

- (b) the dishonest concealment of material facts; or
- (c) recklessly or dishonestly making or publishing any statement, promise forecast that is false or misleading.

### **Fraudulent transactions**

62. A person shall not, directly or indirectly, in connection with a transaction with other person involving the purchase, sale or exchange of securities -

- (a) employ a device, scheme or artifice to defraud that other person; or
- (b) engage in an act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, on that other person.

### **False or misleading statement in connection with sale of securities**

63. A person shall not, directly or indirectly, for the purpose of inducing the sale or purchase of the securities of a company, make with respect to those securities, or with respect to the operations or the past or future performance of the company, make a statement which is -

- (a) at the time in light of the circumstances in which it is made, false or misleading with respect to a material fact and which that person knows or has reasonable grounds to believe to be false or misleading; or
- (b) by reason of the omission of a material fact, rendered false or misleading and which that person knows, or has reasonable grounds to believe, is rendered false or misleading by reason of omission of that fact.

### **Selling of securities limitations**

64. A person shall not sell securities which that person does not hold at, or through a securities exchange or a securities trading facility, unless at the time that person sells them -

- (a) that person has or, where that person is selling as agent, the principal has; or
- (b) that person reasonably and honestly believes that he or she has or, where that person is selling as agent, that the principal has, a presently exercisable and unconditional right to vest the securities in the purchaser of them.

### **Stock market manipulation**

65. (1) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, two or more transactions in securities of an issuer being transactions that have, or are likely to have, the effect of raising the price of securities of the issuer on a securities exchange in Lesotho, with intent to induce other persons to purchase or subscribe for securities of the issuer or of a related issuer.

(2) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, two or more transactions in securities of an issuer, being transactions that have, or are likely to have, the effect of lowering the price of securities of the issuer on a securities exchange in Lesotho, with intent to induce other persons to sell securities of the issuer or of a related issuer.

(3) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, two or more transactions in securities of an issuer, being transactions that have or are likely to have, the effect of maintaining or stabilizing the price of securities of the issuer on a securities exchange in Lesotho with intent to induce other persons to sell, purchase or subscribe for securities of the issuer or of a related issuer.

### **Offences and penalties**

66. A person who contravenes a provision of this Part commits an offence and is liable on conviction -

- (a) in the case of a person not being a company, to a fine not exceeding five hundred thousand Maloti or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; and

- (b) in the case of a company, to a fine not exceeding one million Maloti.

### **Convicted person liable to pay damages**

67. (1) A person who is convicted of an offence under this Part, shall, in addition to criminal liability for the offence, be liable, at the suit of any person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the act or transaction which comprises or is the subject of the offence, to an action for damages in respect of the loss occurred.

(2) Nothing in this regulation limits or diminishes any civil liability which any person may incur under any other law.

## **PART XII -TAKEOVERS**

### **Application**

68. This Part applies to issuers of shares.

### **Takeover offers**

69. (1) In this Part, a "takeover offer", which includes a merger, means an offer to acquire by or on behalf of a company -

- (a) all shares, or all the shares of any class, in another company, other than the shares which at the date of the offer are already held by the offeror; or
- (b) any shares in the offeree company which results in the offeror acquiring effective control of the offeree company.

(2) For the purposes of subregulation (1), "acquiring effective control" means the acquiring of shares in an offeree company which together with shares, if any, already held by the offeror or by any other company that is deemed by virtue of regulation 65 be related to the offeror, carry the right to exercise, or control the exercise of, not less than fifty percent of the rights attached to the voting shares of the offeree company.

**Related companies**

70. Where a company is -

- (a) the holding company of another company;
- (b) the subsidiary of another company; or
- (c) a subsidiary of the holding company of another company,

the first-mentioned company and the other company shall for the purposes of this Part be deemed to be related to each other.

**Conduct of takeovers**

71. (1) The conduct of takeover shall be in accordance with the Schedules made by the Registrar under these regulations.

(2) A person shall not make or pursue a takeover offer except under and in accordance with Schedules made by the Registrar under subregulation (1).

**PART XIII - MISCELLANEOUS PROVISIONS****Exemption from liability**

72. (1) A liability shall not attach to members of -

- (a) capital markets committee;
- (b) the committee of a securities exchange; or
- (c) a central securities depository,

for a loss or damage sustained by a person as a result of the bona fide exercise or performance by the Registrar, the Board, the committee or members of a central securities depository of a power or duty conferred or imposed by these regulations.

(2) Subregulation (1) shall not be construed so as to prevent a person from recovering, by action in a competent court, compensation for loss or damage sustained by that person, which was caused by negligence or breach of contract.

### **Prohibition of misleading names**

73. (1) A person who is not a licensed person, its agent, or representative shall not, without the consent of the Registrar, use the word "stock exchange", "securities exchange", "stockbroker", "investment adviser", or any of their derivatives in any language, or any other word indicating the transaction of securities business, in the name, description or title under which such person is transacting business in Lesotho, or make or continue to make any other representation to such effect in any bill-head, letter-paper, notice, advertisement or in any manner whatsoever for the purpose of transacting securities business in Lesotho.

(2) A person who contravenes subregulation (1) commits an offence and is liable on conviction to a fine of hundred thousand Maloti or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

### **Restrictions on administration and custody of investments in listed securities on behalf of other persons**

74. (1) A person shall not, as a regular feature of his or her business, administer or hold in safe custody on behalf of other person investments in listed securities or any investments of which listed securities form part unless he is -

- (a) a stock-broker;
- (b) a banking institution registered under the Financial Institutions Act of 2012;
- (c) an attorney practicing as such on his own account or in partnership or as a member of a professional company;
- (d) an accountant or auditor registered with the Lesotho Institute of Accounts as an accountant and auditor and engaged in public practice as such, or

- (e) a person approved by the Registrar or a person who is a member of a category of persons approved by the Registrar.

(2) For the purposes of subregulation (1), it shall be deemed that the administration or safe custody of listed securities is not a regular feature of the business of any person -

- (a) unless he or she -
  - (i) either for himself or for any other person, directly or indirectly, canvasses or advertises or touts for any work being the administration or safe custody of such securities; or
  - (ii) receives any valuable consideration other than fees normally charged by an attorney or an accountant or auditor.

#### **Right of appeal to Financial Institutions Tribunal**

75. (1) A person aggrieved by a decision taken by the Registrar under these regulations, may, within 30 days from the date on which the decision is intimated to the person in writing, appeal against the decision by a petition, in writing to the Financial Institutions Tribunal established in terms of section 76 of the Financial Institutions Act of 2012, which may, subject to the limitations of this regulations, uphold, reverse, revoke or vary that decision.

(2) The decision taken under subsection (1) shall be final and shall within 30 days of its taking, be transmitted in writing to the applicant.

**RETŠELISITSOE MATLANYANE**  
**GOVERNOR - CENTRAL BANK OF LESOTHO**

**NOTE**

1. Act No. 2 of 2000
2. Act No. 18 of 2011
3. Act No. 21 of 2012
4. Act No. 12 of 2014

