

BROKERS ACT

Cap 394 – 28 July 1945

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BROKERS ACT

1. Short title

This Act may be cited as the Brokers Act.

2. Interpretation

In this Act—

“broker” means a person appointed by the Minister by a commission under his hand to carry on the business of a broker and includes an agent

employed to make any bargain or contract between other persons in matters of trade, commerce and navigation by explaining the intentions of both parties, and by negotiating in such a manner as to put those who employ him in a condition to treat together personally;

“business of a broker” means the business of negotiating any trading transaction, other than a securities transaction, on behalf of a principal and includes the exchange and sale of negotiable instruments, bills of exchange and promissory notes;

“Minister” means the Minister to whom responsibility for the subject of finance is assigned;

“principal” means any person employing a broker to effect the business of a broker on his behalf;

“securities transaction” has the same meaning as in the Securities Act 2005.

[S. 2 amended by s. 156 (7) of Act 22 of 2005 w.e.f. 28 September 2007.]

3. Necessary qualifications

No person who—

- (a) is under the age of 21;
- (b) is not a Commonwealth citizen;
- (c) has not been employed for at least 5 successive years by a commercial house or by a broker; or
- (d) is an undischarged bankrupt,

shall be appointed a broker.

4. Grant of commission

(1) The Minister may, by commission, appoint brokers.

(2) All commissions shall be registered at the Supreme Court and at the Chamber of Brokers.

(3) A list of brokers shall be posted in the hall of the Supreme Court and at the Chamber of Brokers.

5. Classes of licences

(1) There shall be 2 classes of licences for brokers.

(2) A first class licence shall entitle the holder to act in all matters in which brokers are entitled to act.

(3) A second class licence shall entitle the holder to act as broker only in transactions for the sale or purchase of imported goods other than sugar.

6. Transactions not covered by licence

Where a broker holding a second class licence acts as broker in or concerning any transaction in which he is not authorised to act under section 5, he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees.

7. Transactions by unlicensed persons

Any person not appointed as a broker who undertakes the business of a broker shall commit an offence and any person employing a person not so appointed to do the business of a broker shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees.

8. Prohibition against brokers as partners

(1) No broker shall be cashier or clerk to any merchant or shopkeeper.

(2) A broker who contravenes this section shall be liable to forfeit his commission of appointment.

9. Prohibition against private trading by brokers

(1) No broker shall, on his own account, carry on any trade in goods or merchandise.

(2) No broker shall lend his name to any person not appointed a broker for purposes of a business transaction.

(3) Any broker contravening this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees and to the forfeiture of his commission of appointment.

10. Entry of transaction

(1) Every broker shall enter in a memorandum book (*carnet*) every transaction effected by him and shall, on the day of each transaction, transcribe every transaction upon a stamped paper, to be numbered and signed by the Registrar.

(2) Every broker shall, when required, produce such paper and memorandum book before any Court or arbitrator.

(3) No broker shall refuse to give an acknowledgment in respect of any security entrusted to him.

11. Entries by 2 brokers in one transaction

(1) Where any 2 brokers, who have been engaged in the same transaction, have completed the transaction, each broker shall make an entry under section 10 in his memorandum book and transcribe the transaction upon a stamped paper and shall exhibit the book and stamped paper to the other.

(2) Any broker who contravenes this section and any broker who makes an incorrect entry shall commit an offence and shall, on conviction, be liable to fine not exceeding 500 rupees, without prejudice to a claim for damages by the parties.

12. Suspension of broker

Where any party who has provided security for the due execution of a transaction by a broker is ordered to pay all or a part of the security provided,

the broker shall be suspended from trading as a broker until he repays the security and a notice containing the name of the broker and the fact of his suspension shall be posted up in the hall of the Supreme Court and at the Chamber of Brokers.

13. —

14. Transactions for bankrupt

(1) No broker shall negotiate any note or bill of exchange or sell any merchandise belonging to any bankrupt.

(2) Any broker who contravenes this section shall commit an offence and shall, on conviction, be liable to the forfeiture of his commission and to a fine not exceeding 2,000 rupees and shall be personally responsible for the amount of any sale or transaction so effected.

15. Improperly divulging details of transaction

(1) No broker shall, without the consent of his principal, or unless the nature of the transaction demands it, divulge to any third party the details of any transaction entrusted to him.

(2) Where, as the result of any broker having divulged to any third party the particulars of a transaction entrusted to him, his principal has suffered any damage, the broker shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees, independently of any claim for damages by the party injured.

16. Recovery of broker's fees

(1) Subject to subsection (2), any broker may, after the completion of each transaction, recover from his principal such commission and brokerage as may be agreed upon between them.

(2) The Minister may, by regulations, fix the rates of commission and brokerage payable to brokers.

[S. 16 amended by Act 35 of 1994.]

17. Responsibility of broker

Every broker who has received from his principal any goods to sell on behalf of the principal, or any sum of money to pay for goods to be purchased on behalf of the principal, shall be responsible for the delivery of any goods purchased by him to the principal and for payment for any goods sold or bought by him on behalf of such principal.

18. —

19. Constitution and title of corporation

The Chamber of Brokers shall be a body corporate.

20. Members of corporation

The corporation shall consist of all brokers in Mauritius and every broker, by virtue of his appointment, shall be a member of the corporation.

21. Office bearers of corporation

(1) The corporation shall have the following office bearers—

- (a) the President (*Syndic*), Vice-President (*Syndic-adjoint*), and 5 members elected annually by ballot who shall form the committee of administration (*Chambre Syndicale*);
- (b) a Treasurer and Secretary, being members of the corporation and who shall be elected each year by ballot.

(2) The Treasurer and Secretary shall not be entitled to vote as members of the committee.

(3) The same person may perform the functions of Secretary and Treasurer.

(4) Three members of the committee shall form a quorum.

22. Quorum of meeting of corporation

(1) The quorum required for the general meeting of the Chamber shall be 10 members.

(2) Subject to subsection (4), a majority of the members present and voting shall take decisions.

(3) The Chairperson of the meeting shall have both a deliberative and a casting vote.

(4) No disciplinary measure, other than a fine not exceeding 20 rupees, shall be taken unless with the consent of at least one half, plus one, of the members of the corporation in Mauritius at the time.

23. Meetings of corporation and committees

(1) The President and, in his absence, the Vice-President shall preside at the meetings of the committee of administration, as well as at the general meetings of the corporation.

(2) In case of absence of both these officers, any member chosen by the members present shall preside.

24. Calling of meetings

The Secretary shall convene a meeting of the corporation upon the requisition of the President or Vice-President, and also upon a requisition signed by 3 members of the committee of administration or of any 5 members of the corporation.

25. —

26. Signatures

All deeds and writings to which the corporation is a party, shall be signed by the President or Vice-President, and also by the Secretary and be sealed with the seal of the corporation.

27. Duties of corporation

The corporation shall—

- (a) take care that all its members confine themselves within the legal limits of their calling and act in conformity with the laws relating to it;
- (b) exercise over its members the supervision and authority of a disciplinary body;
- (c) institute and carry out proceedings before Courts for prosecuting any infringement of the laws committed by the members of the corporation, and of all acts being of such a nature as to bring into disrepute the corporation, or the functions and calling of a broker;
- (d) institute and carry out proceedings before Courts through one of its members to be appointed for that purpose, against all persons who shall unduly assume the functions or calling of a broker, and all other proceedings of any kind having for their objects the interests of the corporation;
- (e) submit to the Minister, on his request, its opinion on the qualifications of candidates for the office of broker.

28. Current prices to be published

(1) (a) The corporation shall keep registers of all auction sales carried out by brokers, from which the corporation shall prepare and publish in at least 2 daily newspapers abstracts showing the current prices obtained at the auction sales for different kinds of merchandise, and for freight, public securities and shares in public companies and anonymous societies (*sociétés*) existing in Mauritius.

(b) Nothing in this subsection shall require a broker to disclose the name of his principal in any transaction negotiated by him.

(2) Where the corporation fails to publish the abstracts, it shall commit an offence and shall, on conviction, be liable to a fine of 500 rupees.

29. Disciplinary regulations

The corporation may make disciplinary regulations concerning its members and management.

30. Punishment of members

The corporation may impose the following disciplinary punishments on any member who contravenes any regulation of the corporation, or any law regarding the exercise of the functions of a broker—

- (a) a fine not exceeding 200 rupees;

- (b) suspension from office for a period not exceeding one year; or
- (c) subject to confirmation by the President, dismissal from office.

[S. 30 amended by Act 48 of 1991.]

31. Rights of accused member

(1) Ten days at least before the meeting at which any complaint against a member of the corporation is considered, the corporation shall communicate to the person accused, in writing, the charges preferred against him, and the accused person may be present at the meeting fixed for decision on his case.

(2) Every person accused may submit to the meeting his defence, either verbally or in writing, as he thinks fit, to the charges brought against him.

32. Fines

All fines imposed by the corporation on any of its members under this Act shall be recoverable by proceedings before one of the District Magistrates of Port Louis, at the instance of the President and Vice-President, and judgment shall be given by the Magistrate upon production of a copy, certified by the Secretary to be correct, of the minutes of the meeting at which the fine was imposed.

33. —

34. Committees

(1) The corporation may appoint among its members special committees to exercise the powers and perform the duties under sections 27 (c) and (d) and 28.

(2) (a) The proceedings of the committees shall have the same effect on all such matters as the proceedings of the corporation.

(b) Subject to paragraph (c), the corporation may review, cancel or amend any proceedings of the committees.

(c) The rights of any person who has acted upon the faith of any proceedings of the committees shall not be affected by any act of the corporation under paragraph (b).

35. Members to contribute to funds

All the members of the corporation shall be subject to the payment of a rate, to be applied to the general purposes of the corporation, which shall be fixed, and may be altered, by the corporation, at a general meeting.

36. Security to be furnished by brokers

(1) Every person appointed as a broker shall, before exercising any of his functions, or taking part in the proceedings of the corporation, furnish security, as provided in subsection (2) and sections 37 to 40, for the proper performance of his functions.

(2) The security may be either personal, or by means of a mortgage, at the option of the candidate.

37. Rules when security is personal

(1) (a) Personal security shall consist either of a policy of insurance given by a company authorised by Government or of a bond subscribed jointly by 2 solvent persons.

(b) The security shall be, in the case of a first class broker, of the value of 20,000 rupees and, in the case of a second class broker, of the value of 4,000 rupees, in either case to be accepted by the Attorney-General and deposited in the Registry.

(2) The security shall be renewed, if the Court or Judge so orders on the motion of the Attorney-General, and no broker who has been ordered to renew his security shall act as broker, until he has found a new security.

38. Rules when security is mortgaged

(1) Security by mortgage shall consist of an inscription upon an immovable property to be valued by an appraiser appointed by the Attorney-General and to be paid by the broker.

(2) The security in the case of a first class broker shall be of 12,000 rupees and, in the case of a second class broker, of 4,000 rupees in either case to be subject to the acceptance of the Attorney-General and notified to the corporation.

39. Mortgage securities may be exchanged

Any first class broker who has furnished a mortgage security may exchange it for a personal security of 20,000 rupees or for a policy of insurance for a like sum given by a company authorised by Government.

40. Rules as to freeing securities

Where—

- (a) a broker dies, resigns or is dismissed from the office of a broker;
- (b) any person who—
 - (i) has furnished security to be discharged; or
 - (ii) his immovable property being burdened with a mortgage security wishes it to be cleared and discharged,

the security shall only be discharged on the production of a certificate from the President stating that the cessation of the functions of the broker for whom it was furnished, or the discharge of the security, has been posted up for 2 months in the hall of the Supreme Court and the Chamber of Brokers, and that no opposition has been lodged against such discharge.

41. Prosecution witnesses

(1) Where a person is called as a witness in a prosecution under section 7 or under any other section of this Act, that person shall not be excused from answering any question put to him concerning his employment of the accused on the occasion referred to in the information on the ground that the answer may incriminate or tend to incriminate him.

(2) A witness under subsection (1) shall not be liable to a prosecution under section 7 for having employed the person accused as a broker on the occasion referred to in the information.

42. Prosecution of offences

The prosecution for any breach of this Act may be carried on by the Director of Public Prosecutions or by any Superintendent of Police, the President of the Chamber of Brokers or any licensed broker.

43. Power to transfer immovables and ships

Brokers may sell or purchase immovables and ships and claim for the sale or purchase such commission as may be agreed upon between him and the buyer and seller.

[S. 43 amended by Act 35 of 1994.]
