

SHAREBROKERS ACT, 1945-1975

being

Sharebrokers Act, 1945, No. 11 of 1945 [Assented to 15th November, 1945]¹;

as amended by

Statute Law Revision Act (No. 2), 1975, No. 118 of 1975 [Assented to 4th December, 1975].

An Act to provide for the keeping of certain books and accounts by sharebrokers and for the examination and audit of those books and accounts, and for other purposes incidental thereto.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Sharebrokers Act, 1945-1975".

Short title.
Citation
amended by 118,
1975, s. 3 (1)
(2nd Sched.).

2. This Act shall come into operation on a day to be fixed by the Governor by proclamation¹.

Commence-
ment of Act.

3. (1) In this Act, unless the context otherwise requires or some other meaning is clearly intended—

Interpretation.

"agent" in relation to a broker includes any person who acts or is employed or has acted or been employed as a banker, accountant, auditor, agent or servant of the broker:

"approved auditor" means person who is for the time being registered as a company auditor under section 9 of the Companies Act, 1962, as amended², or under any corresponding subsequent enactment:

Def. amended
by 118, 1975,
s. 3 (1) (2nd
Sched.).

"broker" means person who carries on or has carried on the business of stock broking or share broking or both:

"business day" means day being neither a Sunday nor a bank holiday:

"committee" means committee or other governing body of an exchange:

"exchange" means The Stock Exchange of Adelaide Limited and any other association declared by the Governor by proclamation to be an exchange within the meaning of this Act:

"securities" means—

(a) debentures, funds, stock, shares, bonds, or other securities of a Government, local governing body, public or local authority, company or society: and

(b) any right to subscribe for or to be allotted any such security as mentioned in paragraph (a) of this definition:

¹ Came into operation 1st July, 1946: *Gaz.* 27th June, 1946, p. 1121.

² Now Companies Act, 1962-1974.

“money” includes order for the payment of money:

“president” means president of an exchange and includes any person for the time being acting as president:

“the Registrar” means the Registrar of Companies and any person for the time being acting as Registrar of Companies:

“trust account” means trust account kept pursuant to this Act at a bank in South Australia.

(2) The Governor may by proclamation declare any association to be an exchange within the meaning of this Act, and may by proclamation revoke or vary any proclamation in force under this subsection.

Trust account.

4. (1) Every broker shall open a trust account at a bank for purposes of this Act.

(2) Every such trust account shall bear on each page thereof the name of the broker and the words “sharebroker’s trust account”.

Payment of money into trust account.

5. (1) Subject to this section every broker shall pay into a trust account—

(a) the amount of all money received by him from or on account of any person, not being a broker, for the purchase of securities, if that money is so received before the securities to be purchased are delivered to the broker;

(b) the amount of all money received by him for or on account of any person, not being a broker, from the sale of any securities, if that money is not within three business days after the receipt thereof by the broker paid to that person or as he directs.

(2) The money required by this section to be paid by a broker into a trust account shall be so paid not later than the third business day after the receipt of the money.

(3) Before paying money into a bank pursuant to this section a broker shall be entitled to deduct any brokerage or other charges which are due to him and are properly deductible from the money.

(4) A broker shall not have more than one trust account for purposes of this Act.

(5) A broker who fails to comply with any requirement of this section shall be guilty of an offence.

Disposal of money in trust account.

6. (1) A broker shall not withdraw money from a trust account except for one or more of the following purposes, namely:—

(a) where money received from the sale of securities has been paid into the trust account—paying to the person entitled to that money, or in accordance with his directions, a sum not exceeding the amount so paid into the trust account:

(b) where money received by the broker for the purchase of securities has been paid into the trust account—paying the price of those securities when purchased, but so that the amount so paid for the securities does not exceed the amount so paid into the trust account:

(c) paying any sum of money due and owing to the broker and lawfully payable out of moneys paid into the trust account.

A broker who contravenes this subsection shall be guilty of an offence.

(2) Except as provided in this section, money paid into a trust account pursuant to this Act shall not be available for payment of the debts of the broker or be liable to be paid or taken in execution under an order or process of any court at the instance of any creditor of the broker.

(3) The bank at which a broker keeps a trust account under this Act shall not in respect of any liability of the broker to the bank, not being a liability in connection with that account, have any recourse, right of set-off, counter-claim, charge, lien or other claim, against money standing to the credit of that account.

(4) Nothing in this Act shall take away or affect any lawful claim or lien which a broker has against or upon any money in his trust account.

(5) This section shall not render a bank liable to make any inquiries with regard to the purposes for which any money is withdrawn from a trust account at that bank, nor impose any liability on a bank for failure to make such inquiries.

7. (1) Every broker shall keep such books and accounts as are necessary to record his business transactions clearly, and shall on every day make detailed entries in his books and accounts of his business transactions which took place on that day.

Duty of broker
to keep books.

(2) Without affecting the generality of subsection (1) of this section every broker—

- (a) shall keep a purchases and sales book and shall record therein the name of the buyer and seller in every transaction in which he acts and particulars of the securities bought or sold;
- (b) shall keep two receipt books each of which shall contain receipt forms numbered in sequence and in duplicate, and shall issue from one of the said books all receipts given by him for money, and from the other book all receipts given by him for securities, and shall retain a clear carbon copy of every receipt issued;
- (c) shall keep a cash book and shall enter therein every amount paid or received;
- (d) shall keep a journal;
- (e) shall keep a scrip register and shall record therein particulars of all securities received and disposed of by him including the following:—
 - (i) the name of the person in whose name the securities are registered or inscribed, or in the case of bearer securities the name of the owner;
 - (ii) the class of securities and the individual certificate numbers thereof and, where available, the distinctive numbers of shares;
- (f) shall keep a ledger or ledgers and enter therein particulars of all transactions—
 - (i) with clients;
 - (ii) with brokers; and
 - (iii) in respect of nominal or private accounts.

(3) A broker who fails to comply with any requirement of this section shall be guilty of an offence.

Audit of
brokers'
accounts and
inspection of
securities.

8. (1) Every person who during any financial year or part thereof has carried on business as a broker—

- (a) shall cause his accounts for that financial year to be audited and his securities to be inspected within three months after the end of that financial year, by an approved auditor;
- (b) shall forthwith after completion of the audit and inspection obtain from the auditor a copy of his report:

Provided that the Registrar may extend the time for the commencement or completion of any audit under this subsection.

(2) An auditor who audits a sharebroker's accounts shall forthwith after completion of his audit and inspection send the original of his report to the Registrar and if the sharebroker is a member of an exchange, a copy of his report to the president of that exchange.

(3) The auditor shall include in his report information as to the following matters:—

- (a) The balance date of the accounts of the broker;
- (b) Whether the provisions of this Act relating to keeping books and making entries therein have been promptly complied with;
- (c) Whether all securities held for safe custody were examined by the auditor;
- (d) Whether any, and if so what, securities held for safe custody have been charged, pledged, become subject to a lien, or otherwise encumbered;
- (e) Where clients have been financed by the broker, whether the market value of the securities held covers the amount of the advance in each case;
- (f) Whether all securities which have been lodged by clients for sale but not sold and securities which have been bought for clients and paid for by them, but not delivered to them, are held unencumbered;
- (g) Whether the market value of the broker's assets (excluding the value of his seat on the exchange) as shown in his books and accounts exceeds his liabilities at the balance date;
- (h) Whether the broker's assets are readily realizable;
- (i) Whether the statement of assets includes private assets not usually included with business assets;
- (j) Whether there are any contingent liabilities, and, if so, the amount thereof;
- (k) Whether there are any other matters or circumstances which in the auditor's opinion affect the financial position of the broker; and
- (l) Whether all necessary information has been made available to enable the auditor to furnish the report.

(4) Where a manager, branch manager, or accountant of a bank certifies in writing that the bank holds any securities for or on account of a broker, and the purpose for which they are so held, the auditor may at his discretion refrain from inspecting those securities.

(5) A broker who fails to comply with any requirement of this section shall be guilty of an offence.

9. (1) The Registrar may on the application of a broker direct that a period ending on a day other than the thirtieth of June shall be the financial year for the purpose of the audit of the broker's accounts. If such a direction is given the preceding section shall be read as if the period fixed by the Registrar were the financial year for the purposes of the audit of the broker's accounts under that section.

Variation of
financial year.

(2) The Registrar may revoke or vary any direction in force under this section for reasonable cause.

10. (1) If it appears to the Attorney-General that there is reasonable cause to suspect that—

Special audit.

(a) a broker has been guilty of a breach of this Act; or

(b) owing to the financial position or the conduct of a broker it is desirable that his books and accounts should be audited,

the Attorney-General may after giving the broker not less than three days' notice in writing of his intention, direct an auditor to conduct a general or special audit of the books and accounts of the broker, and to report to the Attorney-General on such audit, and on such other matters relating to the accounts and transactions of the broker as the Attorney-General directs.

(2) A special audit shall be limited to such accounts and other matters as the Attorney-General directs.

(3) An audit under this section shall, if the Attorney-General so directs, include an inspection of the securities held by the broker.

(4) The Attorney-General may give a direction under this section either of his own motion, or on the application of any person.

(5) The costs of any audit and report directed by the Attorney-General under this section shall in the first instance be paid by the Attorney-General out of money appropriated by Parliament. On the application of the Attorney-General the Supreme Court, if satisfied that by reason of any breach of this Act by the broker or any other conduct of the broker it was desirable that the audit should be held, may, in its discretion, order that the broker shall pay to the Attorney-General a sum equal to the whole or any part of the cost of the audit and report.

11. (1) An auditor who is auditing or investigating the books, accounts, or transactions of a broker may require that broker, or any agent of that broker—

Power of
auditors.

(a) to furnish him with any information; or

(b) to answer any question,

relating to the books, accounts or transactions being so audited or investigated.

(2) An auditor who is auditing or investigating the books, accounts and transactions of a broker may require any person having possession of any books, accounts or securities of that broker to produce them to the auditor for audit and inspection.

(3) A person who—

(a) when required pursuant to this section to furnish information or answer questions, refuses or fails to furnish that information, or refuses or fails to answer any of those questions, or gives any information or makes any answer which is false in any particular; or

- (b) when required to do so under this section refuses or fails to produce any books, accounts, or securities,

shall be guilty of an offence.

(4) A person required by an auditor pursuant to this section to furnish information, answer questions or produce books, accounts, or securities:—

- (a) may request the auditor to produce evidence that he is employed to audit the accounts of a broker;
- (b) shall accept as such evidence an apparently genuine certificate purporting to be signed by the Attorney-General or a broker and to certify that the auditor is employed by him to audit the accounts of a broker;
- (c) shall not be required to furnish the information, answer the questions, or produce the books until such evidence is produced to him.

(5) No action, prosecution or other legal proceeding shall lie against any person by reason of any information given or question answered at the request of an auditor pursuant to this section.

Penalty for
destroying,
concealing, or
altering records.

12. (1) Any person who, with intent to conceal the commission of any offence against this Act or to delay, prevent or obstruct the carrying out of any audit or examination under this Act, destroys, conceals, or alters any book, account, record, or document, relating to the business of a broker shall be guilty of an offence.

(2) If in any prosecution for an offence against this section it is proved that the defendant has concealed, destroyed, or altered any book, account, record, or document as aforesaid, the onus of proving that in so doing he had not acted with the intent alleged against him in the complaint shall lie on him.

Offences.

13. (1) Offences against this Act shall be dealt with summarily.

(2) The penalty for an offence against this Act shall be a fine of not less than fifty dollars¹ and not more than four hundred dollars¹.

Regulations.

14. The Governor may by regulations prescribe all matters which it is necessary or convenient to prescribe for the purpose of the administration of this Act or for better effecting the objects of this Act and may by any such regulations prescribe fines recoverable summarily and not exceeding one hundred dollars¹ for breach of any regulation.

¹ Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency substituted for references to amounts of money expressed in the old currency.