

1984

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**THE SENATE**

**COMPANIES AND SECURITIES LEGISLATION (MISCELLANEOUS  
AMENDMENTS) BILL (NO 1) 1984**

**EXPLANATORY MEMORANDUM**

**(Circulated by authority of the Attorney-General,  
Senator the Honourable Gareth Evans)**

# COMPANIES AND SECURITIES LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL (NO. 1) 1984

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## **OUTLINE**

1. The Companies and Securities Legislation (Miscellaneous Amendments) Bill (No. 1) 1984 (hereafter referred to as 'the Bill') makes amendments to Commonwealth Acts under the co-operative companies and securities scheme (further background on the scheme is at paras 6 to 23 of this explanatory memorandum).
2. Part II of the Bill amends the registration of charges provisions of the Companies Act 1981. Parts III and IV of the Bill contain amendments to the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 and the Securities Industry Act 1980 consequent on the proposed corporate membership of stock exchanges and on the unfixing of certain stock exchange brokerage rates as from 1 April, 1984. Parts II and IV of the Bill also contain amendments to the Companies Act 1981 and the Securities Industry Act 1980 dealing with time-sharing.
3. This Bill has been approved by the Ministerial Council for Companies and Securities.
4. The substantive provisions of the Bill will come into operation on such date or dates as are fixed by Proclamation.

### **Explanatory Memorandum**

5. The remainder of this explanatory memorandum:
  - (a) contains a brief introduction to the co-operative companies and securities scheme (paras 6 to 231; and
  - (b) deals sequentially with each clause of the Bill (paras 27 to 95).

## **CO-OPERATIVE COMPANIES AND SECURITIES SCHEME**

### **Formal Agreement**

6. On 22 December 1978 the Commonwealth and the six States executed a Formal Agreement that provided the framework for a co-operative Commonwealth-State scheme for a uniform system of law and administration in relation to company law and the regulation of the securities industry in the six States and the Australian Capital Territory. (A copy of this Agreement is set out in the Schedule to the National Companies and Securities Commission Act 1979.) Since then, the Commonwealth and the six States have executed First and Second Amending Agreements to the Formal Agreement. The Formal Agreement also provides a procedure to enable the Northern Territory to become a party to the Agreement (see Formal Agreement cl.49) and to enable the Agreement to be extended to one or more of the various external Territories (see Formal Agreement cl.50). Negotiations are continuing about the possible extension of the co-operative scheme to the external Territories and the Northern Territory.
7. The Formal Agreement sets out, among other things, the four basic elements of the co-operative scheme:
  - (a) The establishment of a Ministerial Council for Companies and Securities comprising Ministers of the Commonwealth and each of the six States.
  - (b) The establishment of a full-time National Companies and Securities Commission (NCSC) to have responsibility in the entire area, subject to directions from the Ministerial Council.
  - (c) The continuation of existing State and Territory corporate affairs offices.
  - (d) The adoption of a proposal for legislative uniformity which recognises that the States are not required to surrender or refer any constitutional power.
8. Each of these basic elements is discussed below.

### **The Ministerial Council for Companies and Securities**

9. The first of the four basic elements of the co-operative companies and securities scheme is the Ministerial Council for Companies and Securities, which is established by the Formal Agreement itself. The Ministerial Council is composed of one Ministerial representative from each party to the Formal Agreement.

10. The functions of the Ministerial Council, as set out in s-cl. 21(1) of the Formal Agreement, are as follows:

"(a) to consider and to keep under review the formulation and operation of the legislation and regulations provided for by this agreement; and

(b) to exercise general oversight and control over the implementation and operation of the scheme."

11. In exercising its review functions over legislation, the Ministerial Council is responsible for approving all the legislation that is required to give effect to the co-operative scheme. The initial legislation requires unanimous approval and amending legislation, with certain exceptions, requires approval by a simple majority (see Formal Agreement cl. 29) .

### **National Companies and Securities Commission**

12. The second basic element in the co-operative scheme, the National Companies and Securities Commission (hereafter referred to as the 'NCSC') was established by the Commonwealth's National Companies and Securities Commission Act 1979 (hereafter referred to as the 'NCSC Act') which came into operation on 1 February 1980.

13. Under the NCSC Act, the NCSC has responsibility for the companies and securities laws covered by the Formal Agreement, subject to directions from the Ministerial Council. The NCSC has such functions and powers as are conferred on it by the various pieces of Commonwealth, State and Territory legislation that are required to give effect to the co-operative companies and securities scheme (hereafter referred to as the 'co-operative scheme legislation').

14. Each State Parliament has passed a special Act, the NCSC (State Provisions) Act, to support the operation of the NCSC in its jurisdiction. These Acts came into force on 1 July 1981.

### **Use of existing administrations**

15. The third basic element in the co-operative scheme is the use of the corporate affairs office in each jurisdiction covered by the scheme.

16. Under the Formal Agreement, the NCSC is required to work through these local corporate affairs offices to the maximum extent practicable (see Formal Agreement cl.37) and with due regard to the maximum development of a decentralized administrative capacity (see Formal Agreement cl. 35) .

17. In recognition of these requirements, all documents that are required to be lodged with the NCSC under the law of a particular jurisdiction must be lodged with the local corporate affairs office in that jurisdiction (see, for example, s-sec 11(1) of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980).

### **The Legislative Framework**

18. The final basic element of the co-operative companies and securities scheme is the legislative framework. The basic features of the proposal for legislative uniformity (sometimes referred to as 'the legislative device') can be summarised as follows:

(a) The content of the substantive laws under the co-operative scheme is set out in Commonwealth legislation that applies to the Australian Capital Territory.

(b) Each other jurisdiction that is covered by the Formal Agreement has legislation which applies the relevant: Commonwealth law (subject to any necessary local modifications) as the law of that jurisdiction to the exclusion of its present legislation, as from the date of commencement of the relevant Commonwealth law (see Formal Agreement paras 9(a) and (b)).

(c) Any amendments of the Commonwealth Acts must be approved by the Ministerial Council, and then submitted by the Commonwealth to the Commonwealth Parliament. Once enacted, those amendments will, subject to the making of regulations for each jurisdiction (other than the Australian Capital Territory) in order to effect necessary local modifications (sometimes referred to as "translator regulations"), have automatic effect in particular jurisdictions without the necessity for further and separate substantive :Legislation in each other jurisdiction. In the event of the Commonwealth Parliament not enacting, within six months, an amendment approved by the Ministerial Council,

each State will have the right to take action separately to implement the decision of the ministerial Council (see Formal Agreement cl.44) .

(d) Similar provisions apply in relation to the making of amendments to the initial Commonwealth Regulations (see Formal Agreement cl.45).

### **The content of the legislation to give effect to the scheme**

19. The initial Commonwealth legislation was substantially in conformity with what is known as the 'ICAC' companies and securities legislation (the legislation of the States which were parties to the Interstate Corporate Affairs Agreement) that was in force at the time of the execution of the Formal Agreement, except for amendments that were agreed upon by the Ministerial Council or were required to give effect to the Parts of the Formal Agreement dealing with names and special investigations (see Formal Agreement para 8(21(b))).

20. The Commonwealth legislation can be divided into five groups:

- the NCSC Act (see paras 12 to 14, above) and the regulations made thereunder;
- that relating to the interpretation code;
- that relating to the Australian share acquisition code;
- that relating to the Australian securities industry code; and
- that relating to the Australian companies code.

### **The interpretation code**

21. The substantive provisions of the interpretation code or the companies and securities scheme are set out in the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980.

22. The interpretation code provides for the interpretation of the Commonwealth Acts under the co-operative scheme to be governed by the laws in force in the ACT relating to the interpretation of Ordinances at 1 July 1981 except for:

- the matters covered by the provisions in Parts II and IV of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 (except for ss.14, 24, 30 and 32, these provisions in Parts II and IV are expressed to apply in the absence of a contrary intention); and
- the provisions of the Commonwealth Acts Interpretation Act 1901 that are expressly saved (see Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980, s-sec. 4(2)).

### **State legislation**

23. The legislation for each State in relation to each code also consists of several parts:

(a) The (Application of Laws) Act relating to each code. This State Act, in effect:

- (i) applies the code set out in the relevant Commonwealth Act, the Regulations under that Commonwealth Act and the relevant Fees Regulations;
- (ii) enables to be printed, as they apply in that jurisdiction, the code, the Regulations under the Commonwealth Act and the relevant Fees Regulations.

(b) The Regulations that will be made if the Commonwealth fails to amend its initial legislation within 6 months of the amendments being approved by the Ministerial Council.

(c) Any regulations effecting necessary local modifications (sometimes referred to as 'translator regulations') which are made as and when needed to ensure that particular amendments to the initial Commonwealth legislation have a meaningful application in a particular jurisdiction other than the ACT.

# **BILL**

## **Contents of Bill**

24. The Bill is divided into the following parts:

Part I Preliminary

Part II - Amendments of Companies Act 1981

Part III - Amendments of Companies and Securities (Interpretation and Miscellaneous Provisions) Act. 1980

Part IV - Amendments of Securities Industry Act 1980

25. The remainder of this explanatory memorandum deals sequentially with the separate clauses in each of these Parts.

## **BILL PART I - PRELIMINARY**

### **BILL : PART I : Introduction**

26. Part I of the Bill (cls. 1 and 21 deals with various preliminary matters.

#### **Cl. 1 : Short title**

27. When enacted the Bill will be cited as the Companies and Securities Legislation (Miscellaneous Amendments) Act (No. 1) 1984 (Bill cl. 1).

#### **Cl. 2 : Commencement**

28. Part I of the Bill will come into operation on the day on which the Act receives the Royal Assent (Bill s-cl. 2(1)).

29. The remaining provisions of the Bill will come into operation on such date or dates as area fixed by Proclamation by the Governor-General published in the Commonwealth of Australia Gazette (Bill s-cl. 2(2) - see also Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980, s. 9 for definitions of 'Gazette' and 'Proclamation').

## **BILL PART' II - AMENDMENTS OF COMPANIES ACT 1981**

### **BILL : PART II : 'Introduction**

30. Part II of the Bill (cls. 3 to 6) contains amendments to the registration of charges and prescribed interest provisions of the Companies Act 1981 (hereafter referred to as 'CA'). This Act contains the substantive provisions of the companies code.

#### **Cl. 3 : Principal Act**

31. CA is referred to in Part II of the Bill as the Principal Act (Bill cl. 3).

#### **Cl. 4 : Interpretation**

32. Background: CA s.5 contains a series of definitions for the purposes of the CA. In particular, "prescribed interest" is defined to exclude shares in corporations. In *Brentwood village v. Corporate Affairs Commission (N.S.W.)* (1983) 1 ACLC 1006 it was held that if rights, which when considered in isolation could be characterised as prescribed interests, were attached to shares, then those rights were indivisible from the shares and thus did not fall within the prescribed interest provisions.

33. This decision has left the way open to promoters of investment schemes to decide not to appoint a trustee or enter into a trust deed (as is usually required of promoters of prescribed interests) by providing for all the investors' rights to be set out in the articles of association of their particular company. It may be in the interest of investors in particular

schemes that the information as to the scheme obtainable through a prospectus be supplemented by the appointment of a trustee, even though they are purchasing shares (and the offering for shares to the public does not usually involve a requirement for appointment of a trustee).

34. Proposed amendment: It is proposed that this approach be adopted in respect of the promotion of :interests in "time-sharing" developments in which the use or ownership of property is divided amongst a number of people by reference to a specified period of time (typically, the use of holiday resort facilities for a number of weeks each year).

#### **Cl 5 : Charges required to be registered**

35. Background: CA s-sec. 200(1) sets out a list of the types of charges required to be registered. CA para 200(1)(h) requires registration of a lien or charge on a crop, a lien or charge on wool, or a stock mortgage.

36. Proposed amendments: It is proposed to insert a new s-sec. (4A) in CA s. 200. The purpose of this amendment is to clarify what securities come within the phrase "a lien or charge on a crop, a lien or charge on wool or a stock mortgage". 37. The effect of the amendment and of the "translator" regulations to be made by each State will be that a lien or charge on a crop, a lien or charge on wool, or a stock mortgage over property of a company is registrable under the companies legislation in the place of: incorporation of the company if it is registrable under legislation relating to crop liens, wool liens and stock mortgages in the State or Territory where the property the sub~ject of the security is situated.

38. The relevant A. C. T. provisions (Parts IV and V of the Instruments Ordinance 1933) will be identified in the Bill (proposed s-sec. 200 (4B)). The corresponding provisions in State laws will be identified in State "translator" regulations to be made under the Companies (Application of Laws) Act of each State (being the relevant parts of the Instruments Act 1958 (Vic); the Bills of Sale Act 1898 and Liens on Crops and Wool and Stock Mortgages Act 1898 (NSW); the Bills of Sale and Other Instruments Act of 1955 and the Liens on Crops of Sugar Cane Act of 1931 (Qld); Liens on Fruit Act, 1923 and the Stock Mortgages and Wool Liens Act 1924 (S.A.); Bills of Sale Act 1899 (W.,A.1; and the Stock, Wool, and Crop Mortgages Act 1930 (Tas)). The broad definitions of crop lien, wool lien and stock mortgages under proposed s-sec 200(4A) will not apply to these expressions where they appear in s-secs 211(3) - (5).

#### **Cl. 6 : Registration under other :Legislation relating to charges**

39. Background : Some types of charges that fall within the scope of CA s-sec 200(1), and hence are required to be registered under the Companies Act, may also be required to be registered under separate State or. Territory legislation. CA s.211 attempts to overcome the need for dual registration in relation to securities over personal chattels within the meaning of the Instruments Ordinance 1933 (A. C.T.).

40. Doubts have, however, been expressed whether CA s.211 satisfactorily removes the obligation to comply with the relevant provisions of the Bills of Sale legislation. Doubts have also been expressed whether, as the legislation is currently drafted, registration under the Companies legislation of a charge over personal chattels ensures that appropriate protections of the Bills of Sale legislation are imported as if the charge had been registered under that: legislation. In addition, s.211, as it applies in the A.C.T and Victoria, does not currently exempt. persons registering crop liens, wool liens and stock mortgages under the Companies 19 legislation from the operation of the local legislation..

41. Proposed amendment: CA s.211 will be replaced with a redrafted section designed to remove the! doubts that have been expressed as to whether or not this section and the corresponding section of the Companies Codes interact as intended with legislation concerning securities over persona chattels, including wool, crops and stock. 42. Where a notice in relation to a charge is required to be lodged with the NCSC then -

(i) the charge need not be registered under the Instruments Ordinance 1933:

(ii) the priorities provisions of the Instruments Ordinance 1933 do not apply to the charge: and

(iii) if the charge is not registered under the Instruments Ordinance 1933, the validity or effect of the charge 1S not affected

(Bill cl. 6 - proposed CA s-sec. 211 (1)).



43. Insofar as the proposed new s-sec 211(1) relates to securities over personal chattels (registrable under Part III of the Instruments Ordinance 1933 (A. C.T.)), it amounts to simply an amalgamation of existing s-secs 211(1) and (2) and is not designed to alter the existing law (with the exception that the redundant paragraph 211(2)(b) has been deleted). It has been re-cast\_ however. to assist the making of State "translator" regulations which will be more accurately cross-referenced. to the local Bills of Sale legislation e.g. references in s-sec 211(1) of the Commonwealth Act to securities being) "registered" under the Instruments Ordinance will be "translated" to refer to bills of sale "filed or recorded" under. some State Bills of Sale legislation.

44. Insofar as the proposed new s-sec 211(1) relates to securities registrable under other Parts of the Instruments Ordinance (Part IV concerning liens on crops and Part V concerning liens on wool and stock mortgages), the provision is new. Prior to the amendments, registration of such securities under the Companies Act or any Companies Code would not have obviated the need to also register such securities under the Instruments Ordinance. A similar situation existed under the Companies (Victoria) Code but not under the Companies Codes of other States. The amendments will ensure that dual registration is no longer required in any jurisdiction.

45. Proposed CA s-sets. 211(2) -- (5) all have a similar format. They each contain three conditions which must: be satisfied -

(i) The particular. charge that is referred to in each sub-section must be registrable under the Instruments Ordinance 1933;

(ii) Notice in relation to the particular charge must be required to be lodged with the NCSC under the Companies Act or a Companies Code; and

(iii) The particular charge must have been registered under the Companies Act 1981 or a Companies Code.

46. If these three conditions are satisfied, then the particular charge is as valid and effectual. as if it had been duly registered under the Instruments Ordinance 1933. Sub-sections 211(2), (3), (4) and (5) deal. with bills of sale, crop liens, wool liens and stock mortgagee respectively.

47. With respect to bills of sale, all of the benefits of Part III of the Instruments Ordinance 1933 (A. C. T.) are imported by s-sec 211(2). However, for crop liens, wool liens and stock mortgages, only specific sections of the Instruments Ordinance 1933 are expressly stated to have effect in relation to each particular security. These sections either confer rights on the holder of the security or create an offence if the grantor of the security impairs the holder's interest in the property. Other sections relating to the administration of the Instruments Ordinance are not "imported" (e.g. s.22 which requires the Registrar appointed under that Ordinance to keep a register of securities).

48. The purpose of these provisions is to insure that the appropriate protections of the Instruments Ordinance 1933 are given to the securities even though they have not been registered under that legislation.

49. These proposals do not apply to a charge given by a company jointly with others, where one of the others is not a company (Bill cl. 6 - proposed CA s-sec. 27\_1(6)). This involves no departure from the existing law (see CA s-secs 211 (1) and (2)). The proposed amendments are designed to ensure that the consequences outlined above will operate as from the commencement of the amendments in respect of charges registrable under the Companies Act or Codes at any time after commencement of that Act or those Codes (Bill cl.6 - proposed CA s-sec 211(7)).

50. In the process of ensuring that the companies legislation interacts as intended with the relevant local legislation relating to bills of sale, crop liens, wool liens, stock mortgages etc., translator regulations will be required in each State which differ according to the different approaches currently adopted in the Bills of Sale etc. legislation.

## **BILL PART III - AMENDMENT OF COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS PROVISIONS) ACT 1980**

### **BILL PART III: Introduction**

51. Part III of the Bill (cls. 7 and .3) contains an amendment to the Companies and Securities (Interpretation and , Miscellaneous Provisions) Act 1980 (hereafter referred to as the C & S Interpretation Act). Although the amendment will relate to all co-operative scheme legislation, it is particularly relevant to the proposed corporate membership of stock exchanges.

## **Cl. 7 : Principal Act**

52. The C & S Interpretation Act is referred to in Part III of the Bill as the Principal Act (Bill. cl. 7) .

## **Cl. 8 : Rules as to gender and number**

53. Background References in companies and securities legislation to words importing the masculine gender include the feminine and vice-versa. Words in the singular include the plural and vice-versa (C & S Interpretation Act, s. 16).

54. Proposed amendment words in companies and securities legislation importing a gender will include every other gender (Bill cl. 8 - proposed para 16(a) of C & S Interpretation Act). This proposed amendment will enable references such as "who" and "his" to be read as referring to natural persons as well as bodies corporate.

## **BILL PART IV - AMENDMENTS OF SECURITIES INDUSTRY ACT 1980**

### **BILL : PART IV : Introduction**

55. Part IV of the Bill (cls 9 to 19) contains various amendments to the Securities Industry Act 1980 (hereafter referred to as 'SIA') consequent on the proposed corporate membership of stock exchanges and on the unfixing of certain stock exchange brokerage rates as from 1 April 1984. These proposed amendments will give necessary statutory recognition to the changes that are being made as a result of the Trade Practices Commission determination on the Australian Associated Stock Exchanges' authorization application.

### **Cl. 9 : Principal. Act**

56. The SIA is referred to in Part IV of the Bill as the Principal Act (Bill cl. 9).

### **CL. 10 : Interpretation**

57. Background SIA s-sec. 4(1) contains a series of definitions for the purposes of the SIA.

58. In particular, "member", in relation to a stock exchange, is defined to mean a stock exchange member who carries on a business of dealing in securities on his own account and not in partnership (i.e. a "sole trader") or a partner in a member firm of the stock exchange. "Member firm", in relation to a stock exchange, is defined to mean a partnership that carries on a business of dealing in securities and is recognized by the stock exchange as a member firm.

59. For the purposes of the SIA, "securities" is defined to include a "prescribed interest". "Prescribed interest" is defined to mean any right to participate, or any interest, in any profits, assets or realization of certain undertakings, schemes, common enterprises or investment contracts.

60. Proposed amendments The definition of "sole trader" is proposed to be extended so as to encompass a body corporate as well as a natural person stock exchange member carrying-on a business of dealing in securities . A consequential amendment is proposed to the definition of "member" (Bill s-cl. 10(1)).

61. The definition of "prescribed interest" is proposed to be amended to include any right to participate in a time-sharing scheme. A new definition of "time-sharing scheme" will be included (Bill s-cl 10(2)). Similar amendments have been made to the Companies Act 1981 by Bill cl.4 (;discussed at paras 32 to 34 above).

### **Cl. 11 : Power of Ministerial Council to approve stock exchange**

62. Background The Ministerial Council can approve a body corporate as a stock exchange if it is satisfied, among other things, that the business rules of the body corporate make satisfactory provision for the exclusion from membership of persons who are not of good character and high business integrity (S IA s-para 38(2) (a) (i) ).

63. Proposed amendment The business rules of a body corporate applying for approval as a stock exchange will also be required to make provision for the exclusion from membership of a corporate member any director of: which is not of good character and high business integrity (Hill cl.11).

## **Cl. 12 : Issue of contract notes**

64. Background A contract note must: be issued by a dealer (who is not an exempt dealer) in respect of various transactions of sale and purchase (S :CA s. 64).

65. The contract, note must contain the particulars set out in SIA s-sec 64(2). These particulars include a statement specifying the amount and rate of commission charged (S IA para 64(2) (h)).

66. Proposed amendment It is proposed to amend SIA para 64(2)(h) so that the contract note must include a statement specifying the amount of commission charged and the rate (if any) at which the commission was charged. The proposed amendment is consequent upon the deregulation of brokerage rates (Bill cl. 12).

## **Cl. 13 : New section - 94A. Interpretation**

67. Background Part VIII of the S IA deals with the deposits that each sole trader and member firm is required to lodge with the stock exchange of which he is a member or by which it is recognized (its "home exchange"). These deposits are payable out of moneys in a trust account kept by the sole trader or member firm (see SIA para 74(1)(b) and s.95).

68. Proposed amendment A reference in Part VIII to a trust account kept or maintained by a sole trader or member firm will, unless the contrary intention appears, include a reference to a trust account so kept or maintained outside the A. C. T. (Bill cl. 13 - proposed SIA s. 94A) .

## **Cl. 14 : Deposits to be lodged by sole traders and member firms**

69. Background Each sole trader and each member firm must lodge and maintain with the stock exchange a deposit required by Part VIII (S IA s-sec. 95(1)). Failure to do so is an offence (S IA s-sec 95(4)).

70. Proposed amendments A sole trader and member firm will be required to lodge and maintain a deposit: ,

(a) with its home exchange; or

(b) if it is a member of, or is recognized by, 2 or more exchanges, with the "notified" stock exchange unless it has made a deposit to an exchange under the corresponding law of a State or Territory that is a participant in the co-operative companies and securities scheme (Bill paras 14 (a) and (d) -proposed SIA s-secs. 95(1) and (6)).

71. The "notified" stock exchange means the stock exchange most recently notified by a sole trader or member firm pursuant to proposed SIA s-secs. 95(1A) or (1B) (Bill para 14(a) - proposed SIA s-sec. 95(1C)).

72. Where -

(a) a sole trader becomes a member of another exchange or ceases to be a member of an exchange but remains a member of 2 or more other exchanges; or

(b) a member firm becomes recognized by another exchange or ceases to be recognized by an exchange but continues to be recognized by 2 or more other exchanges;

a s-sec 95(1A) or a s-sec 95(1B) notice must be given, forthwith, specifying the exchange with which the sole trader or member firm proposes to lodge his or its deposit, unless a deposit has been made under the corresponding law of a participating State or Territory (Bill paras 14(a) and (d) -proposed SIA s-secs. 95(1A), 95(1B) and (6)). It is an offence for a sole trader to fail to comply with s-secs. 95(1) or (1A) and for a partnership that is recognized as a member firm to fail to comply with s-secs. 95(1) or (1B) (Bill para. 14(c) -proposed SIA s-secs. 95(4) and (4A)).

## **Cl. 15 : Contributions to fund**

73. Background A person must not be admitted to membership of a stock exchange or to a partnership in a member firm unless he has paid at least \$500 to the stock exchange as a contribution to the fidelity fund (S IA s-sec. 106(1;1)). An annual amount of at least \$100 must also be contributed on or before 31 March each year (S IA s-sec. 106(2)).

74. Proposed amendment A stock exchange will be able to determine initial and annual contribution rates in relation to a person or class of persons (Bill cl. 15) .

#### **Cl. 16 : Provisions where fund exceeds \$2,000,000**

75. Background Members of an exchange who have made 20 or more annual contributions to the fidelity fund, and, have not had a payment made from the fund in respect of them, are not required to make any further contributions if the fund exceeds \$2,000,000 or such lesser amount as is prescribed (S IA para 107(L)(a)). On a member's death or retirement, if the fund exceeds this sum the stock exchange committee may pay that member or his personal representative all or part (as determined by the committee) of his total annual contributions (S IA paras 107(1) (b) and (c)).

76. A determination of the committee under SIA para 107(1)(b) must be in writing and may be in respect of any person or any class of persons (S IA s-sec 107(21)).

77. A stock exchange may suspend the operation of SIA paras. 107(1)(b) or (c) by notice in the Gazette, or revoke the suspension (S IA s-sec 107(3)).

78. If the fidelity fund is less than \$1,000,000 or a , prescribed lesser amount, a stock exchange may require a member referred to in SIA s-sec 107(1) to recommence annual contributions (S IA s-sec 107(4)).

79. Proposed amendments It is proposed to restructure SIA s-sec 107(1) so that:

(a) a corporate member which, or a natural person member who, has made 20 or more annual contributions to the fidelity fund and has not had a payment made from the fund in respect of it or him is not required to make any further contributions ,if the fund exceeds \$2,000,000 or such lesser amount as is prescribed; and

(b) if the fund exceeds this sum and a body corporate or a natural person ceases to be a stock exchange member, the committee may pay it or him (or his personal representative or his dependent) all or part of its or his total annual contributions, either with or without interest

(Bill para. 16(a) - proposed SIA s-secs 107(1), (IA), (1B), (1C), and (1D)).

80. Consequential amendments will be made to SIA s-sec 107(21) (Bill para 16(b)), SIA s-sec 107(3) (Bill para 16(c)) and SIA s-sec 107(4) (Bill para 16(d)).

#### **Cl. 17 : Application of fund**

81. Background: SIA s. 111 deals with the payment of moneys out of the fidelity fund where a person has suffered pecuniary loss or where there is a deficiency in an insolvency situation. The fund is applied to compensate persons who suffer loss because of the defalcation or fraudulent misuse of money, securities; or documents of title to securities by a member of the stock exchange who, when the loss is suffered, is a sole trader or partner in a member firm of a stock exchange who is liable to contribute to the fidelity fund, or an employee of that sole trader or firm (S IA s-sec. 111(1)).

82. The fund is also applied to compensate persons who suffer loss because of a defalcation or fraudulent misuse of property by a former member of a stock exchange or by his employees where the persons seeking compensation believed on reasonable grounds that the former member was at that time a member of a stock exchange (S IA s-sec 111(9)).

83. The total liability of a stock exchange in relation to the defalcations of one member or one firm is \$500,000 (S IA s-sec 111(4)). The exchange may also apply out of the fidelity fund such sums in excess of the amount limited by SIA s.111 as it thinks fit in the compensation of: persons who have suffered loss, or in payment to a trustee or official receiver (S IA s-sec 111 I; 8) .

84. Proposed amendments By reason of the amendments proposed to the definition of "member" and "sole trader" by Bill cl. 10 (discussed at paras 57 to 60 above) and the amendment proposed by Bill para 17(d) (proposed SIA s-sec 111(10)), the provisions of SIA s. 111 will apply to a body corporate that is an existing or former member of a stock exchange and to its officers.

85. The fidelity fund will also be able to be applied to pay a liquidator of a corporate member that is being wound up. The amount of such a payment will be limited to the amount that the liquidator certifies is required to make up or reduce the deficiency arising by reason of the corporate member's available assets being insufficient to satisfy proved debts arising from dealings in securities (Bill para. 17(a) -proposed SIA s-sec 111(3A)).

86. For the purposes of SIA s. 111 a defalcation or a fraudulent misuse of securities or documents of title to securities or of other property may occur anywhere (Bill para 17(d) - proposed SIA s-sec. 111(11)).

87. Consequential amendments will be made to SIA para. 111(4)(b) and s-sec.111(8) (Bill paras. 17(b) and (c)).

#### **Cl. 18 : Power of committee to settle claims**

88. Background - The procedure for the settlement of claims for compensation by the committee of a stock exchange is set out in SIA s. 115. A claimant is barred from commencing proceedings against a stock exchange without leave of the committee unless his claim has been disallowed and he has exhausted other remedies (S IA s-sec. 115(2)).

89. Proposed amendment - A claimant will be able to commence proceedings against a stock exchange even though he or it has a right or remedy under SIA s.112 (or a corresponding law of a participating State or Territory) against the fidelity fund of another stock exchange (Bill cl. 18).

#### **Cl. 19 : Dealings by employees of holders of licences**

90. Background SIA s. 132 regulates dealings by employees of dealers or investment advisers.

91. A dealer or investment adviser, and an employee of either, are prohibited from jointly purchasing securities as principals (S IA s-sec. 132(1)).

92. A dealer or investment adviser is prohibited from giving credit to an employee or known associate of an employee if the purpose is to assist the employee to purchase securities (S IA s-sec 132(4)).

93. Employees of stockbrokers are prohibited from purchasing securities as principal unless the stockbroker acts as agent in the transaction (S IA s-sec. 132(7)).

94. Proposed amendments The prohibitions in SIA s-sees. 132(1), (4) and (7) will also apply to officers of a corporate stock exchange member (Bill cl. 19 - proposed SIA s-sees. 132(8) and (9)).

95. The existing penalty for an offence against SIA s.132 will be included in a new sub-section (Bill cl.19 - proposed SIA s-sec. 132(10)).