

**FINANCIAL SERVICES (INVESTMENT AND  
FIDUCIARY SERVICES) ACT\***

**Principal Act**

<b>Act. No.</b> 1989-47	<i>Commencement LN. 1991/009</i>	17.1.1991																																																
	<i>Assent</i>	28.12.1989																																																
<table border="0" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 10%;"></th> <th style="text-align: left; width: 20%;">Amending enactments</th> <th style="text-align: left; width: 50%;">Relevant current provisions</th> <th style="text-align: left; width: 20%;">Commencement date</th> </tr> </thead> <tbody> <tr> <td>LN.</td> <td>1992/138</td> <td>ss.2(1), 3(3), 8(1), (2) and (3), 11A, 38(1)(b), (c) and (d), 41(1)(b) and 56(1)(c) and (d)</td> <td>1.10.1992</td> </tr> <tr> <td></td> <td>1993/151</td> <td>ss.2, 8(1), (2), (3) and (4), 12(1), 13(1), 58(2)(e) and Sch.4</td> <td>1.1.1993</td> </tr> <tr> <td>Act.</td> <td>1993-17</td> <td>ss.2(1), 49, 56 and 57</td> <td>1.9.1993</td> </tr> <tr> <td>LN.</td> <td>1995/144</td> <td>Sch. 3</td> <td>1.9.1995</td> </tr> <tr> <td>Act.</td> <td>1998-10</td> <td>ss.2(1), 3(1), 6(3), 8(1), 9(c), (cc) and (d), 10(4), 11(hh), 11A, 12(1), 13(1), 13A, 24(1), 26(2A), 29A, 32(1)(a), 34, 38(1)(a), 42(1)(a) and (2), 43, 44(1)(h) and (i), 45(1)(c), (d), (e) and (f) and (5), 47, 48(2), (2)(aa) and (5), 49(2), 50(1) and (2), 51(1) and (3), 52, 53(1), (2), (3) and (4), 56(1)(a) and (b) and (4), 57(1)(a), 58(1), Sch.1 and Sch.4</td> <td>4.6.1998</td> </tr> <tr> <td>LN.</td> <td>1998/035</td> <td>–</td> <td>4.6.1998</td> </tr> <tr> <td>Act.</td> <td>2002-22</td> <td>ss. 2(1), 8(2)(a), (b), (b)(i) and (ii) and 38(1)(c)</td> <td>21.1.2003</td> </tr> <tr> <td>LN.</td> <td>2002/088</td> <td>Sch. 2 and 3</td> <td>14.11.2002</td> </tr> <tr> <td>Act.</td> <td>2005-01</td> <td>ss. 38A-38G, 44(1)(h), (i) and (j) and Sch.3 para 3,</td> <td>15.1.2005</td> </tr> <tr> <td></td> <td>2005-48</td> <td>ss. 2(1), (2), (3) &amp; (4), Part III &amp; Sch. 5</td> <td>9.3.2006</td> </tr> <tr> <td></td> <td>2006-03</td> <td>ss. 2(1), 3(2)(b), (2A), 6(1A), 8(3) &amp; (4), 11B, 14(1), (2)(b) &amp; (c), 33A, 34(b), 35(1A), 42(4),</td> <td></td> </tr> </tbody> </table>				Amending enactments	Relevant current provisions	Commencement date	LN.	1992/138	ss.2(1), 3(3), 8(1), (2) and (3), 11A, 38(1)(b), (c) and (d), 41(1)(b) and 56(1)(c) and (d)	1.10.1992		1993/151	ss.2, 8(1), (2), (3) and (4), 12(1), 13(1), 58(2)(e) and Sch.4	1.1.1993	Act.	1993-17	ss.2(1), 49, 56 and 57	1.9.1993	LN.	1995/144	Sch. 3	1.9.1995	Act.	1998-10	ss.2(1), 3(1), 6(3), 8(1), 9(c), (cc) and (d), 10(4), 11(hh), 11A, 12(1), 13(1), 13A, 24(1), 26(2A), 29A, 32(1)(a), 34, 38(1)(a), 42(1)(a) and (2), 43, 44(1)(h) and (i), 45(1)(c), (d), (e) and (f) and (5), 47, 48(2), (2)(aa) and (5), 49(2), 50(1) and (2), 51(1) and (3), 52, 53(1), (2), (3) and (4), 56(1)(a) and (b) and (4), 57(1)(a), 58(1), Sch.1 and Sch.4	4.6.1998	LN.	1998/035	–	4.6.1998	Act.	2002-22	ss. 2(1), 8(2)(a), (b), (b)(i) and (ii) and 38(1)(c)	21.1.2003	LN.	2002/088	Sch. 2 and 3	14.11.2002	Act.	2005-01	ss. 38A-38G, 44(1)(h), (i) and (j) and Sch.3 para 3,	15.1.2005		2005-48	ss. 2(1), (2), (3) & (4), Part III & Sch. 5	9.3.2006		2006-03	ss. 2(1), 3(2)(b), (2A), 6(1A), 8(3) & (4), 11B, 14(1), (2)(b) & (c), 33A, 34(b), 35(1A), 42(4),	
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\* This Act was formerly the Financial Services Act 1989. Name substituted by Act 2006-42 as from 18.1.2007.

	44(1)(ee), 46(b), 53, 53(2), 59(1) &(1)(c) & (d), 57A, Sch. 2, 2A, 2B, 3 & 4	20.4.2006
2006-42	ss. 1(1) & (2), 2(1), 29A(1)(a) & (c), 31(1) & (1)(a) & (aa), 39, 60(4) & Sch. 2B	18.1.2007
LN. 2008/079	Sch. 3 para.6	9.10.2008

**English sources:**

None

**EU Legislation/International Agreements involved:**

Directive 73/239/EEC

Directive 77/780/EEC

Directive 79/279/EEC

Directive 89/646/EEC

Directive 92/30/EEC

Directive 2002/92/EC

**FINANCIAL SERVICES (INVESTMENT AND FIDUCIARY SERVICES) ACT**

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**1989-47** Financial Services (Investment and Fiduciary Services)

AN ACT TO REGULATE THE CARRYING ON OF INVESTMENT BUSINESS AND CERTAIN OTHER ACTIVITIES, INCLUDING THE PROMOTION, ESTABLISHMENT AND OPERATION OF COLLECTIVE INVESTMENT SCHEMES AND THE ESTABLISHMENT AND OPERATION OF INVESTMENT EXCHANGES AND CLEARING HOUSES.

**Title and commencement.**

1. (1) This Act may be cited as the Financial Services (Investment and Fiduciary Services) Act.

(2) The provisions of this Act shall come into operation on such day as the Minister may by notice in the Gazette appoint, and different days may be so appointed for different purposes.

**Interpretation.**

2. (1) In this Act, unless the context otherwise requires,—

“the 1998 Act”, means the Financial Services Act, 1998;

“advertisement” includes every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or videos or by way of sound broadcasting or television or by the distribution of recordings or in any other manner and “advertising” shall be construed accordingly;

“the Authority” means the Financial Services Commissioner appointed under the Financial Services Commission Act;

“body corporate” includes a body incorporated under the law of any country or territory;

“books or papers” include accounts, deeds, writings and documents and records whether kept in written form or on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism;

“controlled activity” has the meaning given in section 3(2)(c) and Schedule 3;

“credit institution” has the meaning given to it in the Financial Services (Banking) Act, 1992;

“European authorised institution” has the meaning given to it in the Financial Services (Banking) Act, 1992;

“items 7 to 12 business” has the same meaning as in the Financial Services (Banking) Act 1992;

“exempted person” means a person exempted from the licensing provisions of this Act by virtue of section 4;

“investment” and “investment business” have the meaning given in section 3(2) and Schedule 2;

“investment agreement” means any agreement—

- (a) for or with a view to acquiring, disposing of, subscribing for or underwriting investment; or
- (b) under which a person is to receive advice as to the merits of the acquisition or disposal of, subscription for or underwriting of an investment or as to the exercise of the rights conferred by an investment; or
- (c) under which arrangements are to be made with a view to another person acquiring, disposing of, subscribing for or underwriting an investment; or
- (d) under which a person’s investments are to be managed;

“investment exchange” means a market for the buying and selling of investments;

“investor” means a person having any property, asset, right or interest (whether vested or contingent) in relation to an investment;

“licence” means a licence to carry on investment business or a controlled activity issued under this Act; and “licensed” and “licensee” shall be construed accordingly;

“member State” means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993;

“Minister” means the Minister with responsibility for financial services;

“Act” includes any regulation and rules made under this Act;

“prescribed” means prescribed by regulations or rules under this Act;



“promotion” means advertising, issuing a prospectus, application form or proposal form, or circulating or making available promotional material;

“prospectus” means any prospectus, notice, circular, or other document which is an offer to the public of any investment for subscription, purchase or exchange;

“the public” includes any section of the public, however selected, but an investment is not promoted to the public by a promotion directly communicated to an identifiable category of persons not exceeding 50 in number;

“recognised institution” has the meaning given to it in the Banking Act, 1992;

“relevant investment business”, in relation to a recognised institution, means any items 7 to 12 business which the institution is authorised or permitted to carry on by the relevant supervisory authority of an EEA State;

“relevant person” has the meaning given in section 32;

“relevant supervisory authority” has the meaning given to it in the Financial Services Act 1998<sup>2</sup>;

“securities” mean—

- (a) shares or debentures, or rights or interests (described whether as units or otherwise) in any shares or debentures, or
- (b) securities of the Government of any country or territory, or
- (c) rights (whether actual or contingent) in respect of money lent to, or deposited with, any industrial and provident society or building society;

“shares” mean shares in the share capital or stock of a body corporate;

(2) *Repealed.*

(3) *Repealed.*

(4) *Repealed.*

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<sup>2</sup> 1998-10

**PART I.****LICENSING OF INVESTMENT BUSINESS AND CONTROLLED ACTIVITIES.****Restriction on the carrying on of investment business or controlled activities.**

3. (1) Subject to the provisions of this Act and the 1998 Act, a person shall not carry on, or hold himself out as carrying on, any investment business or controlled activity in or from within Gibraltar except under and in accordance with the terms of a licence issued under section 8 of this Act.

(2) For the purposes of this Act—

- (a) “investment”, unless the context otherwise requires, means any property, asset, right or interest falling within any paragraph in Schedule 1 to this Act;
- (b) a person carries on investment business if, by way of business, he engages in one or more of the activities which fall within Schedule 2 to this Act and are not excluded by Schedule 2A;
- (c) a person carries on a controlled activity if, by way of business, he engages in any of the activities which fall within Schedule 3 to this Act.

(2A) Schedule 2B shall have effect for the construction of Schedules 1, 2 and 2A.

(3) A person which is a recognised institution may conduct relevant investment business—

- (a) as if a licence had been issued to it under section 8, and
- (b) subject to the provisions of that section.

**Exempted persons.**

4. The provisions of section 3 do not apply to any investment business or controlled activity carried on by a person specified in Schedule 4 to this Act.

**Power to extend or restrict scope of Act.**

5. Regulations made under section 53 of this Act may make provision so as to—

- (a) extend or restrict the meaning of investment for the purposes of all or any provisions of the Act; or
- (b) regulate, extend or restrict for the purposes of all or any of those provisions the activities that are to constitute the carrying on of investment business or the carrying on of a controlled activity in or from within Gibraltar; or
- (c) add to or delete from the list of persons exempted by virtue of section 4; or
- (d) prescribe circumstances in which the carrying on of investment business or a controlled activity by particular classes of persons shall be deemed not to constitute the carrying on of an investment business, or a controlled activity which is subject to the provisions of this Act; or
- (e) prescribe circumstances in which the issue by a person of an advertisement in connection with an investment or a controlled activity shall be deemed not to constitute the carrying on of investment business or controlled activity by that person.

**Application for licence.**

6. (1) An application for a licence to carry on investment business or a controlled activity shall be made to the Authority in such form and manner as may be prescribed.

(1A) The Authority shall not consider an application under subsection (1) from a European authorised institution to carry on items 7 to 12 business.

(2) An applicant for a licence shall furnish the Authority with such further information about the investment business or controlled activity to which the application relates and about the applicant (being, if the Authority so requires, information verified in a specified manner) as the Authority may require for the purpose of determining the application.

(3) At such time as the Authority may require the applicant shall give notice of the application in the prescribed form by publication in the Gazette and in a daily or weekly newspaper published in Gibraltar.

**Licensing regulations.**

7. Regulations made under section 53 of this Act may—

- (a) make any provision governing applications for, and the issue and validity of, licences;

- (b) prescribe minimum requirements (as to premises, capital, solvency, management, staff, resources and otherwise) to be attained by an applicant for a licence;
- (c) prescribe the form and content of licences;
- (d) make provision as to the renewal of licences;
- (e) impose requirements as to the places and manner in which, and the time during which, references are to be displayed or available for inspection by the public.

**Grant or refusal of licence.**

8. (1) Subject to subsections 3 and 4, not later than, 6 months after the receipt by the Authority of an application for a licence which complies in all respects with the requirements of section 6 and of any regulations made by virtue of section 7, the Authority shall either—

- (a) grant the application and issue a licence to the applicant if it appears to the Authority that the applicant satisfies the relevant requirements of this Act; or
- (b) subject to section 44, refuse to grant the application and serve on the applicant notice in writing of such refusal.

(2) The Authority shall consider to be licensed under this Act—

- (a) an European authorised institution in respect of items 7 to 12 business for which that institution is or could be subjected to regulation by a relevant supervisory authority, and, in respect of any such business, the Authority shall not consider an application for a licence;
- (b) an European subsidiary institution in respect of items 7 to 12 business which that institution has notified to the relevant supervisory authority in compliance with Council Directive 89/646/EEC:

Provided that—

- (i) where an European subsidiary institution has notified the relevant supervisory authority in respect of any items 7 to 12 business, the Authority shall not consider an application for a licence in respect of any other items 7 to 12 business in respect of which that institution could have made similar notification;

- (ii) where an European subsidiary institution has notified the Authority and the relevant supervisory authority of its intention to cease to be an European subsidiary institution and the relevant supervisory authority has notified the Authority that it does not object to that European subsidiary institution ceasing to be such an institution, the Authority may cease the recognition of that institution as an European subsidiary institution, and the institution may apply, and the Authority shall consider the application, for a licence in respect of any items 7 to 12 business.

(3) Where an applicant could be a European subsidiary institution in respect of any relevant investment business, the Authority shall not consider an application under section 6(1) in respect of that business, unless the relevant supervisory authority has consented to the applicant carrying on that business other than as a European subsidiary institution.

(4) *Repealed*

**Criteria for the grant of licence.**

9. In considering whether to grant an application the Authority shall have regard to the need to protect the public and the reputation of Gibraltar as a financial centre; and to that end the Authority shall consider—

- (a) the general nature and specific attributes of the investment, investment business or controlled activity to which the application relates; and
- (b) whether or not the applicant or any person associated with the applicant or the application is a fit and proper person to carry on that business or controlled activity; and
- (c) the manner in which it is proposed to organise the carrying on of the investment business or controlled activity or the operation of the collective investment scheme to which the application relates, the number of persons who will be responsible for carrying on each aspect of that business or activity having regard to the need for the business or activity to be effectively controlled by at least two persons, and the experience of and the relationship between the persons who will be so responsible; and
- (cc) the adequacy of the systems of control and record keeping having regard to the nature of the investment business or controlled activity to which the application relates; and

- (d) any representations in writing received from any member of the public in response to and within three weeks of the publication of the notice given in the Gazette pursuant to the provisions of section 6(3); and
- (e) any other factors which the Authority thinks it appropriate to consider.

**Imposition of conditions on licence.**

10. (1) Subject to section 44, the Authority may on or at any time after issuing a licence under section 8, by notice in writing served on the licensee, impose such conditions as appear to the Authority to be necessary or desirable for the protection of investors, and may vary or revoke any condition so imposed.

(2) Without prejudice to the generality of subsection (1), a condition imposed under this section may—

- (a) prohibit a licensee from—
  - (i) entering into transactions of any specified description or in specified circumstances or to a specified extent or with persons of a specified description;
  - (ii) soliciting investment business or transacting a controlled activity in a specified place, or from persons of a specified description or otherwise than from such persons;
  - (iii) carrying on investment business or a controlled activity in a specified manner or otherwise than in a specified manner;
  - (iv) disposing of, or otherwise dealing with any, or with specified, property or assets, in any specified manner or otherwise than in a specified manner;
- (b) require a licensee to take all necessary steps to transfer to the custody of a person approved by the Authority all property or assets, or all property or assets of any specified description, which—
  - (i) belong to the licensee; or
  - (ii) are held by or to the order of the licensee and either belong to investors or relate to the investment business or controlled activity carried on by the licensee;

- (c) require a licensee to maintain in Gibraltar property or assets of such value and of such description as appear to the Authority in its absolute and unfettered discretion to be desirable with a view to ensuring that the licensee will be able to meet his liabilities in respect of the investment business or controlled activity carried on by him.

(3) A prohibition or requirement under subsection (2) may relate to property or assets outside Gibraltar.

(4) By virtue of this subsection it shall be a condition of every licence issued under section 8 that the licensee will at all times comply with—

- (a) any conditions imposed by the Authority under this section; and
- (b) the requirements of this Act and any regulations made under it.

**Cancellation or suspension of licence.**

11.(1) Subject to section 44, the Authority may, by notice in writing served on the licensee—

- (a) cancel a licence, or
- (b) suspend a licence for—
  - (i) a specified period, or
  - (ii) until the occurrence of a specified event, or
  - (iii) until specified conditions are complied with, or
- (c) alter a licence.

(2) In exercising its powers under subsection (1) the Authority may cancel, suspend or alter a licence—

- (a) at the request of the licensee or of an operator or custodian of a collective investment scheme provided that the Authority may refuse such a request if it considers that any matter should be investigated as a preliminary to a decision on the question whether the licence should be revoked or that revocation would not be in the interest of investors; or
- (b) if the licensee or in the case of a collective investment scheme, the operator, trustee or custodian has contravened a provision

- of this Act or has failed to satisfy an obligation to which he is subject by virtue of this Act; or
- (c) if the licensee has failed to comply with a condition of the licence; or
  - (d) if the licensee has failed to pay the prescribed fees including annual fees; or
  - (e) if the licensee has furnished misleading or inaccurate information to the Authority under or for the purposes of any provision of this Act; or
  - (f) if the licensee has not commenced to carry on in or from within Gibraltar the business or activity for which the licence relates within six months of its issue; or
  - (g) if the licensee has ceased to carry on in or from within Gibraltar the business or activity to which the licence relates; or
  - (h) if the Authority considers it desirable for the protection of investors, of the public or the reputation of Gibraltar as a financial centre; or
  - (hh) if at any time the Authority considers that, were the licensee then making an application for the licence in question, it would refuse to grant the application, having regard to section 9; or
  - (i) on any other ground which regulations may specify as a ground for the cancellation or suspension of a licence.

**PART II.**  
**CONDUCT OF BUSINESS.**

**Application of conduct of business regulations, etc.**

11A.(1) In this Part and any regulations made to give effect to the provisions of this Part any reference to a licensee shall be construed as including—

- (a) a reference to a recognised institution where a licence is considered to have been issued to that institution in accordance with section 8 of this Act and in so far as those provisions apply to relevant investment business being conducted by that institution; and



- (b) a reference to an authorised Gibraltar investment firm and (if not falling within paragraph (a)) an authorised European investment firm.

(2) In this Part and any regulations made to give effect to the provisions of this Part, any reference to investment business shall be construed as if non-core investment services were included in Schedule 2 to this Act.

**Modification or waiver of regulations**

11B.(1) The Authority may, with the consent of the Minister, on the application or with the consent of an authorised firm or licensee, direct that all or any of the regulations made under section 53 (except for regulations made under section 56)–

- (a) are not to apply to the authorised firm or licensee; or
- (b) are to apply to him with such modifications as may be specified in the direction.

(2) An application may be made in such manner as the Authority may direct.

(3) The Authority may not give a direction unless it is satisfied that–

- (a) compliance by the authorised firm or licensee with the regulations, or with the regulations as unmodified, would be unduly burdensome, or would not achieve the purpose for which the regulations were made; and
- (b) the direction would not result in undue risk to persons whose interests the regulations are intended to protect.

(4) A direction may be given subject to conditions.

(5) Unless it is satisfied that it is inappropriate or unnecessary to do so, a direction must be published by the Authority in such a way as it thinks most suitable for bringing the direction to the attention of–

- (a) those likely to be affected by it; and
- (b) others who may be likely to make an application for a similar direction.

(6) The Authority may–

- (a) revoke a direction; or

- (b) vary it with the consent of the Minister on the application, or with the consent, of the authorised firm or licensee to whom it relates.

**Conduct of business regulations.**

12. (1) Regulations made under section 53 of this Act may impose requirements as to the conduct of investment business or controlled activities and generally as to the manner in which licensees may carry on, or hold themselves out as carrying on, such business or activities:

Provided that such regulations shall be deemed not to apply to recognised institutions or authorised European investment firms in respect of matters falling within the provisions of any Community instrument relating to the regulation and supervision of credit institutions or investment firms and which by virtue of those provisions are the responsibility of the relevant supervisory authority.

(2) Without prejudice to the generality of subsection (1), regulations may—

- (a) impose requirements (as to time, frequency, manner or otherwise) in relation to the exercise by a licensee of any discretionary powers afforded to him by an investor;
- (b) require a licensee to employ persons of specified descriptions, and to have at his disposal specified resources, in connection with the carrying on of the licensed business or activity, and specify the powers and duties of persons so employed;
- (c) control the relationship between licensees and their servants and agents and, without prejudice to the generality of the foregoing,—
  - (i) require licensees to impose and enforce restrictions on the activities carried on by their servants and agents;
  - (ii) enable or require information obtained in the course of carrying on any part of the investment business or controlled activity of a licensee to be withheld from persons involved in carrying on another part of the business or activity of that licensee;
- (d) regulate or prohibit the carrying on of any other business in conjunction with any description of investment business or controlled activity;

- (e) require specified information to be given, in the form and manner and at the time specified,—
  - (i) to the Authority; or
  - (ii) to the public; or
  - (iii) to an investor; or
  - (iv) to any prescribed classes or descriptions of persons; or
  - (v) without prejudice to any regulations made in accordance with section 55(b), to any person whom a licensee invites to take any step with a view to acquiring an investment or entering into a contract or transaction relating to a controlled activity; or
  - (vi) to any person whom a licensee advises as to the exercise of any right conferred by an investment;
- (f) without prejudice to any regulations made in accordance with section 54, require a licensee to make provision for the protection of investors or customers in the event of the cessation of any investment business or controlled activity carried on by him;
- (g) make provision as to the settlement of disputes.

(3) Regulations made in accordance with subsection (1) of this section, in so far as they relate to the procuring of persons to become participants in a scheme and advising on the scheme and the exercise of rights conferred by it together with matters incidental to those activities, shall apply to a person who is the operator, trustee or custodian of a collective investment scheme recognised by virtue of section 24 or section 26 notwithstanding that such person may be an exempted person.

**Accounting and financial regulations.**

13. (1) Regulations made under section 53 of this Act may make provision as to the financial conduct of investment business or controlled activities:

Provided that such regulations shall be deemed not to apply to recognised institutions or authorised European investment firms in respect of matters falling within the provisions of any Community instrument relating to the regulation and supervision of credit institutions or investment firms and which by virtue of those provisions are the responsibility of the relevant supervisory authority.

(2) Without prejudice to the generality of subsection (1), regulations may make provision as to—

- (a) the manner in which money paid to, or securities deposited with, a licensee in specified circumstances are to be held, dealt with and accounted for by the licensee;
- (b) the preparation, maintenance, submission to the Authority and publication of accounts, reports and other records;
- (c) the separation of funds attributable to different categories of investment business or controlled activities and to different descriptions of such business or activities within each category, the maintenance of accounts and records in relation to those funds and the manner in which they are to be dealt with;
- (d) the appointment, removal, powers and duties of an auditor to audit accounts relating to investment business or controlled activities and the manner in which those accounts are to be audited.

**Auditor to notify Authority of certain matters.**

13A. (1) In the circumstances specified in subsection (2) the auditor of a licensee shall notify the Authority of any matters which relate to the affairs of the licensee and of which he becomes aware in his capacity as auditor.

(2) The circumstances referred to in subsection (1) are those in which the auditor has reasonable cause to believe that the matters are or are likely to be of material significance for determining either—

- (a) whether a person is a fit and proper person to carry on the business of the licensee; or
- (b) whether powers under section 10, Section 11 or Part V should be exercised in order to protect investors from a significant risk of loss.

**Advertising regulations.**

14.(1) Regulations made under section 53 of this Act may prohibit, restrict or control the promotion of any investment, investment business or controlled activity, whether by means of prospectuses, advertisements, invitations or otherwise.

(2) Without prejudice to the generality of subsection (1), and notwithstanding any other enactment, regulations may—

- (a) make provision as to prospectuses, and in particular—
  - (i) specify circumstances in which a prospectus must be issued, and prohibit or restrict the promotion of any specified category or description of investment by any other means unless a prospectus has been issued in accordance with the regulations;
  - (ii) prohibit, restrict or control the issue of prospectuses in relation to any specified description of investment business or controlled activity;
  - (iii) impose requirements as to the form and content of prospectuses, including requirements as to their submission to, and authorisation by, the Authority;
  - (iv) make special provision concerning the submission to the Authority, and the publication of updated information concerning the investments to which a prospectus relates, and of corrections to and changes in that information, including special provisions as to the payment of compensation to investors who suffer loss as a result of any omission from, or misleading statement in, any such prospectus or information;
- (b) prohibit licensees from promoting any category or description of investment or investment business, to the public;
- (c) restrict the circumstances and manner in which a licensee may promote any category or description of investment or investment business, to the public or to any description of persons.

**Unsolicited calls regulations.**

15. (1) Regulations made under section 53 of this Act may prohibit any person from entering into any, or any description of, investment agreement with any person in the course of, or in consequence of, a personal visit or oral communication made without express invitation.

(2) Regulations under this section may provide that, subject to any prescribed modifications, section 41 of this Act is to apply in relation to any agreement entered into in contravention of those regulations as that section applies in relation to an agreement entered into in contravention of section 3 or in consequence of such a contravention.

**PART III.**

*Repealed*

**PART IV.**

**INVESTMENT EXCHANGES AND CLEARING HOUSES.**

**Application for licence.**

29. Every application under section 6 for a licence to establish or operate an investment exchange or clearing house shall be accompanied by—

- (a) a copy of the applicant's rules;
- (b) a copy of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form; and
- (c) in the case of an application in respect of an investment exchange, particulars of any arrangements which the applicant has made or proposes to make for the provision of clearing services; and
- (d) in the case of an application in respect of a clearing house, particulars of any investment exchange with which the applicant proposes to make clearing arrangements and of any other person (whether or not such an exchange) for whom the applicant provides clearing services.

**Investment exchanges.**

29A. (1) Without prejudice to the provisions of Part I of this Act, the Authority shall not grant a licence to establish or operate an investment exchange unless the Authority is satisfied—

- (a) that the investment exchange will comply with regulations made as mentioned in subsection (2);
- (b) that the exchange will have rules to give effect to the provisions of Article 20 and 21 of the Investment Services Directive; and
- (c) The Minister has consented on behalf of the Government to the grant of the licence.

(2) Regulations made under section 53 of this Act may make provisions defining—

- (a) the conditions for the operation of the market;

- (b) the conditions for access to the market;
- (c) where Council Directive 79/279/EEC coordinating the conditions for the admission of securities to official stock exchange listing is applicable, the conditions governing admission to listing imposed in that Directive; and
- (d) where that Directive is not applicable, the conditions that must be satisfied by an instrument before it can effectively be dealt in on the market.

**Notice to be given to the Authority.**

30. (1) Where a recognised investment exchange or a licensed clearing house—

- (a) amends, revokes or adds to its rules or guidance; or
- (b) makes, terminates or varies any clearing arrangements, including in the case of a clearing house, a change in the person for whom it provides clearing services;

the exchange or clearing house shall within seven days give written notice to the Authority of the amendment, revocation or addition or, as the case may be, of the matters mentioned in paragraph (b) above.

(2) The notice referred to in subsection (1) above is notice in relation to guidance of the kind mentioned in paragraph (b) of section 29.

**Regulations on information to be given to the Authority.**

31. (1) Regulations made under section 53 of this Act may make provision requiring a licensed investment exchange or licensed clearing house to—

- (a) give the Authority notice, either in advance or in arrears of the occurrence of such events relating to the exchange or clearing house as are specified in the regulations and such information in respect of those events as is so specified;
- (aa) obtain consent to such changes in personnel and other matters as may be specified in the regulations; and
- (b) furnish the Authority at such time or in respect of such periods as are specified in the regulations with such information relating to the exchange or clearing house as is so specified.

(2) The notices and information required to be given or furnished under subsection (1) shall be such as the Authority may require for the exercise of its functions under the Act.

**PART V.**  
**POWERS OF INTERVENTION.**

**Meaning of “relevant person”.**

32. In this Part “a relevant person” means–

- (a) a licensee, an authorised Gibraltar investment firm and an authorised European investment firm;
- (b) an exempted person;
- (c) the operator, trustee or custodian of an authorised or recognised collective investment scheme;
- (d) any director or officer of an investment exchange or a clearing house;
- (e) any person who is, or who has at any time been, directly or indirectly employed (whether or not under a contract of service) by any of the persons mentioned in paragraphs (a) to (c) above; and
- (f) any person who has, or who has at any time had, any direct or indirect proprietary, financial or other interest in or connection with any of the persons mentioned in paragraphs (a) to (c) above.

**Power to require information and production of documents, etc.**

33. (1) The Authority may require a relevant person–

- (a) to attend before the Authority, or before a person duly appointed by the Authority in that behalf (an “appointed person”) at a specified time and place, and to answer questions and otherwise furnish information appearing to the Authority or to the appointed person to be relevant to any investment business or controlled activity carried on by that person;
- (b) to furnish the Authority or an appointed person on any occasion or at specified times or intervals, with such information, books or papers as the Authority or the appointed person may reasonably require about any specified matter



relating to an investment business or to a controlled activity, being if the Authority or the appointed person so requires, information verified in a specified manner.

(2) Where by virtue of paragraph (b) of subsection (1) the Authority has power to require the production of any books or papers from a relevant person, the Authority shall have the like power to require production of those books or papers from any person who appears to the Authority to be in possession thereof.

(3) The powers conferred by paragraph (b) of subsection (1) or by subsection (2) to require a person to produce books or papers includes power—

- (a) to take copies of any book or paper produced;
- (b) to require the person who was required to produce such books or papers to provide explanations thereof; and
- (c) to require a person to state, to the best of his knowledge and belief, where the said books and papers might be found.

(4) A statement made by a person in compliance with a requirement under this section may be used in evidence against him.

(5) Any power conferred by this section to require the production of books or papers includes power to require the reproduction in a legible form of any record maintained otherwise than in a legible form.

**Skilled Person's Report.**

33A.(1) The Authority may, by notice in writing given to a relevant person, require him to provide the Authority, at such time or times or at such intervals or in respect of such period or periods as may be specified in the notice, with a report on any aspect of, or any matter about which, the Authority may reasonably require for the performance of its functions under this or any other Act for which it exercises its regulatory powers.

(2) The Authority may require the report to be in such form as may be specified in the notice.

(3) The person appointed to make a report required under subsection (1) must be a person—

- (a) nominated or approved by the Authority; and
- (b) appearing to the Authority to have the professional skills necessary to make a report on the matter concerned.

(4) The Costs of producing a report under subsection (1) shall be borne by the relevant person required to provide the report.

**Extension of powers to obtain information, etc.**

34. The powers of the Authority under section 33 may be exercised in relation to—

- (a) an applicant for a licence or for authorisation under Part III of the 1998 Act; or
- (b) any person who appears to the Authority to be carrying on, or holding himself out as carrying on, any investment business or a controlled activity in or from within Gibraltar.

**Directions.**

35. (1) If it appears to the Authority that there are grounds for the cancellation or suspension of a licence under section 11 the Authority may impose any of the conditions provided for in section 10(2) by way of directions.

(1A) If it appears to the Authority that a person is not fit and proper to carry out any function in relation to investment business or a controlled activity carried on by a person licensed under this Act or authorised under the 1998 Act, the Authority may direct that the person is under an obligation not to perform a specified function, any function falling within a specified description, or any function as stated in the direction.

(2) The cancellation or suspension of a licence shall not affect the operation of any direction under subsection (1) which is then in force; and any such direction may be varied or added to after any such cancellation or suspension.

(3) The Authority may, either of its own motion or on the application of the person on whom a direction has been served under subsection (1) withdraw or vary the direction if it appears to the Authority that it is no longer necessary for the direction to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

**Notice of directions.**

36.(1) The power to give a direction under section 35 shall be exercisable by written notice served by the Authority on the person concerned and any such notice shall take effect on such date as is specified in the notice.

(2) If the Authority refuses to withdraw or vary a direction on the application of the person on whom it was served the Authority shall provide that person with a written notice of refusal.

(3) A notice giving a direction, or varying it otherwise than on the application of the person on whom it was served, or refusing to withdraw or vary a direction on the application of such a person, shall state the reason for which the direction was given or varied or, as the case may be, why the application was refused.

(4) The Authority may by publication in the Gazette give public notice of a direction given by it under section 35 or of any withdrawal or variation of such a direction.

**Application to the Court.**

37.(1) Where the Authority has power to give a direction under section 35 in relation to a collective investment scheme the Authority may apply to the Supreme Court—

- (a) for an order removing the manager, trustee or custodian of the scheme and replacing any or all of them with a person or persons nominated by it and appearing to it to satisfy any prescribed requirements for the appointment of managers, trustees and custodians; or
- (b) if it appears to the Authority that there is no person satisfying the prescribed requirements, for an order removing the manager, trustee or custodian, and appointing a person to wind up the scheme.

(2) On an application under this section the Court may make such order as it thinks fit, and the Court may, on the application of the Authority rescind any such order as is mentioned in subsection (1)(b) and substitute such an order as is mentioned in subsection (1)(a).

(3) The Authority shall give written notice of the making of an application under this section to the operator, trustee or custodian and take such steps as it considers appropriate for bringing the making of the application to the attention of the participants of the scheme concerned.

(4) Section 19 shall not apply to a manager appointed by an order made on an application under subsection (1)(a).

**Investigations.**

38. (1) The Authority may appoint one or more persons (an “appointed person”) to investigate and report on—

- (a) the affairs of any person, including a person falling within paragraph (a) or paragraph (b) of section 32, suspected of carrying on an investment business or a controlled activity contrary to any of the provisions of this Act, or in a manner which is otherwise prejudicial to the public, to any investor or potential investor, or to the reputation of Gibraltar as a financial centre; or
- (b) the affairs of, or of the manager, operator, trustee or custodian of, an authorised or a recognised scheme, in so far as they relate to the activities carried on in or from within Gibraltar or any other collective investment scheme, if it appears to the Authority that it is in the interests of the investors or potential investors or of the reputation of Gibraltar as a financial centre so to do;
- (c) the affairs of a recognised institution in relation to items 7 to 12 business suspected of being carried out in or from within Gibraltar in contravention of the provisions of this Act or any regulations or rules made hereunder or upon the request of the relevant supervisory authority and in such case the appointed person shall carry out the investigation in such manner as that supervisory authority may require and shall, if so required by the Authority, report on such investigation directly to that supervisory authority;
- (d) for the purposes of paragraph (c) “relevant supervisory authority” shall have the meaning given to it in the Banking Act.

(2) An appointed person may also, if he thinks it necessary for the purposes of an investigation under paragraph (b) of subsection (1) investigate the affairs of any other authorised or recognised collective investment scheme whose operator, trustee or custodian is the same person as the operator, trustee or custodian of the scheme which is the subject of the investigation.

(3) The appointed person under this section shall have all the powers conferred on the Authority under and by section 33.

(4) An appointed person may, and if so directed by the Authority shall, make interim reports to the Authority and on the conclusion of his investigation shall make a final report to it.

(5) Any such report shall be written or printed as the Authority may direct and the Authority may, if it thinks fit—

- (a) furnish a copy, on request and on payment of the prescribed fee, to any person whose affairs are under investigation pursuant to the provisions of paragraph (a) of subsection (1) of this section or to the manager, operator, trustee, custodian or a participant in a collective investment scheme under investigation or any other person whose conduct is referred to in the report; and
- (b) cause the report to be published.

(6) Nothing in this section shall require a person carrying on the business of banking to disclose any information or produce any document relating to the affairs of a customer unless—

- (a) the customer is a person who the appointed person has reason to believe may be able to give information relevant to the investigation; and
- (b) the Authority is satisfied that the disclosure or production is necessary for the purposes of the investigation; and
- (c) the Supreme Court shall so order.

(7) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the Court or on grounds of confidentiality as between client and professional legal adviser in any such proceedings, except that a lawyer may be required to furnish the name and address of his client.

#### **PART V(A)**

#### **Interpretation of PartV(A).**

38A. In this Part—

“Directive” means Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation;

“durable medium” means any instrument which enables the customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored.

In particular, “durable medium” covers floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is

stored, but it excludes Internet sites, unless such sites meet the criteria specified in the first paragraph of this definition;

“insurance intermediary” means any person who, for remuneration, takes up or pursues insurance mediation (as referred to in paragraph 3 of Schedule 3);

“insurance undertaking” means an undertaking licensed under the Insurance Companies Act;

“large risks” means large risks as defined by Article 5(d) of Directive 73/239/EEC;

“Minister” means the Minister responsible for Financial Services;

“reinsurance intermediary” means any person who, for remuneration, takes up or pursues reinsurance mediation (as referred to in paragraph 3 of Schedule 3);

“reinsurance undertaking” means an undertaking, other than an insurance undertaking or non-member-country insurance undertaking, the main business of which consists in accepting risks ceded by an insurance undertaking, a non-member country insurance undertaking or other reinsurance undertakings.

### **Competent Authority.**

38B.(1) The Authority is designated as the competent authority for the purposes of Article 7 of the Directive.

(2) The Authority shall maintain a register of—

- (a) every person who is licensed under section 8 of this Act by virtue of his carrying on a controlled activity which falls within paragraph 3 of Schedule 3. As regards legal persons, the register shall detail the names of the natural persons within the management who are responsible for the mediation business;
- (b) the details of the competent authorities which have been designated under Article 7 of the Directive in each EEA state; and
- (c) information as to each EEA state in which a Gibraltar firm whose right derives from the Directive has established a branch or is providing services.

(3) The register referred to in subsection (2) shall be compiled electronically and kept up to date; and the Authority shall ensure that

members of the public are able to access quickly and easily the information on the register.

(4) The validity of the registration of insurance and reinsurance intermediaries shall be subject to regular review by the Authority.

(5) If an insurance or reinsurance intermediary ceases to meet the requirements of this Act, his licence shall be cancelled in accordance with the provisions of this Act and he shall be removed from the register referred to in subsection (2).

**Professional requirements.**

38C.(1) An insurance or reinsurance intermediary operating in or from within Gibraltar shall be of good repute and, as a minimum, shall have a clean police record in relation to serious criminal offences linked to crimes related to financial services. An insurance or reinsurance intermediary should not have been declared bankrupt, unless he has been rehabilitated under the law of Gibraltar.

(2) An insurance or reinsurance intermediary operating in or from within Gibraltar shall, on a permanent basis—

- (a) hold professional indemnity insurance covering the whole territory of the EEA, or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1,000,000 (or sterling equivalent) applying to each claim and in aggregate EUR 1,500,000 (or sterling equivalent) per year for all claims, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions;
- (b) ensure that money paid by the customer to the intermediary is treated as having been paid to the undertaking, whereas money paid by the undertaking to the intermediary is not treated as having been paid to the customer until the customer actually receives it;
- (c) have financial capacity amounting to 4% of the sum of annual premiums received, subject to a minimum of EUR 15,000 (or sterling equivalent); and

- (d) ensure that customers' money is only transferred via strictly segregated client accounts and that these accounts shall not be used to reimburse other creditors in the event of bankruptcy.

(3) The Minister may, by regulations, add to the requirements set out in subsection (1).

(4) Insurance undertakings shall use the insurance and reinsurance mediation services only of insurance and reinsurance intermediaries who are licensed under section 8 and of the persons referred to in paragraph 3(3)(a) of Schedule 3.

**Requirements for providing insurance mediation in Gibraltar and other EEA states: duties of the Authority.**

38D.(1) An insurance or reinsurance intermediary licensed in Gibraltar under section 8 of this Act who wishes to provide his services or open an establishment in another EEA state shall inform the Authority, and the Authority shall, within one month, inform the competent authority of that other EEA state, if that other EEA state wishes to know of the fact, and shall at the same time inform the intermediary concerned.

(2) An insurance or reinsurance intermediary authorised in another EEA state under the terms of the Directive wishing to provide services or open an establishment in Gibraltar may do so one month after notification by the competent authority of that other EEA state to the Authority that the intermediary concerned desires to do so.

(3) The Authority shall notify the Commission of the European Communities of its wish to be informed of an intermediary from another EEA state desiring to carry on business in Gibraltar.

**Exchange of information between EEA states.**

38E.(1) The Authority shall take steps to co-operate with another competent authority which has been designated under Article 7 of the Directive in any EEA state.

(2) In particular, the Authority shall exchange information with the competent authorities referred to in subsection (1) if an insurance or reinsurance intermediary has been subject to a sanction in the event of a failure to comply with a provision of this Act and such information is likely to lead to his removal from the register referred to in section 38B(2).

(3) Co-operation may include the sharing of information which the Authority would not be prevented from disclosing. The limitations of the Insurance Companies Act in respect of the disclosure of information shall apply in relation to insurance and reinsurance intermediaries.



**Complaints.**

38F.(1) Customers and other interested parties may make complaints about insurance and reinsurance intermediaries to the Consumer Protection Office of the Government, or such other person or entity as the Minister may designate by regulations (the “complaints authority”).

(2) The complaints authority shall register and reply to any complaint received in relation to insurance and reinsurance intermediaries.

(3) The Minister may make rules which set out the procedure for reference of complaints and for their investigation, consideration and determination by the complaints authority.

(4) Insurance and reinsurance intermediaries shall ensure that they have adequate mechanisms for receiving and dealing with complaints.

**Information requirements.**

38G.(1) Prior to the conclusion of any initial insurance contract, and, if necessary, upon amendment or renewal thereof, an insurance intermediary shall provide the customer with at least the following information:

- (a) his identity and address;
- (b) the register in which he has been included and the means for verifying that he has been registered;
- (c) whether he has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in a given insurance undertaking;
- (d) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the insurance intermediary; and
- (e) the procedures referred to in section 38F allowing customers and other interested parties to register complaints about insurance and reinsurance intermediaries.

(2) An insurance intermediary operating in or from within Gibraltar shall inform the customer, concerning the contract that is provided, whether—

- (a) he gives advice based on the obligation in subsection (3) to provide a fair analysis; or

- (b) he is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. In that case, he shall, at the customer's request provide the names of those insurance undertakings; or
- (c) he is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice based on the obligation in subsection (3) to provide a fair analysis. In that case, he shall, at the customer's request provide the names of the insurance undertakings with which he may and does conduct business,

and in those cases where information is to be provided solely at the customer's request, the customer shall be informed that he has the right to request such information.

(3) When the insurance intermediary informs the customer that he gives his advice on the basis of a fair analysis, he is obliged to give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable him to make a recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

(4) Prior to the conclusion of any specific contract, the insurance intermediary shall at least specify, in particular on the basis of information provided by the customer, the demands and the needs of that customer as well as the underlying reasons for any advice given to the customer on a given insurance product, according to the complexity of the insurance contract being proposed.

(5) The information referred to in subsections (1) to (4) need not be given when the insurance intermediary mediates in the insurance of large risks.

(6) All information to be provided to customers in accordance with this section shall be communicated—

- (a) on paper or on any other durable medium available and accessible to the customer;
- (b) in a clear and accurate manner, comprehensible to the customer; and
- (c) in English or any other language agreed by the parties,

but the information may be provided orally where the customer requests it, or where immediate cover is necessary. In those cases, the information

shall be provided to the customer in accordance with subparagraphs (a) to (c) immediately after the conclusion of the insurance contract.

(7) In the case of telephone selling, the information given to the customer under this section shall be in accordance with Community rules applicable to the distance marketing of consumer financial services and shall be provided to the customer immediately after the conclusion of the insurance contract.

**PART VI.**  
**MISCELLANEOUS AND SUPPLEMENTARY.**

**Restriction on use of the word “trust”.**

39. Except as otherwise provided in section 60(4), no person shall, in relation to or in connection with any business carried on in or from within Gibraltar, in any way use—

- (a) the word “trust”; or
- (b) any cognate expression of the word “trust”; or
- (c) any word or words resembling the word “trust”,

otherwise than—

- (i) in relation to an investment business or a controlled activity authorised by virtue of a licence issued to him under this Act where the words so used either form part of his name in the licence or of the name of any authorised or recognised scheme;
- (ii) in the name specified in a deposit-taking licence issued to him under the Financial Services (Banking) Act; or
- (iii) with the prior written consent of the Authority and in accordance with such conditions, if any, as the Authority may impose in giving its consent.

**Termination or suspension of exemption.**

40. (1) Subject to section 44, if it appears to the Authority that any person to whom Part 2 of Schedule 4 applies has contravened any provision of this Act or, in purported compliance with any such provision, has furnished the Authority with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act, the Authority may direct—

- (a) that he shall cease to be an exempted person; or

- (b) that he shall not be an exempted person for a specified period or until the occurrence of a specified event or until specified conditions are complied with.

(2) Any period, event or condition specified in a direction under subsection (1)(b) may be varied by the Authority on the application of the person to whom the direction relates.

(3) The Authority shall consult any other relevant supervisory authority before giving a direction under this section unless it considers it desirable in the interests of investors, the public or of the reputation of Gibraltar as a financial centre that the direction should be given forthwith but in that case it shall consult the relevant supervisory authority immediately after giving the direction and may then revoke or vary it if it considers it appropriate to do so.

(4) The Authority shall revoke a direction under this section if it is satisfied, after consulting the relevant supervisory authority, that it will secure that the person concerned will comply with the provisions of this Act.

#### **Agreements made by or through persons in breach of section 3.**

41. (1) Subject to subsection (3), any agreement—

- (a) which is entered into by a person in the course of carrying on investment business or a controlled activity in contravention of section 3; or
- (b) which, in consequence of anything said or done in contravention of section 3 by a person in carrying on any investment business or a controlled activity, is entered into by a licensee or by an exempted person in the course of investment business or controlled activity which is licensed or recognised under this Act and in respect of which he entered into the agreement, and for the purposes of this paragraph a licensee shall be taken to include a recognised institution,

shall be unenforceable against the other party and that other party shall be entitled to recover any money paid, or other property transferred, by him under the agreement, together with compensation for any loss sustained by him in consequence of such payment or transfer.

(2) The compensation recoverable under subsection (1) shall be such as the parties may agree or as the Supreme Court may, on the application of either party, determine.

(3) The Court may allow an agreement to which subsection (1) applies to be enforced, or money and property paid or transferred under it to be retained, if it is satisfied—

- (a) in a case within paragraph (a) of that subsection—
  - (i) that the person mentioned in that paragraph reasonably believed that his entering into the agreement did not constitute a contravention of section 3; and
  - (ii) that in his dealings with the other parties he has acted substantially in accordance with the provisions of this Act; and
  - (iii) that it is just and equitable for the agreement to be enforced;
- (b) in a case within paragraph (b) of subsection (1), that the licensee or exempted person mentioned therein did not know and ought reasonably to be excused from knowing that the agreement was entered into as a result of a thing done or said in contravention of section 3.

(4) Where any person elects not to perform an agreement which by virtue of this section is unenforceable against him, or by virtue of this section recovers money paid or other property transferred by him under an agreement, he shall repay any money and return any other property received by him under the agreement.

(5) Where any property transferred under an agreement to which this section applies has passed to a third party, references to that property in subsections (1), (3) and (4) shall be construed as references to its value at the time of its transfer under the agreement.

(6) A contravention of section 3 shall not make an agreement illegal or invalid to any greater extent than is provided in this section or in regulations made by virtue of section 15.

**Injunctions and restitution orders.**

42. (1) If on the application of the Authority the Supreme Court is satisfied—

- (a) that there is a reasonable likelihood that a person will contravene any provision of section 3 or any condition imposed under section 10 of this Act or any provision of any regulations and rules made under this Act or any provision of, or of regulations made under the 1998 Act; or

- (b) that a person has contravened any such provision and that steps should be taken to remedy the contravention,

the Court may grant an injunction restraining that person from contravening or from further contravening any such provision, or order that person and any other person who it appears to the Court is or was knowingly a party to a contravention to take such steps as the Court may direct to remedy any such contravention.

(2) If on the application of the Authority the Court is satisfied that a person has contravened any provision of this Act or the 1998 Act and either—

- (a) that profits have accrued to any person as a result of that contravention; or
- (b) that any investor has suffered loss or been otherwise adversely affected as a result of that contravention,

the Court may order that person to pay into Court, or otherwise give security in respect of, such sum as appears to the Court to be just having regard to the extent of any such profit, loss or adverse effect.

(3) Any sum paid into Court pursuant to an order under subsection (2) shall be paid out as the Court may direct to persons who have entered into transactions as a result of which profits have accrued, or to persons who have suffered loss or other adverse effect, as mentioned in that subsection.

(4) For the purpose of determining how to exercise its powers under subsections (2) and (3) the Court may order any person appearing to have information related to any contravention of a provision or condition mentioned in subsection (1)(a) to furnish such information including accounts, verified by affidavit, as the Court may order.

(5) It is hereby declared for the avoidance of doubt that this section does not affect any other right of any person to bring proceedings.

#### **Action for damages.**

43. Without prejudice to section 42, a contravention by any person of any provision of this Act or the 1998 Act shall be actionable as a breach of statutory duty at the suit of any person who has suffered loss or been otherwise adversely affected as a result of that contravention.

#### **Representations concerning decisions of Authority.**

44. (1) This section and section 45 apply to any decision of the Authority—

- (a) under section 8, to refuse to grant an application for a licence; or
- (b) under section 10, to impose any condition on a licence or to vary any condition so imposed; or
- (c) under section 11, to cancel, suspend or alter a licence otherwise than at the request of the licensee, or to cancel or suspend a licence at the request of the operator or trustee or custodian of a collective investment scheme; or
- (d) under section 24, to notify the operator of a collective investment scheme constituted in a member State that the manner in which an invitation is to be made by him to intended participants in the scheme does not comply with the law in force in Gibraltar; or
- (e) under section 26, to refuse to grant an order or to cancel or suspend an order declaring an overseas scheme to be a recognised scheme; or
- (ee) under section 35, to issue a direction; or
- (f) under section 39, to grant a consent for the use of the word “trust” or any cognate expression thereof or word resembling “trust”; or
- (g) under section 40, to terminate or suspend an exemption; or
- (h) under section 7(3) of the 1998 Act, to impose a condition on an investment firm;
- (i) under section 8(1) of the 1998 Act, to cancel or suspend an authorisation; or
- (j) under Part V(A) of this Act.

(2) Before taking any decision mentioned in subsection (1) the Authority shall serve on the applicant, or, as the case may be, on the licensee, or, in the case of an authorised collective investment scheme on both the manager and the trustee or custodian, notice in writing stating—

- (a) that the Authority is considering taking the decision for the reasons stated in the notice;
- (b) that that person may, within 28 days of the date of the service of this notice, make written or oral representations to the

Authority in such manner as the Authority may from time to time decide; and

- (c) that in the event of the Authority taking the decision an appeal against the decision may be brought under section 45 of this Act.

(3) The Authority shall consider any representations made in response to a notice under subsection (2) before giving further consideration to the matter to which the notice relates.

(4) The period of 28 days mentioned in paragraph (b) of subsection (2) may be reduced, in any case in which the decision concerned is a decision under section 10 or 11 or 31 and in which the Authority considers it necessary to reduce that period, to such period of not less than two business days as the Authority may in any particular case decide.

(5) For the purposes of this section a business day is any day other than a Saturday, a Sunday or public holiday.

**Appeals against decisions of Authority.**

45. (1) A person aggrieved—

- (a) by a decision of the Authority to which section 44 applies; or
- (b) by the failure of the Authority to deal with an application for a licence under section 6, within the time prescribed by section 8; or
- (c) by a decision by the Authority to serve a notice of objection under section 11 of the 1998 Act; or
- (d) by a decision of the Authority to impose a prohibition under section 21 of the 1998 Act or to refuse an application for the variation or rescission of such a prohibition; or
- (e) by a decision of the Authority to impose a restriction under section 22 of the 1998 Act or to refuse an application for the variation or rescission of such a restriction; or
- (f) by a decision of the Authority under Schedule 4 to the 1998 Act to refuse to give a notice under paragraph 3 or paragraph 7(1) of that Schedule,

may appeal to the Supreme Court.



(2) An appeal under paragraph (a) of subsection (1) shall be instituted within 28 days of the notification to the appellant of the matter complained of, or in the case of an appeal under paragraph (b) of that subsection, within 28 days of the expiration of the period prescribed in section 8.

(3) If by reason of any default on the part of the appellant an appeal under this section has not been determined by the Court within three months of the date of the notice of appeal or application by which it was instituted, the Authority may apply to the Court, by a summons served on the appellant to show cause why the appeal should not be dismissed for want of prosecution; and upon the making of such an application the Court may dismiss the appeal or make such other order as it considers just.

(4) On an appeal under this section the Court may quash or confirm the decision of the Authority against which the appeal is brought or may substitute any other decision which the Authority could have made.

(5) Subject to subsection (6), from the time of the institution of an appeal under subsection (1) of this section against a decision of the Authority, the decision shall not operate so as to—

- (a) require the appellant to do anything which he would not otherwise have been required to do; or
- (b) prohibit the appellant from doing anything which he could otherwise have done,

unless and until the decision is confirmed by the Court or the appeal is withdrawn or is dismissed for want of prosecution under subsection (3).

(6) The Court may, upon the application of the Authority, direct that the provisions of subsection (5) shall not have effect in any particular case; and a direction under this subsection may be given in such terms as the Court thinks just.

(7) A decision of the Court under this section shall be final as to any question of fact, but an appeal from such a decision of fact shall lie to the Court of Appeal on any question of law.

**Publication in the Gazette.**

46. The Authority—

- (a) shall give notice published in the Gazette of—
  - (i) all decisions made under sections 8, 11, 26 and 40;

- (ii) every voluntary surrender of a licence or recognition under this Act;
  - (iii) every approval under section 20, and
- (b) may in its discretion give notice published in the Gazette of any decision made under section 10 or 35.

**Immunity.**

47. Neither the Authority nor any person appointed by the Authority, nor any of its members, officers, or servants shall be liable in damages for anything done or omitted in the discharge or purported discharge of any powers or functions conferred on the Authority by this Act, the 1998 Act or any regulations made under either of them unless the act or omission is shown to have been in bad faith.

**Offences.**

48. (1) A person who contravenes any provision of this Act, or who fails to comply with any obligation imposed on him by this Act is guilty of an offence.

(2) A person who—

- (a) fails to comply with or contravenes any requirement or condition imposed on him under this Act or the 1998 Act; or
- (aa) contravenes any prohibition or restriction imposed under any provision of Part IV of the 1998 Act; or
- (b) in purported compliance with a requirement under this Act or the 1998 Act furnishes information or makes a statement which he knows to be false or misleading in a material particular, or recklessly furnishes information or makes a statement which is false or misleading in a material particular, or
- (c) not being a licensee, an exempted person or a person recognised under section 24 or 26, knowingly describes himself as such or so holds himself out as to indicate, or to be reasonably understood to indicate, that he is such a person,

is guilty of an offence.

(3) A person who is knowingly party to the carrying on of an investment business or a controlled activity with any fraudulent intent or for any fraudulent purpose is guilty of an offence.

- (4) A person who—
  - (a) by any statement, promise or forecast which he knows to be misleading, false or deceptive; or
  - (b) by any dishonest concealment of material facts; or
  - (c) by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is misleading, false or deceptive,

induces or attempts to induce another person to enter into or to offer to enter into an investment agreement or an agreement in relation to a controlled activity is guilty of an offence.

(5) A person who, with intent to avoid detection of an offence under this Act or the 1998 Act removes from Gibraltar, destroys, conceals or fraudulently alters any books or papers is guilty of an offence.

**Penalties.**

49. (1) Any person guilty of an offence under this Act save the offences created by section 58 shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both;
- (b) on summary conviction, to a fine not exceeding £25,000.

(2) The Authority may, with the consent of the Attorney-General, in its discretion stay or compound any proceedings for an offence under the Act or the 1998 Act, or under regulations or rules made under the Act or the 1998 Act, and where the Authority exercises its discretion to compound such proceedings—

- (a) it shall take account of the provisions of subsection (1) in so doing;
- (b) any amounts paid by virtue of this subsection shall be received by the authority and form part of the revenue of the Authority.

**Criminal proceedings against unincorporated bodies.**

50. (1) Without prejudice to section 49, proceedings for an offence alleged to have been committed under this Act or the 1998 Act by an unincorporated body may be brought in the name of that body and in that of any of its members and, for the purpose of such proceedings, the service of

any document on that body shall be carried out in accordance with the provisions of section 52.

(2) A fine imposed on an unincorporated body on its conviction of an offence under this Act or the 1998 Act shall be paid out of the funds of that body.

#### **Criminal liability of directors, etc.**

51. (1) Where an offence under this Act or the 1998 Act committed by a body corporate or by an unincorporated body is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director or manager, or any person who acted or was purporting to act in any such capacity, such director or manager or person as well as that body, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) For the purposes of this section a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate or any of them act.

(3) Where an offence under this Act or the 1998 Act is proved to have been committed by a partnership every partner in that partnership, other than a partner who is proved to have been ignorant of the offence or to have attempted to prevent the commission of the offence, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.

#### **Service of notices and documents.**

52. Any notice or document to be served by or on behalf of the Authority under or in connection with this Act or the 1998 Act shall, without prejudice to any other valid method of service, be validly served—

- (a) on any person, if delivered to him, or left or sent by registered post or by recorded delivery service addressed to him, at his usual or last known place of abode;
- (b) on any unincorporated body, if delivered to any partner, manager or other similar officer of that body, or if left at, or sent by registered post or by recorded delivery service to the last known place of business of that body;
- (c) on any body corporate if left at, or sent by registered post or by recorded delivery service to its registered office if situate in Gibraltar or, if its registered office is not so situate, the last known place of business in Gibraltar;

- (d) on any applicant for a licence, or on any other person if left at or sent by registered post or by recorded delivery service to the address in Gibraltar notified by him to the Authority for the service of notices or other documents.

**Regulations.**

53. (1) The Minister may make regulations for the purpose of bringing this Act or any part of it into effect and for any matters for which provisions are made in this Act or the 1998 Act for the making of regulations.

(2) The Minister may make regulations empowering the Authority to prescribe by rules anything for which provision may be made under this Act or the 1998 Act.

(3) Without prejudice to the generality of subsection (1) and to any other express provision of this Act or the 1998 Act, regulations may—

- (a) contain such transitional provisions, and such incidental or supplementary provisions, as appear to the Minister to be expedient for the purposes of this Act or the 1998 Act;
- (b) make different provisions in relation to different cases or circumstances and may provide that any provision of this Act or the 1998 Act which is expressed to apply only to licensees shall apply also, with or without modification, to any other person who carries on investment business or a controlled activity, including a person who would otherwise be exempt from the provisions of this Act or the 1998 Act by virtue of section 4;
- (c) apply to all investment business or to any category or description of such business, or to all controlled activities or to any category or description of such activities;
- (d) exempt any person from any of the provisions of this Act or the 1998 Act;
- (e) set out general conditions applicable to all licences, to prescribed classes of licences, or to licences issued to prescribed classes of persons;
- (f) make different provisions in respect of the different cases mentioned in paragraphs (b) and (c) of this subsection, in respect of different circumstances within those cases.

(4) Any power conferred by this Act or the 1998 Act to make regulations includes power to vary or revoke any regulation so made by a subsequent regulation.

(5) The Minister may by regulation make such provision as appears to him to be necessary or expedient to secure—

(a) that the Authority may make notification under subsection 3 of section 24 on grounds relating to the law of the United Kingdom; and

(b) that this Act applies as if a scheme which is constituted in a member State other than Gibraltar or the United Kingdom and recognised in the United Kingdom under section 86 of the Financial Services Act, 1986 were a scheme recognised by virtue of section 24 of this Act.

(6) Regulations and rules made by the exercise of powers contained in this section shall be laid before the Parliament in accordance with the provisions of section 28 of the Interpretation and General Clauses Act but shall not require the prior approval of the Parliament before coming into force.

#### **Compensation regulations.**

54. (1) Regulations made under section 53 of this Act may provide for compensation for loss arising from inability to meet any claim, in respect of any description of civil liability incurred by a licensee or an exempted or recognised person in connection with the carrying on of investment business or a controlled activity.

(2) For the purpose of providing for compensation, regulations under this section may—

(a) authorise the Authority to establish, maintain and administer a fund or funds, or specify circumstances in which the Authority may do so;

(b) authorise the Authority to take out and maintain insurance with an insurer;

(c) require any person to whom the regulations apply to take out and maintain insurance with an insurer.

(3) Without prejudice to the generality of subsections (1) and (2), regulations under this section may—

- (a) specify the terms and conditions on which, and the extent to which, compensation is to be available and any circumstances in which the right to it is to be excluded or modified;
- (b) provide for the management, administration and protection of any fund or funds maintained by virtue of regulations under subsection (2)(a) and require any person to whom those regulations apply to make payments to any such fund, or specify the circumstances in which, and the terms upon which, the Authority may by notice in writing require them to make such payments;
- (c) require any person to whom those regulations apply to make payments by way of premium on any insurance policy maintained by the Authority by virtue of regulations under subsection (2)(b);
- (d) prescribe the conditions which an insurance policy must satisfy for the purposes of regulations under subsection (2)(c);
- (e) authorise the Authority to determine the amount which the regulations require to be paid to the Authority or to an insurer, subject to such limits or in accordance with such provisions as may be specified in the regulations;
- (f) empower the Authority to take such steps as the Authority considers necessary or expedient to ascertain whether or not the regulations are being complied with;
- (g) specify circumstances in which, where sums are paid by the Authority or an insurer in satisfaction of claims against a person to whom those regulations apply, proceedings may be taken against that person by the Authority or the insurer.

**Cancellation regulations.**

55. Regulations made under section 53 of this Act may, without prejudice to section 41 or to any regulations making such provision as is referred to in section 15(2),—

- (a) enable a person who has entered into or offered to enter into an investment agreement to rescind the agreement or to withdraw the offer, within such period and in such manner as may be prescribed;
- (b) require prescribed information to be given, in the form and manner and at the time prescribed, as to any such right of rescission or withdrawal;

- (c) provide for the restitution of property and making and recovery of payments where any such right of rescission or withdrawal is exercised.

**Fees regulations.**

56. (1) Regulations made under section 53 of this Act may prescribe fees to be payable to the Financial Services Commission –

- (a) in respect of any application for a licence or for an authorisation or for recognition of a collective investment scheme;
- (b) in respect of any document deposited, notification given, information furnished, or application or request made, under or for the purpose of this Act or the 1998 Act;
- (c) from time to time, in respect of licensees, authorised Gibraltar investment firms, authorised European investment firms or collective investment schemes.

(2) Regulations under this section may–

- (a) provide for the determination of any fee in accordance with a prescribed scale or other prescribed factors;
- (b) make provisions as to the person by whom, and the time or intervals at which, any fee is to be payable.

(3) If any person by whom a fee is payable by virtue of regulations under this section fails to pay that fee as required by those regulations, no application, request or other thing in respect of which it is payable shall be regarded as duly made or done.

(4) Regulations under this section may provide for fees payable by way of penalty in respect to a failure to comply with the provisions of regulations or rules made under this Act or the 1998 Act.

**Winding-up regulations.**

57. (1) Regulations made under section 53 may make provision for–

- (a) the winding up of a licensee or an authorised Gibraltar investment firm; or
- (b) modifying or supplementing any enactment or rule of law appertaining to winding up or other dissolution of any body,



whether corporate or otherwise, in its application to such a body carrying on investment business or a controlled activity or which applies for a licence under section 6.

(2) Such regulations as are mentioned in subsection (1) may in particular—

- (a) empower the Authority to petition for the winding up, or to take steps in relation to the dissolution of the body or scheme;
- (b) restrict or add to the description of persons who may so petition or take such steps;
- (c) make special provision as to the grounds upon which, and the manner in which, such a body or scheme may be wound up or dissolved, and for the application of its assets;
- (d) permit the continuation of any description of the business of the body or scheme with a view to its transfer as a going concern to another body and empower the Supreme Court to give directions and orders, including an order to reduce the financial commitments of the body or scheme in lieu of making an order for it to be wound-up;
- (e) make provision as to the personal responsibility of any person who in the course of the winding up of a body or scheme is found to have been a party to the conduct of the business of that body or scheme with any fraudulent intent or for any fraudulent purpose.

**Guidance.**

57A.(1) The Authority may issue guidance consisting of such information and advice as it considers appropriate—

- (a) with respect to matters within its competence relating to the operation of this Act or the 1998 Act;
- (b) with respect to any matters relating to the discharge by the Authority of its functions under this or any other Act;
- (c) with respect to any other matters within the statutory competence of the Authority about which it appears to the Authority to be desirable to give information or advice.

**Confidentiality.**

58. (1) Save as may be provided by any other Act, any information from which an individual or body can be identified which is acquired by the Authority in the course of carrying out its functions (whether under this or any other Act) shall be regarded as confidential by the Authority and by its members, officers and servants.

(2) Save as may be provided by any other Act, no such information as is referred to in subsection (1) shall be disclosed, without the consent of every individual who, and every body which, can be identified from that information, except to the extent that its disclosure appears to the Authority to be necessary—

- (a) to enable the Authority to carry out any of its statutory functions; or
- (b) in the interests of the prevention or detection of crime; or
- (c) in connection with the discharge of any international obligation to which Gibraltar is subject; or
- (d) to assist, in the interests of the public, any authority which appears to the Authority to exercise in a place outside Gibraltar functions corresponding to those of the Authority; or
- (e) to comply with the directions of the Supreme Court:

Provided that the Authority shall not disclose information received by virtue of the provisions of Council Directive 92/30/EEC unless it is satisfied that to do so would not contravene the provisions of Article 12 of Council Directive 77/780/EEC.

**Savings and transitional provisions.**

59. (1) A person who, immediately before the day on which engaging in an activity first constitutes carrying on investment business or a controlled activity was engaged in that business or activity shall apply for a licence within two months of that day if he intends to continue so to engage.

(2) A person who makes an application as required by subsection (1) in relation to an investment business or a controlled activity may, pending the determination of that application, continue to engage in that business or activity and shall not be regarded, by reason only of so doing, as carrying on that investment business or controlled activity in contravention of this Act.

(3) Subject to subsection (4), the Authority may, on the application of a person to whom subsection (1) applies, by notice in writing served on him, exempt that person from the requirements of any regulations made under sections 7, 12 and 13 or may modify such requirements by reference to the

circumstances of that person or that particular business or activity being carried on by him.

(4) The Authority shall not exercise the powers conferred by subsection (3) in any case unless it appears to the Authority that—

- (a) compliance with the requirements in question would be unduly burdensome for that person having regard to the benefit which compliance would confer on investors or customers; and
- (b) the exercise of those powers would not result in any undue risk to investors or customers.

**Consequential amendments to other enactments.**

*Section 60(1) amends the proviso in section 28 of the Licensing and Fees Act.*

*Section 60(2) deletes paragraph II in Schedule 2 of the Licensing and Fees Act.*

*Section 60(3) repeals section 66 of the repealed Banking Act (Act. 1982-19).*

(4) Notwithstanding section 39(1) and subsection (3) of this section, every person who immediately before the commencement of this Act holds a consent under section 66(2)(b) of the Financial Services (Banking) Act may continue to use the word “trust” or the cognate or similar expression thereof authorised by such consent—

- (a) for the period of six months following the enactment of this section, on such conditions as he was immediately before such enactment authorised to do so, or
- (b) pending the determination of an application for a licence under section 8 or for a consent under section 39(2)(c) made within that period,

whichever is the shorter, or

- (c) where the person has appealed against the refusal of such a licence or consent as mentioned in paragraph (b) until the determination of the appeal.

**SCHEDULE 1**

Section 3(2)

**INVESTMENTS.****1. Shares, etc.**

Shares and stock in the share capital of a company and transferable shares in an industrial and provident society.–

**Note.**

In this paragraph “company” includes any body corporate and also any unincorporated body constituted under the law of a country or territory outside Gibraltar but does not include an open-ended investment company or a building society, industrial and provident society.

**2. Debentures.**

Debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness including bills of exchange accepted by a banker, not being instruments falling within paragraph 3 below.

**Notes.**

This paragraph does not apply–

- (a) to any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
- (b) to a cheque or other bill of exchange (other than as expressly mentioned), a banker’s draft or a letter of credit; or
- (c) to a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property or an insurance policy.

**3. Government and public securities.**

Loan stock, bonds, and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, a local or public authority.

**Notes.**

- (1) In this paragraph “government, a local or public authority” means–
  - (a) the Government of Gibraltar or the government of any country or territory outside Gibraltar;
  - (b) a local authority;
  - (c) any international organisation the members of which include a member State.
- (2) The Notes to paragraph 2 above shall, so far as applicable, apply also to this paragraph.

**4. Instruments entitling to shares or securities.**

Warrants or other instruments entitling the holder to subscribe for investment falling within paragraph 1, 2 or 3 above.

**Note.**

- (1) It is immaterial whether the investments are for the time being in existence or identifiable.
- (2) An investment falling within this paragraph shall not be regarded as falling within paragraph 7, 8 or 9 below.

**5. Certificates representing securities.**

Certificates or other instruments which confer–

- (a) property rights in respect of any investment falling within paragraph 1, 2, 3 or 4 above;
- (b) any right to acquire, dispose of, underwrite or convert an investment falling within paragraph 1, 2, 3 or 4 above, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or
- (c) a contractual right (other than an option) to acquire any investment falling within paragraph 1, 2, 3 or 4 above otherwise than by subscription.

**Note.**

This paragraph does not apply to any instrument which confers rights in respect of two or more investments issued by different persons or in respect

of two or more different investments falling within paragraph 3 above and issued by the same person.

**6. Units in collective investment schemes.**

Units in a collective investment scheme, including shares in or securities of an open-ended investment company.

**7. Options.**

Options to acquire or dispose of—

- (a) an investment falling within any other paragraph of this Schedule;
- (b) Gibraltar currency or the currency of any other country or territory;
- (c) gold, palladium, platinum or silver; or
- (d) an option to acquire or dispose of an investment falling within this paragraph by virtue of (a), (b) or (c) above.

**8. Futures.**

Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made.

**Notes.**

(1) This paragraph does not apply if the contract is made for commercial and not investment purposes.

(2) A contract shall be regarded as made for investment purposes if it is made or traded on a recognised investment exchange or made otherwise than on such an exchange but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made or such an exchange.

(3) A contract not falling within note (2) above shall be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within 7 days.

(4) The following are indications that any other contract is made for a commercial purpose and the absence of any of them is an indication that it was made for investment purposes—

- (a) either or each of the parties is a producer of the commodity or other property or uses it in his business;
- (b) the seller delivered or intended to deliver the property or the purchaser takes or intends to take delivery of it.

(5) It is an indication that a contract is made for commercial purposes that the price, the lot, the delivery date or the other terms are determined by the parties for the purposes of the particular contract and not by reference to regularly published prices, to standard lots or delivery dates or to standard terms.

(6) The following are also indications that a contract is made for investment purposes—

- (a) it is expressed to be as traded on a market or on an exchange;
- (b) performance of the contract is ensured by an investment exchange or a clearing house;
- (c) there are arrangements for the payment or provision of margin.

(7) A price shall be taken to have been agreed upon when a contract is made—

- (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
- (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

**9. Contracts for differences, etc.**

Rights under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

**Note.**

This paragraph does not apply where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.

**10. Long term insurance contracts.**

Rights under a contract the effecting and carrying out of which constitutes long term business within the meaning of the Insurance Companies Act.

**Notes.**

(1) This paragraph does not apply to rights under a contract of insurance if—

- (a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
- (b) no benefits are payable under the contract on a death (other than a death due to accident) unless it occurs within ten years of the date on which the life of the person in question was first insured under the contract or before the person attained a specified age not exceeding seventy years;
- (c) the contract has no surrender value or the consideration consists of a single premium and the surrender value does not exceed that premium; and
- (d) the contract does not make provision for its conversion or extension in a manner that would result in its ceasing to comply with paragraph (a), (b) and (c) above.

(2) Where the provisions of a contract of insurance are such that the effecting and carrying out of the contract—

- (a) constitutes both long term business and general business within the meaning of the Insurance Companies Act; or
- (b) by virtue of that Act constitutes long term business notwithstanding the inclusion of subsidiary general business provisions,

references in this paragraph to rights and benefits under the contract are references only to such rights and benefits as attributable for the provisions of the contract relating to long term business.

(3) This paragraph does not apply to rights under a reinsurance contract.

(4) Rights falling within this paragraph shall not be regarded as falling within paragraph 9 above.

**11. Rights and interests in investments.**



Rights to and interests in anything which is an investment falling within any other paragraph of this Schedule.

**Note.**

This paragraph does not apply to any interests under the trust of an occupational pension scheme or to rights or interests which are investments by virtue of any other paragraph of this Schedule.

**SCHEDULE 2**

Section 3(2)

**ACTIVITIES CONSTITUTING INVESTMENT BUSINESS.****1. Dealing in investments.**

Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so either as principal or as an agent.

**Notes.**

(1) This paragraph does not apply to a person by reason of his accepting, or offering or agreeing to accept, whether as principal or agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has offered or agreed to make, grant or provide.

(2) The references in Note (1) to a person accepting, or offering or agreeing to accept, an instrument include references to a person becoming or offering or agreeing to become, a party to an instrument otherwise than as a debtor or as surety

**2. Arranging deals in investments.**

Making, or offering or agreeing to make, arrangements with a view to—

- (a) another person buying, selling or subscribing for or underwriting a particular investment; or
- (b) a person who participates in those arrangements buying, selling, subscribing for or underwriting investments.

**Notes.**

(1) The arrangements in subparagraph (a) are arrangements which bring about or would bring about the transaction in question; but arrangements do not fall within subparagraph (b) by reason of their having as their purpose the provision of finance to enable a person to buy, sell, subscribe for or underwrite investments.

(2) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements to which he will himself be a party as principal or which will be entered into by him as agent for one of the parties.

(3) This paragraph does not apply to a person (the relevant person) who is either a money-lender, within the meaning of the Money-Lending Act or a person whose ordinary business includes the making of loans or the giving of guarantees in connection with loans by reason of the relevant person making, or offering or agreeing to make, arrangements with a view to a regulated firm selling an investment which falls within paragraph 10 of Schedule 1 or, so far as relevant to that paragraph, paragraph 11 of that Schedule, if the arrangements are either—

- (a) that the regulated firm or a person on its behalf will introduce persons to whom the regulated firm has sold or proposes to sell an investment of the kind described above, or will advise such persons to approach the relevant person with a view to the relevant person lending money on the security of that investment; or
- (b) that the regulated firm gives an assurance to the relevant person as to the amount which will or may be received by the relevant person, should he lend money to a person to whom the regulated firm has sold or proposes to sell an investment of the kind described above, on the surrender or maturity of that investment if it is taken as security for the loan.

(4) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a person accepting, whether as principal or agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide; and the reference in this note to a person accepting an instrument includes a reference to a person becoming a party to an instrument otherwise than as a debtor or a surety.

(5) This paragraph does not apply to arrangements for the introduction of persons to another person if—

- (a) the person to whom the introduction is made is a regulated firm or an exempted person or is a person whose ordinary business involves him in engaging in activities which fall within this Schedule, or would do so apart from the provisions of Schedule 2A, and who is not unlawfully carrying on investment business in Gibraltar; and
- (b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion either—

- (i) in relation to investments generally; or
- (ii) in relation to any class of investments if the transaction or advice is or is to be with respect to an investment within that class.

**Custody of investments.**

2A.(1) Safeguarding and administering or arranging for the safeguarding and administration of assets belonging to another where—

- (a) those assets consist of or include investments; or
- (b) the arrangements for their safeguarding and administration are such that those assets may consist of or include investments and the arrangements have at any time been held out as being arrangements under which investments would be safeguarded and administered.

(2) Offering or agreeing to safeguard and administer, or to arrange for the safeguarding and administration of, assets belonging to another where the circumstances fall within sub-paragraph (a) or sub-paragraph (b) of paragraph (1).

**Notes.**

(1) This paragraph does not apply to a person by reason of his safeguarding and administering assets, or offering or agreeing to do so under arrangements—

- (a) under which another person ("the primary custodian"), who is permitted to provide a service falling within this paragraph, undertakes to the person to whom the assets belong a responsibility in respect of the assets which is no less onerous than the responsibility which the primary custodian would undertake to that person if the primary custodian were safeguarding and administering the assets himself; and
- (b) which are operated by the primary custodian in the course of carrying on, in or from within Gibraltar, investment business falling within this paragraph.

(2) None of the following activities constitutes the administration of assets—

- (a) providing information as to the number of units or the value of any assets safeguarded;

- (b) converting currency; and
  - (c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the discretion of the person to whom the investment belongs.
- (3) For the purposes of this paragraph it is immaterial that the assets safeguarded and administered–
- (a) constitute units of a security title to which is recorded on the relevant register of securities as being held in uncertificated form; or
  - (b) may be transferred to another person, subject to a commitment by the person safeguarding and administering them, or arranging for their safeguarding and administering, that they will be replaced by equivalent assets at some future date or when so requested by the person to whom they belong.
- (4) This paragraph does not apply to arrangements for the introduction of persons to another person if–
- (a) the person to whom the introduction is made is permitted to provide a service falling within this paragraph, and
  - (b) the introduction is made with a view to the provision in or from within Gibraltar of a service falling within this paragraph or the making of arrangements operated in or from within Gibraltar for the provision of a service falling within this paragraph by a person who is not connected with the person by whom the introduction is made, and, for the purposes of this Note, the person making the introduction shall be regarded as connected with the other person if he is either a body corporate in the same group as that other person or remunerated by that other person.
- (5) For the purposes of Notes (1) to (4), a person is permitted to provide a service falling within this paragraph if –
- (a) he is a regulated firm who may provide that service without contravening any such regulations as are referred to in section 12; or
  - (b) he is an exempted person as respects any investment business which consists of or includes that service; or

- (c) he is entitled to carry on investment business in Gibraltar which consists of or includes that service pursuant to section 4(2) of the 1998 Act.

### **3. Managing investments.**

Managing or offering or agreeing to manage, assets belonging to another person if those assets consist of or include investments or may do so at the discretion of the person managing or offering or agreeing to manage them.

### **4. Investment advice.**

Giving, or offering or agreeing to give, advice on the merits of the purchase, sale, subscription for or underwriting of investments or of the exercise of rights conferred by investments.

*5 Repealed.*

### **Sending dematerialised instructions etc.**

6.(1) Sending on behalf of another person dematerialised instructions relating to an investment by means of a computer based system—

- (a) through the medium of which securities may be transferred or allotted without the need for an instrument in writing, and
- (b) which is operated by a person authorised by a relevant supervisory authority in an EEA state or by a prescribed authority in another territory,

or offering or agreeing to do so, or causing on behalf of another person such instructions to be sent by such means or offering or agreeing to do so.

(2) In subparagraph (1) “prescribed” means prescribed by rules made by the Authority.

### **Notes.**

(1) This paragraph does not apply to a person by reason of his sending, or causing the sending of, instructions by means of a computer based system on behalf of—

- (a) a participating issuer or settlement bank acting in its capacity as such; or
- (b) an offeror making a takeover offer,

or by reason of his offering or agreeing to do so.

(2) This paragraph does not apply to a person by reason of any activity in which he engages, or in which he offers or agrees to engage, at a time when he is accredited by the Authority as a provider of a network for the purposes of a computer based system and which is a necessary part of the provision of such a network.

(3) For the purposes of this paragraph a person shall be taken to cause, or to offer or agree to cause, the sending of a dematerialised instruction only if he is a person who, under an agreement with the Authority, is responsible for the operation of, and the maintenance of security over, a gateway.

(4) In this paragraph—

“dematerialised instruction”, in relation to a computer based system, means an instruction sent by means of a gateway;

“gateway”, in relation to a computer based system, means computer hardware and software by means of which instructions are authenticated and encrypted for processing by the system; and

“settlement bank”, in relation to a computer based system, means a person who has agreed to make payments in connection with the discharge of debts or liabilities arising from the transfer or allotment of securities made through the medium of the system.

## SCHEDULE 2A

Section 3(2)(b).

## EXCLUDED ACTIVITIES

**Dealing as principal.**

1.(1) Paragraph 1 of Schedule 2 applies to a transaction which is or is to be entered into by a person as principal only if—

- (a) he holds himself out as willing to enter into transactions of that kind at prices determined by him generally and continuously rather than in respect of each particular transaction; or
- (b) he holds himself out as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
- (c) he regularly solicits members of the public for the purpose of inducing them to enter as principals or agents into transactions to which that paragraph applies and the transaction is or is to be entered into as a result of his having solicited members of the public in that manner.

(2) In subparagraph (1) “buying” and “selling” means buying and selling by transactions to which paragraph 1 of Schedule 2 applies and “members of the public”, in relation to the person soliciting them (“the relevant person”), means any other persons except—

- (a) regulated firms or exempted persons;
- (b) members of the same group as the relevant person;
- (c) persons who are, or propose to become, participators with the relevant person in a joint enterprise;
- (d) any person who is solicited by the relevant person—
  - (i) with a view to the acquisition by the relevant person of 20 per cent. or more of the voting shares in a body corporate (that is to say, shares carrying not less than that percentage of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the body); or



- (ii) if the relevant person (either alone or with other members of the same group as himself) holds 20 per cent. or more of the voting shares in a body corporate, with a view to the acquisition by him of further shares in the body or the disposal by him of shares in that body to the person solicited or to a member of the same group as that person; or
  - (iii) if the person solicited (either alone or with other members of the same group as himself) holds 20 per cent. or more of the voting shares in a body corporate, with a view to the disposal by the relevant person of further shares in that body to the person solicited or to a member of the same group as that person; and
  - (e) any person whose head office is outside Gibraltar, who is solicited by an approach made or directed to him at a place outside Gibraltar and whose ordinary business involves him in engaging in activities which fall within Schedule 2 or would do so apart from this Schedule.
- (3) Subparagraph (1) applies only–
- (a) if the investment to which the transaction relates or will relate falls within any of paragraphs 1 to 6 of Schedule 1 or, so far as relevant to those paragraphs, paragraph 11 of that Schedule; or
  - (b) if the transaction is the assignment of an investment falling within paragraph 10 of Schedule 1 or is the assignment of an investment falling within paragraph 11 of that Schedule which confers rights to or interests in an investment falling within paragraph 10 of that Schedule.
- (4) Paragraph 1 of Schedule 2 does not apply to any transaction which relates or is to relate to an investment which falls within any of paragraphs 7 to 10 of Schedule 1 or, so far as relates to any of those paragraphs, paragraph 11 of that Schedule, being a transaction which is or is to be entered into by a person as principal if he is not a regulated firm and the transaction is to be entered into by him–
- (a) with or through a regulated firm or exempted person; or
  - (b) through an office outside Gibraltar, maintained by a party to the transaction, and with or through a person whose head office is situated outside Gibraltar and whose ordinary business is such as is mentioned in subparagraph (2)(e).

**Groups and joint enterprises.**

2.(1) Paragraph 1 of Schedule 2 does not apply to a transaction which is or is to be entered into by a person as principal with another person if –

- (a) they are bodies corporate in the same group; or
- (b) they are, or propose to become, participators in a joint enterprise and the transaction is or is to be entered into for the purposes of, or in connection with, that enterprise.

(2) Paragraph 1 of Schedule 2 does not apply to a transaction which is or is to be entered into by any person as agent for another person in the circumstances mentioned in paragraph (a) or paragraph (b) of subparagraph (1) if–

- (a) where the investment falls within any of paragraphs 1 to 6 of Schedule 1 or, so far as relevant to any of those paragraphs, paragraph 11 of that Schedule, the agent does not–
  - (i) hold himself out (otherwise than to other bodies corporate in the same group or persons who are or propose to become participants with him in a joint enterprise) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
  - (ii) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which paragraph 1 of Schedule 2 applies; and the transaction is not or is not to be entered into as a result of his having solicited members of the public in that manner;
- (b) where the investment is not as mentioned in paragraph (a)–
  - (i) the agent enters into the transaction with or through a regulated firm or exempted person; or
  - (ii) the transaction is effected through an office outside Gibraltar, maintained by a party to the transaction, and with or through a person whose head office is situated outside Gibraltar and whose ordinary business involves him in engaging in activities which fall within Schedule 2 or would do so apart from this Schedule;

(3) Paragraph 2 of Schedule 2 does not apply to arrangements which a person makes or offers or agrees to make if–

- (a) that person is a body corporate and the arrangements are made with a view to another body corporate in the same group entering into a transaction of the kind mentioned in that paragraph; or
- (b) that person is or proposes to become a participator in a joint enterprise and the arrangements are with a view to another person who is or proposes to become a participator in the enterprise entering into such a transaction for the purposes of or in connection with that enterprise.

(4) Paragraph 2A of Schedule 2 does not apply to a service which a person provides or offers or agrees to provide or to arrangements which a person makes or offers or agrees to make for the provision of a service if—

- (a) that person is a body corporate and the service is to be provided to another body corporate in the same group and relates or will relate to assets which belong to that other body corporate; or
- (b) that person is or proposes to become a participator in a joint enterprise and the assets to which the service relates or will relate are or are to be held on behalf of another person who is or proposes to become a participator in the enterprise and are or are to be held for the purposes of or in connection with that enterprise.

(5) Paragraph 3 of Schedule 2 does not apply to a person by reason of his managing or offering or agreeing to manage investments of another person if—

- (a) they are bodies corporate in the same group; or
- (b) they are, or propose to become, participators in a joint enterprise and the investments are to be managed for the purposes of or in connection with that enterprise.

(6) Paragraph 4 of Schedule 2 does not apply to advice given by a person to another person if—

- (a) they are bodies corporate in the same group; or
- (b) they are, or propose to become, participators in a joint enterprise and the advice is given for the purposes of or in connection with that enterprise.

(7) Paragraph 6 of Schedule 2 does not apply to a body corporate by reason of its sending, or causing the sending of, dematerialised instructions relating to an investment or offering or agreeing to do so if—

- (a) the person on whose behalf the instructions are, or are to be, sent or caused to be sent is a body corporate in the same group; and
- (b) the investment to which the instructions relate, or will relate, is one in respect of which a body corporate in the same group is registered as the holder on an appropriate register of securities, or will be so registered as a result of the instructions.

(8) The definitions in paragraph 1(2) apply also for the purposes of subparagraph (2)(a) except that the relevant person referred to in paragraph 1(2)(d) shall be the person for whom the agent is acting.

**Employees' share schemes.**

3.(1) Paragraphs 1, 2 and 2A of Schedule 2 do not apply to anything done by a body corporate (“the principal body corporate”), a body corporate connected with it or a relevant trustee for the purpose of enabling or facilitating transactions in shares or debentures of the principal body corporate between or for the benefit of any of the persons mentioned in subparagraph (2) or the holding of such shares or debentures by or for the benefit of any such persons.

(2) The persons referred to in subparagraph (1) are—

- (a) the bona fide employees or former employees of the principal body corporate or of another body corporate in the same group; or
- (b) the wives, husbands, widows, widowers, children or step-children under the age of eighteen of such employees or former employees.

(3) In this paragraph “a relevant trustee” means a person holding shares or debentures of the principal body corporate as trustee in pursuance of arrangements made for the purpose mentioned in subparagraph (1) by, or by a body corporate connected with, the principal body corporate.

(4) In this paragraph “shares” and “debentures” include—

- (a) any investment falling within paragraph 1 or paragraph 2 of Schedule 1;

- (b) any investment falling within paragraph 4 or paragraph 5 of Schedule 1 so far as relating to paragraph 1 or paragraph 2 thereof; and
- (c) any investment falling within paragraph 11 of Schedule 1 so far as relating to any of paragraphs 1,2, 4 and 5 thereof.

(5) For the purposes of this paragraph, a body corporate is connected with another body corporate if—

- (a) they are members of the same group; or
- (b) one of them is entitled, either alone or together with any other body corporate in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other body corporate or of its holding company.

**Sale of body corporate.**

4.(1) Paragraphs 1 and 2 of Schedule 2 do not apply to the acquisition or disposal of, or to anything done for the purposes of the acquisition or disposal of, shares in a body corporate other than an open-ended investment company, and paragraph 4 of that Schedule does not apply to advice given in connection with the acquisition or disposal of such shares, if—

- (a) the shares consist of or include shares carrying 75 per cent or more of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the body corporate, or
- (b) the shares, together with any already held by the person acquiring them, carry not less than that percentage of those voting rights,

and, in either case, the acquisition and disposal is, or is to be, between parties each of whom is a body corporate, a partnership, a single individual or a group of connected individuals.

(2) For the purposes of subparagraph (1), a “group of connected individuals”, in relation to a person disposing of shares, means persons each of whom is, or is a close relative of, a director or manager of the body corporate and, in relation to the person acquiring the shares, means persons each of whom is, or is a close relative of, a person who is to be a director or manager of the body corporate.

(3) For the purposes of this paragraph the “close relatives” of a person are his spouse, his children and step-children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters.

**Trustees and personal representatives.**

5.(1) Paragraph 1 of Schedule 2 does not apply to a person by reason of his buying, selling or subscribing for an investment or offering or agreeing to do so if—

- (a) the investment is, or is to be, held by him as bare trustee for another person;
- (b) he is acting on that person's instructions; and
- (c) he does not hold himself out as providing a service of buying and selling investments; and this subparagraph has effect to the exclusion of paragraph 1 as respects any transaction in respect of which the conditions in paragraphs (a) and (b) of this subparagraph are satisfied.

(2) Paragraph 2 of Schedule 2 does not apply to anything done by a person as trustee or personal representative with a view to—

- (a) a fellow trustee or personal representative and himself engaging in their capacity as such in any activity falling within paragraph 1 of that Schedule; or
- (b) a beneficiary under the trust, will or intestacy engaging in any such activity, unless that person is remunerated for what he does in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(3) Paragraph 2A of Schedule 2 does not apply to anything done by a person as trustee or personal representative unless—

- (a) he holds himself out as providing a service falling within that paragraph; or
- (b) he is remunerated for providing such a service in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(4) Paragraph 3 of Schedule 2 does not apply to anything done by a person as trustee or personal representative unless he holds himself out as offering investment management services or is remunerated for providing such services in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(5) Paragraph 4 of Schedule 2 does not apply to advice given by a person as trustee or personal representative to—

- (a) a fellow trustee or personal representative for the purposes of the trust or estate, or
- (b) a beneficiary under the trust, will or intestacy concerning his interest in the trust fund or estate, unless the person is remunerated for doing so in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(6) Paragraph 6 of Schedule 2 does not apply to a person by reason of his sending, or causing the sending of, dematerialised instructions relating to an investment held by him as trustee or as personal representative, or by reason of his offering or agreeing to do so.

**Arrangements made and advice given in course of profession or non-investment business.**

6.(1) Paragraph 2 of Schedule 2 does not apply to arrangements—

- (a) which are made in the course of the carrying on of any profession or of a business not otherwise constituting investment business; and
- (b) the making of which is a necessary part of other services provided in the course of carrying on that profession or business.

(2) Paragraph 2A of Schedule 2 does not apply to the provision of a service or to arrangements made in the provision of a service where—

- (a) the service is provided or the arrangements are made in the course of the carrying on of any profession or of a business not otherwise constituting investment business; and
- (b) the provision of the service or the making of the arrangements is a necessary part of other services provided in the course of carrying on that profession or business.

(3) Paragraph 4 of Schedule 2 does not apply to advice—

- (a) which is given in the course of the carrying on of any profession or of a business not otherwise constituting investment business; and

- (b) the giving of which is a necessary part of other advice or services given in the course of carrying on that profession or business.

(4) In construing the preceding provisions of this paragraph—

- (a) the making of arrangements shall not be regarded as falling within subparagraph (1)(b);
- (b) the provision of a service or the arranging for such a provision shall not be regarded as falling within subparagraph (2)(b); and
- (c) advice shall not be regarded as falling within subparagraph (3)(b), if the making of the arrangements, the provision, or the arranging for the provision, of the service or the giving of the advice is remunerated separately from the other services or advice.

**Custody of group pension funds by certain insurance companies.**

7.(1) Paragraph 2A of Schedule 2 does not apply to anything done by a relevant insurance company in relation to investments of any pension fund which is established solely for the benefit of officers or employees and their dependants of that company or of any other body corporate in the same group as that company.

(2) In subparagraph (1) “relevant insurance company” means a licensed insurer, as defined in the Insurance Companies Act 1987 who is not an exempted person in relation to the management of the pension fund in question.

**Newspapers.**

8. Paragraph 4 of Schedule 2 does not apply to advice given in a newspaper, journal, magazine or other periodical publication if the principal purpose of the publication, taken as a whole and including any advertisements contained in it, is not to lead persons to invest in any particular investment.

**Advice given in television, sound or teletext services.**

9.(1) Paragraph 4 of Schedule 2 does not apply to any advice given in any programme included, or made for inclusion, in—

- (a) any television broadcasting service;
- (b) any sound broadcasting service; or



(c) any teletext service.

(2) Any reference in subparagraph (1) to a “service” includes a programme, an advertisement and any other item included in that service.

**SCHEDULE 2B**

Section 3(2A)

**INTERPRETATION OF SCHEDULES 1, 2 AND 2A**

1. In this Schedule “the relevant Schedules” means Schedules 1, 2 and 2A.
- 2.(1) In the relevant Schedules—
  - (a) “property” includes currency of Gibraltar or any country or territory;
  - (b) “regulated firm” has the same meaning as in section 2(7)(b);
  - (c) references to an instrument include references to any record whether or not in the form of a document;
  - (d) references to an offer include references to an invitation to treat;
  - (e) references to buying and selling include references to any acquisition or disposal for valuable consideration;
  - (f) “group”, subject to paragraph 4, shall be construed in accordance with paragraph 15 of Schedule 1 to the Financial Institutions (Prudential Supervision) Act 1997 as if the relevant Schedules formed part of that Schedule.
- (2) In subparagraph (1)(d) “disposal” includes—
  - (a) in the case of an investment consisting of rights under a contract or other arrangements, assuming the corresponding liabilities under the contract or arrangements;
  - (b) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;
  - (c) in the case of an investment consisting of rights under a contract, surrendering, assigning or converting those rights.
- (3) A company shall not by reason of issuing its own shares or share warrants, and a person shall not by reason of issuing his own debentures or debenture warrants, be regarded for the purposes of the relevant Schedules as disposing of them or, by reason of anything done for the purpose of issuing them, be regarded as making arrangements with a view to a person subscribing for or otherwise acquiring them or underwriting them.

(4) In subparagraph (3)–

- (a) “company” has the same meaning as in paragraph 1 of Schedule 1;
- (b) “shares” and “debentures” include any investments falling within paragraph 1 or paragraph 2 of Schedule 1;
- (c) “share warrants” and “debenture warrants” mean any investment which falls within paragraph 4 of Schedule 1 and relates to shares in the company concerned or as the case may be, to debentures issued by the person concerned.

3. For the purposes of the relevant Schedules a transaction is entered into through a person if he enters into it as agent or arranges for it to be entered into by another person as principal or agent.

4.(1) For the purposes of the relevant Schedules a group shall be treated as including any body corporate in which a member of the group holds a qualifying capital interest, as defined below.

(2) A “qualifying capital interest” means an interest in relevant shares of the body corporate which the member holds on a long term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest.

(3) In subparagraph (2) “relevant shares” means shares comprised in the share capital of the body corporate of a class carrying rights to vote in all circumstances at general meetings of the body.

(4) A holding of 20 per cent. or more of the nominal value of the relevant shares of a body corporate shall be presumed to be a qualifying interest unless the contrary is shown.

5. In the relevant Schedules a “joint enterprise” means an enterprise into which two or more persons (“the participators”) enter for commercial reasons related to a business or businesses (other than investment business) carried on by them; and, where a participator is a body corporate and a member of a group, each other member of the group shall also be regarded as a participator in the enterprise.

6. Where a person is an exempted person as respects part of the investment business carried on by him, anything done by him in carrying on that part shall be disregarded in determining whether any paragraph of Schedule 2A applies to anything done by him in the course of business in respect of which he is not exempt.

7. In determining for the purposes of the relevant Schedules whether anything constitutes an investment or the carrying on of investment business, any provision of the law relating to the enforceability of a contract by way of gaming or wagering shall be disregarded.

8. For the purposes of the relevant Schedules the following are not collective investment schemes—

- (a) arrangements where the entire contribution is a deposit within the meaning of the Financial Services (Banking) Act 1992 or a sum of a kind described in any of paragraphs (d) to (f) of subsection (2) of section 4 of that Act;
- (b) arrangements under which the rights or interests of the participants are represented by the following—
  - (i) investments falling within paragraph 2 of Schedule 1 which are issued by a single body corporate which is not an open-ended investment company or which are issued by a single issuer which is not a body corporate and are guaranteed by the Government, or the government of any other country or territory; or
  - (ii) investments falling within subparagraph (i) which are convertible into or exchangeable for investments falling within paragraph 1 of Schedule 1 provided that those later investments are issued by the same person as issued the investments falling within subparagraph (i) or issued by a single other issuer; or
  - (iii) investments falling within paragraph 3 of Schedule 1 issued by the same government, local or public authority; or
  - (iv) investments falling within paragraph 4 of Schedule 1 which are issued otherwise than by an open ended investment company and which confer rights in respect of investments, issued by the same issuer, falling within paragraph 1 of that Schedule or within any of subparagraphs (i) to (iii);
- (c) arrangements which would fall within paragraph (b) were it not for the fact that the rights or interests of a participant (“the counterparty”) whose ordinary business involves him in engaging in activities which fall within Schedule 2 or would do so apart from Schedule 2A are or include rights or interests under a swap arrangement, that is to say, an arrangement the purpose of which is to facilitate the making of payments to

participants whether in a particular amount or currency or at a particular time or rate or interest or all or any combination of those things, being an arrangement under which—

- (i) the counterparty is entitled to receive amounts (whether representing principal or interest) payable in respect of property subject to the scheme or sums determined by reference to such amounts; and
  - (ii) the counterparty makes payments (whether or not of the same amount and whether or not in the same currency as those referred to in subparagraph (i)) which are calculated in accordance with an agreed formula by reference to the amounts or sums referred to in subparagraph (i);
- (d) arrangements under which the rights or interests of the participants are rights to or interests in money held in a common account in circumstances in which the money is so held on the understanding that an amount representing the contribution of each participant is to be applied either in making payments to him or in satisfaction of sums owed by him or in the acquisition or property or the provision of services for him.

9.(1) For the purposes of the relevant Schedules, arrangements are not a collective investment scheme if they are operated by a body corporate (“the primary body corporate”), a body corporate connected with it or a relevant trustee, for the purpose of enabling or facilitating transactions in shares or debentures of the primary body corporate between or for the benefit of any of the persons mentioned in subparagraph (2) or the holding of such shares or debentures by or for the benefit of any such persons.

(2) The persons referred to in subparagraph (1) are—

- (a) the bona fide employees or former employees of the primary body corporate or of another body corporate in the same group; and
- (b) the wives, husbands, widows, widowers, or children or stepchildren under the age of eighteen of such employees or former employees.

(3) In this paragraph a “relevant trustee” means a person holding shares or debentures of the primary body corporate as trustee in pursuance of arrangements mentioned in subparagraph (1) which were made by, or by a body corporate connected with, the primary body corporate.

- (4) In this paragraph “shares” and “debentures” include–
- (a) any investment falling within paragraph 1 or paragraph 2 of Schedule 1;
  - (b) any investment falling within paragraph 4 or paragraph 5 of Schedule 1 so far as relating to paragraph 1 or paragraph 2 thereof; and
  - (c) any investment falling within paragraph 11 of Schedule 1 so far as relating to any of paragraphs 1,2,4 and 5 thereof.
- (5) For the purposes of this paragraph a body corporate is connected with another body corporate if–
- (a) they are members of the same group; or
  - (b) one is entitled, either alone or together with any other body corporate in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other body corporate or its holding company.

## SCHEDULE 3

Section 3(2)

## CONTROLLED ACTIVITIES.

**1. Company Management.<sup>1</sup>**

(1) Undertakings or holding out by way of business as undertaking company or corporate administration including (without limitation) any one or more of the following—

- (a) the formation, management or administration of companies, partnerships or other unincorporated bodies whether incorporated or established in or under the laws of Gibraltar or elsewhere;
- (b) the provision to any one or more companies, partnerships or other unincorporated bodies, whether incorporated or established in or under the laws of Gibraltar or elsewhere, of any one or more of the following;
  - (i) corporate or individual directors;
  - (ii) individuals or companies to act as company or corporate secretary or in any other capacity as officer of a company, partnership or other unincorporated body other than a director;
  - (iii) nominee services, including (without limitation) acting as or providing nominee shareholders;
  - (iv) registered offices;
- (c) acting as director of any company or unincorporated body; or as partner of any partnership, whether incorporated, registered or established in or under the laws of Gibraltar or elsewhere.

(2) In the application of sub-paragraph (1) there shall be taken into account, as the activities of a person (whether as principal or as the servant or agent of a licensed management company), the activities of any person connected with him.

(3) Sub-paragraph (1) does not apply to the following—

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<sup>1</sup> For transitional provisions see LN. 2002/088 *Financial Services (Amendment) Regulations, 2002*

- (a) the holding by any person who is resident in Gibraltar of a directorship of not more than twelve companies all of which are registered in Gibraltar and all of which carry on business within Gibraltar;
- (b) the acting, by any person who is resident in Gibraltar, as a partner of not more than twelve partnerships all of which are registered in Gibraltar and all of which carry on business within Gibraltar,
- (c) the provision of private mail boxes or the forwarding of mail or both;
- (d) companies engaged in the activity of a professional trusteeship licensed under the Act.

**2. Professional trusteeship.**

Holding out as a professional trustee for profit or reward, or soliciting for business as such, in or from within Gibraltar.

**Note.**

This paragraph does not apply—

- (a) to barristers or solicitors admitted and enrolled under the Supreme Court Act;
- (b) to a person whose name, address and qualifications are contained in Part I, II or III of the Register maintained under the provisions of the Auditors Approval and Registration Act,

in the performance of duties within the ambit of their normal respective professions carried out other than in connection with an activity regulated by this Act.

**3. Insurance and Reinsurance Mediation.**

(1) Carrying out, for remuneration, any one or more of the following activities—

- (a) introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance or reinsurance;
- (b) concluding contracts of insurance or reinsurance;
- (c) assisting in the administration and performance of contracts of insurance or reinsurance, in particular in the event of a claim.



(2) However, the following activities shall not be considered as insurance or reinsurance mediation—

- (a) the activities detailed in subparagraphs 3(1)(a) to (c) when undertaken by an insurance or reinsurance undertaking or an employee of an insurance or reinsurance undertaking who is acting under the responsibility of the insurance or reinsurance undertaking;
- (b) the provision of information on an incidental basis in the context of another professional activity provided that the purpose of the activity is not to assist the customer in concluding or performing an insurance or reinsurance contract;
- (c) claims management, expert appraisal of claims or loss adjusting on behalf of an insurance or reinsurance undertaking.

(3) Paragraph 3(1) does not apply to—

- (a) persons providing mediation services for insurance contracts where the mediation concerned meets all of the conditions of subparagraphs (i) to (vi)—
  - (i) the insurance contract only requires knowledge of the insurance cover that is provided;
  - (ii) the insurance contract is not a life assurance contract;
  - (iii) the insurance contract does not cover any liability risks;
  - (iv) the principal professional activity of the person is other than insurance mediation;
  - (v) the insurance is complementary to the product or service supplied by any provider, where such insurance covers—
    - (aa) the risk of breakdown, loss of or damage to goods supplied by that provider, or
    - (bb) damage to or loss of baggage and other risks linked to the travel booked with that provider, even if the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to that travel; and

- (vi) the amount of the annual premium does not exceed EUR 500 (or sterling equivalent) and the total duration of the insurance contract, including any renewals, does not exceed five years; and
- (b) insurance and reinsurance mediation services provided in relation to risks and commitments located outside the EEA.

**4. Investment exchanges and clearing houses.**

Establishing and conducting the business of an investment exchange or clearing house.

**5. Insurance management.**

Exercising managerial functions and/or giving, or offering or agreeing to give advice in relation to the business of one or more insurer or reinsurer, of which he is not an employee, that, in the opinion of the Commissioner appointed from time to time under section 8 of the Financial Services Commission Act, 1989, is an activity which should not fall within any of the categories listed in Schedule 2 or within the categories defined in paragraphs 1 or 3 of this Schedule.

**6. Money Service Business.**

- (1) Bureaux de Change

Carrying on, in or from within Gibraltar, as a business;

- (a) the buying, selling, or exchanging of foreign currency;
- (b) the buying, selling, or exchanging of precious metals; or
- (c) cashing cheques which are payable to customers or third parties.

- (2) Money Transmitters.

Carrying on, in or from within Gibraltar, as a business, transmitting money or any representation of monetary value, by any means.

**Note.**

Save for the purposes of sections 32 to 38 of this Act, this paragraph does not apply—

- (a) to any person who is licensed under section 24 of the Banking Act 1992 to accept deposits or issue means of payment in the

form of electronic money or is authorised under that Act for these activities; or

- (b) to electronically based foreign exchange trading platforms.

**SCHEDULE 4**

Section 4

**EXEMPTED PERSONS****PART I.**

- (a) The Government of Gibraltar;
- (b) Friendly Societies registered under the Friendly Societies Act as respects any business which they carry on for or in connection with any of the purposes for which friendly societies may under that Act provide;
- (bb) a licensed insurer, as defined in section 2(2) of the Insurance Companies Act, in respect of any insurance business that it is authorised to carry on pursuant to a licence issued to it under that Act and an EEA insurer as defined in section 2(2) of the Insurance Companies Act which is lawfully carrying on insurance business, or providing insurance, in Gibraltar;
- (c) The Accountant General and the Director of Postal Services in the exercise of their functions;
- (d) The Registrar, Supreme Court when managing funds paid into court;
- (e) The Public Trustee in the exercise of his functions under the Public Trustee Act;
- (f) The Official Receiver;
- (g) A person acting in his capacity as manager of any fund established under the Charities Act, the Trustee Act or the Administration of Justice Act;
- (h) A person acting as the servant or agent of another person (“his principal”) if his principal—
  - (i) has complied with section 3 or is exempt from the provisions of that section by virtue of the provisions of any other paragraph of this Schedule; and
  - (ii) is responsible, under the terms of his agreement with that servant or agent, for that activity of that servant or agent.

Provided that, if the principal is a licensed management company, the exemption conferred by this sub-paragraph does not apply to a person who, as servant or agent of his principal, is a director of another company in circumstances falling within paragraph 1 of Schedule 3.

**PART II.**

A person who provides the trading facilities constituting a market which—

- (a) appears on the list drawn up by a member State pursuant to Article 16 of the Investment Services Directive, and
- (b) operates without any requirement that a person dealing on the market should have a physical presence in the territory of the member State from which the trading facilities are provided or on any trading floor that the market may have,

to the extent of anything done by that person in connection with or for the purposes of the provisions of those trading facilities.