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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1938.

A BILL

To amend the law relating to Stock and Share Brokers; to provide for the keeping and examination of accounts of Stock and Share Brokers; to make provision for the registration of Stock Exchanges; to provide for the establishment and administration of a fidelity guarantee fund in relation to each registered Stock Exchange; to amend the Business Agents Act, 1935, and certain other Acts in certain respects; and for purposes connected therewith.

BE 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 the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Stock and Share Brokers Act, 1938." Short title.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. Commencement and division into Parts.

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

- PART I.—PRELIMINARY.
- PART II.—STOCK AND SHARE BROKERS.
- PART III.—STOCK EXCHANGES.
- PART IV.—REGULATIONS.
- SCHEDULE.

2. In this Act, unless the context or subject matter otherwise indicates or requires— Definitions.

- "Broker" means stock and share broker.
- "Committee" means committee or other governing body of an exchange.
- "Exchange" means stock exchange registered under this Act.

PART II.

STOCK AND SHARE BROKERS.

3. (1) All moneys received for or on behalf of any person by any broker shall be held by him exclusively for such person, to be paid to such person, or to be disbursed as he directs, and until so paid or disbursed Payment into bank.
cf. Act No. 22, 1898, s. 41.
the

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the moneys shall be paid into a bank in New South Wales to a trust account, whether general or separate.

(2) The moneys shall not be available for the payment of the debts of the broker to any other creditor of the broker, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such other creditor.

(3) Nothing in this section shall be construed to take away or affect any just claim or lien which any broker may have against or upon any of the moneys.

4. (1) Every broker shall keep books, accounts and records of all moneys and securities received, paid or disposed of by him, and of all transactions entered into by or with him as a broker in such a manner as to disclose the true position in regard thereto, and to enable the same to be conveniently and properly audited.

Keeping of accounts. cf. Act No. 22, 1898, s. 42.

(2) It shall be a sufficient compliance with subsection one of this section if the broker keeps the following books accounts and records:—

- (a) a Bought and Sold Book in which shall be recorded the name of the buyer and seller respectively in every transaction of the broker;
- (b) a Receipt Book containing acknowledgments of receipts of securities from clients for sale or for safe custody;
- (c) a Cash Book in which shall be entered every amount paid or received;
- (d) a Journal;
- (e) a Scrip Register in which shall be recorded all securities received by the broker and all disposals of the same;
- (f) a Ledger or Ledgers showing all transactions—
 - (i) with clients;
 - (ii) with brokers; and
 - (iii) in respect of nominal or private accounts.

(3) Any broker who contravenes or fails to comply with any of the provisions of this section shall be liable to a penalty of not more than fifty pounds.

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5. (1) Subject to the provisions of this section no bank shall, in connection with any transaction on any account of any broker kept with it or with any other bank, incur any liability or be under any obligation to make any enquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it:

Relief to
bankers.
cf. Act
No. 22,
1898, s. 44.

Provided that nothing in this subsection shall relieve a bank from any liability or obligation under which it would be apart from this Act.

(2) Notwithstanding anything in subsection one of this section a bank at which a broker keeps an account for clients' money shall not, in respect of any liability of the broker to the bank, not being a liability in connection with that account, have or obtain any recourse or right whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of that account:

Provided that nothing in this subsection shall deprive a bank of any right existing at the time of the commencement of the Stock and Share Brokers Act, 1938.

6. The committee of any exchange may whenever in their opinion such action appears warranted, and shall at the request of the Minister, investigate the accounts and affairs of any broker who is a member of the exchange, and may report the result of such investigation to a special general meeting of members of the exchange.

Investiga-
tion of
accounts.

Such investigation shall be carried out and reported on to the committee by the secretary and/or an accountant appointed by the committee for the purpose:

Provided that, when the investigation is made at the request of the Minister—

(a) it shall be carried out by an accountant appointed for the purpose by the committee with the approval of the Minister; and

(b)

- (b) a copy of the report of such accountant to the committee shall as soon as practicable be furnished to the Minister.

A member whose accounts and affairs are being investigated shall, without delay, produce all books and documents and supply all such information as may be in his possession relative to the matter or matters under investigation to the committee or to the secretary or to the accountant appointed to make the investigation.

7. (1) For the purpose of carrying out, in the course of or in connection with the making of an investigation under this Act, an examination and audit of the books, accounts and records of and securities held by the broker any accountant appointed by the committee under this Act—

Employment
of other
persons by
accountant.

- (a) may employ such persons as he considers necessary; and
(b) may by writing under his hand authorise any person employed by him to do, in relation to such examination and audit, any act or thing that he could himself do in his capacity as an accountant so appointed.

(2) Except for the purpose of carrying into effect the provisions of this Act or so far as may be required for the purpose of any proceedings, civil or criminal, against such broker no accountant appointed as aforesaid and no person employed as aforesaid by any such accountant shall communicate any matter which may come to his knowledge in the performance of his duties as such accountant or employee to any person other than the committee of the exchange or such person as the committee directs.

(3) Any such accountant or employee who contravenes the provisions of subsection two of this section shall be liable to a penalty of not more than *fifty* pounds.

8. Any broker or the servant or agent of any broker who—

Refusal to
produce
books, etc.

- (a) refuses to produce any books, accounts, records or documents of, or securities held by, such broker to any accountant appointed under this Act

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Act or to any person who produces the written authority of such accountant given in pursuance of the provisions of section seven of this Act; or

- (b) refuses to answer any question relevant to such examination and audit put to him by any such accountant or person with respect to the business of such broker,

shall be liable to a penalty of not more than *five hundred* pounds or to imprisonment for a term of not more than *two* years.

9. (1) Any person who, with intent to defeat the purposes of this Act or with intent to prevent, delay or obstruct the carrying out of any examination under this Act of the books, accounts or records of, or securities held by, any broker—

Penalty for destroying, concealing or altering records or sending records or other property out of New South Wales.

- (a) destroys, conceals or alters any book, account, record or document relating to the business of the broker; or
- (b) sends or attempts to send or conspires with any other person to send out of New South Wales any such book, account, record or document or any property of any description belonging to or in the disposition or under the control of such broker,

shall for every such offence be liable to a penalty of not more than *five hundred* pounds or to imprisonment for a term of not more than *two* years.

(2) If in any prosecution for an offence alleged to have been committed against this section it is proved that the person charged with such offence—

Burden of proof.

- (a) has concealed, destroyed or altered any book, account, record or document as aforesaid; or
- (b) has sent or attempted to send or conspired to send out of New South Wales any such book, account, record or document or any property aforesaid,

the onus of proving that in so doing he had not acted with intent to defeat the purposes of this Act or with intent to prevent, delay or obstruct the carrying out of an examination under this Act shall lie on him.

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10. (1) (a) In the event of a person who is not a member of an exchange agreeing to purchase from a member of an exchange shares owned by the member at a price mutually agreed upon the member shall issue a contract note stating "sold to [such non-member] as principal."

Dealings by a member of an exchange as principal.

(b) In the event of a member of an exchange agreeing to purchase from a person who is not a member of such exchange shares owned by the non-member at a price mutually agreed upon the member shall issue a contract note stating "bought from [such non-member] as principal."

(2) No such sale or purchase shall be made without such agreement and statement on the contract note.

11. (1) No broker who is a member of an exchange shall after the expiration of three months after the commencement of this Act, carry on his business as a broker unless he has lodged with the committee of the exchange of which he is a member a fidelity bond, and such fidelity bond is still subsisting at the time he so carries on business.

Fidelity bond.

(2) The fidelity bond shall be a bond in the prescribed form in the penal sum of one thousand pounds, from some insurance company or surety approved for the purpose by the Minister conditioned for duly accounting to the persons entitled thereto for all moneys and securities received for or on behalf of any person by the broker in the course of his business as such.

(3) Any such fidelity bond may be terminated by the insurance company or surety by notice in writing served personally or by post upon the Minister, the broker concerned and the chairman of the committee of the exchange of which such broker is a member.

Such notice shall specify the date (not being earlier than one month after the date of service of the notice) upon which the fidelity bond is to be terminated.

The obligation of the insurance company or surety under the fidelity bond shall, as from the date so specified, be determined so far as it relates to transactions by the broker

broker after such specified date, other than the application, payment and disposal of all moneys, securities and other property received by him before the said date and the duly accounting for the same.

(4) Any broker who carries on his business in contravention of subsection one of this section shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding *five hundred* pounds and to a further penalty not exceeding *twenty* pounds for each day upon which he so carries on business.

(5) Any person may, with the approval of the Minister in writing, sue upon any fidelity bond under this Act for indemnity in respect of any loss covered by the said bond.

(6) Any such action shall be commenced within two years after the date upon which the cause of such action arises.

(7) This section shall not apply to or in respect of—

- (a) the members of the Sydney Stock Exchange; or
- (b) the members of any other exchange having a members' fidelity fund which complies with the requirements of subsection eight of this section.

(8) A members' fidelity fund shall be established by rules of the exchange and such rules—

- (a) shall be approved by the Governor;
- (b) shall not be altered except with the approval of the Governor.

The approval of the Governor to rules for the establishment of a members' fidelity fund or to the alteration of such rules shall not be given unless such rules or such rules as altered make provision to the satisfaction of the Governor for the following matters:—

- (i) the amount of the fund,
- (ii) the appointment of trustees of the fund,
- (iii) the investment of the fund,
- (iv) the application of the fund,
- (v) the maintenance of the fund,
- (vi) the audit of the accounts of the fund,
- (vii) such other matters as may be prescribed.

12. (1) The provisions contained in the Schedule to this Act shall have effect with respect to the Sydney Stock Exchange Members' Fidelity Fund.

Sydney
Stock
Exchange
Members'
Fidelity
Fund.

(2) The said provisions shall be deemed and taken to have the same force and effect as if contained in this Act.

(3) The said provisions may be altered with the approval of the Governor by rules duly made by the members of the Sydney Stock Exchange.

(4) If, at any time, the Sydney Stock Exchange is wound up then, notwithstanding anything contained in the Schedule, so much of the Sydney Stock Exchange Members' Fidelity Fund as is not required to meet any claims payable out of such fund in accordance with the provisions of the Schedule, shall be assets of the Sydney Stock Exchange in such winding up.

13. (1) Section eleven of this Act shall, subject to this section, extend to and in respect of a broker resident outside New South Wales who carries on business as a broker in New South Wales where—

Brokers resi-
dent outside
New South
Wales.

(a) such broker is a member of a stock exchange outside New South Wales; and

(b) such stock exchange is in accordance with the memorandum and articles of association of Australian Associated Stock Exchanges entitled to nominate a member or members of that company.

(2) In the application of section eleven of this Act to and in respect of any such broker that section shall be deemed to be amended as follows:—

(a) by omitting from subsection one the words "who is a member of an exchange";

(b) by omitting from the same subsection the words "the committee of the exchange of which he is a member" and by inserting in lieu thereof the words "the Registrar-General";

(c) by omitting from subsection two the words "one thousand pounds" and by inserting in lieu thereof the words "five thousand pounds";

(d) by inserting at the end of the same subsection the words "in New South Wales";

(e)

- (e) by omitting from subsection three the words "the chairman of the committee of the exchange of which such broker is a member" and by inserting in lieu thereof the words "the Registrar-General";
- (f) by omitting subsections seven and eight.

14. The Business Agents Act, 1935, is amended—

Amendment of Act No. 7, 1935.

- (a) by inserting in section two at the end of the definition of "Business agent" the words "and includes any stock and share broker who is not a member of a stock exchange registered under the Stock and Share Brokers Act, 1938, but does not include a stock and share broker to and in respect of whom the provisions of section eleven of the Stock and Share Brokers Act, 1938, are extended by section thirteen of that Act";

Sec. 2. (Definitions.)

- (b) by inserting next after subsection one of section four the following new subsection—

Sec. 4. (Business agent to be licensed.)

(1A) Subject to this Act from and after the expiration of three months after the commencement of the Stock and Share Brokers Act, 1938, no person (either by himself or as a member of a partnership) unless he is the holder of a business agent's license, or is a member of any stock exchange registered under that Act—

- (a) shall exercise or carry on or advertise notify or state that he exercises or carries on or is willing to exercise or carry on the business of or shall act as a stock and share broker; or
- (b) shall in any way hold himself out to the public as ready to undertake for payment or other remuneration (whether monetary or otherwise) any of the functions of a stock and share broker.

- (c) (i) by inserting at the end of subsection eleven of section seven the following words:—

Sec. 7. (Fidelity bond.)

"Any such fidelity bond may be terminated by the insurance company or surety,

surety by notice in writing served personally or by post upon the business agent concerned and upon the clerk of the court by which the license was issued.

Such notice shall specify the date (not being earlier than one month after the date of service of the notices) upon which the fidelity bond is to be terminated.

The obligation of the insurance company or surety under the fidelity bond shall, as from the date so specified, be determined so far as it relates to transactions by the business agent after such specified date, other than the application, payment and disposal of all moneys, securities and other property received by him before the said date and the duly accounting for the same."

(ii) by inserting next after the same subsection the following new subsection—

(11A) A license shall be suspended during any period in which there is not a fidelity bond in force and applicable to and in respect of the holder of the license.

During any period in which a license is suspended the holder of the license shall be deemed not to be a licensed business agent.

(d) by inserting at the end of section seventeen the following new subsection:—

Sec 17.
(Trust
Moneys.)

(5) This section shall not apply to and in respect of transactions as a stock and share broker or to moneys received as a stock and share broker by a business agent.

(e) by inserting at the end of section twenty-two the following new subsection:—

Sec. 22.
(Keeping of
records.)

(4) This section shall not apply to and in respect of transactions as a stock and share broker by a business agent.

(f)

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- (f) by omitting from subsection three of section twenty-seven the words "six years after the cause of such action" and by inserting in lieu thereof the words "two years after the date upon which the cause of such action arises."

Sec. 27(3).
(Limit of actions.)

PART III.

STOCK EXCHANGES.

15. (1) No stock exchange shall be formed or established except under the authority of a license issued by the Governor.

Registration of stock exchange.

(2) Every stock exchange so formed or established shall be registered by lodging in the office of the Registrar-General a certified copy of the license issued by the Governor in respect of that stock exchange.

(3) Regulations may be made under the Conveyancing Act, 1919-1932, prescribing all matters necessary or convenient to be prescribed in relation to the registration of a stock exchange.

(4) The Sydney Stock Exchange and the Newcastle Stock Exchange shall be deemed to be registered under this Act.

16. (1) The Business Names Act, 1934, is amended by inserting in section twenty-one after the word "Dominions" the words "or which consists of or includes the words 'Stock Exchange.'"

Amendment of Act No. 50, 1934.
Sec. 21.
(Restriction as to names.)

(2) Where, immediately before the commencement of this Act, the business name under which any firm, individual or corporation is registered under the Business Names Act, 1934, consists of or includes the words "Stock Exchange," then, unless the consent of the Governor is given to the use of that business name, such firm, individual or corporation shall, within a period of six weeks after such commencement, change its name to a name which does not consist of or contain those words.

If

If any firm, individual or corporation makes default in complying with the requirements of this subsection such individual or corporation and the members of such firm shall be guilty of an offence and shall be liable to a penalty not exceeding *fifty* pounds for every day during which the default continues.

(3) The Companies Act, 1936, is amended—

(a) by inserting at the end of subsection two of section thirty-two the following word and new paragraph:—

or (e) consists of or includes the words
“Stock Exchange.”

(b) by inserting next after subsection three of section thirty-five the following new subsection:—

(3A) Where, before the commencement of the Stock and Share Brokers Act, 1938, a company has been registered by a name which consists of or includes the words “Stock Exchange,” then, unless the consent of the Governor is given to the use of that name, the company shall, within a period of six weeks after such commencement, change its name to a name which does not contain those words.

If a company makes default in complying with the requirements of this subsection it shall be guilty of an offence.

Penalty: *Fifty* pounds for every day during which the default continues.

Amendment of
Act No. 33,
1936.

Sec. 32.

(Restriction
as to
names.)

Sec. 35.

(Change of
name.)

PART IV.

REGULATIONS.

17. (1) The Governor may make regulations not inconsistent with this Act 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 this Act.

(2)

(2) The regulations may prescribe penalties not exceeding *ten* pounds for any breach thereof.

(3) All regulations 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) 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.

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, such regulation or part shall thereupon cease to have effect.

SCHEDULE.

Sec. 12.

1. The sum of twenty thousand pounds (£20,000) appropriated from the general funds of the Sydney Stock Exchange (in this Schedule called the Exchange) and credited to a special fund called the Sydney Stock Exchange Members' Fidelity Guarantee Fund (in this Schedule called "the fund") shall be applied for the purposes mentioned in this Schedule.

2. The fund shall be administered on behalf of the Exchange by three honorary Trustees appointed for that purpose by the Committee of the Exchange.

Such Trustees shall be members of the Exchange.

The Committee for the time being of the Exchange may at any time revoke the appointment of any one or more of such Trustees and appoint another or others in his or their place or places, and may fill any vacancy in the office of Trustee caused by the death or cessation of membership or trusteeship of any person who has been acting as a Trustee.

3. All moneys belonging to the fund shall, pending the investment or application thereof, be paid into a bank in Sydney to the credit of a separate account, to be called the Sydney Stock Exchange Members' Fidelity Guarantee Fund Account, and such account shall be operated upon in such manner in accordance with the provisions of this Schedule as the Trustees shall from time to time determine.

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4. The Trustees may invest the said sum of twenty thousand pounds, and such other sums as may from time to time come into their hands or be credited to the fund, in such trustee investments as they may in their absolute discretion determine.

Any interest derived from such investments shall be paid by the Trustees into the general funds of the Exchange.

5. The fund shall be debited with the amounts of all admitted claims thereon as hereinafter provided and with necessary administration expenses.

6. The fund shall be held and applied for the purpose of reimbursing in whole or in part a non-member or non-members of the Exchange who may suffer pecuniary loss in respect of stock and share transactions by reason of the default of a member or member firm of the Exchange. Provided, however, that no such non-member or non-members shall have any direct claim on the fund, and that the only claims which shall be recognised by the Trustees shall be those payable as hereinafter provided to the Official Receiver of the bankrupt estate of a defaulting member or member firm who or which has been made bankrupt since the fourteenth day of June, one thousand nine hundred and thirty-seven.

7. The total amount which may be applied from the fund in or towards the reimbursement of all non-members who may suffer pecuniary loss through the default of such member or member firm of the Exchange shall not in any case or in any event exceed the sum of five thousand pounds in the case of such defaulting member or ten thousand pounds in the case of such defaulting member firm consisting of two or more partners.

8. In the event of the total amount at credit of the fund being reduced at any time to less than twenty thousand pounds the Committee of the Exchange shall impose on every member of the Exchange for the time being a levy or levies of such amount or amounts as will restore the total amount at credit of the fund to twenty thousand pounds, provided that no member shall be required to contribute more than fifty pounds in any one calendar year.

9. In the event of the estate of the defaulting member or member firm being placed in bankruptcy and the total available assets of such member or member firm (without taking into account the value of his or their membership or memberships) being insufficient to satisfy the admitted claims arising out of stock and share transactions of all non-member creditors the Trustees shall pay to the Official Receiver such sum, not exceeding five thousand pounds in the case of such defaulting member or ten thousand pounds in the case of such defaulting member firm consisting of two or more partners, as the Official Receiver certifies is required to make up or reduce the total amount of the deficiency arising out of stock and share transactions. Should the amount at credit of the fund be insufficient to satisfy such payment the deficiency may be made up by an advance (free of interest) to the Trustees from the general funds of the Exchange.

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Exchange. Any advance so made shall be refunded by the Trustees to the general funds of the Exchange so soon as circumstances will admit, provided that no such refund shall have the effect of reducing the amount at credit of the fund to less than twenty thousand pounds.

10. The membership or memberships of a defaulting member or member firm who or which has been declared a bankrupt shall be encumbered as hereinafter provided to the full extent of the amount paid or payable by the Trustees of the fund to the Official Receiver.

11. In the event of a defaulting member or member firm being declared a bankrupt the proceeds of the sale of the membership or memberships of such member or member firm shall so far as the same will extend be applied as follows and in the following order:—

- (a) In payment of the entrance fee of the purchaser or the entrance fees of the purchasers, and of any subscription, fine or other liability owing by the defaulting member or member firm to the Exchange;
- (b) In payment of all legal and other expenses incurred by the Exchange in investigating the accounts and affairs of the defaulting member or member firm and settling the accounts of such member or member firm with other members of the Exchange;
- (c) In the indemnification of any member or members of the Exchange who may at the time of default be a creditor or creditors of the defaulting member or member firm but only in respect of claims arising from transactions for cash or bona fide London or Eastern or New Zealand delivery or on terms not exceeding six weeks;
- (d) In satisfaction in whole or part of any amount paid or payable by the Trustees of the fund to the Official Receiver;
- (e) In the indemnification of any member or members of the Exchange who may at the time of default be a creditor or creditors of the defaulting member or member firm in respect of claims arising from transactions for forward delivery beyond a term of six weeks, other than sales on London or Eastern or New Zealand account; and
- (f) The balance (if any) shall, if the Official Receiver certifies that the claims of all creditors of the defaulting member or member firm have been satisfied in full, be paid to the defaulting member or member firm; or, if the Official Receiver certifies that all such claims have not been so satisfied, such balance (if any) shall be paid to the Official Receiver.

12. The accounts of the fund shall be kept by the Secretary of the Exchange and shall be audited annually by a chartered accountant to be appointed by the Committee of the Exchange.
