

**MARKET ABUSE ACT 2005****Principal Act**

<b>Act. No. 2005-44</b>	<i>Commencement</i>	4.8.2005
	<i>Assent</i>	2.8.2005

Amending enactments	Relevant current provisions	Commencement date
LN. 2010/057	ss. 41(1)(d) & 41A	29.3.2010

**English sources:**

None cited

**EU Legislation/International Agreements involved:**

Directive 93/22/EEC

Directive 2000/12/EC

Directive 2003/6/EC

**ARRANGEMENT OF SECTIONS**

Section

**PART I  
PRELIMINARY**

1. Title and commencement.
2. Interpretation and scope.

**PART II  
INSIDER DEALING AND MARKET MANIPULATION**

3. Meaning of “Insiders”.
4. Inside information.
5. Market abuse.
6. Exceptions to section 5.
7. Territorial scope – Market abuse.
8. Actions for damages.
9. Offences.

**PART III  
PUBLIC DISCLOSURE OF INFORMATION**

10. Disclosure of information.
11. Legitimate interests for delaying disclosure of information.
12. Lists of insiders.
13. Managers’ transactions.
14. Protected Disclosures.
15. Application of Part and actions for damages.

**PART IV  
INVESTIGATIONS**

16. Investigations into alleged market abuse.
17. Penalty for failure to comply with requirement under section 16.
18. Restrictions on disclosure of information.
19. Exceptions from restrictions on disclosure.
20. Behaviour to be taken into account in an examination of the market.
21. Consultation and market review.

**PART V  
POWERS EXERCISABLE TO ASSIST EEA AUTHORITIES**

22. Power to assist an EEA authority.

---

**PART VI**  
INVESTMENT RECOMMENDATIONS

23. Scope of this Part.
24. Disclosure of identity of producers.
25. Fair Presentation.
26. Additional obligations in relation to fair presentation.
27. Disclosure of interests etc.
28. Additional obligations in relation to disclosure of interests or conflicts of interest.
29. Non-written investment recommendations.
30. Disclosure of identity of persons disseminating investment recommendations.
31. Dissemination of altered investment recommendations.
32. Dissemination of summaries of investment recommendations.
33. News reporting on investment recommendations.
35. Actions for damages.

**PART VII**  
MISCELLANEOUS

36. Proceedings under this Act.
37. Entry of premises under warrant.
38. Offences by corporate bodies, partnerships and unincorporated associations.
39. Jurisdiction and procedure in respect of offences.
40. Sanction for prosecution.
41. Powers of the Authority in respect of authorised persons and licensees.
- 41A. Powers in relation to persons not regulated by the Authority.
42. Power to make regulations and orders.
43. Repeal of the Insider Dealing Act.

**SCHEDULE 1**  
SPECIAL DEFENCES



AN ACT TO IMPLEMENT INTO THE LAW OF GIBRALTAR DIRECTIVE 2003/6/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 28 JANUARY 2003 ON INSIDER DEALING AND MARKET MANIPULATION (MARKET ABUSE).

## PART I PRELIMINARY

### **Title and commencement.**

1. This Act may be cited as the Market Abuse Act 2005 and comes into operation on the day of publication.

### **Interpretation and scope.**

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

“accepted market practices” means practices that are reasonably expected in the financial market or markets in question and are accepted by the competent authority or, in the case of a market situated in another EEA State, the EEA authority;

“behaviour” includes any action or inaction;

“company” means any body (whether or not incorporated and wherever incorporated or constituted) which is not a public sector body;

“competent authority” means such persons or body as the Minister may by regulations appoint from time to time, to exercise the powers, discretions and functions conferred on the competent authority under this Act;

“credit institution” means any person as defined in Article 1(1) of Directive 2000/12/EC of the European Parliament and of the Council;

“dealing”, in relation to a security, means acquiring or disposing of the security whether as principal or agent or directly or indirectly, and includes agreeing to acquire or dispose of the security, and entering into and bringing to an end a contract creating it;

the “Directive” means Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse);

“distribution channels” means a channel through which information is, or is likely to become, publicly available;

“EEA authority” means the authority or authorities designated by an EEA State in accordance with Article 11 of the Directive;

“EEA State” means a State which is a Contracting Party to the EEA Agreement and includes Gibraltar;

“investment firm” means any person as defined in Article 1(2) of Council Directive 93/22/EEC;

“investment recommendation” means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several securities or the issuers of securities, including any opinion as to the present or future value or price of such securities, intended for distribution channels or for the public;

an “issuer”, in relation to any securities, means any company, public sector body or individual by which or by whom such securities have been or are to be issued;

“media” means—

- (a) a newspaper, journal, magazine or other periodical publication;
- (b) a service (including the internet) comprising regularly updated news or information; or
- (c) any service consisting of the broadcast or transmission of television or radio programmes.

This definition does not include any publication or service the principal purpose of which (taken as a whole and including any advertisements or other promotional material contained in it) is to provide advice—

- (a) to a person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor, on the merits of his buying, selling, subscribing for or underwriting securities or contractually based investments;
- (b) to a person exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment; or

- (c) leading or enabling a person to buy, sell, subscribe for or underwrite securities or contractually based investments;

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

“parent undertaking” has the same meaning as in section 2 of the Companies (Consolidated Accounts) Act, 1999;

“participating interest” has the same meaning as in section 4 of the Companies (Consolidated Accounts) Act, 1999;

“person discharging managerial responsibilities within an issuer” means a person who is–

- (a) a member of the administrative, management or supervisory bodies of the issuer; or
- (b) a senior executive, having regular access to inside information relating, directly or indirectly, to the issuer, and the power to make managerial decisions affecting the future developments and business prospects of this issuer;

“person closely associated with a person discharging managerial responsibilities within an issuer” means–

- (a) the spouse of the person discharging managerial responsibilities;
- (b) any dependent children of the person discharging managerial responsibilities;
- (c) any other relatives of the person discharging managerial responsibilities, who have shared the same household as that person for at least one year on the date of the transaction concerned; or
- (d) any legal person, trust or partnership, whose managerial responsibilities are discharged by a person discharging managerial responsibilities within an issuer or a person referred to in paragraphs (a) to (c) or which is directly or indirectly controlled by such a person, or that is set up for the benefit of such a person, or whose economic interests are substantially equivalent to those of such person;

“person professionally arranging transactions” includes an investment firm or a credit institution;

“public sector body” means—

- (a) the Government of Gibraltar or of any other country or territory;
- (b) a local authority;
- (c) any international organisation the members of which include an EEA State; or
- (d) the central bank of any sovereign state;

“publicly available”, in relation to information, means information to which a large number of persons have access;

“related investment”, in relation to a security, means an investment whose price or value depends on the price or value of the security;

“regulated market” means—

- (a) all markets which are established under the rules of a United Kingdom or Gibraltar recognised investment exchange;
- (b) the market known as OFEX;
- (c) all other markets which are regulated markets under Directive 93/22/EEC;

“research or other information recommending or suggesting investment strategy” means—

- (a) information produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce recommendations or a natural person working for them under a contract of employment or otherwise, that, directly or indirectly, expresses a particular investment recommendation in respect of a security or an issuer of securities;
- (b) information produced by persons other than the persons referred to in paragraph (a) which directly recommends a particular investment decision in respect of a security;

“securities” means—

- (a) shares in companies and other securities equivalent to shares in companies;

- (b) bonds and other forms of securitised debt which are negotiable on the capital market;
- (c) any other securities normally dealt in giving the right to acquire any such transferable securities by subscription or exchange or giving rise to a cash settlement, excluding instruments of payment;
- (d) units in collective investment undertakings;
- (e) money-market instruments;
- (f) financial-futures contracts, including equivalent cash-settled instruments;
- (g) forward interest-rate agreements;
- (h) interest-rate, currency and equity swaps;
- (i) options to acquire or dispose of any instrument falling into these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates;
- (j) derivatives on commodities;
- (k) any other instrument admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made;

“subsidiary undertaking” has the same meaning as in section 2 of the Companies (Consolidated Accounts) Act, 1999;

“undertaking” means a body corporate, partnership or unincorporated association.

(2) A “related undertaking” in relation to a person (“A”), means any undertaking that is—

- (a) a parent undertaking of A;
- (b) a subsidiary undertaking of A;
- (c) a subsidiary undertaking of the parent undertaking of A;
- (d) a parent undertaking of a subsidiary undertaking of A; or

- (e) an undertaking in which A or an undertaking mentioned in paragraph (a), (b), (c), or (d) has a participating interest.

(3) Any reference in this Act to a person engaged in market abuse is to a person engaged in market abuse either alone or with one or more other persons.

(4) This Act shall apply to any security admitted to trading on a regulated market in at least one EEA State, or for which a request for admission to trading on such a market has been made, irrespective of whether or not the transaction itself actually takes place on that market.

(5) Sections 4 and 5 shall also apply to any related investment not admitted to trading on a regulated market in an EEA State.

## **PART II**

### **INSIDER DEALING AND MARKET MANIPULATION**

#### **Meaning of “Insiders”.**

3. For the purposes of this Act an insider is any person who has inside information—

- (a) as a result of his membership of the administrative, management or supervisory bodies of an issuer of securities;
- (b) as a result of his holding in the capital of an issuer of securities;
- (c) as a result of having access to the information through the exercise of his employment, profession or duties;
- (d) as a result of his criminal activities; or
- (e) which he has obtained by other means and which he knows, or could reasonably be expected to know, is inside information.

#### **Inside information.**

4.(1) This section defines “inside information” for the purposes of this Act.

(2) In relation to securities, or related investments, which are not commodity derivatives, inside information is information of a precise nature which—

- (a) is not generally available;
- (b) relates, directly or indirectly, to one or more issuers of the securities or to one or more of the securities; and
- (c) would, if generally available, be likely to have a significant effect on the price of the securities or on the price of related investments.

(3) In relation to securities, or related investments, which are commodity derivatives, inside information is information of a precise nature which—

- (a) is not generally available;
- (b) relates, directly or indirectly, to one or more such derivatives; and
- (c) users of markets on which the derivatives are traded would expect to receive in accordance with any accepted market practices on those markets.

(4) In relation to a person charged with the execution of orders concerning any securities or related investments, inside information includes information conveyed by a client and related to the client's pending orders which—

- (a) is of a precise nature;
- (b) is not generally available;
- (c) relates, directly or indirectly, to one or more issuers of securities or to one or more securities; and
- (d) would, if generally available, be likely to have a significant effect on the price of those securities or the price of related investments.

(5) Information is precise if it—

- (a) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur; and

- (b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of securities or related investments.

(6) Information would be likely to have a significant effect on price if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.

(7) For the purposes of subsection (3)(c), users of markets on which investments in commodity derivatives are traded are to be treated as expecting to receive information relating directly or indirectly to one or more such derivatives in accordance with any accepted market practices, which is—

- (a) routinely made available to the users of those markets; or
- (b) required to be disclosed in accordance with any statutory provision, market rules, or contracts or customs on the relevant underlying commodity market or commodity derivatives market.

(8) Information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded, for the purposes of this Act, as being generally available to them.

**Market abuse.**

5.(1) For the purposes of this Act, market abuse is behaviour (whether by one person alone or by two or more persons jointly or in concert) which—

- (a) occurs in relation to—
  - (i) securities; or
  - (ii) in the case of subsection (2) or (3) behaviour, investments which are related investments in relation to such securities; and
- (b) falls within any one or more of the types of behaviour set out in subsections (2) to (6).

(2) The first type of behaviour is where an insider deals, or attempts to deal, in a security or related investment on the basis of inside information relating to the security in question.

(3) The second is where an insider discloses inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties.

(4) The third is behaviour which consists of effecting transactions or orders to trade (otherwise than for legitimate reasons in conformity with accepted market practices on the regulated market) which—

- (a) give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more securities; or
- (b) secure the price of one or more such investments at an abnormal or artificial level.

(5) The fourth is behaviour which consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance.

(6) The fifth is behaviour which consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a security by a person who knew or could reasonably be expected to have known that the information was false or misleading.

(7) For the purposes of subsection (6), the dissemination of information by a journalist acting in his professional capacity is to be assessed taking into account the codes governing his profession unless he derives, directly or indirectly, any advantage or profits from the dissemination of the information.

## **Exceptions to section 5.**

6. Behaviour does not amount to market abuse for the purposes of this Act if—

- (a) it conforms with a rule which includes a provision to the effect that behaviour conforming with the rule does not amount to market abuse;
- (b) it conforms with the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments; or
- (c) it is done by a person acting on behalf of a public authority in pursuit of monetary policies or policies with respect to exchange rates or the management of public debt or foreign exchange reserves.

**Territorial scope – Market abuse.**

7. Behaviour is to be taken into account for the purposes of this Act only if it occurs in Gibraltar.

**Actions for damages.**

8.(1) A person is in contravention of the provisions of this Part if he–

- (a) is or has engaged in market abuse; or
- (b) has taken or refrained from taking any action which has required or encouraged another person or persons to engage in behaviour which, if engaged in by him, would amount to market abuse.

(2) A contravention of this Part is actionable at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

**Offences.**

9.(1) A person is guilty of an offence if he–

- (a) is or has engaged in market abuse; or
- (b) has taken or refrained from taking any action which has required or encouraged another person or persons to engage in behaviour which, if engaged in by him, would amount to market abuse.

(2) A person guilty of an offence under this section shall be liable–

- (a) on summary conviction, to a fine up to level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both; or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding seven years or to both.

(3) Schedule 1 (special defences) shall have effect.

(4) The Minister may by order in the Gazette amend Schedule 1.

**PART III**  
**PUBLIC DISCLOSURE OF INFORMATION**

## **Disclosure of information.**

10.(1) An issuer of securities shall inform the public as soon as possible of inside information which directly concerns the said issuer. Such information shall be posted on the issuer's internet site for a period of time that is sufficient to enable the public to make a complete, correct and timely assessment of the information.

(2) An issuer will be deemed to have complied with subsection (1) where, upon the coming into existence of a set of circumstances or the occurrence of an event, albeit not yet formalised, the issuer notified the public as soon as was possible.

(3) The issuer shall not combine, in a manner likely to be misleading, the provision of inside information to the public with the marketing of its activities.

(4) Any significant changes concerning already publicly disclosed inside information shall be publicly disclosed promptly after these changes occur, through the same channel as the one used for the public disclosure of the original information.

(5) Whenever an issuer, or a person acting on his behalf, or for his account, discloses any inside information to any third party in the normal exercise of his employment, profession or duties, he must make complete and effective public disclosure of that information, simultaneously in the case of an international disclosure and promptly in the case of a non-international disclosure.

(6) Subsection (5) does not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association or on a contract.

(7) Issuers shall take reasonable care to ensure that the disclosure of inside information to the public is synchronised as closely as possible between all categories of investors in all EEA States in which those issuers have requested or approved the admission to trading of their securities on a regulated market.

(8) Public institutions disseminating statistics liable to have a significant effect on financial markets shall disseminate them in a fair and transparent way.

## **Legitimate interests for delaying disclosure of information.**

11.(1) An issuer may delay the public disclosure of the inside information referred to in section 10(1), so as not to prejudice his legitimate interests

provided that such an omission would not be likely to mislead the public and provided that the issuer is able to ensure the confidentiality of that information.

(2) For the purposes of subsection (1), legitimate interests may, in particular, relate to the following non-exhaustive circumstances—

- (a) negotiations in course, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer;
- (b) decisions taken or contracts made by the management body of an issuer which need the approval of another body of the issuer in order to become effective, where the organisation of such an issuer requires the separation between these bodies, provided that a public disclosure of the information before such approval together with the simultaneous announcement that this approval is still pending would jeopardise the correct assessment of the information by the public.

(3) Issuers shall, in relation to the information referred to in subsection (1)—

- (a) establish effective arrangements to deny access to such information to persons other than those who require it for the exercise of their functions within the issuer;
- (b) take the necessary measures to ensure that any person with access to such information acknowledges the legal and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of the information; and
- (c) have in place measures which allow immediate public disclosure in case the issuer was not able to ensure the confidentiality of the information (without prejudice to section 10(6)).

**Lists of insiders.**

12.(1) Issuers, or persons acting on their behalf or for their account, shall draw up a list of those persons working for them, under a contract of employment or otherwise, who have access to inside information. Issuers and persons acting on their behalf or for their account shall regularly update this list and transmit it to the competent authority whenever the latter requests it.

(2) For the purposes of subsection (1), lists of insiders shall include all persons covered by that subsection who have access to inside information relating directly or indirectly to the issuer, whether on a regular or occasional basis.

(3) Lists of insiders shall state at least—

- (a) the identity of the person having access to inside information;
- (b) the reason why any such person is on the list; and
- (c) the date at which the list of insiders was created and updated.

(4) Lists of insiders shall be promptly updated—

- (a) whenever there is a change in the reason why any person is already on the list;
- (b) whenever any new person has to be added to the list; and
- (c) by mentioning whether and when any person already on the list has no longer access to inside information.

(5) Lists of insiders shall be kept by the issuer for at least five years after being drawn up or updated.

(6) The persons required to draw up lists of insiders under subsection (1) shall take the necessary measures to ensure that any person on such a list that has access to inside information acknowledges the legal and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of such information.

#### **Managers' transactions.**

13.(1) Persons discharging managerial responsibilities within an issuer, and where applicable, persons closely associated with them, shall, at least, notify to the competent authority the existence of transactions conducted on their own account relating to shares of the said issuer, or to derivatives or other securities linked to them. Public access to information concerning such transactions, on at least an individual basis, shall be readily available as soon as possible.

(2) All transactions related to shares admitted to trading on a regulated market or to derivatives or other securities linked to them, conducted on the account of persons discharging managerial responsibilities within an issuer and where applicable persons closely associated with them, shall be notified to the competent authority within 5 working days of the transaction date.

(3) A notification under this section shall contain the following information—

- (a) the name of the person discharging managerial responsibilities within the issuer, or, where applicable, the name of the person closely associated with such a person;
- (b) the reason for the responsibility to notify;
- (c) the name of the relevant issuer;
- (d) a description of the security;
- (e) the nature of the transaction;
- (f) the date and place of the transaction; and
- (g) the price and volume of the transaction.

(4) A notification is not required under this section until the total amount of transactions has reached five thousand Euros at the end of the calendar year. The total amount of transactions shall be computed by summing up the transactions conducted on the own account of a person discharging managerial responsibilities within an issuer and a person closely associated with a person discharging managerial responsibilities within an issuer.

#### **Protected Disclosures.**

14. (1) Any person professionally arranging transactions in securities who reasonably suspects that a transaction might constitute market abuse shall notify the competent authority without delay.

(2) The notification under subsection (1) may be done by mail, electronic mail, telecopy or telephone, provided that in the latter case, confirmation is notified by any written form upon request by the competent authority.

(3) The notification referred to in subsection (1) shall contain the following information—

- (a) a description of the transactions, including the type of order;

- (b) the reasons for the suspicion that the transactions might constitute market abuse;
- (c) the means for identification of the persons on behalf of whom the transactions have been carried out, and of other persons involved in the relevant transactions;
- (d) the capacity in which the person subject to the notification obligation operates; and
- (e) any information which may have significance in reviewing the suspicious transactions,

and where that information is not available at the time of notification, the notification shall include at least the reasons why the notifying person suspects that the transactions might constitute market abuse. All remaining information shall be provided to the competent authority as soon as possible.

(4) The competent authority shall transmit information received under subsection (1) immediately to the EEA authority of the regulated markets concerned.

(5) A disclosure is not to be taken to breach any restriction on the disclosure of information (however disclosed) if—

- (a) the information or other matter—
  - (i) causes the person making the disclosure (the discloser) to know or suspect; or
  - (ii) gives him reasonable grounds for knowing or suspecting, that another person has engaged in market abuse;
- (b) the information or other matter disclosed came to the discloser in the course of his trade, profession, business or employment; and
- (c) the disclosure is made to the competent authority or to a nominated officer as soon as is practicable after the information or other matter comes to the discloser.

(6) A disclosure to a nominated officer is a disclosure which is made to a person nominated by the discloser's employer to receive disclosures under this section, and is made in the course of the discloser's employment and in accordance with the procedure established by the employer for the purpose.

(7) For the purposes of this section, references to a person's employer include any body, association or organisation (including voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward) and references to employment must be construed accordingly.

**Application of Part and actions for damages.**

15.(1) This Part shall not apply to issuers who have not requested or approved admission of their securities to trading on a regulated market.

(2) A contravention of this Part is actionable at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

**PART IV  
INVESTIGATIONS**

**Investigations into alleged market abuse.**

16.(1) If it appears to the competent authority that there are circumstances suggesting that a person is in contravention of Part II of this Act, the competent authority may take such steps as it considers necessary and appropriate to establish whether or not there has been any such contravention. Where the competent authority is of the opinion that there has been a contravention of Part II, it shall report the results of its investigation to the Minister and to the Attorney General and it may disclose to the public every measure or sanction that will be imposed for the contravention, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

(2) In carrying out an investigation under subsection (1) the competent authority may seek the assistance of—

- (a) any statutory authority in Gibraltar having regulatory responsibilities in respect of persons carrying on in Gibraltar an investment business which in whole or in part consists of dealing in securities;
- (b) an EEA authority,

and any reference in this section to a person having an obligation to assist the competent authority or to provide information to that authority shall apply to a statutory authority falling within paragraph (a).

(3) A person who is or may be able to give information concerning a contravention of Part II shall be required—

- (a) to produce to the competent authority any documents in his possession or under his control which appear to be relevant to the investigation;
- (b) to produce to the competent authority at a specified time and place any specified documents which appear to the competent authority to relate to any matter relevant to the investigation; and
- (c) otherwise to give to the competent authority all assistance in connection with the investigation which that person is reasonably able to give.

(4) In this section, “document” includes information recorded in any form, and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible form.

(5) Where documents are produced, the competent authority may take copies or extracts from them.

(6) A statement made by a person in compliance with a requirement imposed by virtue of this section may only be used in evidence against him if—

- (a) that person has himself introduced the statement in evidence;
- (b) the prosecution of that person relates to—
  - (i) a failure or refusal by that person to produce documents or give assistance in accordance with subsection (3);
  - (ii) an omission by that person to disclose material which should have been disclosed; or
  - (iii) an untruthful statement by that person.

(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 Supreme Court.

(8) A person shall not under this section be required to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) the person to whom the obligation of confidence is owed consents in writing to the disclosure or production; or
- (b) the making of the requirement was authorised by the Minister.

(9) Where a person claims a lien on a document, its production under this section shall be without prejudice to his lien.

(10) No person shall be bound to comply with a requirement imposed by a person exercising powers granted under this section unless that person has, if required, produced evidence of his authority.

(11) A person who is found by a court to be contravening the provisions of this Act in proceedings instituted as a result of an investigation under this section may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the Order.

**Penalty for failure to comply with requirement under section 16.**

17.(1) A person who without reasonable excuse fails or refuses to comply with a requirement imposed on him under section 16, or omits to disclose material which should have been disclosed, is guilty of an offence and is liable on summary conviction to a fine up to level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both.

(2) A person who in purported compliance with a requirement imposed on him under section 16 furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular, commits an offence and is liable—

- (a) on summary conviction, to a fine up to level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both.

**Restrictions on disclosure of information.**

18.(1) This section applies to information relating to the business or other affairs of a person which—

- (a) is supplied by an EEA authority; or
- (b) is received for the purposes of, or on the discharge of functions under, this Act.

(2) Except as permitted under section 19, such information shall not be disclosed for any purpose—

- (a) by the primary recipient; or
- (b) by any person obtaining the information directly or indirectly from him, without the consent of the person from whom the primary recipient obtained the information and, if different, the person to whom it relates.

(3) The “primary recipient” means, as the case may be—

- (a) the competent authority;
- (b) any officer, servant or agent of the competent authority.

(4) Information shall not be treated as information to which this section applies if it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose which, disclosure is allowed by this section.

(5) A person who contravenes this section commits an offence and is liable—

- (a) on summary conviction, to a fine up to level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both.

**Exceptions from restrictions on disclosure.**

19.(1) Subject to subsection (2), information to which section 18 applies may be disclosed—

- (a) to any person with a view to the institution of, or otherwise for the purposes of, relevant proceedings;
- (b) to the Government, if the disclosure is made in the interests of investors or in the public interest;
- (c) if the information is or has been lawfully available to the public from other sources;
- (d) in pursuance of any Community obligation.

(2) Where information is supplied to the primary recipient (as defined in section 18(3)) by an EEA authority, that information may not, without the consent of the supplying EEA authority, be disclosed to any person except for the purposes of the exercise by the primary recipient of his functions under this Act or any relevant proceedings taken thereto.

- (3) The relevant proceedings referred to in subsections (1)(a) and (2) are—
- (a) any criminal proceedings;
  - (b) any civil proceedings arising under or by virtue of this Act, the Financial Services Act 1989, the Financial Services Act 1998, the Financial Services (Banking) Act 1992 and the Insurance Companies Act 1987; and
  - (c) any disciplinary proceedings relating to—
    - (i) the exercise by a solicitor or barrister, auditor, accountant, valuer or actuary of his professional duties; or
    - (ii) the discharge by a public servant or a servant of the competent authority, or of a statutory authority referred to in section 16(2)(a), of his duties.

**Behaviour to be taken into account in an examination of the market.**

20.(1) The competent authority shall ensure that the following non-exhaustive signals, which should not necessarily be deemed in themselves to constitute market manipulation, are taken into account when transactions or orders to trade are examined—

- (a) the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant security on the regulated market concerned, in particular when these activities lead to a significant changes in the price of a security;
- (b) the extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a security lead to significant changes in the price of the security or related investment or underlying asset admitted to trading on a regulated market;
- (c) whether transactions undertaken lead to no change in beneficial ownership of a security admitted to trading on a regulated market;

- (d) the extent to which orders to trade given or transactions undertaken include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant security on the regulated market concerned, and might be associated with significant changes in the price of a security admitted to trading on a regulated market;
- (e) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;
- (f) the extent to which orders to trade given the change the representation of the best bid or offer prices in a security admitted to trading on a regulated market, or more generally the representation of the order book available to market participants, and are removed before they are executed;
- (g) the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such price and valuations;
- (h) whether orders to trade given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or persons linked to them;
- (i) whether orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate research or investment recommendations which are erroneous or biased or demonstrably influenced by material interest.

(2) Market participants shall adopt structural provisions aimed at preventing and detecting market abuse and shall take into account the non-exhaustive list of signals contained in subsection (1) when examining transactions or orders to trade.

(3) The competent authority shall ensure that the following non-exhaustive factors are taken into account when assessing whether it can accept a particular market practice—

- (a) the level of transparency of the relevant market practice to the whole market;

- (b) the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand;
- (c) the degree to which the relevant market practice has an impact on market liquidity and efficiency;
- (d) the degree to which the relevant practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice;
- (e) the risk inherent in the relevant practice for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant security within the whole Community;
- (f) the outcome of any investigation of the relevant practice by the competent authority or an EEA authority, in particular whether the relevant market practice breached provisions designed to prevent market abuse on the market in question or on directly or indirectly related markets within the EEA;
- (g) the structural characteristics of the relevant market including whether it is regulated or not, the types of securities traded and the type of market participants, including the extent of retail investors participation in the relevant market.

(4) The competent authority shall, when considering the need for the safeguard referred to in subsection (3)(b) in particular analyse the impact of the relevant market practice against the main market parameters, such as the specific market conditions before carrying out the relevant market practice, the weighted average price of a single session or the daily closing price.

(5) Practices shall not be assumed to be unacceptable by the competent authority simply because they have not been previously accepted by it.

(6) The powers referred to in section 16 are exercisable by the competent authority for the purpose of carrying out an examination of the market.

(7) Sections 17, 18 and 19 apply to any exercise of the powers contained in section 16 for the purposes of this section.

(8) Where the competent authority is of the opinion that behaviour amounts to market abuse, it shall report the results of its examination of the market to the Minister and the Attorney General.

**Consultation and market review.**

21.(1) The competent authority shall, before accepting or not a market practice, consult as appropriate relevant bodies such as representatives of issuers, financial services providers, consumers, EEA authorities and market operators.

(2) The competent authority shall publish its decisions regarding the acceptability of a market practice in a manner which enables the public to access easily the information.

(3) A decision published under subsection (2) shall include—

- (a) a description of the practice concerned; and
- (b) a description of the factors taken into account in determining whether the relevant practice is regarded as acceptable, in particular where different conclusions have been reached regarding the acceptability of the same practice on different EEA States markets.

(4) The competent authority shall regularly review the market practices that it has accepted, in particular taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructure. The competent authority may seek the assistance of—

- (a) any statutory authority in Gibraltar having regulatory responsibilities in respect of persons carrying on in Gibraltar an investment business which in whole or in part consists of dealing in securities;
- (b) an EEA authority,

in carrying out such a review.

(5) A market practice which was accepted following the consultation procedures set out in subsections (1) to (3) shall not be changed without using the same consultation process.

(6) The powers referred to in section 16 are exercisable by the competent authority for the purpose reviewing market practices under this section.

(7) Sections 17, 18 and 19 apply to any exercise of the powers contained in section 16 for the purposes of this section.

(8) Where the competent authority is of the opinion that a market practice amounts to market abuse, it shall report the results of its review of the market to the Minister and the Attorney General.

## PART V

## POWERS EXERCISABLE TO ASSIST EEA AUTHORITIES

**Power to assist an EEA authority.**

22.(1) The competent authority shall cooperate with EEA authorities, whenever necessary, for the purpose of carrying out their functions and duties under the Directive.

(2) The powers referred to in section 16 are exercisable by the competent authority for the purpose of assisting an EEA authority which in exercise of Article 16 of the Directive has requested assistance in connection with enquiries being carried out by that EEA authority or on its behalf for the purposes specified in subsection (3).

(3) The purposes referred to in subsection (2) are the investigation or prosecution of an alleged breach of obligations under the Directive arising in the State of an EEA authority as a result of the transposition in that State of the Directive.

(4) The competent authority shall not exercise the powers conferred by section 16 for the purposes of assisting an EEA authority if the Minister is satisfied that the assistance requested by the EEA authority—

- (a) would adversely affect the sovereignty, security or public policy of Gibraltar; or
- (b) relates to the same matters and the same persons in respect of whom proceedings in Gibraltar have been initiated or a court in Gibraltar has delivered a judgment.

(5) Sections 17, 18 and 19 apply to any exercise of the powers contained in section 16 for the purposes of this section.

(6) The competent authority shall inform the Minister of all requests for co-operation received by it from an EEA authority and any action that it proposes to take under this section.

**PART VI**

## INVESTMENT RECOMMENDATIONS

**Scope of this Part.**

23.(1) This Part applies in respect of the production and the dissemination of an investment recommendation.

(2) Subject to subsections (3) and (4), any person whose business or profession is in the media and who, in the conduct of that business or in the exercise of that profession, either—

- (a) produces an investment recommendation; or
- (b) disseminates an investment recommendation produced by a third party,

must do so in accordance with this Part; and references to a “person producing an investment recommendation” and to a “person disseminating an investment recommendation produced by a third party” include references respectively to such persons.

(3) A person producing an investment recommendation and a person disseminating an investment recommendation produced by a third party is not subject to this Part if–

- (a) the media in or through which the recommendation appears is subject either to a self-regulatory code or to an appropriate system or procedure with respect to the presentation of investment recommendations and to the disclosure of financial interests and conflicts of interest; and
- (b) the publication, programme or regularly updated news or information service in or through which the recommendation appears includes a clear and prominent reference to the relevant code, system or procedure.

(4) In subsection (3) a “self-regulatory code” means any applicable statutory code including any code issued by the Gibraltar Regulatory Authority or to which the Gibraltar Broadcasting Corporation is subject.

#### **Disclosure of identity of producers.**

24.(1) A person producing an investment recommendation must disclose clearly and prominently in the recommendation his identity, in particular, the name and job title of the individual who prepared it, the name of the legal person responsible for its production and, where the legal person is an investment firm or a credit institution, the identity of the authority by whom it is regulated.

(2) Where the person producing an investment recommendation is neither an investment firm nor a credit institution, but is subject to self-regulatory standards or codes of conduct, he must disclose clearly and prominently in the recommendation a reference to those standards or codes.

#### **Fair Presentation.**

25.(1) A person producing an investment recommendation shall take reasonable care to ensure that in that recommendation–

- (a) facts are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;
- (b) all the documents, figures, names and other records used are reliable and if there is any doubt as to their reliability that this is clearly indicated; and
- (c) all projections, forecasts and price targets are clearly labelled as such and that any material assumptions made in producing or using them are indicated.

(2) A person producing an investment recommendation must take reasonable care to ensure that any such recommendation can be substantiated as reasonable, upon request by the competent authority.

**Additional obligations in relation to fair presentation.**

26.(1) Subject to subsection (2), an independent analyst, investment firm, credit institution, any related legal person or any other person whose main business is to produce recommendations, or a natural person working for them under a contract of employment or otherwise, shall, when producing an investment recommendation, take reasonable care to ensure that—

- (a) all substantially material sources are indicated, as appropriate, including the relevant issuer, together with the fact whether the recommendation has been disclosed to that issuer and amended following this disclosure before its dissemination;
- (b) any basis of valuation or methodology used to evaluate a security or an issuer of a security, or to set a price target for a security, is adequately summarised;
- (c) the meaning of any recommendation made, such as “buy”, “sell” or “hold”, which may include the time horizon of the investment to which the recommendation relates, is adequately explained and any appropriate risk warning, including a sensitivity analysis of the relevant assumptions indicated;
- (d) reference is made to the planned frequency, if any, of updates of the recommendation and to any major changes in the coverage policy previously announced;
- (e) the date at which the recommendation was first released for distribution is indicated clearly and prominently, as well as the relevant date and time for any security price mentioned;

- (f) where a recommendation differs from a recommendation concerning the same security or issuer, issued during the 12 month period immediately preceding its release, this change and the date of the earlier recommendation are indicated clearly and prominently.

(2) A person producing an investment recommendation, may, if he considers that the disclosure required under subsection (1)(a) to (c) would be disproportionate in relation to the length of that recommendation, comply with the requirements of that subsection—

- (a) by including in the recommendation itself a clear and prominent reference to the place where the disclosure can be directly and easily accessed by the public (such as an appropriate internet site of his from which a direct internet link can be made to such disclosures); or
- (b) where he produces two or more recommendations which appear together, by including in one of the recommendations a single clear and prominent reference to the place where the disclosures required for all the recommendations can be directly and easily accessed by the public.

**Disclosure of interests etc.**

27.(1) Subject to subsection (5), a person producing an investment recommendation, and any person working for such a legal person under a contract of employment or otherwise who was involved in preparing the recommendation, must disclose, in the recommendation itself, all relationships and circumstances that may reasonably be expected to impair the objectivity of that recommendation, and in particular, he must disclose the following information—

- (a) where he has a significant financial interest in one or more of the securities which are the subject of the investment recommendation;
- (b) where he has a significant conflict of interest with respect to an issuer of a security to which the investment recommendation (directly or indirectly) relates.

(2) For the purposes of subsection (1)(a), a “significant” financial interest includes—

- (a) in relation to a legal person, a holding exceeding 5% of the total issued share capital in the issuer of the shares in question; and

- (b) in relation to a natural person, a holding exceeding £3,000 of the total issued share capital in the issuer of the shares in question.

(3) Where the person producing the investment recommendation is a legal person the significant financial interests and the significant conflicts of interest that he must disclose under subsection (1) include—

- (a) any such interests or interest that he (or any related undertaking) has that are accessible, or reasonably expected to be accessible, to the person involved in the preparation of the recommendation;
- (b) any interests or conflicts of interest that he (or any related undertaking) has that are known to persons who, although not involved in the preparation of the recommendation, had, or could reasonably be expected to have, access to the recommendation prior to its being disseminated to customers or to the public.

(4) A person producing an investment recommendation, may, if he considers that the disclosure required under this section would be disproportionate in relation to the length of that recommendation, comply with the requirements of that subsection—

- (a) by including in the recommendation itself a clear and prominent reference to the place where the disclosure can be directly and easily accessed by the public (such as an appropriate internet site of his from which a direct internet link can be made to such disclosures); or
- (b) where he produces two or more recommendations which appear together, by including in one of the recommendations a single clear and prominent reference to the place where the disclosures required for all the recommendations can be directly and easily accessed by the public.

**Additional obligations in relation to disclosure of interests or conflicts of interest.**

28.(1) In addition to the obligations laid down in section 27, any investment recommendation produced by an independent analyst, an investment firm, a credit institution, any related legal person, or any other relevant person whose main business is to produce recommendations, shall disclose clearly and prominently the following information on their interests and conflicts of interest, where applicable—

- (a) any significant financial interests (other than those required to be disclosed under section 27) held by the person in relation to the issuer;
- (b) a statement that the person or any related undertaking is a market maker or liquidity provider in the securities of the issuer;
- (c) a statement that the person or any related undertaking has been lead manager or co-lead manager over the previous 12 months of any publicly disclosed offer of securities of the issuer;
- (d) a statement that the person or any related undertaking is party to any other agreement with the issuer relating to the provision of investment banking services, provided that this would not entail the disclosure of any confidential commercial information and that the agreement has been in effect over the previous 12 months or has given rise during the same period to the payment of compensation or to the promise to get a compensation paid; and
- (e) a statement that the person or a related undertaking is party to an agreement with the issuer relating to the production of the recommendation.

(2) In addition to the information required to be disclosed under subsection (1), any investment recommendation which is produced by an investment firm or credit institution shall disclose clearly and prominently the following information—

- (a) a statement, in general terms, of the effective organisational and administrative arrangements set up for the prevention and avoidance of conflicts of interest with respect to recommendations, including information barriers;
- (b) a statement, on a quarterly basis, detailing the proportion of all recommendations that are “buy”, “hold” or “sell”, as well as the proportion of issuers corresponding to each of these categories to which the investment firm or credit institution has supplied material investment banking services over the previous 12 months;
- (c) in relation to persons working under a contract of employment or otherwise who were involved in preparing the recommendation, whether the remuneration of such persons is tied to investment banking transactions performed by the investment firm or credit institution or any related undertaking. Where any such natural persons receive or purchase the shares

of the issuers prior to a public offering of such share, the price at which the shares were acquired and the date of acquisition shall also be disclosed.

(3) A person producing an investment recommendation, may, if he considers that the disclosure required under this section would be disproportionate in relation to the length of that recommendation, comply with the requirements of that subsection—

- (a) by including in the recommendation itself a clear and prominent reference to the place where the disclosure can be directly and easily accessed by the public (such as an appropriate internet site of his from which a direct internet link can be made to such disclosures); or
- (b) where he produces two or more recommendations which appear together, by including in one of the recommendations a single clear and prominent reference to the place where the disclosures required for all the recommendations can be directly and easily accessed by the public.

**Non-written investment recommendations.**

29.(1) A person producing a non-written investment recommendation may comply with the requirements of sections 24 to 28 to disclose information or indicate certain matters—

- (a) by including in the recommendation itself a clear and prominent reference to the place where the information and matters that would otherwise have to be disclosed or indicated in it can be directly and easily accessed by the public (such as at an appropriate internet site to which a direct link can be made to those matters or to that information); or
- (b) where he produces two or more recommendations which appear together, by including in one of the recommendations a single clear and prominent reference to the place where the disclosures required for all the recommendations can be directly and easily accessed by the public.

(2) A “non-written investment recommendation” is an investment recommendation that is—

- (a) broadcast or transmitted in the form of a television or radio programme; or
- (d) displayed on a web-site (or similar system for the electronic display of information).

**Disclosure of identity of persons disseminating investment recommendations.**

30.(1) If a person having no authority from the person who produced an investment recommendation to do so nevertheless on his own behalf disseminates that recommendation, he must indicate his own identity clearly and prominently on the recommendation or ensure that it is otherwise clearly and prominently indicated to the persons to whom that recommendation is being disseminated.

(2) In addition to the requirements laid down in subsection (1), where an investment recommendation produced by a third party is disseminated by an investment firm, a credit institution or a natural person working for such persons under a contract of employment–

- (a) the investment recommendation shall indicate clearly and prominently the identity of the authority by whom the investment firm or credit institution is regulated; and
- (b) if the producer of the recommendation has not already disseminated it through a distribution channel, the requirements laid down in sections 24 to 28 shall be met by the disseminator.

**Dissemination of altered investment recommendations.**

31.(1) A person (other than an investment firm or credit institution, or an individual working for such persons under a contract of employment or otherwise) disseminating an investment recommendation produced by a third party who makes a change to the direction of the recommendation (such as the change of a recommendation to “buy” into one to “hold” or to “sell” (or vice versa)), must comply with sections 24 to 27.

(2) A person (other than an investment firm or credit institution, or an individual working for such persons under a contract of employment or otherwise) disseminating an investment recommendation produced by a third party who does not make a change to the direction of the recommendation but who makes some other substantial alteration, must ensure that the details of that alteration are clearly indicated.

(3) An investment firm or credit institution, or an individual working for such persons under a contract of employment or otherwise, disseminating an investment recommendation produced by a third party who makes a change to the direction of the recommendation or any other substantial alteration, must ensure that the details of that alteration are clearly indicated and must comply with the requirements of sections 24 to 28.

(4) Where the dissemination referred to in subsections (2) and (3) is by a legal person (either itself or through a natural person) that the legal person must have a formal written policy so that those receiving the information are directed to where they can have access to–

- (a) the identity of the person who produced that recommendation;
- (b) the investment recommendation itself; and
- (c) any disclosures of the financial interests and conflicts of interest of the person who produced the recommendation which have been made pursuant to section 27(1).

**Dissemination of summaries of investment recommendations.**

32. Where an investment recommendation produced by a third party is summarised and the summary is then disseminated, the summary must–

- (a) be clear and not misleading;
- (b) mention the document in which the investment recommendation appears; and
- (c) indicate where any disclosures as to the financial interests and the conflicts of interest of the person who produced the investment recommendation which have been disclosed pursuant to section 27(1) can be directly and easily accessed by the public.

**News reporting on investment recommendations.**

33. Where no change is made to the essence of an investment recommendation produced by a third party or where a summary is made of an investment recommendation produced by a third party, the requirements respectively of sections 31 and 32 need not be complied with as respects the reporting on that recommendation or summary as news in or through the media.

**Territorial scope – Investment recommendations.**

34. This Part applies to any act or course of conduct of–

- (a) a person producing an investment recommendation, if his act is done, or his course of conduct is engaged in, in Gibraltar, regardless of whether that recommendation is then disseminated in or from Gibraltar or in or from an EEA State;

- (b) a person disseminating an investment recommendation produced by a third party, if his act is done, or his course of conduct is engaged in, in or from—
- (i) his registered office (or if he does not have a registered office his head office); or
  - (ii) another establishment maintained by him,  
  
in Gibraltar, regardless of whether the person to whom that recommendation is disseminated is in Gibraltar, the United Kingdom or another EEA State.

**Actions for damages.**

35.(1) A contravention of this Part is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) A “private person” is any person, unless he suffers the loss in question in the course of carrying on any regulated activity or any business of any kind.

**PART VII**  
**MISCELLANEOUS**

**Proceedings under this Act.**

36. The Attorney General may institute any proceedings, whether civil or criminal, in respect of any contravention of this Act.

**Entry of premises under warrant.**

37.(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given on behalf of the Minister or the competent authority that there are reasonable grounds for believing that the first or second set of conditions is satisfied.

(2) The first set of conditions is—

- (a) that a person has failed (wholly or in part) to comply with a request for information made under this Act; and
- (b) that on the premises specified in the warrant—
  - (i) there are documents which have been required; or

(ii) there is information which has been required.

(3) The second set of conditions is–

- (a) that a contravention of Part II of this Act has been (or is being) committed by any person;
- (b) that there are on the premises specified in the warrant documents or information relevant to whether that contravention has been (or is being) committed; and
- (c) that if a request for information were made under this Act–
  - (i) it would not be complied with; or
  - (ii) the documents or information to which it related would be removed, tampered with or destroyed.

(4) A warrant under this section shall authorise a constable or other person authorised by the competent authority–

- (a) to enter the premises specified in the warrant;
- (b) to search the premises and take possession of any documents or information appearing to be documents or information or a kind in respect of which a warrant under this section was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
- (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found;
- (e) to use such force as may be reasonably necessary.

(5) Any document of which possession is taken under this section may be retained–

- (a) for a period of three months; or
- (b) if within that period proceedings to which the document is relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.

**Offences by corporate bodies, partnerships and unincorporated associations.**

38.(1) Where an offence under section 17 or 18 committed by a corporate body is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the corporate body is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a corporate body are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as to a director of a corporate body.

(3) Where an offence under section 17 or 18 committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) Where an offence under section 17 or 18 committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, he as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

**Jurisdiction and procedure in respect of offences.**

39.(1) Proceedings for an offence alleged to have been committed under section 17 or 18 by an unincorporated association shall be brought in the name of the association (and not that of any of its members), and for the purposes of any such proceedings any rules of court related to the service of documents apply as in relation to a corporation.

(2) Section 124 of and Schedule 4 to the Criminal Procedure Act (which relate to procedure where a corporation is charged with an offence before the Magistrates' Court) apply in a case where an unincorporated association is charged with an offence under section 17 and 18 as they apply in the case of a corporation.

(3) Section 144 of the Criminal Procedure Act (which relates to procedure where a corporation is arraigned on indictment) applies in a case where an unincorporated association is charged with an offence under section 17 and 18 as it applies in the case of a corporation.

(4) A fine imposed upon an unincorporated association on its conviction for an offence shall be paid out of the funds of the association.

**Sanction for prosecution.**

40. No prosecution in respect of an offence against this Act may be commenced except at the instance of or with the sanction of the Attorney-General.

**Powers of the Authority in respect of authorised persons and licensees.**

41.(1) Where the competent authority (if that is the Financial Services Commissioner) or the Authority reasonably suspects that a person regulated by the Authority under any enactment has contravened the provisions of this Act the Authority may serve a notice on him—

- (a) cancelling any authorisation or licence of his to carry on a regulated activity after the expiry of a specified period after the service of the notice;
- (b) disqualifying him from becoming authorised or licensed to carry on any regulated activity after the expiry of a specified period;
- (c) restricting any authorisation or licence of his in respect of any regulated activity during a specified period to the performance of contracts entered into before the notice comes into force;
- (d) prohibiting him from entering into any transactions of a specified kind or entering into such transactions except in specified circumstances or to a specified extent;
- (e) prohibiting him from soliciting any business from persons of a specified kind or otherwise than from such persons; or
- (f) prohibiting him from carrying on any regulated activity in a specified manner or otherwise than in a specified manner.

(2) The period mentioned in paragraph (a) and (c) of subsection (1) shall be such period as appears to the Authority reasonable to enable the person on whom the notice is served to complete the performance of any contracts entered into before the notice comes into force and to terminate such of them as are of a continuing nature.

(3) A notice served on a person under subsection (1) may be revoked at any time by the Authority by serving a revocation notice on him.

(4) The revocation of such a notice as is mentioned in subsection (1)(a) shall not have the effect of reviving the authorisation or licence cancelled by the notice, but nothing in this subsection shall be construed as preventing any person who has been subject to such a notice from again becoming authorised or licensed after the revocation of the notice.

(5) The provisions of sections 44 and 45 of the Financial Services Act 1989 shall apply to any powers exercised under this section.

(6) In this section—

- (a) “the Authority” means the Financial Services Commissioner;
- (b) “regulated activity” means any activity regulated by the Authority under any enactment.

### **Powers in relation to persons not regulated by the Authority.**

41A.(1) Section 41 applies, in accordance with the provisions of this section, in relation to persons not regulated by the Authority as it applies in relation to persons regulated by the Authority whenever a person not regulated by the Authority has contravened the provisions of this Act.

(2) The Minister, or such other person as the Minister may appoint by notice in the Gazette, shall exercise, in relation to persons not regulated by the Authority, the powers conferred by section 41 on the Authority in relation to persons regulated by the Authority.

(3) For the avoidance of doubt, the Minister or such other person as may be appointed under subsection (2) shall have the power to enforce the provisions of section 41 in relation to—

- (a) any person not regulated by the Authority; and
- (b) any activity, practice or transaction engaged in by such a person irrespective of whether or not such activity, practice or transaction is licensed, permitted, authorised or otherwise regulated under any enactment and irrespective of whether or not such a person acts in a professional or private capacity.

(4) In this section, “Authority” has the same meaning as under section 41(6)(a).

### **Power to make regulations and orders.**

42. The Minister may make regulations and orders in respect of any matter and for any purpose relating to the subject matter of this Act.

**Repeal of the Insider Dealing Act.**

43. The Insider Dealing Act, 1998 is repealed.

---

**SCHEDULE 1**

Section 9(3)

**SPECIAL DEFENCES**

**Market makers.**

1.(1) An individual is not guilty of an offence under section 9 if he shows that he acted in good faith in the course of—

- (a) his business as a recognised market maker with obligations to deal in the investment; or
- (b) his employment in the business of a recognised market maker with obligations to deal in the investment.

(2) A recognised market maker is a person who—

- (a) holds himself out at all normal times in compliance with the rules of a regulated market or an approved organisation as willing to acquire or dispose of securities; and
- (b) is recognised as doing so under those rules.

(3) In this paragraph “approved organisation” means an international securities self-regulating organisation approved by the Minister by order made under this Act.

**Market information.**

2.(1) An individual is not guilty of an offence under section 9 if he shows that—

- (a) the information which he had as an insider was market information; and
- (b) it was reasonable for an individual in his position to have acted as he did despite having that information as an insider at the time.

(2) In determining whether it is reasonable for an individual to do any act despite having market information at the time, there shall, in particular, be taken into account—

- (a) the content of the information;

- (b) the circumstances in which he first had the information and in what capacity; and
  - (c) the capacity in which he now acts.
- (3) An individual is not guilty of an offence under section 9 if he shows—
- (a) that he acted—
    - (i) in connection with an acquisition or disposal which was under consideration or the subject of negotiation, or in the course of a series of such acquisitions or disposals; and
    - (ii) with a view to facilitating the accomplishment of the acquisition or disposal or the series of acquisitions or disposals; and
  - (b) that the information which he had as an insider was market information arising directly out of his involvement in the acquisition or disposal or series of acquisitions or disposals.
- (4) For the purposes of paragraphs (2) and (3) market information is information consisting of one or more of the following facts—
- (a) that securities of a particular kind have been or are to be acquired or disposed of, or that their acquisition or disposal is under consideration or the subject of negotiation;
  - (b) that securities of a particular kind have not been or are not to be acquired or disposed of;
  - (c) the number of securities acquired or disposed of or to be acquired or disposed of or whose acquisition or disposal is under consideration or the subject of negotiation;
  - (d) the price (or price ranges) at which securities have been or are to be acquired or disposed of or the price (or range of prices) at which securities whose acquisition or disposal is under consideration or the subject of negotiation may be acquired or disposed of;
  - (e) concerning the identity of the persons involved or likely to be involved in any capacity in an acquisition or disposal.

**Price stabilisation.**

3. An individual is not guilty of insider dealing by virtue of dealing in securities or encouraging another person to deal if he shows that he acted in conformity with the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.