

**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

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),	

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\* *This Act was formerly the Financial Services Act 1989. Name substituted by Act 2006-42 as from 18.1.2007.*

	33A, 34(b), 35(1A), 42(4), 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
2010/082	Sch. 1	29.4.2010
2016/055	Sch. 3, 4	21.3.2016
2017/061	Sch. 3	31.3.2017
2017/067 <sup>1</sup>	Sch. 3	11.4.2017
Act. 2017-18	ss. 10(1), (2)(b)(ii), 11(2)(a), (h), 12(2)(a), (e)(iii), 13A(2)(b), 14(2)(a)(iv), 38(1)(a), (b), 40(3), 42(2)(b)	15.12.2017
LN. 2017/204	Sch. 3	1.1.2018
2017/135	ss. 38A, 38H – 38K, Sch. 3	3.1.2018
2018/041	ss. 38A – 38ZW, 48(1A), Sch. 3 & 5	1.10.2018 <sup>2</sup>

**English sources:**

None

**EU Legislation/International Agreements involved:**

Directive 73/239/EEC	Directive 2002/65/EC
Directive 77/780/EEC	Directive 2002/92/EC
Directive 79/279/EEC	Directive 2005/60/EC
Directive 89/646/EEC	Directive 2006/48/EC
Directive 92/30/EEC	Directive 2007/64/EC
Directive 97/5/EC	Directive 2014/65/EU
Directive 97/7/EC	Directive (EU) 2016/97

<sup>1</sup> For Transitional Arrangement see Legal Notice<sup>2</sup> Notice of Commencement LN. 2018/193

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

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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.*

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<sup>2</sup> 1998-10

(4) *Repealed.*

**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, customers, the public or the reputation of Gibraltar as a financial centre, 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 customers 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 customers; 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, customers, 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 or customer;
- (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 customer; 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 or customers 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 or customers 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, customer or potential customer, 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, customers or potential customers, 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)**  
**INSURANCE AND REINSURANCE DISTRIBUTION**

*Preliminary*

**Overview.**

38A. This Part regulates the taking up and pursuit of the controlled activity of insurance and reinsurance distribution, which is more specifically defined in Paragraph 3 of Schedule 3.

**Interpretation of Part.**

38B.(1) In this Part—

“advice” means the provision of a personal recommendation to a customer, either upon their request or at the initiative of the insurance distributor, in respect of one or more insurance contracts;

“ancillary insurance intermediary” means a person, other than a credit institution or investment firm who, for remuneration, takes up or pursues insurance distribution on an ancillary basis, provided that all the following conditions are met—

- (a) the person’s principal professional activity is not insurance distribution;
- (b) the person only distributes certain insurance products that are complementary to a product or service; and
- (c) the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the product or service which the person provides as its principal professional activity;

“branch” means an agency or a branch of an intermediary which is located in the territory of an EEA State other than the home State;

“close links” has the meaning given in the Article 13(17) of EUS2D;

“durable medium” means any instrument which–

- (a) enables a customer to store information addressed personally to that customer in a way accessible for future reference and for a period of time adequate for the purposes of the information; and
- (b) allows the unchanged reproduction of the information stored;

“EEA State” means a Member State of the European Economic Area listed in Schedule 3 to the European Communities Act and, where the context requires, includes Gibraltar;

“EUIDD” means Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution;

“EUS2D” means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);

“home State” means–

- (a) where the intermediary is an individual, the EEA State in which his or her residence is situated;
- (b) where the intermediary is a legal person, the EEA State in which its registered office is situated or, if under its national law it has no registered office, the EEA State in which its head office is situated;

“home State competent authority” means the competent authority in an intermediary’s home State;

“host State” means the EEA State in which an insurance or reinsurance intermediary has a permanent presence or establishment or provides services, and which is not its home State;

“host state competent authority” means the competent authority in an intermediary’s host State;

“insurance-based investment product” means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations, and does not include–

- (a) non-life insurance products;
- (b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or disability;
- (c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;
- (d) officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or EUS2D; or
- (e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider;

“insurance distributor” means any insurance intermediary, ancillary insurance intermediary or insurance undertaking;

“insurance intermediary” means a person, other than an insurance or reinsurance undertaking or their employees and other than an ancillary insurance intermediary, who, for remuneration, takes up or pursues insurance distribution;

“insurance undertaking” means an insurance undertaking within the meaning of Article 13(1) of EUS2D;

“large risks” has the meaning given in Article 13(27) of EUS2D;

“non-life insurance products” means the non-life insurance products listed in Annex I to EUS2D;

“primary place of business” means the location from where the main business is managed;

“reinsurance distributor” means any reinsurance intermediary or reinsurance undertaking;

“reinsurance intermediary” means any person, other than a reinsurance undertaking or its employees, who, for remuneration, takes up or pursues reinsurance distribution;



“reinsurance undertaking” means a reinsurance undertaking within the meaning of Article 13(4) of EUS2D; and

“remuneration” means any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance distribution activities.

**Competent authority.**

38C.(1) The Authority is designated as the competent authority for the purposes of this Part and Article 12 of EUIDD.

(2) The Authority must monitor the insurance distribution market, including the market for ancillary insurance products which are marketed, distributed or sold in or from Gibraltar.

(3) The Minister must inform the European Commission of the Authority’s designation under this section.

**Use of intermediaries.**

38D.(1) Insurance and reinsurance undertakings and intermediaries must only use the distribution services of—

- (a) insurance, reinsurance or ancillary insurance intermediaries licensed under section 8 and registered under this Part;
- (b) insurance, reinsurance or ancillary insurance intermediaries authorised in accordance with EUIDD in an EEA State other than Gibraltar; or
- (c) ancillary insurance intermediaries carrying out the insurance distribution activities in paragraph 3(4) of Schedule 3.

(2) When carrying out a distribution activity through an ancillary insurance intermediary who is exempted from the application of this Part by paragraph 3(4) of Schedule 3, an insurance undertaking or insurance intermediary must ensure that—

- (a) information is made available to the customer, prior to the conclusion of the contract, about its identity and address and about the procedures referred to in section 38Q allowing customers and other interested parties to lodge complaints;
- (b) appropriate and proportionate arrangements are in place to comply with sections 38S and 38Z and to consider the demands

and needs of the customer before the proposal of the contract;  
and

- (c) the insurance product information document referred to in section 38V(8) is provided to the customer prior to the conclusion of the contract.

*Registration requirements*

**Registration.**

38E.(1) The Authority must maintain a register of insurance, reinsurance, and ancillary insurance intermediaries who are licensed under section 8 to carry on a controlled activity which falls within paragraph 3 of Schedule 3.

(2) The register must—

- (a) specify the names of the individuals within the management of an insurance or reinsurance distributor who are responsible for insurance or reinsurance distribution; and
- (b) indicate the EEA States in which an intermediary conducts business in exercise of the freedom of establishment or the freedom to provide services.

(3) Insurance and reinsurance undertakings and intermediaries must cooperate with the Authority in relation to—

- (a) the registration of insurance, reinsurance and ancillary insurance intermediaries; and
- (b) the application of sections 38K to 38M.

(4) Insurance and reinsurance undertakings and their employees are not required to be registered under this Part.

(5) An insurance or reinsurance intermediary or ancillary insurance intermediary may act under the responsibility of an insurance or reinsurance undertaking or another intermediary.

(6) An insurance or reinsurance undertaking or intermediary—

- (a) must ensure that any insurance, reinsurance or ancillary insurance intermediary for which it is responsible meets the conditions for registration, including the condition set out in subsection (9)(c); and

- (b) is responsible for registering that insurance, reinsurance or ancillary insurance intermediary.

(7) The Authority must promptly provide relevant information to EIOPA and provide it with access to data and any other assistance it may reasonably and lawfully require for the purposes of establishing and maintaining its register of insurance, reinsurance and ancillary insurance intermediaries under Article 3(4) of EUIDD.

(8) The Authority must establish an online system which is easily accessible and allows licensing applications made in accordance with this section to be completed online.

(9) An application for a licence under section 8 to carry on a controlled activity which falls within paragraph 3 of Schedule 3 must be made in the form and manner which the Authority directs and, in addition to complying with any other requirements imposed by or under this Act, must include all of the following information–

- (a) the identities of shareholders or members, whether natural or legal persons, that have a holding of more than 10% in the intermediary, and the amounts of those holdings;
- (b) the identities of persons who have close links with the intermediary;
- (c) information confirming that those holdings or close links do not prevent the effective exercise of the Authority's supervisory functions.

(10) The Authority must determine a licence application within three months of a complete application being submitted in accordance with subsection (9) and promptly notify the applicant of its decision.

(11) An applicant must promptly inform the Authority of any change in any information provided as part of an application submitted in accordance with subsection (9).

(12) The Authority must not grant a licence if it would be prevented from exercising its supervisory functions effectively by–

- (a) the laws, regulations or administrative provisions of a territory outside of the EEA governing any person with which the intermediary has close links; or
- (b) any difficulties involved in the enforcement of those laws, regulations or administrative provisions.

(13) Any licence granted under section 8 to carry on a controlled activity which falls within paragraph 3 of Schedule 3 is subject to the condition that the holder meets the applicable requirements of sections 38K to 38M.

(14) The validity of registration under this section is subject to regular review by the Authority.

(15) Where a person who is licensed as an insurance, reinsurance or ancillary insurance intermediary ceases to meet the requirements of sections 38K to 38M, the Authority must—

- (a) revoke that person's licence;
- (b) remove the person's name from the register maintained under this section; and
- (c) where relevant, inform any host State competent authority.

(16) This Part does not affect any other Gibraltar law in respect of insurance and reinsurance distribution activities pursued by insurance and reinsurance undertakings or intermediaries which are established in a third country and operating in Gibraltar under the principle of freedom to provide services, where equal treatment is guaranteed to all persons carrying on or authorised to carry on insurance and reinsurance distribution activities in Gibraltar.

(17) The Authority must inform the European Commission of any general difficulties which insurance or reinsurance distributors in Gibraltar encounter in becoming established or carrying on insurance or reinsurance distribution activities in any third country.

*Freedom to provide services and freedom of establishment*

**Exercise of the freedom to provide services.**

38F.(1) An insurance, reinsurance or ancillary insurance intermediary licensed under section 8 that proposes to carry on business in another EEA State under the freedom to provide services must provide the Authority, in the form and manner it may direct, with the following information—

- (a) the intermediary's name, address and registration number (if any);
- (b) the EEA States in which it intends to operate;

- (c) the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented; and
  - (d) the relevant classes of insurance, if applicable.
- (2) The Authority, within one month of receiving the information referred to subsection (1), must send it to the host State competent authority.
- (3) The Authority must inform the intermediary in writing that–
- (a) the host State competent authority has acknowledged receipt of the information sent to it in accordance with subsection (2);
  - (b) the intermediary may commence business in that EEA State; and
  - (c) in doing so the intermediary must comply with any general good rules which, under Article 11 of EUIDD, apply in that EEA State, the details of which can be obtained through the means referred to in that Article.
- (4) If an intermediary proposes to change any of the particulars provided under subsection (1), it must notify the Authority, in the form and manner it may direct, at least one month before implementing the change.
- (5) Where the Authority receives a notice under subsection (4) it must inform the relevant host State competent authority as soon as practicable and in any event within one month of receiving the notice.
- (6) Where the Authority receives information of the kind in subsection (1) from a home State competent authority concerning an insurance, reinsurance or ancillary insurance intermediary that proposes to carry on business in Gibraltar under the freedom to provide services, the Authority must promptly acknowledge receipt of that information.

**Breach of obligations when exercising the freedom to provide services.**

38G.(1) The Authority, where it considers that an insurance, reinsurance or ancillary insurance intermediary acting in Gibraltar under the freedom to provide services is in breach of an obligation under this Part or EUIDD, must inform the intermediary's home State competent authority.

(2) Where, despite the measures taken by the home State competent authority or because those measures prove to be inadequate or are lacking, an intermediary persists in acting in a manner that is clearly detrimental to the interests of Gibraltar consumers on a large scale or to the orderly functioning of insurance and reinsurance markets, the Authority, after

informing the home State competent authority, may take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing the intermediary from carrying on new business in Gibraltar.

(3) Subsection (2) does not affect the Authority's power to take appropriate measures to prevent or penalise irregularities committed in Gibraltar where immediate action is necessary in order to protect the rights of consumers, including preventing an intermediary from carrying on new business in Gibraltar.

(4) Where the Authority takes any action under subsection (3) it must promptly inform the intermediary concerned of its decision and the reasons for it and provide that reasoned decision to—

- (a) the intermediary's home State competent authority;
- (b) EIOPA; and
- (c) the European Commission.

(5) Where the Authority receives information of the kind in subsection (1) from a host State competent authority concerning an intermediary that is licensed under this Act, the Authority must—

- (a) assess the information received;
- (b) if applicable, promptly take steps to remedy the situation; and
- (c) inform the host State competent authority of any steps taken.

(6) The Authority and the home State or host State competent authority (as the case may be) may refer any matter arising under this section to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

#### **Exercise of the freedom of establishment.**

38H.(1) An insurance, reinsurance or ancillary insurance intermediary licensed under section 8 that proposes to exercise its freedom of establishment by establishing a branch or permanent presence in another EEA State must provide the Authority, in the form and manner it may direct, with the following information—

- (a) the intermediary's name, address and registration number (if any);

- (b) the EEA States in which it intends to establish a branch or permanent presence;
- (c) the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented;
- (d) the relevant classes of insurance, if applicable;
- (e) the address in each of those EEA States from which documents may be obtained; and
- (f) the name of the person responsible for the management of each branch or permanent presence.

(2) An intermediary's permanent presence in another EEA State which is equivalent to a branch must be treated in the same way as a branch, unless the intermediary lawfully establishes that permanent presence in another legal form.

(3) Subject to subsection (6), within one month of receiving the information referred to subsection (1), the Authority must send it to the host State competent authority.

(4) The Authority must inform the intermediary in writing that—

- (a) the host State competent authority has—
  - (i) acknowledged receipt of the information sent to it in accordance with subsection (3);
  - (ii) provided details of the legal provisions ('general good rules') which, under Article 11 of EUIDD, apply in that EEA State and with which the intermediary must comply; and
- (b) the intermediary may commence business in that EEA State provided it complies with those legal provisions.

(5) If the host State competent authority fails to provide a response of the kind in subsection (4)(a) within one month of receiving the information sent by the Authority under subsection (3), the intermediary is entitled to establish its branch and commence business in that EEA State.

(6) The Authority may refuse to send information provided to it under subsection (1) to the host State competent authority where, taking account of the distribution activities envisaged, it has reason to doubt the adequacy of

the organisational structure or financial situation of the insurance, reinsurance or ancillary insurance intermediary.

(7) The Authority must provide an intermediary with a reasoned decision for a refusal under subsection (6), and a refusal under that subsection or any other failure by the Authority to send information provided under subsection (1) to a host State competent authority in accordance with subsection (3) may be the subject of an appeal under section 38ZR.

(8) If an intermediary proposes to change any of the particulars provided under subsection (1), it must notify the Authority, in the form and manner it may direct, at least one month before implementing the change.

(9) Where the Authority receives a notice under subsection (8), it must inform the relevant host State competent authority as soon as practicable and in any event within one month of receiving the notice.

(10) Where the Authority receives information of the kind in subsection (1) from a home State competent authority concerning an insurance, reinsurance or ancillary insurance intermediary that proposes to carry on business in Gibraltar under the freedom of establishment, the Authority must promptly acknowledge receipt of that information and, if applicable, provide that competent authority with information of the kind in subsection (4)(a)(ii).

#### **Division of competence between home and host States.**

38I.(1) The Authority may enter arrangements under subsection (2) or (3) with a competent authority in another EEA State.

(2) Where an insurance, reinsurance or ancillary insurance intermediary is licensed under this Act but its primary place of business is in an EEA State other than Gibraltar, the Authority may arrange for the competent authority in that EEA State to act as if it was the home State competent authority for that intermediary with regard to the provisions of sections 38D(1) and 38K to 38ZU.

(3) Where an insurance, reinsurance or ancillary insurance intermediary is authorised in another EEA State but its primary place of business is Gibraltar, the Authority may agree to act as if it was the home State competent authority for that intermediary with regard to the provisions of sections 38D(1) and 38K to 38ZU.

(4) The Authority must promptly notify EIOPA and the intermediary concerned of any agreement reached under subsection (2) and the home



State competent authority has a similar notification obligation in respect of any agreement reached under subsection (3).

- (5) The Authority, as the host State competent authority—
  - (a) is responsible for ensuring that the services provided by an establishment in Gibraltar comply with the obligations in sections 38S to 38ZF and any measures adopted under them; and
  - (b) is entitled to examine an establishment's arrangements and request any changes to them which are needed to enable the Authority to enforce those obligations with respect to the services or activities provided by the establishment in Gibraltar.

**Breach of obligations when exercising the freedom of establishment.**

38J.(1) The Authority may take appropriate measures where it considers that an insurance, reinsurance or ancillary insurance intermediary acting in Gibraltar under the freedom of establishment is in breach of any of sections 38S to 38ZF.

(2) Where the Authority considers that such an intermediary is in breach of an obligation under any other provision of this Part or EUIDD, it must refer its findings to the home State competent authority.

(3) Where, despite the measures taken by the home State competent authority or because those measures prove to be inadequate or are lacking, the intermediary persists in acting in a manner that is clearly detrimental to the interests of Gibraltar consumers on a large scale or the orderly functioning of insurance and reinsurance markets, the Authority, after informing the home State competent authority, may take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing the intermediary from carrying on new business in Gibraltar.

(4) Subsections (2) and (3) do not affect the Authority's power as host State competent authority to take appropriate and non-discriminatory measures to prevent or penalise irregularities committed in Gibraltar, including preventing an intermediary from carrying on new business in Gibraltar, where—

- (a) immediate action is strictly necessary to protect the rights of consumers in Gibraltar; and

- (b) the home State competent authority has not taken equivalent measures or those it has taken are inadequate.

(5) Where the Authority imposes any measure under subsection (4) it must promptly inform the intermediary concerned of its decision and the reasons for it and provide that reasoned decision to—

- (a) the intermediary's home State competent authority;
- (b) EIOPA; and
- (c) the European Commission.

(6) Where the Authority receives information of the kind in subsection (2) from a host State competent authority concerning an intermediary that is licensed under this Act, the Authority must—

- (a) assess the information received;
- (b) if applicable, promptly take steps to remedy the situation; and
- (c) inform the host State competent authority of any steps taken.

(7) The Authority and the home State or host State competent authority (as the case may be) may refer any matter arising under this section to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

*Professional and organisational requirements*

**Knowledge, ability and continuing development requirements.**

38K.(1) Insurance and reinsurance distributors must possess, and must ensure that relevant individuals possess, appropriate knowledge and ability in order to complete their tasks and perform their duties adequately, having regard to the distribution activities which they undertake and the products distributed.

- (2) In subsection (1) a “relevant individual” means—
  - (a) an individual within the distributor's management structure who is responsible for distribution in respect of insurance and reinsurance products;
  - (b) an employee of the distributor who carries out insurance or reinsurance distribution activities; or

- (c) any other individual who is directly involved in the distributor's insurance or reinsurance distribution activities.

(3) Insurance and reinsurance intermediaries must demonstrate compliance with the relevant professional knowledge and competence requirements in Schedule 5.

(4) In order to maintain an adequate level of performance corresponding to the role they perform and the relevant market—

- (a) insurance and reinsurance intermediaries;
- (b) employees of insurance and reinsurance undertakings; and
- (c) employees of insurance and reinsurance intermediaries;

must complete a minimum of 15 hours of continuing professional training and development in each 12 month period.

(5) Continuing professional training and development may encompass various types of facilitated learning opportunities, including courses, e-learning and mentoring, and must take account of—

- (a) the role and activity carried out by the person concerned; and
- (b) the type of distribution and the nature of the products sold.

(6) An insurance or reinsurance undertaking or intermediary whose employees are engaged in insurance or reinsurance distribution must—

- (a) take appropriate steps to verify that the knowledge and ability of those employees, having regard to the distribution activities which they undertake and the products distributed, meet the requirements of subsection (1); and
- (b) where necessary, provide those employees with appropriate training or professional development in order to meet those requirements.

**Fit and proper requirements.**

38L.(1) Individuals who—

- (a) work for—
  - (i) an insurance, reinsurance or ancillary insurance intermediary; or

- (ii) insurance or reinsurance undertaking; and
- (b) are directly involved in insurance or reinsurance distribution or form part of the management structure responsible for any staff directly involved in insurance or reinsurance distribution;

must be of good repute and, as a minimum, must not have been convicted of a serious criminal offence in respect of crimes against property or crimes related to financial activities or be an undischarged bankrupt.

(2) The Minister may, by regulations, supplement the good repute requirements in subsection (1).

(3) The Authority may establish arrangements under which insurance and reinsurance distributors are permitted to verify and certify the good repute of their employees and, where appropriate, their insurance or reinsurance intermediaries.

(4) To ensure compliance with the requirements of this section and section 38K, insurance and reinsurance undertakings must—

- (a) approve, implement and regularly review their internal policies and appropriate internal procedures;
- (b) identify a function to ensure the proper implementation of those policies and procedures, and inform the Authority at its request, of the name of the person responsible for that function; and
- (c) establish and maintain up-to-date records of all relevant documents regarding the application of this section and section 38K.

#### **Indemnity arrangements.**

38M.(1) Insurance and reinsurance intermediaries must hold professional indemnity insurance covering the whole of the EEA or some other comparable guarantee against liability arising from professional negligence, for at least—

- (a) EUR 1,250,000 for each claim; and
- (b) EUR 1,850,000 in aggregate per year for all claims;

unless that insurance or a comparable guarantee is provided by an insurance or reinsurance undertaking or other undertaking for which the intermediary

is acting or is empowered to act, or such an undertaking has assumed full responsibility for the intermediary's actions.

(2) Ancillary insurance intermediaries must hold professional indemnity insurance or comparable guarantees at a level prescribed by the Minister in regulations, taking into account the nature of the products sold and the activity carried out.

(3) An insurance, reinsurance or ancillary insurance intermediary must, on a permanent basis—

- (a) ensure that money paid—
  - (i) by the customer to the intermediary is treated as having been paid to the undertaking; and
  - (ii) by the undertaking to the intermediary is not treated as having been paid to the customer until the customer actually receives it;
- (b) have financial capacity amounting to 4% of the sum of annual premiums received, subject to a minimum of EUR 18,750; and
- (c) ensure that customers' money is only transferred via strictly segregated client accounts which cannot be used to reimburse other creditors in the event of insolvency or bankruptcy.

(4) This section applies subject to any regulatory technical standards adopted by the European Commission under Article 10(7) of EUIDD.

**Publication of 'general good' laws.**

38N.(1) The Authority is designated as the single point of contact responsible for providing information about any domestic legislation protecting the general good which—

- (a) applies to the carrying on of insurance and reinsurance distribution in Gibraltar; and
- (b) imposes specific requirements which are—
  - (i) additional to those imposed under this Part; or
  - (ii) stricter than those required under EUIDD including, in particular, information about whether and how any stricter provisions under Article 29(3) of EUIDD apply in Gibraltar.

(2) The Authority must publish on its website, in an appropriate form, information about any legislation to which subsection (1) applies and ensure that the information is updated on a regular basis.

**Authority's powers in relation to 'general good' laws.**

38O.(1) The Authority may take appropriate measures to prevent an insurance distributor established in another EEA State from carrying out activity in Gibraltar under the freedom to provide services or (where applicable) the freedom of establishment where the relevant activity–

- (a) is entirely or principally directed towards Gibraltar with the sole purpose of avoiding legal provisions which would apply if that insurance distributor had its residence or registered office in Gibraltar; and
- (b) seriously endangers the proper functioning of insurance and reinsurance markets in Gibraltar with respect to the protection of consumers.

(2) In subsection (1) “appropriate measures” means all the appropriate measures needed in order to protect the rights of consumers in Gibraltar.

(3) The Authority, before it takes any appropriate measures under subsection (1), must inform the relevant insurance distributor's home State competent authority.

(4) If any disagreement arises between the Authority and an insurance distributor's home State competent authority in relation to any action taken by the Authority under subsection (1), those authorities may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

**Cooperation and exchange of information with competent authorities of EEA States.**

38P.(1) The Authority must take steps to cooperate with competent authorities in other EEA States and to exchange information with them on insurance and reinsurance distributors in order to ensure the proper application of EUIDD.

(2) In particular, the Authority must share information on–

- (a) the good repute, professional knowledge and competence of insurance and reinsurance distributors, whether derived from the registration process or on an ongoing basis; and

- (b) any insurance and reinsurance distributor that has been subject to a sanction or other measure under sections 38ZG to 38ZM which is likely to lead to its removal from the register.

(3) Any person who receives or divulges information in connection with this Part is bound by the obligation of professional secrecy in section 3 of the Financial Services (Information Gathering and Co-Operation) Act 2013.

### **Complaints.**

38Q.(1) Customers and other interested parties may make complaints about insurance and reinsurance distributors to the Authority or any other entity that the Minister may designate by regulations (the “complaints authority”).

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

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

### **Out-of-court redress.**

38R.(1) Insurance and reinsurance distributors must ensure that they have adequate mechanisms for receiving and dealing with complaints from customers.

(2) An insurance and reinsurance distributor which is licensed under section 8 but carries on insurance distribution business by means of a branch or appointed representative in another EEA State must—

- (a) have in place and operate appropriate and effective procedures for registering and responding to complaints from customers in that EEA State; and
- (b) adhere to an appropriate alternative dispute resolution entity in that EEA State in respect of consumer disputes arising from its insurance distribution business in that State.

(3) The Financial Services Ombudsman Act 2016 applies to disputes arising between a consumer and an insurance distributor under this Part as it applies to a financial service dispute within the meaning of that Act.

(4) The Financial Services Ombudsman must cooperate in the resolution of cross-border disputes concerning rights and obligations arising under EUIDD.

*Information requirements and conduct of business rules***General principle.**

38S.(1) Insurance distributors, when carrying out insurance distribution, must always act honestly, fairly and professionally, in accordance with the best interests of their customers.

(2) Any information related to insurance distribution, including marketing communications, addressed by an insurance distributor to customers or potential customers must be fair, clear and not misleading and, in the case of marketing communications, must be clearly identifiable as such.

(3) subsection (2) applies without limiting the Consumer Protection (Unfair Trading) Act 2008.

(4) An insurance distributor must not—

- (a) be remunerated in a way that conflicts with its duty to act in the best interests of its customers; or
- (b) remunerate or assess the performance of its employees in a way which conflicts with that duty;

and, in particular, must not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to it or its employees to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs.

**General information provided by insurance intermediary or undertaking.**

38T.(1) An insurance intermediary must disclose the following to a customer in good time before an insurance contract is concluded—

- (a) its identity and address and that it is an insurance intermediary;
- (b) whether it provides advice about the insurance products sold;
- (c) the procedures under sections 38Q and 38R enabling customers and other interested parties to make complaints and seek out-of-court redress;



- (d) the register in which it has been included and the means for verifying that it has been registered; and
- (e) whether the intermediary is representing the customer or is acting for and on behalf of the insurance undertaking.

(2) An insurance undertaking must disclose the following to a customer in good time before an insurance contract is concluded—

- (a) its identity and address and that it is an insurance undertaking;
- (b) whether it provides advice about the insurance products sold; and
- (c) the procedures under sections 38Q and 38R enabling customers and other interested parties to make complaints and seek out-of-court redress.

**Conflicts of interest and transparency.**

38U.(1) An insurance intermediary must provide a customer with the following information in good time before an insurance contract is concluded—

- (a) whether it has a holding (direct or indirect) representing 10% or more of the voting rights or capital in a given insurance undertaking;
- (b) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding (direct or indirect) representing 10% or more of the voting rights or capital in the insurance intermediary;
- (c) in relation to any contract proposed or advised upon—
  - (i) whether it gives advice on a fair analysis basis;
  - (ii) whether it is under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings and, if so, the names of those insurance undertakings; or
  - (iii) where it does not give advice on a fair analysis basis and is not under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings, the names of the insurance

undertakings with which it may and does conduct business;

- (d) the nature of the remuneration received in relation to the insurance contract;
- (e) whether in relation to the insurance contract, it works on the basis of—
  - (i) a fee (remuneration paid directly by the customer);
  - (ii) a commission of any kind (remuneration included in the insurance premium);
  - (iii) any other type of remuneration, including an economic benefit of any kind offered or given in connection with the insurance contract; or
  - (iv) any combination of the types of remuneration in subparagraphs (i) to (iii).

(2) In subsection (1)(c)(i) and (iii) a “fair analysis basis” means a fair and personal analysis conducted in accordance with section 38V(4).

(3) Where a fee is payable directly by the customer, the insurance intermediary must inform the customer of the amount of the fee or, where that is not possible, of the method for calculating the fee.

(4) If any payments are made by a customer under an insurance contract after it is concluded (other than the ongoing premiums and scheduled payments) the insurance intermediary must, in respect of each payment, make the disclosures required under subsections (1) and (3).

(5) An insurance undertaking must inform a customer, in good time before an insurance contract is concluded, of the nature of any remuneration which the insurance undertaking’s employees will receive in relation to the insurance contract.

(6) If any payments are made by a customer under an insurance contract after it is concluded (other than ongoing premiums and scheduled payments) the insurance undertaking must, in respect of each payment, make the disclosure required under subsection (5).

**Advice and sales where no advice is given.**

38V.(1) Before concluding an insurance contract, an insurance distributor must—

- (a) specify the demands and needs of the customer, based upon information obtained from that customer; and
- (b) provide the customer with objective information about the insurance product in a comprehensible form, to allow the customer to make an informed decision,

and any contract proposed must be consistent with the customer's insurance demands and needs.

(2) Where advice is provided before a specific contract is concluded, the insurance distributor must provide the customer with a personalised recommendation explaining why the particular product would best meet the customer's demands and needs.

(3) The level of detail provided under subsections (1) and (2) may be varied according to the type of customer and the complexity of the insurance product being proposed.

(4) Where an insurance intermediary informs a customer that it gives advice on the basis of a fair and personal analysis, it must do so on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

(5) Before an insurance contract is concluded, and regardless of whether or not advice is given or whether the insurance product is part of a package to which section 38Z applies, an insurance distributor must provide the customer with the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision about the contract.

(6) The information provided under subsection (5) may be varied according to the type of customer and the complexity of the insurance product being proposed.

(7) Subsection (5) applies without limiting sections 80 and 81 of the Financial Services (Insurance Companies) (Solvency II Directive) Act 2015.

(8) In relation to the distribution of non-life insurance products, the information required under subsection (5) must be provided by means of a standardised insurance product information document drawn up by the manufacturer of the non-life insurance product.

(9) A standardised insurance product information document must—

- (a) be a short and stand-alone document provided on paper or on another durable medium;
- (b) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;
- (c) be no less comprehensible if, having been originally produced in colour, it is printed or photocopied in black and white;
- (d) be written in an official language used in the part of the EEA State where the insurance product is offered or, if agreed by the consumer and the distributor, in another language;
- (e) be accurate and not misleading;
- (f) contain the title “insurance product information document” at the top of the first page; and
- (g) include a statement that complete pre-contractual and contractual information on the product is provided in other documents.

(10) An insurance product information document must contain the following—

- (a) information about the type of insurance;
- (b) a summary of the insurance cover, including the main risks insured, the insured sum and, where applicable, the geographical scope and a summary of the excluded risks;
- (c) the means of payment of premiums and the duration of payments;
- (d) the main exclusions where claims cannot be made;
- (e) the obligations—
  - (i) at the start of the contract;
  - (ii) during the term of the contract; and
  - (iii) in the event that a claim is made;
- (f) the term of the contract, including its start and end dates; and

- (g) the means of terminating the contract.

(11) This section applies subject to any implementing technical standards adopted by the European Commission under Article 20(9) of EUIDD.

**Information provided by ancillary insurance intermediaries.**

38W. An ancillary insurance intermediary must comply with sections 38T(1)(a), (c) and (d) and 38U(1)(d).

**Information exemptions and flexibility.**

38X.(1) The information referred to in sections 38T to 38V does not need to be provided when an insurance distributor carries out distribution activities in relation to the insurance of large risks.

(2) The information referred to in sections 38ZE and 38ZF does not need to be provided to a professional client within the meaning of the Financial Services (Markets in Financial Instruments) Act 2018.

(3) Where an insurance distributor is responsible for the provision of mandatory occupational pension arrangements and an employee becomes a member of such an arrangement without having taken an individual decision to join it, the information referred to in sections 38S to 38ZA must be provided to the employee promptly after the employee's enrolment in the arrangement concerned.

(4) The Minister may by regulations—

- (a) make the provision by insurance distributors of the advice referred to in section 38V(2) mandatory for the sale of any insurance product or insurance products of a specified type; or
- (b) limit or prohibit the acceptance by insurance distributors of fees, commissions or other monetary or non-monetary benefits paid or provided by or on behalf of any third party in relation to the distribution of insurance products.

(5) Any regulations made under subsection (4)(a) apply, in respect of the products to which the regulations relate, to all insurance distributors, including those operating under the freedom to provide services or the freedom of establishment, when concluding insurance contracts with customers who reside or are established in Gibraltar.

(6) The Minister must ensure that the European Commission and EIOPA are informed of any regulations made under subsection (4).

**Information conditions.**

38Y.(1) Any information which is provided in accordance with sections 38T to 38V and 38ZE must be communicated to the customer—

- (a) free of charge;
- (b) in a clear and accurate manner, comprehensible to the customer;
- (c) in an official language of the EEA State in which the risk is situated, the EEA State of the commitment or in any other language agreed upon by the parties; and
- (d) on paper or, subject to subsection (2)—
  - (i) another durable medium, where the conditions in subsection (3) are met; or
  - (ii) a website, where the conditions in subsection (4) are met.

(2) Where the information is provided using a durable medium other than paper or by means of a website, a paper copy must be provided to the customer upon request and free of charge.

(3) The information may be provided using a durable medium other than paper if the following conditions are met—

- (a) the use of that durable medium is appropriate in the context of the business conducted between the insurance distributor and the customer; and
- (b) the customer has been given the choice between information on paper and on that durable medium, and has chosen the latter medium.

(4) The information may be provided by means of a website if—

- (a) it is addressed personally to the customer; or
- (b) the following conditions are met—
  - (i) the provision of that information by means of a website is appropriate in the context of the business conducted between the insurance distributor and the customer;

- (ii) the customer has consented to the provision of that information by means of a website;
- (iii) the customer has been notified electronically of the address of the website, and the place on the website where that information can be accessed; and
- (iv) the information will remain accessible on the website for such period of time as the customer may reasonably need to consult it.

(5) For the purposes of subsections (3) and (4), the provision of information using a durable medium other than paper or by means of a website is to be regarded as appropriate in the context of the business conducted between the insurance distributor and the customer if there is evidence that the customer has regular access to the internet, and the provision by the customer of an e-mail address for the purposes of that business is to be regarded as such evidence.

(6) In the case of telephone selling, the information given to the customer by the insurance distributor before the contract is concluded, including the insurance product information document, must be provided in accordance with the Financial Services (Distance Marketing) Act 2006 and, even if the customer has chosen to receive prior information on a durable medium other than paper in accordance with subsection (3), information must be provided by the insurance distributor to the customer in accordance with subsections (1) and (2) immediately after the insurance contract is concluded.

### **Cross-selling.**

38Z.(1) When an insurance product is offered together with an ancillary product or service which is not insurance, as part of a package or the same agreement, the insurance distributor must inform the customer whether it is possible to buy the different components separately and, if so, must provide an adequate description of the components of the agreement or package and the costs and charges for each component.

(2) Where the risk or insurance coverage resulting from such an agreement or package offered to a customer is different from that associated with the components taken separately, the insurance distributor must provide an adequate description of the different components of the agreement or package and the way in which their interaction modifies the risk or insurance coverage.

(3) Where an insurance product is ancillary to a product or service which is not insurance, as part of a package or the same agreement, the

insurance distributor must offer the customer the possibility of buying the product or service separately.

(4) Subsection (3) does not apply where an insurance product is ancillary to—

- (a) an investment service or activity within the meaning of the Financial Services (Markets in Financial Instruments) Act 2018;
- (b) a mortgage credit agreement within the meaning of the Financial Services (Mortgage Credit) Regulations 2016; or
- (c) a payment account within the meaning of the Financial Services (Payment Accounts) Regulations 2016.

(5) In any case where subsection (1) or (3) applies, the insurance distributor must specify the demands and needs of the customer in relation to the insurance products that form part of the overall package or the same agreement.

(6) Nothing in this section prevents the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).

(7) The Authority, acting on a case-by-case basis, may prohibit the sale of insurance together with an ancillary service or product which is not insurance, as part of a package or the same agreement, where it can demonstrate that such sales are detrimental to consumers.

(8) This section must be applied having regard to any guidelines on the assessment and supervision of cross-selling practices issued by EIOPA under Article 24(4) of EUIDD.

#### **Product oversight and governance requirements.**

38ZA.(1) Insurance undertakings and intermediaries that manufacture insurance products for sale to customers must maintain, operate and review a process for the approval of each insurance product, or significant adaptations of an existing insurance product, before it is marketed or distributed to customers.

(2) A product approval process must be proportionate and appropriate to the nature of the insurance product.

(3) A product approval process must—



- (a) specify an identified target market for each product; and
- (b) ensure that–
  - (i) all relevant risks to that identified target market are assessed;
  - (ii) the intended distribution strategy is consistent with the identified target market; and
  - (iii) reasonable steps are taken to ensure that the insurance product is distributed to the identified target market.

(4) An insurance undertaking must understand and regularly review the insurance products it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the product remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.

(5) Insurance undertakings and intermediaries that manufacture insurance products must make available to distributors all appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product.

(6) Where an insurance distributor advises on or proposes insurance products which it does not manufacture, it must have in place adequate arrangements to obtain the information referred to in subsection (5) and to understand the characteristics and identified target market of each insurance product.

(7) This section–

- (a) applies without limiting any other requirements under this Part, including those relating to disclosure, suitability or appropriateness, inducements and the identification and management of conflicts of interest; and
- (b) does not apply to insurance products which consist of the insurance of large risks.

(8) This section applies subject to any delegated acts adopted the European Commission under Article 25(2) of EUIDD.

*Additional requirements: insurance-based investment products*

**Scope of additional requirements.**

38ZB. Where an insurance intermediary or insurance undertaking carries on the distribution of insurance-based investment products, the requirements of sections 38ZC to 38ZF apply in addition to those of sections 38S to 38V.

**Prevention of conflicts of interest.**

38ZC.(1) An insurance intermediary or insurance undertaking carrying on the distribution of insurance-based investment products must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest (as determined under section 38ZD) from adversely affecting the interests of its customers.

(2) Any arrangements under subsection (1) must be proportionate to the type of distributor, the activities performed and the insurance products sold.

(3) This section applies without limiting section 38S.

**Conflicts of interest.**

38ZD.(1) Insurance intermediaries and insurance undertakings must take all appropriate steps to identify conflicts of interest between themselves (including their managers, employees or any person directly or indirectly linked to them by control) and their customers or between one customer and another, that arise in the course of carrying out any insurance distribution activities.

(2) Where organisational or administrative arrangements made by an insurance intermediary or insurance undertaking under section 38ZC to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to customer interests will be prevented, the insurance intermediary or insurance undertaking must clearly disclose to the customer the general nature or source of the conflict of interest, in good time before an insurance contract is concluded.

(3) Despite section 38Y, any disclosure under subsection (2) must–

- (a) be made on a durable medium; and
- (b) include sufficient detail, taking into account the nature of the customer, to enable that customer to reach an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.

(4) This section applies subject to any delegated acts adopted by the European Commission under Article 28(4) of EUIDD.

**Information to customers.**

38ZE.(1) Without limiting sections 38T or 38U(1) and (3), customers or potential customers must be provided with appropriate information in good time, prior to the conclusion of a contract, with regard to the distribution of insurance-based investment products and all costs and related charges.

- (2) That information must include—
  - (a) when advice is provided, whether the insurance intermediary or insurance undertaking will provide the customer with a periodic assessment of the suitability of the insurance-based investment products recommended to that customer, referred to in section 38ZF;
  - (b) as regards the information on insurance-based investment products and proposed investment strategies, appropriate guidance on, and warnings of, the risks associated with the insurance-based investment products or in respect of particular investment strategies proposed;
  - (c) as regards the information on all costs and related charges to be disclosed, information relating to the distribution of the insurance-based investment product, including the cost of advice, where relevant, the cost of the insurance-based investment product recommended or marketed to the customer and how the customer may pay for it, also encompassing any third party payments.
- (3) The information about all costs and charges, including costs and charges in connection with the distribution of the insurance-based investment product, which are not caused by the occurrence of underlying market risk must—
  - (a) be provided in aggregated form to allow the customer to understand the overall cost as well as the cumulative effect on the return of the investment;
  - (b) where the customer so requests, include an itemised breakdown of the costs and charges; and
  - (c) where applicable, be provided to the customer on a regular basis, at least annually, during the life cycle of the investment.
- (4) The information in subsections (1) to (3), which may be provided in a standardised format, must be provided in a comprehensible form in such a

manner that customers or potential customers are reasonably able to understand the nature and risks concerning the insurance-based investment product offered and, consequently, to take investment decisions on an informed basis.

(5) Without limiting sections 38U(1)(d) and (e), (4) or any regulations made under section 38X(4)(b), an insurance intermediary or insurance undertaking is regarded as fulfilling its obligations under section 38S(1), 38ZC or 38ZD where—

- (a) in connection with the distribution of an insurance-based investment product or an ancillary service, it—
  - (i) pays or is paid any fee or commission to or by any party other than the customer or a person acting on the customer's behalf; or
  - (ii) provides or is provided with any non-monetary benefit to or by any party other than the customer or a person acting on the customer's behalf; and
- (b) the payment or benefit—
  - (i) does not have a detrimental impact on the quality of the relevant service to the customer; and
  - (ii) does not impair the insurance intermediary's or insurance undertaking's compliance with the duty to act honestly, fairly and professionally in accordance with the best interests of its customers.

(6) The Minister may, by regulations—

- (a) impose further requirements on distributors in respect of the matters within this section; or
- (b) make the provision of the advice referred to in section 38ZF mandatory for sales of any or specified types of insurance-based investment products.

(7) Without limiting subsection (6), regulations under that subsection may, in particular—

- (a) further restrict or prohibit the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice; and

- (b) require any such fees, commissions or non-monetary benefits to be returned to the client or offset against fees paid by the client.

(8) Any regulations made under subsection (6) apply to all insurance intermediaries or insurance undertakings, including those operating under the freedom to provide services or the freedom of establishment, when concluding insurance contracts with customers who reside or are established in Gibraltar.

(9) This section applies subject to any delegated acts adopted by the European Commission under Article 29(4) of EUIDD.

**Assessment of suitability and appropriateness and reporting to customers.**

38ZF.(1) Without limiting section 38V(1) and (2), when providing advice on an insurance-based investment product, an insurance intermediary or insurance undertaking must obtain information regarding the customer's or potential customer's—

- (a) knowledge and experience in the investment field relevant to the specific type of product or service;
- (b) financial situation, including the ability to bear losses; and
- (c) investment objectives, including the person's risk tolerance;

which is necessary to enable the insurance intermediary or insurance undertaking to recommend to the customer or potential customer insurance-based investment products that are suitable for that person and, in particular, accord with that person's risk tolerance and ability to bear losses.

(2) An insurance intermediary or insurance undertaking must ensure that, where it provides investment advice recommending a package of services or products bundled as provided for in section 38Z, the overall bundled package is suitable.

(3) Without limiting section 38V(1) and (2), when carrying out insurance distribution activities other than those in subsections (1) and (2), in relation to sales where no advice is given, an insurance intermediary or insurance undertaking must ask the customer or potential customer to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded, in order to enable the insurance intermediary or insurance undertaking to assess whether—

- (a) the insurance service or product envisaged is appropriate for the customer; and
- (b) where a package of services or products bundled as provided for in section 38Z is envisaged, the overall bundled package is appropriate for the customer.

(4) Where, on the basis of information received under subsection (3), an insurance intermediary or insurance undertaking considers that the product is not appropriate for the customer or potential customer, the insurance intermediary or insurance undertaking must give the customer or potential customer a warning to that effect.

(5) Where a customer or potential customer does not provide the information requested under subsection (3) or provides insufficient information regarding the person's knowledge and experience, the insurance intermediary or insurance undertaking must warn the person that it is not in a position to determine whether the product envisaged is appropriate for that person.

(6) Without limiting section 38V(1) and (2), an insurance intermediary or insurance undertaking may carry out insurance distribution activity without the need to obtain the information or make the determination provided for in subsections (3) to (5) where no advice is given in relation to insurance-based investment products and all the following conditions are met—

- (a) the customer or potential customer resides or is established in Gibraltar;
- (b) the activity relates to either of the following insurance-based investment products—
  - (i) contracts which only provide investment exposure to financial instruments which are deemed to be non-complex under Directive 2014/65/EU and do not incorporate a structure which makes it difficult for the customer to understand the risks involved; or
  - (ii) other non-complex insurance-based investments;
- (c) the activity is carried out at the initiative of the customer or potential customer;
- (d) the customer or potential customer has been clearly informed that, in the providing the activity—

- (i) the insurance intermediary or insurance undertaking is not required to assess the appropriateness of the insurance-based investment product or insurance distribution activity provided or offered; and
  - (ii) the customer or potential customer does not benefit from the corresponding protection of the relevant conduct of business rules; and
- (e) the insurance intermediary or insurance undertaking complies with its obligations under sections 38ZC and 38ZD.

(7) A warning under subsection (4), (5) or (6)(d) may be provided in a standardised format.

(8) An insurance intermediary or insurance undertaking must establish a record that includes any document agreed between the insurance intermediary or insurance undertaking and a customer that sets out–

- (a) the rights and obligations of the parties; and
- (b) the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer;

and the rights and duties of the parties may be incorporated by reference to other documents or legal texts.

(9) An insurance intermediary or insurance undertaking must provide the customer, on a durable medium, with adequate reports on the service provided and those reports must include–

- (a) periodic communications to customers, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the customer; and
- (b) where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.

(10) An insurance intermediary or insurance undertaking, when providing advice on an insurance-based investment product and before the contract is concluded, must provide to the customer, on a durable medium and in compliance with section 38Y(1) to (3), a suitability statement specifying the advice given and how that advice meets the customer's preferences, objectives and other characteristics.

(11) Where a contract is concluded using a means of distance communication which prevents the suitability statement being provided in advance, the insurance intermediary or insurance undertaking may provide the suitability statement on a durable medium immediately after the customer is bound by the contract if the following conditions are met—

- (a) the insurance intermediary or insurance undertaking has given the customer the option of delaying the conclusion of the contract in order to receive the suitability statement before the contract is concluded; and
- (b) the customer has consented to receiving the suitability statement without undue delay after the contract is concluded.

(12) Where an insurance intermediary or insurance undertaking has informed a customer that it will carry out a periodic assessment of suitability, the periodic report must contain an updated statement of how the insurance-based investment product meets the customer's preferences, objectives and other characteristics.

(13) This section must be applied—

- (a) subject to any delegated acts adopted by the European Commission under Article 30(6) of EUIDD; and
- (b) having regard to any guidelines issued by EIOPA under Article 30(7) or (8) of EUIDD.

*Sanctions and other measures*

**Administrative sanctions and other measures.**

38ZG. For the purpose of performing its functions under this Part, the Authority may—

- (a) act directly or in collaboration with other competent or statutory authorities; or
- (b) institute legal proceedings.

**Sanctions for infringements.**

38ZH.(1) The Authority may take any of the actions specified in sections 38ZI to 38ZM if it is satisfied that an insurance undertaking or insurance intermediary has failed to comply with any conduct of business requirement in sections 38S to 38ZF, in relation to the distribution of insurance-based investment products.



(2) The Authority may take any of the actions specified in sections 38ZJ and 38ZK if it is satisfied that—

- (a) a person has failed to register their insurance or reinsurance distribution activities in accordance with section 38E;
- (b) an insurance or reinsurance undertaking or insurance or reinsurance intermediary has used or is using the distribution services of a person who is not registered under section 38E;
- (c) an insurance, reinsurance or ancillary insurance intermediary has obtained registration through false statements or other irregular means in breach of section 38E;
- (d) an insurance distributor has failed or is failing to meet the requirements of sections 38K to 38M;
- (e) an insurance distributor has failed to comply with any conduct of business requirements in sections 38S to 38ZA, in relation to any insurance product other than an insurance-based investment product.

(3) The Authority may take any of the following actions if it is satisfied that an infringement of this Part, other than one specified in subsection (1) or (2), is being or has been committed—

- (a) to publish a statement under section 38ZI;
- (b) to issue a cease and desist order under section 38ZJ; or
- (c) to impose a civil penalty of an amount not exceeding £10,000.

(4) Section 38ZM(4) applies to the recovery of a penalty imposed under subsection (3)(c).

(5) Where an obligation under this Part applies to an insurance or reinsurance distributor, in addition to any action taken against that entity, action may be taken against—

- (a) the members of its management or supervisory body; and
- (b) any other person who is responsible for the infringement.

**Public statement.**

38ZI.(1) The Authority may publish a statement specifying—

- (a) the nature of the infringement; and
- (b) the identity of the person who has committed it.

(2) Publication under this section may take any form, or combination of forms, that the Authority thinks appropriate.

**Cease and desist order.**

38ZJ. The Authority may order a person—

- (a) to cease any conduct which constitutes an infringement; and
- (b) to desist from any repetition of that conduct.

**Licence revocation.**

38ZK.(1) The Authority may by order revoke any licence under section 8 which it has issued to an insurance, reinsurance or ancillary insurance intermediary.

(2) Subsection (1) applies without affecting the Authority's powers under section 11.

**Temporary prohibition order.**

38ZL.(1) The Authority may by order (“a temporary prohibition order”) prohibit a specified individual, who is a member of the management body of an insurance intermediary or insurance undertaking and is responsible for an infringement, from exercising management functions—

- (a) within a specified insurance intermediary or insurance undertaking; or
- (b) in insurance intermediaries or insurance undertakings.

(2) A temporary prohibition order must specify a period during which it has effect.

**Civil penalties.**

38ZM.(1) The Authority may by order impose a penalty for an infringement of an amount not exceeding the higher of the following—

- (a) in the case of a legal person—

- (i) EUR 5,000,000 or up to 5% of the total annual turnover according to the last available accounts approved by the management body; or
  - (ii) up to twice the amount of the profits gained or losses avoided because of the infringement, where those can be determined;
- (b) in the case of an individual—
- (i) EUR 700,000; or
  - (ii) up to twice the amount of the profits gained or losses avoided because of the infringement, where those can be determined.

(2) A penalty under subsection (1)(a)(i) or (b)(i) may be imposed as an equivalent amount expressed in Sterling, based upon the exchange rate as at 22 February 2016.

(3) Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts under Directive 2013/34/EU, the relevant total turnover for the purpose of subsection (1) is the total annual turnover according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

(4) A penalty imposed under this section may be enforced as if it was a civil debt owed to the Authority.

**Effective application of sanctions and other measures.**

38ZN. When determining the type of administrative sanctions or other measures and the level of any civil penalty, the Authority must take account of all relevant circumstances, including where appropriate—

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the person responsible;
- (c) the financial strength of the person responsible, for example, as indicated by a legal person's total turnover or an individual's annual income;
- (d) in so far as they can be determined, the importance of profits gained or losses avoided by the person responsible;

- (e) in so far as they can be determined, the losses for customers and third parties caused by the infringement;
- (f) the level of cooperation of the responsible person with the Authority;
- (g) previous infringements by the responsible person; and
- (h) measures taken by the person responsible to prevent repetition of the infringement.

**Warning notices.**

38ZO.(1) Before taking action under section 38ZH(3)(c) or sections 38ZI to 38ZM in respect of an infringement, the Authority must give the person concerned a warning notice, stating the action proposed and the reasons for it.

(2) Subsection (1) does not apply if the Authority is satisfied that a warning notice—

- (a) cannot be given because of urgency;
- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action to be taken; or
- (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.

(3) A warning notice—

- (a) must give the recipient not less than 14 days to make representations; and
- (b) must specify a period within which the recipient may decide whether to make oral representations.

(4) The period for making representations may be extended by the Authority.

**Decision notices.**

38ZP.(1) This section applies where the Authority has—

- (a) issued a warning notice; or

- (b) dispensed with the requirement to do so under section 38ZO(2).

(2) After considering any representations made in accordance with section 38ZO, the Authority must issue—

- (a) a decision notice stating that the Authority will take the action specified in the warning notice;
- (b) a discontinuance notice stating that the Authority does not propose to take that action; or
- (c) a combined notice consisting of a decision notice stating that the Authority will take certain action specified in the warning notice and a discontinuance notice in respect of the remaining action.

(3) A decision notice takes effect, and the specified action may be taken—

- (a) at the end of the period for bringing an appeal if no appeal is brought; or
- (b) when any appeal is finally determined or withdrawn.

**Interim orders.**

38ZQ. The Authority may apply to the Supreme Court for permission to take action under this Part where a decision notice has been given and has not yet taken effect (whether or not a warning notice has been given).

**Appeals.**

38ZR.(1) The person on whom a decision notice is served may appeal to the Supreme Court.

(2) An appeal must be brought within the period of 28 days beginning with the date of the decision notice.

**Publication of sanctions and other measures.**

38ZS.(1) The Authority must promptly publish on its official website details of any administrative sanction or other measure that has been imposed for an infringement of this Part.

(2) The information published under subsection (1) must include—

- (a) the type and nature of the infringement; and
  - (b) the identity of the person responsible for it.
- (3) The Authority must take one of the steps in subsection (4) where—
- (a) following an obligatory prior assessment, it considers that it would be disproportionate to publish in accordance with subsection (1)—
    - (i) the identity of the legal person involved; or
    - (ii) the personal data of the individual involved; or
  - (b) it considers that publication in accordance with that subsection would jeopardise the stability of financial markets or an ongoing investigation.
- (4) Those steps are—
- (a) to defer publication until the reasons for non-publication cease to exist;
  - (b) to publish the decision on an anonymous basis if doing so ensures effective protection of the personal data concerned; or
  - (c) not to publish the decision if the steps in paragraphs (a) and (b) are considered to be insufficient to ensure—
    - (i) that the stability of the financial markets would not be put in jeopardy; or
    - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.
- (5) In the case of a decision to publish on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication will cease to exist.
- (6) Subsection (1) does not apply while an appeal could be brought or is pending.
- (7) Despite subsection (6), the Authority may apply to the Supreme Court for permission to publish a decision which is or may be subject to an

appeal and, if permission is granted, the Authority must without undue delay—

- (a) publish the decision together with a statement which—
  - (i) states that the decision may be the subject of an appeal and the time in which any appeal must be made; and
  - (ii) confirms whether it is the subject of an appeal; and
- (b) amend the information published under paragraph (a)—
  - (i) if an appeal is submitted after its initial publication; or
  - (ii) to reflect the outcome of any appeal.

(8) The Authority must inform EIOPA of any administrative sanction or other measure imposed under this Part but not published in accordance with this section, including any appeal against that sanction or measure and the outcome of the appeal.

#### **Reporting of breaches.**

38ZT.(1) The Authority must establish effective mechanisms to enable and encourage the reporting to it of possible or actual breaches of this Part.

- (2) Those mechanisms must include—
  - (a) specific procedures for the receipt and follow-up of reports;
  - (b) access for employees and other persons who report breaches committed within insurance or reinsurance distributors to—
    - (i) information and advice on the legal procedures and remedies available to protect the person against retaliation, discrimination or other types of unfair treatment, including on the procedures for seeking compensation; and
    - (ii) effective assistance from the Authority before any relevant authority involved in the person's protection against unfair treatment, including certification by the Authority in any employment dispute of the reporting person's status as a person who has reported a breach.
  - (c) protection of the identity of both the person who reports the breach and the individual who is allegedly responsible for the

breach, at all stages of the procedure unless disclosure is required by law in the context of further investigation or subsequent administrative or judicial proceedings.

**Submitting information to EIOPA on sanctions and other measures.**

38ZU.(1) The Authority must inform EIOPA of any administrative sanction or measure imposed under this Part but not published in accordance with section 38ZS.

(2) The Authority must provide EIOPA annually with aggregated information regarding all administrative sanctions and other measures imposed in accordance with section 38ZG.

(3) Where the Authority has disclosed an administrative sanction or other measure to the public, it must at the same time report it to EIOPA.

**Data protection.**

38ZV. The Data Protection Act 2004 applies to the processing of personal data under this Part.

*Transitional provision*

**Transitional period.**

38ZW. A general insurance intermediary's or life assurance intermediary's licence which was granted under this Act and had effect on the day before this section comes into operation is to continue to have effect and be treated as if it was granted under this Part but the holder of that licence must comply with section 38K by no later than 23rd February 2019.

**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, customers, 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 or customer 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.

(1A) Subsection (1) does not apply to an infringement of Part V(A) to which section 38ZH applies.

(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. This paragraph applies only to the extent that that the Financial Services (EEA) (Payment Services) Regulations 2010 do not apply.

**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, foundations, 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, foundations, 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, foundation, 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.

(1A) The activities in sub-paragraphs (1)(a) and (b) may only be undertaken in respect of a foundation by a person who is licensed as a professional trustee and professional foundation councillor in accordance with paragraph 2(2)(b).

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

(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—

- (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) *Omitted.*

## **2. Professional Trustee.**

(1) Holding out, or soliciting for or undertaking business, for profit or reward, in or from Gibraltar as—

- (a) a professional trustee; or
- (b) a professional foundation councillor.

(2) A professional trustee licence issued under this Act may authorise the holder to act as—

- (a) a professional trustee; or
- (b) a professional trustee and professional foundation councillor.

(3) A professional trustee licence may not be issued which authorises the holder only to act as a professional foundation councillor.

(4) The holder of a professional trustee licence may also perform the controlled activities in paragraph 1 without the need to hold a separate licence, but subject to complying with any requirement that applies to a person licensed to undertake those activities.

(5) References in this paragraph to a professional foundation councillor are to—

- (a) a member of the council of a foundation registered under the Private Foundations Act 2017; or
- (b) a person performing the corresponding role within a foundation (however described) established under the law of another jurisdiction.

(6) This paragraph does not apply to the following persons when performing duties within the ambit of their respective professions and which are carried out other than in connection with an activity regulated by this Act—

- (a) barristers or solicitors admitted and enrolled under the Supreme Court Act; or
- (b) statutory auditors or audit firms who are registered under Part III of the Financial Services (Auditors) Act 2009.

(7) This paragraph does not apply to any activity carried on by a person who acts as trustee of one or more personal pension schemes.

(8) In sub-paragraph (7), “personal pension scheme” has the same meaning as in the Financial Services (Pensions) Regulations 2017.

### **3. Insurance and Reinsurance Distribution.**

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

- (a) advising on, 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;
- (d) providing—
  - (i) information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media; or

- (ii) an insurance product ranking list, including price and product comparison or a discount on the price of an insurance contract, through a website or other media;

where the customer is able to directly or indirectly conclude an insurance contract using a website or other media;

(2) Insurance and reinsurance undertakings and their employees may also perform the controlled activities in paragraph (1) in accordance with Part V(A) without the need to hold a licence under that Part.

(3) The following activities do not constitute insurance or reinsurance distribution—

- (a) the provision of information on an incidental basis in the context of another professional activity where—
  - (i) the provider does not take any additional steps to assist in concluding or performing an insurance contract; and
  - (ii) the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;
- (b) claims management, expert appraisal of claims or loss adjusting on behalf of an insurance or reinsurance undertaking;
- (c) the mere provision of data and information on potential policyholders to insurance or reinsurance intermediaries or insurance or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract;
- (d) the mere provision of information about insurance or reinsurance products, an insurance or reinsurance intermediary or an insurance or reinsurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract.

(4) Paragraph (1) does not apply to insurance distribution activities carried out by ancillary insurance intermediaries where the following conditions are met—

- (a) the insurance is complementary to the product or service supplied by a provider and covers—



- (i) the risk of breakdown, loss of or damage to the product or non-use of the service supplied by that provider; or
- (ii) damage to, or loss of, baggage and other risks linked to travel booked with that provider; and
- (b) the premium paid for the insurance product does not exceed—
  - (i) EUR 600 a year; or
  - (ii) where the insurance is complementary to a service of not more than three months' duration, EUR 200 a person.

(5) Paragraph (1) does not apply to insurance and reinsurance distribution activities carried on outside the EEA or 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.

**7. Mortgage credit activity.**

Carrying on by way of business, in or from Gibraltar, any of the following activities, which constitute mortgage credit activity within the meaning of the Financial Services (Mortgage Credit) Regulations 2016–

- (a) acting as a mortgage creditor;
- (b) acting as a mortgage credit intermediary; or
- (c) providing mortgage advisory services.

**8. Establishing, operating or winding up a personal pension scheme.**

- (1) Establishing, operating or winding up a personal pension scheme.
- (2) Sub-paragraph (1) does not apply to activities which-
  - (a) are carried on by a person authorised under the 2011 Act to act as the manager of a UCITS and are carried on in connection with or for the purposes of managing a UCITS;
  - (b) are carried on by an AIFM authorised in accordance with the 2013 Regulations and are carried on in connection with or for the purposes of managing an AIF;
  - (c) are carried on by a person acting as a licensed insolvency practitioner.”.
- (3) In sub-paragraph (2)-

- (a) “the 2011 Act” means the Financial Services (Collective Investment Schemes) Act 2011 and “manager” and “UCITS” have the same meaning as in that Act;
- (b) “the 2013 Regulations” means the Financial Services (Alternative Investment Fund Managers) Regulations 2013 and “AIF” and “AIFM” have the same meaning as in those Regulations; and
- (c) “licensed insolvency practitioner” has the same meaning as in the Insolvency Practitioner Regulations 2014.

**9. Advising on pensions.**

- (1) Advising another person on-
  - (a) the merits of the person participating in, or being a member of, a personal pension scheme or an occupational pension scheme; or
  - (b) the acquisition or disposal of any interests, rights, benefits or other entitlements under a personal pension scheme or occupational pension scheme.
- (2) Offering or agreeing to give advice of the kind specified in sub-paragraph (1).
- (3) Sub-paragraph (1) does not apply to the giving of advice by a person (“P”) exclusively for P’s parent undertaking, P’s subsidiaries or for other subsidiaries of P’s parent undertaking.

“Parent undertaking” and “subsidiary undertaking” have the same meaning as in Part VII of the Companies Act 2014.
- (4) Sub-paragraph (1) does not apply to the giving of advice by a person (“P”) acting as trustee or personal representative-
  - (a) to a fellow trustee or personal representative for the purposes of the trust or estate; or
  - (b) to a beneficiary under the trust, will or intestacy concerning the beneficiary’s interest in the trust fund or estate, unless P is remunerated for doing so in addition to any remuneration P receives for discharging P’s duties as trustee or personal representative.

(5) Sub-paragraph (1) does not apply to the giving of advice in an incidental manner in the course of a professional activity that is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the giving of advice.

(6) Sub-paragraph (1) does not apply to the giving of advice in writing or other legible form if the advice is contained in a newspaper, journal, magazine or other periodical publication, or is given by way of a service comprising regularly updated news or information, if the principal purpose of the publication or service, taken as a whole and including any advertisements or other promotional material contained in it, is not that of leading or enabling persons to-

- (a) participate in or become a member of a personal pension scheme or occupational pension scheme; or
- (b) acquire or dispose of interests, rights, benefits or other entitlements under a personal pension scheme or occupational pension scheme.

(7) Sub-paragraph (1) does not apply to the giving of advice in any service consisting in the broadcast or transmission of television or radio programmes, if the principal purpose of the service, taken as a whole and including any advertisements or other promotional material contained in it, is neither of those mentioned in sub-paragraph (6)(a) or (b).

#### **10. Providing distributed ledger technology services.**

(1) Carrying on by way of business, in or from Gibraltar, the use of distributed ledger technology for storing or transmitting value belonging to others.

(2) For the purposes of sub-paragraph (1)–

“distributed ledger technology” or “DLT” means a database system in which–

- (a) information is recorded and consensually shared and synchronised across a network of multiple nodes; and
- (b) all copies of the database are regarded as equally authentic; and

“value” includes assets, holdings and other forms of ownership, rights or interests, with or without related information, such as agreements or transactions for the transfer of value or its payment, clearing or settlement.

(3) Sub-paragraph (1) does not apply to a person who is not a DLT Provider but who holds—

- (a) a licence under this Act to conduct investment business or a controlled activity (other than being a DLT Provider) and only uses DLT in the course of conducting that investment business or controlled activity; or
- (b) an authorisation granted under—
  - (i) another Supervisory Act;
  - (ii) the Insolvency Act 2011; or
  - (iii) the Gambling Act 2005;

and only uses DLT in the course of conducting the business or activity which the person is authorised to conduct.

(4) For the purposes of sub-paragraph (3)(b), “authorisation” includes a licence, registration, approval or other permission and “authorised” is to be construed accordingly.

(5) Sub-paragraph (1) does not apply to an EEA firm which is not a DLT Provider but which—

- (a) conducts in Gibraltar—
  - (i) investment business or a controlled activity (other than being a DLT Provider) which is regulated under the Principal Act; or
  - (ii) any other business or activity which is regulated under an enactment in sub-regulation (1)(b); and

(b) does so in exercise of rights arising under European Union law;

to the extent that it only uses DLT in the course of conducting that investment business, controlled activity, business or activity (as the case may be).

(6) In this paragraph—

a “DLT Provider” means a person licensed to carry on the controlled activity of providing distributed ledger technology services;

“EEA Firm” means an undertaking that has its head office or registered office in an EEA State and is regulated under the law of that State which is equivalent to the Principal Act or an enactment in subparagraph (3)(b); and

“Supervisory Act” has the meaning given in section 2(1) of the Financial Services Commission Act 2007.

**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.

- (i) a person who, in respect of mortgage credit activity within the meaning of the Financial Services (Mortgage Credit) Regulations 2016, is by virtue of regulation 7(4) of those regulations exempt from the need to hold a licence granted under section 8.

## **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.



**SCHEDULE 5**

**PART V(A): MINIMUM PROFESSIONAL KNOWLEDGE AND  
COMPETENCE REQUIREMENTS**

I. Non-life risks classified under classes 1 to 18 in Part A of Annex I to EUS2D–

- (a) minimum necessary knowledge of terms and conditions of policies offered, including ancillary risks if covered by such policies;
- (b) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law, relevant tax law and relevant social and labour law;
- (c) minimum necessary knowledge of claims handling;
- (d) minimum necessary knowledge of complaints handling;
- (e) minimum necessary knowledge of assessing customer needs;
- (f) minimum necessary knowledge of the insurance market;
- (g) minimum necessary knowledge of business ethics standards; and
- (h) minimum necessary financial competency.

II. Insurance-based investment products–

- (a) minimum necessary knowledge of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits;
- (b) minimum necessary knowledge of advantages and disadvantages of different investment options for policyholders;
- (c) minimum necessary knowledge of financial risks borne by policyholders;
- (d) minimum necessary knowledge of policies covering life risks and other savings products;

- (e) minimum necessary knowledge of organisation and benefits guaranteed by the pension system;
- (f) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law and relevant tax law;
- (g) minimum necessary knowledge of the insurance market and of the saving products market;
- (h) minimum necessary knowledge of complaints handling;
- (i) minimum necessary knowledge of assessing customer needs;
- (j) conflicts of interest management;
- (k) minimum necessary knowledge of business ethics standards; and
- (l) minimum necessary financial competency.

### III. Life risks classified in Annex II to EUS2D–

- (a) minimum necessary knowledge of policies including terms, conditions, the guaranteed benefits and, where applicable, ancillary risks;
- (b) minimum necessary knowledge of organisation and benefits guaranteed by the pension system of the relevant Member State;
- (c) knowledge of applicable insurance contract law, consumer protection law, data protection law, anti-money laundering law and, where applicable, relevant tax law and relevant social and labour law;
- (d) minimum necessary knowledge of the insurance and other relevant financial services markets;
- (e) minimum necessary knowledge of complaints handling;
- (f) minimum necessary knowledge of assessing consumer needs;
- (g) conflicts of interest management;
- (h) minimum necessary knowledge of business ethics standards; and

- (i) minimum necessary financial competency.