

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3570 of 12th December, 2006

B 47/06

BILL

FOR

AN ORDINANCE to amend the Financial Services Ordinance 1989.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1.(1) This Ordinance may be cited as the Financial Services (Amendment) Ordinance 2006.

(2) This Ordinance shall come into operation on a day appointed by the Minister by notice in the Gazette.

Interpretation.

2. In this Ordinance, “Minister” means the Minister with responsibility for financial services.

Amendments of section 1 of the Financial Services Ordinance 1989.

3.(1) In subsection (1) of section 1 of the Financial Services Ordinance 1989 (provisions relating to Title and Commencement) for the words “Financial Services Ordinance 1989” there shall be substituted the words “Financial Services (Investment and Fiduciary Services) Ordinance”.

(2) In subsection (2) of section 1, the word “Governor” shall be substituted by the word “Minister”.

Amendments of section 2 of the Financial Services Ordinance 1989.

4.(1) In the definition of “the Authority” in subsection (1) of section 2 of the Financial Services Ordinance 1989 all the words after the word “means” shall be deleted and shall be substituted by the words “the Financial Services Commission established under the Financial Services Commission Ordinance”.

(2) In the definition of “European authorised institution” in subsection (1) of section 2 of the Financial Services Ordinance 1989, for the word “Banking” there shall be substituted the words “Financial Services (Banking)”.

Amendments of section 29A of the Financial Services Ordinance 1989.

5.(1) In subsection (1)(a) of section 29A of the Financial Services Ordinance 1989 (provisions relating to licensing of investment exchanges) for the words “rules made by the Authority under” there shall be substituted “regulations made as mentioned in”.

(2) Subsection (1) of section 29A of the Financial Services Ordinance 1989 shall be amended by adding a new sub-clause as sub-clause (c), as follows:

“(c) The Minister has consented on behalf of the Government to the grant of the licence.”.

(3) In subsection (2) for the words “The Authority may by rules” there shall be substituted “Regulations made under section 53 of this Ordinance may”.

Amendments of section 31 of the Financial Services Ordinance 1989.

6. In section 31 of the Financial Services Ordinance 1989 (regulations on information to be given to the Financial Services Commissioner) in subsection (1)–

(a) in paragraph (a) for the words “forthwith notice” there shall be substituted “notice, either in advance or in arrears” and the word “or” at the end of the paragraph shall be omitted; and

(b) after paragraph (a) there shall be inserted the following paragraph—

“(aa)”obtain consent to such changes in personnel and other matters as may be specified in the regulations; and”.

Other amendments to the Financial Services Ordinance 1989.

7. In section 39, in subsection (4) of section 59 and in paragraph 8(a) of Schedule 2B, for the word “Banking” there shall be substituted the words “Financial Services (Banking) Ordinance”.

EXPLANATORY MEMORANDUM

This draft Ordinance (“the Bill”) makes two amendments to provisions of Part IV of the Financial Services Ordinance 1989 (“the FSO”), which relates to the licensing of investment exchanges (“stock exchanges”) and clearing houses. It also changes the name of the Ordinance to the Financial Services (Investment and Fiduciary Services) Ordinance.

Section 1 of the Bill is formal, providing for the short title and commencement.

Section 3 of the Bill changes the name of the Financial Services Ordinance 1989 to the Financial Services (Investment and Fiduciary Services) Ordinance.

Section 4 of the Bill defines “the Authority” as the Financial Services Commission.

Section 5 of the Bill amends section 29A of the FSO (which was inserted into that Ordinance by the Financial Services Ordinance 1998). As originally enacted, section 29A gave a power to the Financial Services Commission to make rules. The amendment made by section 2 changes this to a power for the Minister to make regulations: this brings the power into line with almost all the other powers in the FSO to make subordinate legislation. The amendment thus facilitates the making of one set of regulations to deal with matters arising under different provisions of Part IV. Section 5 also requires the consent of the Government to the establishment of a stock exchange in Gibraltar.

Section 6 of the Bill extends the regulation-making power under section 31. As originally enacted, section 31 conferred power to require a licensed investment exchange or clearing house to give information on various matters to the Financial Services Commissioner. The power was not, however, wide enough to require advance information of any matters. Nor was the power wide enough to require the prior consent of the Financial Services Commissioner to the appointment of key personnel, although such a power already exists in relation to certain other licensees. Under section 6 of the Bill the powers in section 31 are widened to remove both of these barriers.