing any information for any of the purposes of this Act or regulations made thereunder, makes any statement which, to his knowledge, is false in a material particular, shall be liable, on conviction  
 25 on indictment, to imprisonment for a term not exceeding

False  
statements.  
cf. 2 & 3,  
Geo. 6,  
c. 16, s. 17.

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exceeding two years or to a fine not exceeding two hundred pounds or to both such imprisonment and such fine or, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding  
 5 one hundred pounds or to both such imprisonment and such fine.

**17.** Where any offence under this Act committed by a corporation is proved to have been committed with the consent or connivance of any director, manager,  
 10 secretary or other officer of the corporation, he, as well as the corporation, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Offences committed by corporations.  
 cf. 2 & 3, Geo. 6, c. 16, s. 18.*

**18.** Any notice to be served under this Act on any  
 15 person may be served by post, and a letter containing the notice shall be deemed to be properly addressed if it is addressed to that person at his last known residence or last known place of business.

*Service of notices.  
 cf. Ibid. s. 22.*

**19.** (1) The Governor may make regulations not  
 20 inconsistent with this Act—

*Regulations.*

- (a) prescribing any forms to be used under this Act;
- (b) prescribing the fees to be paid under this Act;
- 25 (c) prescribing the procedure on applications and other proceedings under this Act; and
- (d) generally, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to  
 30 this Act.

(2) All regulations made under this Act shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date specified in the regulations; and
- (c)

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- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.
- 5

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, 10 such regulation or part shall thereupon cease to have effect.

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