

**FINANCIAL SERVICES (INVESTOR COMPENSATION
SCHEME) ACT 2002****Principal Act**

Act. No. 2002-10	<i>Commencement</i>	24.7.2003
	<i>Assent</i>	7.8.2002

Amending enactments	Relevant current provisions	Commencement date
Acts. 2005-59	s.2(2)	8.12.2005
2006-36	ss. 1(1), 3(2) & (2A)	1.1.2007

EU Legislation/International Agreements involved:

Directive 91/308/EEC
Directive 97/9/EC

English sources:

None cited

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AN ACT TO TRANSPOSE INTO THE LAW OF GIBRALTAR EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 97/9/EC ON INVESTOR COMPENSATION SCHEMES.

Title and commencement.

1.(1) This Act may be cited as the Financial Services (Investor Compensation Scheme) Act 2002.

(2) This Act comes into operation on the day appointed by the Minister by notice in the Gazette and different days may be appointed for different purposes.

Interpretation.

2.(1) This Act creates an investor compensation scheme (“the scheme”) in Gibraltar.

(2) In this Act—

“The Board” means the Gibraltar Investor Compensation Board established under section 4;

“Branch” means a place of business which is a part of an investment firm which has no legal personality and which provides investment services for which the investment firm has been authorised; all the places of business set up in the territory of one EEA State by an investment firm with headquarters in the territory of another EEA State will be regarded as a single branch;

“The Directive” means European Parliament and Council Directive 97/9/EC on investor compensation schemes;

“Eligible investment” means the amount, at the market value on the date of declaration of a default under section 9(1) in an investment—

- (a) contained in an investment instrument as listed in section B of Schedule 1 to the Financial Services Act 1998;
- (b) made by an investor;
- (c) not arising out of transactions in connection with which there has been a conviction under the Criminal Justice Act, 1995 (or legislation in another country prohibiting money-laundering within the meaning of Article 1 of Directive 91/308/EEC); and

- (d) not eligible for compensation under the Deposit Guarantee Scheme Act 1997;

“Investment business” means any investment service as set out in Schedule 1 to the Financial Services Act 1998;

“Investment firm” and “European investment firm” shall be construed in accordance with section 3 of the Financial Services Act 1998;

“Investor” means any person who has entrusted money or financial instruments (as listed in section B of Schedule 1 to the Financial Services Act 1998) to an investment firm in connection with investment business but does not include persons listed in Annex 1 to the Directive;

“Joint investment” means an investment carried out for the account of two or more persons or over which two or more persons have rights that may operate against the signature of one or more of those persons;

“The Minister” means the Minister with responsibility for financial services.

Participants in the scheme.

3.(1) An investment firm which is authorised in Gibraltar under the Financial Services Act 1998 shall participate in the scheme if–

- (a) it has its head office in Gibraltar; or
- (b) it has its head office in a non-EEA State and any investor compensation scheme in which it participates in its State of incorporation or formation does not offer equivalent protection to investors in Gibraltar.

(2) Subject to subsection (2A), an investment firm which is a European investment firm may apply to the Board to participate in the scheme if the investor compensation scheme in which it participates in its EEA State of authorisation does not offer to investors in Gibraltar protection at least equivalent protection to that provided by the scheme.

(2A) An investment firm which is a European investment firm–

- (a) whose registered office is in Bulgaria (or in the case of a firm which, under Bulgarian law, has no registered office or which is a natural person, its head office) may not, until 31 December 2009, open a branch in Gibraltar unless it participates in the scheme in order to cover the difference between the level of

investor compensation required by the law of Bulgaria and the compensation payable under section 11(2);

- (b) whose registered office is in Romania (or in the case of a firm which, under Romanian law, has no registered office or which is a natural person, its head office) may not, until 31 December 2011, open a branch in Gibraltar unless it participates in the scheme in order to cover the difference between the level of investor compensation required by the law of Romania and the compensation payable under section 11(2).”.

(3) An investment firm which participates under subsection (2) may withdraw on giving the Board at least 6 months’ written notice.

(4) An investment firm which applies to participate under subsection (2) but whose application is refused may appeal by notice in writing to the Minister.

(5) An investment firm whose appeal under subsection (4) is refused may further appeal to the Supreme Court.

The Gibraltar Investor Compensation Board.

4.(1) The scheme shall be administered by the Gibraltar Investor Compensation Board.

- (2) The Board shall be appointed by the Minister and consist of—
 - (a) the Financial Services Commissioner as Chairman;
 - (b) the Investment Services Supervisor;
 - (c) an auditor, registered under Part I of the register kept by the Auditors’ Registration Board, nominated by the Gibraltar Society of Chartered and Certified Accountancy Bodies;
 - (d) a barrister or solicitor nominated by the General Council of the Bar in Gibraltar;
 - (e) two individuals nominated by the Gibraltar Bankers Association; and
 - (f) two individuals nominated by the Gibraltar Association of Stockbrokers and Investment Managers.

The Minister shall consult the Chairman before appointing the members nominated under paragraphs (c), (d), (e) and (f).

(3) If the relevant organisations who nominate members under paragraphs (c), (d), (e) and (f) of subsection (2) also nominate alternates, those alternates shall be appointed by the Minister (after consulting the Chairman) and shall serve in any case where the Chairman rules that a conflict of interest arises for the member concerned.

(4) Notice of the names of the members of the Board and their alternates (and any resignation, dismissal and new appointment) shall be published in the Gazette.

(5) A member (or alternate) of the Board shall hold office for the length of time specified in the letter of appointment and is eligible for reappointment if he has not resigned or been dismissed. A member (or alternate) may resign by notice in writing to the Minister at any time. A member (or alternate) may be removed by the Minister if—

- (a) he is incapacitated;
- (b) he is bankrupt or has made an arrangement with his creditors;
- (c) he has been convicted of an indictable criminal offence; or
- (d) he is otherwise unable or unfit to continue.

(6) The Board shall act with a quorum of three members, one of whom must be the Chairman.

(7) The Chairman shall have a second and casting vote, in the event of voting being equal.

(8) Subject to subsections (6) and (7), the Board may lay down its own rules of procedure, appoint sub-committees of persons appearing to it to be suitably qualified to carry out particular functions and grant contracts for services to outside persons (including the Financial Services Commission) for particular functions.

(9) The Board shall appoint auditors of its financial affairs. The auditors must be eligible for appointment as auditors of a company under the Companies Act, and shall report—

- (a) whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of the audit;
- (b) whether, in their opinion, proper accounting records have been kept by the Board;

- (c) whether the Board's balance sheet and accounts dealt with by the report are in agreement with the books of account; and
- (d) whether in their opinion and to the best of their information and according to the explanations given to them, the accounts give a true and fair view, in the case of the balance sheet of the Board's finances as at the end of the financial year, and in the case of the income and expenditure account of the Board's surplus or deficit for that financial year.

(10) The Board shall appoint a person to be its Secretary.

Status of Board.

5.(1) The Board shall be a corporate body with a seal which may only be applied in the presence of the Chairman and at least one other member of the Board.

(2) The members of the Board, their alternates, the Secretary and outside persons appointed under section 4(8) shall have immunity from prosecution or suit for all their actions or omissions while carrying out the functions of the Board unless any action or omission is shown to have been in bad faith.

(3) The Board may sue and be sued in its name.

(4) Documents may be served on the Board by leaving them at, or sending them by registered post to, the office of the Board.

(5) The members of the Board, their alternates, the Secretary and outside persons appointed under section 4(8) shall keep confidential any information obtained by them in the course of performing their duties under this Act, and shall not reveal any such information to any person except as permitted by this Act or any other Act or in compliance with the directions of the Supreme Court.

(6) A person who discloses information, or who causes or permits the disclosure of information, in contravention of subsection (5), is guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both;
- (b) on summary conviction, to a fine of up to level 2 on the standard scale.

Financial year.

6.(1) The first financial year of the scheme is, unless the Board decides otherwise, the period ending at the end of 2002. From then, the financial year of the scheme shall be a year beginning on 1 January.

(2) Within three months after the end of the financial year, the Board shall prepare and have audited the accounts of the scheme for that year.

(3) The Board shall publish, within three months after the end of the audit of the accounts for any financial year, a report on the activities during that year together with the audited accounts.

(4) The Board shall ensure that proper records are kept so that the financial position of the scheme can be ascertained with reasonable accuracy at any time.

Establishment of funds.

7.(1) The Board shall establish—

- (a) an administration fund; and
- (b) as the need arises, a fund for each default.

(2) The Board shall hold, manage and apply the funds in accordance with this Act.

(3) The funds shall consist of—

- (a) money paid to the Board as administrative fees by all participants;
- (b) money levied on participants by the Board;
- (c) money received by the Board as income from investments;
- (d) money borrowed by the Board for the purposes of the scheme;
- (e) money received by the Board on any policy of insurance it takes out;
- (f) money received by the Board from a liquidator or receiver of a participant in default; and
- (g) any other money required to be paid into the funds or received by the Board for the purposes of the scheme.

(4) The Board may invest any money in the funds in—

- (a) stock issued by the Government of any EEA State;
- (b) Government of Gibraltar debentures or bonds;
- (c) deposits in the Gibraltar Savings Bank; and
- (d) deposits in credit institutions authorised under the Financial Services (Banking) Act 1992.

(5) For the purposes of the scheme the Board may borrow money and take out insurance policies, but nothing in this Act implies or imposes a duty on the Board to take out any insurance policy.

(6) There shall be paid out of the funds—

- (a) money determined by the Board as compensation for investors;
- (b) money required for the repayment of (or interest on or charges in connection with) any money borrowed, or for the payment of premiums on any insurance policies taken out, for the purposes of the scheme;
- (c) the costs incurred in administering the scheme and the funds, including the expenses of the members of the Board, and payments to persons to whom contracts are granted under section 4(8); and
- (d) any other money authorised to be paid out by the Board for the purposes of the scheme.

Continued participation.

8.(1) An investment firm which has given notice of withdrawal under section 3(3) shall continue to be treated as a participant until the expiry of 6 months from the date of the notice.

(2) An investment firm shall not be treated as a participant if it is itself the subject of a declaration of default between the time of the declaration of default of another participant and the notice of any levy following that default.

(3) An investment firm which was, at the time of a declaration of default under section 9(1), a participant in the scheme (unless subsection (2) applies to it) shall continue to be treated as a participant for the purposes of a levy even if it is no longer, at the time of any levy following that default, a participant.

Default.

9.(1) A participant shall be in default if the Financial Services Commissioner so declares.

(2) The Financial Services Commissioner shall make the declaration under sub-section (1) within 21 days of any of the following–

- (a) the Financial Services Commissioner taking the view that, for reasons directly related to its financial circumstances, the participant appears unable to meet obligations to investors arising out of investors' claims in relation to investments held through it; or
- (b) in respect of a participant incorporated in Gibraltar–
 - (i) a winding-up order being made;
 - (ii) a voluntary winding-up resolution being passed under section 204¹ of the Companies Act;
 - (iii) a creditors' meeting being held or called under section 145² of the Companies Act;
 - (iv) a receiver being appointed (whether by a court or otherwise); or
 - (v) a voluntary arrangement with its creditors being made; or
- (c) in respect of a participant incorporated outside Gibraltar, the Financial Services Commissioner considering that an event corresponding to any of those mentioned in paragraph (b) has occurred.

Compensation.

10.(1) The Board shall, subject to section 11, pay compensation in pounds sterling in respect of an eligible investment if–

- (a) a participant is in default; and
- (b) the Board is satisfied that, on application (in the form prescribed by the Board) by or for a person claiming to be entitled to the eligible investment (“the claimant”), and on the basis of evidence produced by or for that claimant or

¹ As a consequence of the re-numbering of the Companies Act now s. 268

² As a consequence of the re-numbering of the Companies Act now s. 205

independently available to the Board, the participant in default holds or controls that eligible investment.

(2) The Board shall be in a position to pay the compensation for verified claims within three months of the establishment of the claim. The Board may, in exceptional circumstances, apply to the Financial Services Commissioner for an extension of this period by a further period of up to three months.

(3) The Board shall make administrative arrangements for verifying claims. These arrangements shall include—

- (a) providing a clearly understandable application form for claimants (in English in Gibraltar, and in the official language or languages of the EEA State where a branch of an investment firm is situated);
- (b) providing for the exercise of the Board's right of subrogation under section 16; and
- (c) requiring claimants to give—
 - (i) their name and address;
 - (ii) the capacity in which they claim;
 - (iii) evidence of the eligible investments;
 - (iv) proof that they have made a claim to the liquidator or receiver (or equivalent in another country), where applicable, of the participant in default; and
 - (v) any other information or documents reasonably required by the Board.

Payment of compensation.

11.(1) The amount of compensation due to each successful claimant shall be calculated as specified in this section.

(2) The total amount of compensation to any claimant shall be limited to the lesser of—

- (a) 90% of the total amount of all eligible investments held by that claimant with the investment firm in default (wherever held);
or

- (b) the sterling equivalent, as calculated under sub-section (6) on the date of declaration of default under section 9(1), of euros 20,000.

(3) Subject to sub-sections (4) and (5), an eligible investment held in a joint investment shall be divided according to the holders' shares in the investment or equally if there is no indication available to the Board of the share of each holder.

(4) A business partnership, association or grouping of a similar nature without separate legal personality shall be treated as one claimant.

(5) Eligible investments held by trustees or under equivalent arrangements in any country (except in collective investment undertakings) shall be treated—

- (a) as one investment, if under the trust there is only one beneficiary of the trust or if held as a bare trustee or nominee;
- (b) as separate investments, if each of the beneficiaries of the trust can be separately identified and has a separate right under the trust before the date of declaration of the default under section 9(1),

and the beneficiary or beneficiaries shall be paid the compensation.

(6) An eligible investment held in the currency of an EEA State other than sterling or in euros shall be translated into sterling by taking the value of the euro and other EEA currencies at the rates published in the Official Journal of the European Communities on or nearest to the date of declaration of the default under section 9(1).

(7) The compensation to which a claimant is entitled shall be reduced by the amount of any payment the claimant actually receives or is entitled to in respect of the eligible investments, including—

- (a) from an investor compensation scheme elsewhere;
- (b) from an insurance policy taken out by the investor or on his behalf in respect of the investment;
- (c) from the liquidator or through the receiver (or equivalent in another country) of the participant in default; or
- (d) following any right of set-off at the date of declaration of the default under section 9(1).

(8) If a European investment firm which is a participant in the scheme under section 3(2) is in default, the Board shall ask the relevant authority in the relevant EEA State to supply it with full details of—

- (a) the default;
- (b) the amount of compensation paid to each claimant in Gibraltar (or to which each claimant in Gibraltar is entitled) under that State's investor compensation scheme;
- (c) any subrogated or other right to recover compensation paid or any claim that State's scheme may have which will reduce the Board's liability to pay compensation; and
- (d) any other information the Board may require to establish the amount of compensation payable under the scheme.

(9) If an investment firm with a branch in the territory of an EEA State participates in that State's scheme and is in default, the Board shall co-operate with the competent authority in that State and supply it with details corresponding to those in sub-section (8).

(10) The Board may delay payment to a claimant until determination of any criminal charge brought against the claimant, investor or any other person entitled to, or interested in respect of, an eligible investment under the provisions of the Criminal Justice Act 1995 (or legislation in another country prohibiting money-laundering within the meaning of Article 1 of Directive 91/308/EEC).

(11) A claimant who is dissatisfied with a decision of the Board relating to compensation may appeal to the Supreme Court who may direct the Board to take any action which the Board may take under this Act.

Annual fees.

12.(1) In respect of each financial year of the scheme, each participant shall pay an annual fee of an amount determined by the Board. In determining the amount of the fee for any financial year, the Board shall seek to cover by the fees its expected administrative expenses in that year together with any outstanding shortfall from previous financial years of administrative expenses over receipts.

(2) The annual fee in respect of any financial year becomes due—

- (a) in the case of an investment firm which becomes a participant at any time during that financial year, at that time (but such firm shall only be required to pay the fee in proportion to the number of months remaining in that financial year); and

- (b) in the case of any other participant, at the beginning of that financial year or at any other time the Board may decide.

(3) If, at the time it would be determining the amount of the annual fee for a forthcoming financial year, it appears to the Board that there will be a sufficient credit balance carried forward from the previous financial year to cover all or part of the expected administrative expenses of the Board in the next financial year, the Board may determine to waive all or part of the annual fee for that year and shall notify the participants accordingly.

Levies on participants.

13.(1) If a participant is in default, the Board may, in accordance with this section, impose on all the other participants in the scheme at the date of default one or more levies to meet the costs of and incidental to the payment of compensation under the scheme.

(2) The Board may make rules, with the approval of the Minister, to provide for the compensation liability of each participant in the event of a default; such rules shall take account of the proceeds of any insurance policy taken out by the Board or a participant in respect of a default.

(3) The amount to be raised by the first levy imposed following the default of a participant shall be the amount which the Board estimates will be the costs referred to in sub-section (1). If it is necessary to impose any further levy or levies, the amount to be raised shall be based on the amount by which the total raised by the earlier levy or levies falls short of the Board's estimate of those costs or, as the case may require, of the amount of those costs as finally determined.

(4) If the total raised by a levy or levies exceeds the amount of the costs referred to in sub-section (1), as finally determined, the Board shall repay the excess to the participants in the same proportions as the contributions made.

(5) Where the Board imposes a levy, it shall give written notice to each participant liable to contribute stating—

- (a) the amount of the participant's contribution;
- (b) the method by which it is calculated; and
- (c) the date on which it is due (which will not be earlier than 14 days after the date of the notice).

(6) If, at any time after a levy is imposed, any participant liable for a contribution to that levy is itself declared under section 9(1) to be in default

before paying its contribution, that liability shall be cancelled (so that the total amount raised by the levy will be reduced accordingly).

Co-operation.

14.(1) Each participant shall co-operate with the Board in making available to the Board all information it requires (in the form it requests) to carry out its functions.

(2) The duty of co-operation extends to any successor of the participant, including—

- (a) a liquidator, if the participant is being wound up;
- (b) a receiver, if the participant is in receivership; and
- (c) any other person who appears to the Board to be carrying out duties similar to those in paragraph (a) or (b) in respect of the participant or has continuing responsibility for the affairs of the participant.

Liquidation of participant in default.

15.(1) The liquidator or receiver of a participant in default shall co-operate with the Board in providing it with all the information it requires (in the form it requests) to carry out its functions. In particular, this duty extends to information which will assist the Board in exercising its rights of subrogation under section 16.

(2) The Board shall be—

- (a) in the position of a creditor of a participant in default;
- (b) entitled to nominate a member (or alternate) of the Board or any other appropriately qualified person to sit upon any creditors' committee or committee of inspection of the participant; and
- (c) entitled to receive any notice addressed to creditors and to attend (and vote at) any creditors' meeting under the Companies Act.

(3) The liquidator or receiver of a participant in default shall pay the Board any amount realised in respect of an eligible investment up to the amount of compensation paid or payable by the Board to the claimant.

Subrogation.

16.(1) The Board has the right of subrogation to the rights of claimants who apply for compensation under the scheme.

(2) No compensation shall be paid to any claimant in respect of any eligible investment until that claimant has agreed in writing that—

- (a) his rights in respect of that investment will vest in the Board;
- (b) he will provide any assistance the Board may ask to enable the Board to exercise those rights;
- (c) he will pay the Board any amount he receives in respect of those rights, after deduction of any amount the Board may be required to repay him under subsection (3); and
- (d) any prospect of recovering an amount in excess of the compensation paid or payable will vest in the Board, who may settle the claim.

(3) Any amount received by the Board under this section shall be paid into the fund established in respect of the default in question. The Board shall pay each claimant any amount which it receives in respect of his eligible investment and which exceeds—

- (a) the amount of compensation paid or payable in respect of the particular eligible investment; and
- (b) any costs incurred by the Board specifically in relation to that investment.

Failure to comply with the scheme.

17.(1) If a participant fails to comply with this Act or any request made by the Board under it, the Board shall inform the Financial Services Commissioner who shall—

- (a) take all measures appropriate, including using his powers under the Financial Services Act 1989, to ensure that the investment firm meets its obligations; and
- (b) withdraw the authorisation granted to that investment firm under section 6 of the Financial Services Act 1998 if the firm continues to fail to comply with this Act or a request made by the Board under it.

(2) Any eligible investment held by the investment firm on the date the authorisation is withdrawn under subsection (1)(b) shall continue to be covered by the scheme and that firm shall continue to be liable for the

annual fees under section 12 and any levy or levies imposed under section 13 and obliged to comply with sections 14 and 15 in relation to eligible investments it continues to hold.

Compliance with requests by the Board.

18.(1) If any person fails to provide the Board with any information it has requested under section 15 or 16, the Board shall inform the Financial Services Commissioner.

(2) The Financial Services Commissioner may by notice in writing require the person requested to provide information to do so at a time and place specified in the notice.

(3) A person is guilty of an offence and liable on summary conviction to a fine of up to level 5 on the standard scale if he—

- (a) fails without a reasonable excuse to provide the information required at the time and place required under sub-section (2);
- (b) fails without a reasonable excuse to answer any question properly put to him by the Board under section 14 or 15; or
- (c) intentionally obstructs the Board's investigations under section 14 or 15.

Non-compliance with scheme by a European Investment Firm.

19.(1) If a European investment firm which participated in the scheme under section 3(2) fails to comply with this Act, the Board shall inform the Financial Services Commissioner and the relevant competent authority in the EEA State concerned and request the latter—

- (a) to take measures to ensure that the institution complies with this Act; and
- (b) to inform the Board what measures it has taken.

(2) If the Board considers that the measures of the type referred to in sub-section (1) have not been taken or have been taken but are inadequate, it may give notice to the relevant competent authority that it will exclude the investment firm concerned from the scheme if the firm does not comply with this Act within 12 months from the date of the notice.

(3) If, within 12 months from the date of the notice, the investment firm concerned is still not complying with this Act, the Board may, with the consent of the relevant competent authority, exclude it from the scheme.

(4) If an investment firm is excluded under this section, it shall immediately inform all its investors with its Gibraltar branch that it no longer participates in the scheme.

(5) An eligible investment held at the moment of exclusion by an investment firm which is excluded under this section, which is no longer eligible to participate or which withdraws from the scheme under section 3(3) shall continue to be covered by the scheme and the firm shall still be liable to pay the annual fees under section 12 and any levy or levies imposed under section 13 and shall comply with sections 14 and 15 in relation to eligible investments it continues to hold.

Non-compliance with scheme in an EEA State .

20.(1) If the relevant competent authority of, or person responsible for a scheme in, an EEA State notifies the Financial Services Commissioner that an investment firm licensed in Gibraltar has failed to comply with the terms of an investor compensation scheme in which the firm participates, the Commissioner shall—

- (a) inform the Board of the notification;
- (b) take all measures appropriate, including using his powers under the Financial Services Act 1989 to ensure that the firm concerned complies with the scheme in that EEA State, in accordance with the steps required by the relevant competent authority or person responsible;
- (c) inform the relevant competent authority or person responsible of his actions; and
- (d) if the relevant competent authority or person responsible is in an EEA State other than the United Kingdom inform the Commission of the European Communities of his actions.

(2) If the Financial Services Commissioner receives notice from the relevant competent authority or person responsible in that EEA State that no steps have been taken by the investment firm (or that they are inadequate) to comply with the scheme in that State, the Commissioner may, within 12 months from the date of that notice, cancel the firm's authorisation. In that case if the relevant competent authority or person responsible is in an EEA State other than the United Kingdom he shall also inform the Commission of the European Communities.

Co-operation with other authorities.

21. The Financial Services Commissioner and the Board shall consult the relevant competent authorities and the persons responsible for the investor

compensation schemes in EEA States and seek to reach agreement with those authorities and persons about–

- (a) the procedures to be followed if a participant in Gibraltar defaults;
- (b) the amounts of compensation payable (after deductions, if any) under each scheme; and
- (c) the procedures to be followed under sections 19 and 20.

Information to investors.

22.(1) Participants in the scheme (in whatever capacity) shall make information available in a readily comprehensible form in explanatory material to actual and intending investors about–

- (a) the scheme and any other schemes to which the participant belongs; and
- (b) a summary of the provisions of the scheme and any other schemes, including details of the amount and scope of cover offered.

(2) Participants shall also, on request, inform actual and intending investors about the conditions for compensation and the procedures for claiming it.

(3) The information in sub-sections (1) and (2) shall be given in English in Gibraltar and in the official language or languages of the EEA State where a branch of an investment firm is established.

(4) Advertisements inviting an investment (or which might lead to an investment being made) may not refer to the cover offered by the scheme and any other schemes to which the participant belongs. However, advertisements may make a factual reference to the existence of the scheme and any other schemes to which the participant belongs.

(5) The information required by sub-sections (1) and (2), given in explanatory material to actual or intending investors, is not an advertisement for the purposes of sub-section (4).

(6) Investment firms which are not participants in the scheme (for whatever reason) shall inform actual and intending investors of that fact in clear and comprehensible language in explanatory material.

(7) The Board shall issue recommended wording for giving the information required by this section.

Tax treatment.

23.(1) For the purposes of the Income Tax Act, a participant–

- (a) may deduct as an allowable expense any money paid as a contribution to the funds (whether as a fee or on any levy); and
- (b) shall treat as a trading receipt any repayment made by the Board under section 13(4).

(2) The income of the Board shall be exempt from income tax and all other taxes, and any property of the Board shall be exempt from all duties and rates levied by the Government of Gibraltar.

Information to EC Commission.

24. The Financial Services Commissioner shall notify the Commission of the European Communities of the names and titles of all the participants in the scheme, in whatever capacity they participate.

