CAPITAL MARKET DEVELOPMENT ACT

(LAWS OF MALAWI CHAPTER 46:06)

An Act to provide for the development of a capital market; to expand access by companies in Malawi to term financing for development purposes; to provide for the utilization of savings and excess liquidity in domestic development; to provide for adequate regulation of the capital market and for self-regulatory organizations; to foster development of fair and orderly financial markets; to provide administrative procedures for these purposes; and to provide fur matters incidental thereto or connected therewith

[25TH JUNE 1990]

PART I
PRELIMINARY

1. This Act may be cited as the Capital Market Development.

2. In this Act, unless the context otherwise requires -

"**Bank**" means the Reserve Bank of Malawi

"**bank**" means any person registered as a bank under the Banking Act;

"**broker**" means any person engaged in the business of broker- age for commission or other benefit, designed to bring into contact the supply and demand of securities and money market funds;

"**capital market**" means the totality of financial markets in the broadest sense, including money markets and securities markets, both primary and secondary, and all forms of finance, whether short-, medium- or long-term, and all participants in the foregoing;

"**cash transaction**" means a transaction in securities with immediate payment of a debt when it is due either in cash or by any other means of money transfer or by a duly covered cheque;

"**control**" means the ability to direct the policies and activities of a person or entity, through direct or indirect ownership of securities, contractual arrangements or otherwise;

"**dealer**" means any person, not being an investor or issuer , engaged in the regular business of buying and selling of securities for his own account;

"**financial institution**" means any person, other than a bank, Cap 44-()l registered as a financial institution under the Banking Act;

"**investment adviser**" means any person who engages in the business of advising as to the value of securities or the investing, purchasing or selling of securities;

"**investor**" means a person engaged in the buying, selling or holding of securities for investment purposes for his own account;

"**issuer**" means a person who, directly or through the intermediary of an underwriter, agent or other arrangement, issues securities or introduces securities in the capital market;

"**marketmaker**" means a person who for his own account operates in a financial market as a buyer of securities, offered for sale, or as a seller of securities demanded for purchase, in cases that no other counterparts are prepared to deal;

"**material information**" means any information that can reason- ably be considered to be of interest to existing or potential parties in a capital market, or to investors, including information that is likely to affect the price or value of securities;

"**public offering**" means an offer or invitation to the public as defined in section 165 of the Campanies Act;

"**purchase**" or "buy" includes any contract to purchase or buy or otherwise acquire;

"**sale**" or "**sell**" includes any contract to sell or otherwise dispose of any securities;

"**secondary market**" means a market for the re-sale of securities and purchase of securities offered for re-sale;

"**security**" means-

(a) stock, shares, bills, notes, commercial paper, certificates of deposit, bonds and debentures issued by the Government or statutory bodies, or by companies or other bodies whether corporate or unincorporate;

(b) any interest, privilege, right, option, warrant or receipt in respect of issues referred to in paragraph (a) and

(c) any interest or instrument commonly known as a security: Provided that the Bank may nonetheless determine whether or not any arrangement or matter constitutes a security and exempt, as it deems appropriate in pursuit of this Act, fully, partially or conditionally, types and classes of securities from the definition of securities for purposes of any or all of the provisions of this Act;

"**self-regulatory organization**" means an association of members who operate regularly in a capital market as brokers, dealers or marketmakers, which is established, with the permission of the Minister upon recommendation of the Bank, in order to provide rules and regulations aimed at the proper functioning of a stock exchange or other form of trade in securities;

"**statutory body**" has the meaning assigned thereto in the Finance and Audit Act;

"**underwriter**" .means any person or group of persons who undertakes or undertake to purchase securities from an issuer with the intention to offer for sale and distribute such securities, or who participates or participate in any such undertaking, but does not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors" or sellers' commission

PART II
PURPOSE AND REGULATORY AUTHORITY

3. As a principal purpose of this Act, the Bank shall-

(a) encourage enterprises to raise needed finance through the issue of securities;

(b) encourage investment of savings in securities;

(c) foster the development of fair and orderly financial markets; and

(d)provide rules and regulations as may be appropriate for the development, operation and supervision of the capital market.

4.-

(1)The Bank shall be the authority responsible for regulating and supervising the proper functioning of the capital market.

(2) The Bank shall determine and implement measures as it deems necessary or appropriate to carry out the purpose of this Act, and shall exercise its powers under this section to develop the capital market and to provide rules and regulations for fair and orderly market conditions.

5. The Bank shall take action and, if it deems necessary shall make proposals for appropriate action by other authority in order to-

(a) foster the development of the capital market and achievement of the purpose of this Act;

(b) increase the supply of securities, including the encouraging of companies to increase investment in capital assets and to raise finance through public issue.. of securities, and the encouraging of holders of securities to engage in the secondary market;

(c) encourage savings and investment of such savings in securities ;

(d) encourage the development of securities intermediaries and other securities professionals;

(e) disseminate to the public information on the capital market and on securities;

(f) create facilities for regular publication of prices, dealings and securities;

(g) prevent unfair trading practices and abuse of inside information.

6. The Bank shall maintain a continuing evaluation of market conditions to determine whether any disincentives to capital market development exist and what new incentives should be provided to foster achievement of the purpose of this Act.

7. The Bank shall examine and recommend to the Government special actions for removal of disincentives, and adoption of incentives for the development of capital market.

8.-

(1) The Bank shall have the power to cancel any transaction, which it believes violates any provision of this act or any rule or regulation made under this Act, or is not in accordance with sound trading practices.

(2) The Bank shall conduct, on a continuing basis, an examination of trading practices in the capital market to determine which practices should be covered by rules and regulations in order to provide for fair and orderly market conditions and ensure that investors are adequately protected and can develop increased confidence in the capital market.

9.-

(1) If it deems necessary or appropriate, the Bank shall suspend trading or transactions in any security or group or class of securities in the capital market.

(2) Any broker, dealer, marketmaker or underwriter who effects any trading or a transaction, in, or facilitates or induces the purchase or sale or other transaction of, a security the trading or transacting in which is suspended under subsection (1) shall be guilty of an offence.

PART III
SELF- REGULA*TORY* ORGANIZATIONS

10. Trading in securities may be conducted only by brokers, dealers marketmakers and underwriters who are members of a self-regulatory organization, which meets the standards prescribed in or under this Act:

Provided that so long as there is no self-regulatory organization in existence in Malawi, the Bank may grant permission to brokers, dealers, marketmakers or underwriters registered as such under section 26 to trade in securities.

11.-

(1) A self-regulatory organization may be registered by filing with the Bank an application for registration in such form as may be prescribed, and submitting with such application the operational rules of such organization or such other information and documentation as the Bank may require.

(2) A self-regulatory organization shall not be registered un- less the Bank determines that it meets the requirements of section 13 and that-

(a) it is so organized that it has the capability to carry out the purposes of this Act and to ensure compliance by its members and its employees with this Act and with its own rules;

(b) its rules are designed to-

(i) promote the development of the capital market;

(ii) prevent fraudulent and manipulative acts and practices

(iii) promote just principles of trade;

(iv) remove impediments to, and perfect the mechanism of, a free and open market; and

(v) generally protect investors and the public interest;

(c)its rules are not designed to permit, and do not permit, discrimination between customers, issuers of securities, brokers, dealers, marketmakers and underwriters;

(d) its rules provide that its members and persons associated with the members shall, for violating those rules, the provisions of this Act, or any rules or regulations made under this Act, be appropriately disciplined. by expulsion, suspension , limitation of activities and functions, or by suspending or barring them from being associated with the organization or a member thereof, or by any other fitting sanction;

(e)its rules provide a fair procedure for the disciplining of its members and persons associated with it or associated with its members; and

(f)its rules do not impose any undue burden in the furtherance of the purposes of this Act.

12. Where a self-regulatory organization registered under this Act fails to meet the requirements necessary for registration, or fails to fulfill any of its duties under this Act, the Bank shall take such remedial action as it may deem appropriate.

13.-
(1) A self-regulatory organization shall take steps necessary to ensure compliance with the requirements of this Act, with its own rules and with the requirements of any other relevant written law.

(2) A self-regulatory organization shall adopt all measures necessary to provide a fair, orderly, transparent, and properly regulated and disciplined market for the benefit of the public and investors, and as a minimum, the organization shall have-

(a)rules establishing the manner in which business is to be transacted by its members;

(b) rules designed to ensure that the capital market functions for the benefit of investors and not solely for the special benefit or advantage of its members;

(c) rules establishing the rights and obligations between members and their customers including rules for members acting in a fiduciary capacity and for members acting as agents;

(d)rules establishing trading procedures and requirements and record keeping to provide for an adequate audit trail;

(e)rules establishing priority, parity and precedence among orders designed to ensure proper treatment of all orders;

(f) rules designed to ensure that all buying and selling interest is brought together and exposed sufficiently to lead to efficient pricing and that transactions by investors obtain the best execution;

(g)rules establishing whether and in what circumstances members may trade for their own account and requiring disclosure of this fact, with the objective of ensuring that the self-regulatory trading system operates as a public market for the benefit of investors;

(h)rules establishing the obligations of those acting as marketmakers;

(i)rules establishing trading procedures for less actively traded securities;

(j)rules establishing that any transaction shall be a cash transaction ;

(k)rules establishing procedures to ensure efficient, prompt and orderly clearance, settlement and payment of transactions, including but not limited to:-

(i)requirements that members-must clear, settle and pay transactions among themselves independent of the obligations to or of their customers;

(ii) requirements, if determined appropriate by the self- regulatory organization, that members must receive from customer's securities and payments before executing trans- actions;

(iii) rules regulating transfer of ownership or securities; (l) rules designed to foster fair, honest, orderly and trans- parent markets, protect investors, promote high standards of commercial honour and fair principles of trade and conduct, and prevent manipulative, deceptive and fraudulent acts, practices and courses of conduct by any person, and acts, practices and courses of conduct by any person determined by the self-regulatory organization to be improper or contrary to the purposes of this Act;

(m) rules providing effective and fair procedures and standards under which members and their associated persons shall be appropriately disciplined, by expulsion, suspension, limitation of activities and functions, and other fitting sanctions in case of violations of its own rules or of this Act or -the rules and regulations made under this Act;

(n)rules providing for suspension or cancellation of trading;

(o) rules establishing the obligations of the issuers of publicly traded securities to provide disclosure of material information to investors, brokers, dealers, marketmakers, underwriters, investment advisors and portfolio managers and the market in general; and

(p) rules establishing the duties of its members to obtain and disseminate information provided by issuers of securities.

14.-

(1) A self-regulatory organization shall file with the Bank, in accordance with such requirements as may be pre- scribed, copies of any prop9sed change in the rules of the organization.

(2) In the case of change in the rules, the submission to the Bank shall be accompanied with a statement of the basis and purpose of each proposed change and an explanation of

how the proposed change furthers the purposes and meets the requirements of this Act, all in sufficient detail to "permit the Bank to reach a finding on each proposed change .

(3) No proposed change of the rules of a self-regulatory organization shall take effect unless approved by the Bank.

15 For a secondary market transaction in securities a commission, fees and other charges may be payable in accordance with a minimum an maximum scale which shall be determined by the self-regulatory organization and approved by the Bank, and which shall be appropriate to the stage of development of the capital market and the provision of adequate compensation to brokers or dealers; but so, however, that neither the self-regulatory organization nor the Bank shall have authority to fix a commission, fees or charges for underwriting or similar services or for public offering,

16.

(1) Officials and personnel of a self-regulatory organization shall maintain secrecy regarding any information which they have obtained as a result of the performance of their functions or otherwise, and shall not use the knowledge of such information for themselves personally or for others, whether in anyway related or totally unrelated to the capital market.

(2) A person who contravenes subsection (1) shall be guilty of an offence.

PART IV
DISCLOSURE OF INFORMATION

17. Issuers of securities shall disclose to the public and to the market all material information.

18. Issuers of securities, which are traded in the capital market shall provide true, complete and prompt continuous disclosure of material information to the market by promptly providing copies to brokers, dealers marketmakers underwriters, investment advisers and portfolio managers and by preparing, and filing with the Bank such annual, quarterly or other periodical reports as the Bank may require.

19.-

(1) Issuers of securities, which are traded in the capital market, shall disclose to the capital market all material information concerning the issuer and its business at the time the information first becomes known.

(2) The issuer of securities shall ensure that no unauthorized person has access to any information referred to in subsection (1) until the information has been made public and shall make such information public through the facilities of the Bank or of the self-regulatory organization, newspapers and such other forms of media as may from time to time be determined by the Bank. -

20.-

(1)Every shareholder who directly or indirectly owns, (of record or beneficiary) or controls ten or more *per centum* of the share capital of a public company which is traded in the capital market shall, within five days of becoming such, inform the Bank and the self-regulatory organization of the amount of his shares in such ownership or control and shall, within five days following the occurrence of a change in the amount of his shares, inform the Bank and the self-regulatory organization of the change and the new balance of his holdings.

(2) The Bank shall make public through its own facilities, newspapers or such other forms of media as it may determine any information it has received under subsection (1).

21. Issuers of securities which are traded in the capital market shall, within five days of issuing the securities, notify the Bank and the self-regulatory organization concerned of any election, resignation, vacancy or change in directors, chief executive officers, managers or auditors.

22.-

(1) All reports and filings made with the Bank and with a self-regulatory organization shall be available for public inspection, except for information obtained through the Banks own investigation and information for which issuers legitimately claim confidentiality upon proof to the Bank that public disclosure could be detrimental to the legitimate business interests of the issuers.

(2) The Bank shall designate appropriate means for disclosure by issuers to be promptly made available and disseminated to dealers, brokers, marketmakers, underwriters, investment advisers and portfolio managers and to the general public.

23. A self-regulatory organization shall promptly collect relevant information of transactions and shall publish such information to the members of the trading system on a regular basis, and shall prepare trading statistics, which shall be regularly published in the newspapers and other appropriate forms of media.

PART V
PROSPECTUSES

24. No public issue of shares, bonds or other securities to be traded or introduced in the capital market shall be made by a company unless the company has complied, to the satisfaction of the Bank, with the requirements pf Part IX of the Campanies Act and the requirements of the Fifth Schedule to that Act: Provided that the powers and duties of the Registrar of Companies related to prospectuses, and referred to in sections 167 (1) *(a),* 167 (1) (c), 169 (2), 170 (1), 170 (3) (inclusive of the proviso) and 170 (5) of that Act shall, in respect of capital market operations, devolve upon the Bank, and that references to the Registrar of Companies in the Fifth Schedule to that Act, whether appearing as

"Registrar of Companies" or as 'registrar", shall, for the purposes of this section, be construed as reference to the Bank.

PART VI
FINANCIAL STATEMENTS

25. A company, the securities of which are traded in the capital market, shall, for the purpose of this Act, comply with the requirements of Part X of the Companies Act and the requirements of the Second and Third Schedules to that Act: Provided that-

(a) a private company, the securities of which are publicly traded in the market, shall comply with the requirements of section 196 (1) of the Companies Act as if it were a public company, and section 197 of that Act shall not apply to that company; and

(b) a copy of the annual returns required by section 182 of the Companies Act, including a report by the directors required under section 189 of that Act, shall be submitted to the Bank.

PART VII
REGISTRATION, QUALIFICATIONS, ETC., OF BROKERS, DEALERS AND OTHER SECURITIES PROFESSIONALS

26.-

(1) Brokers, dealers, marketmakers underwriters of securities investment advisers and portfolio managers, including banks and financial institutions in their capacity as brokers, dealers, marketmakers, underwriters, investment advisers and portfolio managers, shall only be bodies corporate and shall be registered as such with the Bank upon application to the Bank and approved by the Bank. ;

(2) The Bank may grant exemptions from registration or from the requirement of incorporation, as it deems appropriate for giving proper effect to the purposes of this Act.

27.-

(1) The Bank may establish criteria for the professional capability of brokers, dealers, marketmakers and their staff. Such qualifications and requirements may be varied for different types of activities.

(2) Any person, not being registered as a broker, dealer or marketmaker by the Bank, who represents or implies in any manner to any person that his abilities or qualifications have in any respect been approved by the Bank, shall be guilty of an offence.

28. A broker, dealer, marketmaker, underwriter, investment adviser or portfolio manager required to be registered under this Act who conducts business in contravention of the requirements prescribed by the Bank concerning minimum capital and liquidity requirements shall be guilty of an offence.

29.-

(1) Every securities professional entity registered under section 26 shall maintain such books and records and provide such reports and information, data and statistics as the Bank may require, and shall prepare and file financial statements and information and other materials required pursuant to this Act according to the requirements established by the Bank, and shall make all such books and records available to the Bank for inspection and examination at any reasonable time.

30. Every entity registered under section 26 shall-

(a) be under a duty to actively supervise all employees and persons operating under its authority to ensure that they comply with the requirements of this Act and with the rules and regulations made under this Act, which shall be applicable to the employees to the same extent that they are applicable to their employers or to persons under whose authority the employees operate; and

(b) have established written procedures approved by the Bank on how supervision under paragraph *(a)* is to be con- ducted.

31. In the conduct of business, every entity registered under section 26 and every person associated with such entity shall

(a) observe high standards of commercial honour and just and equitable principles of trade, having due regard to the maintenance of fair and orderly markets and the protection of investors;

(b)at all times recommend and ensure the best possible terms and conditions for its customers when handling orders which it has received, and shall not recommend any purchase or sale solely for its own benefit nor advise its customers where there is in existence any conflict of interest between its own operations and the interest of the particular customer.

32. Every entity registered under section 26 and every person associated with such entity, who recommends to a customer the purchase, sale or exchange of any security shall have reasonable grounds to believe that such recommendation is suitable for the customer. Such belief shall he based on-

(a)information furnished by such customer after the person giving the recommendation has made reasonable enquiry concerning the customer's investment objectives, financial situation, risk-taking ability, and needs; and

(b)any information known by the person giving the recommendation.

33. The Bank and any self-regulatory organization may establish a fund to consist of amounts paid in by brokers, dealers and marketmakers in accordance with requirements issued by the Bank to provide security against damage or loss that may arise from the

financial inability or difficulty of brokers, dealers and marketmakers in meeting their obligations to liquidate transactions between one another or with their customers.

34. The Bank may cancel the registration of a broker, dealer , marketmaker,underwriter, investment adviser and portfolio manager or suspend such registration for up to two years, after first hearing from the persons concerned, where in the opinion of the Bank such entity or person-

(a) at any time no longer meets the requirements of registration and has failed to remedy the situation within thirty days of being required by the Bank so to do;

(b) engages in serious or repeated violations of his obligations under this Act or under requirements issued by the Bank or under the rules of a self-regulatory organization;

(c) takes part in transactions which the Bank determines are inconsistent with sound capital market practices;

(d) ceases,to a significant degree, to meet or fulfill the criteria for professional capability established by the Bank under section 27; .

(e) participates in transactions in securities for which trading has been suspended or cancelled;

(f) fails to meet obligations arising from transactions in which he has been involved; and

(g) fails to properly supervise persons under section 30 with a view to preventing violations of this Act.

PART VIII
INVESTMENT COMPANIES, MUTUAL FUNDS AND SIMILAR ENTITIES

35.-

(1)An entity shall not be established, or continue to operate, as an investment company, a mutual fund, an investment trust, a unit trust or other collective investment established in Malawi for, or in fact engaged in, collective investment and management of securities and investment unit trusts, portfolios, unless it has been licensed by the Bank.

(2) No licence under this section shall be issued until the Bank has prescribed such requirements, as it deems appropriate for the establishment and operation of entities to be licensed under this Act.

(3) The requirements prescribed pursuant to subsection (2) shall be complied with or fulfilled by every licensed entity and shall be designed to provide appropriate protection for investors, including, but not limited to, the following-

(a) public offering and continuing disclosure of material information;

(b) proper organization and internal accounting controls;

(c) independent management;

(d) diversification of investments;

(e) annual distributions of earnings, except where capital gains and growth are the objectives, in which case distributions may be spread out over longer periods if appropriate for investors ;

(f)requirements for management agreements;

(g) proper management and qualifications of directors and officers;

(h) reports and financial statements;

(i)shareholders rights and annual and special meetings;

(j) liabilities for misconduct ;

(k) prohibition of improper practices; and

(l) other matters deemed necessary by the Bank.

(4) Notwithstanding the foregoing, the Bank shall not interfere in the investment strategy or objectives of any entity, which is or may be licensed under this section.

PART IX
PROHIBITED ACTIVITIES

36 No person shall, directly or indirectly, for the purposes of creating false or misleading appearance of active trading in any security-

(a) effect any transaction in a security which involves no change in the beneficial ownership thereof. For the purposes of this paragraph, a transaction involves no change in beneficial ownership if a person associated with that person in relation to such securities holds an interest in the securities after the purchase or sale; .

(b)enter an order or orders for the purchase of any such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale of such security has been and will be entered by or for the same or for different parties; or

(c) enter an order or orders for the sale of any such security 4 with the knowledge that an order or orders at substantially the same time, and at substantially the same price, for the purchase of such security has been or will be entered by or for the same or different parties: Provided that nothing in this section shall prevent a marketmaker from effecting a transaction in the normal course of his business and in accordance with the requirements of the Bank or of the rules of a self-regulatory organization.

37. No person shall, directly or indirectly, effect, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security for the purpose of inducing the purchase or the sale of such security by others.

38. No person, being a person selling or offering to sell or purchasing or offering to purchase any security shall, directly or indirectly, for a consideration anticipated, expected or received from any person, induce the purchase or sale of any security by the circulation or dissemination of information to the effect that the price will or is likely to rise or fall because of market operations of anyone or more persons conducted for the purpose of raising or depressing the price of such security.

39. No person shall, directly or indirectly, effect, alone or with one or more other persons, any series of transactions in any security for the purpose of pegging, fixing or stabilizing the price of such security unless such action is taken in accordance with the requirements issued in that behalf by the Bank.

40. No person shall, directly or indirectly, effect, alone or with one or more other persons, any transaction in any security knowing of information not yet published concerning the particular issuer, if such information may reasonably be assumed to be significant to the pricing of such security.

41. No broker, dealer, marketmaker, underwriter, investment adviser or portfolio manager selling or offering to sell or statements purchasing or offering to purchase any security, shall, directly or indirectly, make, regarding the security, any statement which was at the time false or misleading with respect to any material fact and which he knew or had reasonable ground to believe was false or misleading.

42. No person shall engage in any act, practice, course conduct or transaction in any security in contravention of any requirements which the Bank may issue on the basis of its judgment that such act, practice, course of conduct or transaction is improper or contrary to the proper functioning of the capital market,

43.-

(1) No director, officer, employee or controlling Transactions shareholder of a company shall

(a) effect or cause to be effected securities transactions based on material information that has not been publicly announced or disseminated;

(b) disclose any confidential information on the affairs of a company, which he obtains by virtue of office or employment in the company, prior to the normal time for publication of that information by the company;

(c) carry out .on his own behalf or on behalf of any other person any securities transaction based on internal and confidential knowledge of company information prior to the nor- mal time for publication of that information by the company.

(2) Section 152 of the Campanies Act shall apply to any transaction referred to in subsection (1),

44.-

(1) No person shall, in connection with any transaction in securities, issue post-dated cheques or use any other device for similar purposes or agree or plan to or in fact hold any cheques or not demand payment whatever their date.

(2) No bank or other person shall honour a post-dated or held cheque referred to in subsection (1) or deal with such cheque in any manner.

(3) No broker, dealer, marketmaker, underwriter, investment adviser or portfolio manager shall participate in or facilitate any transaction involving in any way a post-dated or held cheque referred to in subsection (1).

45. No director, officer or controlling securities holder or information any other person shall file, publish or issue any report or information that is false or misleading or fails to state all material facts.

46

(1) A person who contravenes any provision of this penalty for Part or any requirement issued by the Bank and designed to carry out the purpose of this Part shall be guilty of an offence and liable to a fine of KI0,000 and to imprisonment for two years.

PART X
REGISTRATION AND TRANSFER OF SECURITIES AND CLEARANCE AND SETTLEMENT OF TRANSACTIONS

47. The Bank may establish requirements and procedures of securities for-

(a) the form and content of certificates for securities;

(b) the transfer, dealing, custody and mortgage of certificates of securities;

(c) the transfer and registration and all matters related to loss, destruction and replacement of securities certificates; and

(d) the establishment of record dates for meetings of shareholders.

48. The Bank may establish requirements, procedures and methods for determining the manner in which transactions in securities shall be cleared, settled and paid.

PART XI.
CIVIL LIABILITIES

49. -

(1) Notwithstanding that no person has been charged action or convicted for an offence under this Act, a person who alleges injury, harm or loss as a result of activities alleged to violate any provision of this Act or any requirements issued by the Bank or any rules of a self-regulatory organization shall be entitled to bring before a court civil actions for compensation or damages or rescission of transactions against any person who he alleges has caused or participated in such violation.

(2) Nothing in subsection (1) shall preclude the taking of any other action authorized under this Act or under any other law against any other person or for any other purpose

PART XII
INVESTIGATION OF ACTIVITIES UNDER THIS ACT AND INSPECTION OF RECORDS **50**. –

(1)Where the Bank suspects that, or wishes to determine whether, any person has violated, is violating or is about to violate any provision of this Act or rules, regulations, requirements, procedures or methods prescribed or made or issued under this Act, the Bank may cause an investigation or an inspection to be made of the business of any person who is subject to this Act as it may deem appropriate.

(2) The Bank may, for the purpose of carrying out the pro- visions of this Act, at any time carry out investigations or inspections about the business of any person who is subject to this Act.

(3) In any investigation under this section the Bank may require any person to file a statement, in writing or otherwise as the Bank determines, with respect to the facts and cir- circumstances concerning the matter under investigation, for which it may issue instructions, as it deems appropriate.

51. Where a person fails, without good cause, to attend when summoned by the Bank or to submit any document required by the Bank pursuant to an investigation or inspection under this Part, the Bank may apply to a court for an order that such person shall comply with the Bank's request within the period to be specified in the order and, failing compliance within that period, shall pay a fine not exceeding K100 for each day he continues to fail to comply after that period.

52. A person required to make or keep records under this Act or under the Companies Act, or under any requirement issued by the Bank under this Act, shall make such record available to the Bank for inspection under this Act and shall furnish to the Bank copies of such documents as the Bank may require.

53. A person who conceals, removes, sends' abroad, destroys mutilates or alters any records or document required under this Act to be maintained or relating to any subject under investigation by the Bank or conspires or connives with another to do any such act, shall be guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years,

PART XIII
RULES AND REGULATIONS

54.

(1) The Bank may make rules and regulations for prescribing various requirements and other matters required under power this Act.

(2) Rules and regulations made under subsection (1)-

(a)shall be subject to the prior written approval of the Minister;

(b)shall be published in the *Gazette*

55. In the rules and regulations made under section 54, the Bank may classify persons, securities, transactions, statements,applications, reports an other matters, and prescribe greater, lesser or different requirements for different classes thereof and may phase the making of such rules and regulations according to the stage of development of the capital market.

PART XIV
MISCELLANEOUS

56. Any person who contravenes any provision of this or any rule or regulation made under this Act shall be guilty of an offence

57. A person guilty of an offence under this Act for which no other penalty has been provided shall be liable to a fine of K5, 000 and to imprisonment for one year.

58. No advance waiver of the requirements of any protection effective or of any provision under this Act or under any rule or regulation made under this Act shall be valid or binding.

59. Section 82 of the Companies Act shall not apply to a company, which issues or has issued debentures of any class or description to bearer.