Financial Services Act 2019

This version is out of date

Principal Act

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	LN.2021/199 (Part 14)	25.3.2021
	Assent	23.7.2019

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2020/053	Sch. 2	30.1.2020
2020/175	s. 163(2)-(6), Sch. 28	7.5.2020
2020/421	Sch. 2	26.11.2020
2020/475	Sch. 13	28.12.2020
2020/457	s. 216(8)	1.1.2021
2020/500	ss. 2(1)(a)-(c), 2(2), (3)(b), (4)-(5), 7(2)(b)-(d), 12(6)(b)(iv), 19, 20(1)-(2), 22(1)(k), 33(1), 46(1)(a), 50(2), 53(b), 54(1)(b)-(c), 57-60, 61(2)(c), 63(6), 66, 73(4)-(5), (7), 77(3)(c), 83(1), (3), 84, 86(1)(b)-(c), 87(3), 88(3), 107(1), 108(b), 117(4)(b), (6)(a)(ii), 121, 123(4)(a)-(b), 149(1)(c), (d)(ii), 179(1), 182(6), 188(3), 195(a)-(b), 196, 200(1)(e), (4), 205(1)-(3), 206(1)(b), (2), 207(1)-(4), (6), 208(1), (7)(a)-(c), (9), 209(5), (19), 211, 212(1)(b), (2)(c), (f)-(g), 216(2), 217(8)(e), (9), 218(1), (3), 221(4)(a)-(c), 222(1)-(2), (4)(a), (6), 223-225, 226(c), 227, 228(6), 229(a)(i)-(ii), (b)(i), 230(8), 231(6), 233-234, 236, 237(1)-(2), 244(2)(a), 247-248, 249(1), (3), 250-253, 254(1), (3), 255(4), 256(a), 258(1)-(2), (2A), (3), 259-264, 265(1), (a), (2), 266(1), 269(4)(a), 275(4), 277, 278(1)(a)-(b), 279, 281, 282(1), 283(1)(d)-(e), (2), 284(2), (4)(f), (5)(a)-(b), (6), 287, 288(b)(ii)-(iv), 289, 291(4)(a)-(c), 292(3)(b), (d), (9), 294, 299(5)-(6), 300, 302(1)(b)-(d), 304(4)(b), 305(5), 309(5)(c), (6)(a), (8), 313(4)(b), 316, 322-324, 328(1)(g), 331(1)(f)-(h), 338(1), (2)(a), (c)-(e), 340(1), 342(1)-(2), 343(2), 344(1)-(2), 345(1)-(3), 346, 346A(1), (a), (2), (3), (b), 346B(5), 346(C)(1)-(2), 346D(5), 346E(1)(b)(ii), (4)(b), 347(1), 348, 348A(1), 349(2)(a), (3)(a), (c), (7), 350(1)(d), 351(10), 351A(1)(a)-(b), 352-354, 355(1), 356(1)-(3), 357, 358(1), (6), 359(3), 362(1)(b)-(e), (3)(a)-(b), 363(1),	

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[2] *Notice of Commencement – LN.2025/053*

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AN ACT TO PROVIDE FOR THE REGULATION OF FINANCIAL SERVICES AND MARKETS AND FIDUCIARY SERVICES; TO MAKE PROVISION IN RESPECT OF THE GIBRALTAR FINANCIAL SERVICES COMMISSION; TO ESTABLISH A FINANCIAL SERVICES OMBUDSMAN; TO MAKE PROVISION IN RESPECT OF A DEPOSIT GUARANTEE SCHEME, AN INVESTOR COMPENSATION SCHEME AND RECOVERY AND RESOLUTION ARRANGEMENTS AND THEIR FINANCING; TO PROVIDE FOR THE REGULATION OF THE LISTING OF SECURITIES, PROSPECTUSES AND TAKEOVERS; TO MAKE PROVISION IN RESPECT OF MARKET ABUSE; TO PROVIDE FOR THE CONTROL OF INSURANCE BUSINESS TRANSFERS; TO MAKE PROVISION IN RESPECT OF OCCUPATIONAL AND

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PERSONAL PENSION SCHEMES; TO PROVIDE FOR THE REGULATION OF AUDITORS AND INSOLVENCY PRACTITIONERS, AND FOR CONNECTED PURPOSES.

PART 1
PRELIMINARY

Title and commencement.

1.(1) This Act may be cited as the Financial Services Act 2019.

(2) This Act comes into operation on the day the Minister appoints by notice in the Gazette, and the Minister may appoint different days for different provisions or purposes.

Interpretation.

2.(1) This Act is to be interpreted in accordance with this section and Schedule 1–

(a) Part 1 of which lists where other expressions used in this Act or a Part of this Act are defined or otherwise explained;

(b) Part 2 of which lists EU Regulations referred to in this Act and explains how references to those Regulations are to be interpreted; and

(c) Part 3 of which lists EU Directives referred to in this Act and explains how references to those Directives are to be interpreted.

(2) In this Act, unless the context otherwise requires–

"AIF" means a collective investment undertaking (including investment compartments of such an undertaking) which–

(a) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

(b) does not require authorisation as a UCITS scheme in accordance with Part 18;

"AIFM" (or alternative investment fund manager) means a legal person whose regular business is managing one or more AIFs (that is to say, performing at least risk management or portfolio management for the AIF);

"authorised person" has the meaning given in section 54;

"body corporate" means a body corporate constituted under the law of–

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(a) Gibraltar; or

(b) a country or territory outside Gibraltar;

"Capital Requirements Regulation" means the Capital Requirements Technical Standards, set out in the Annex to the Financial Services (Capital Requirements) (Technical Standards) Regulations 2026;

"consumer" (where not otherwise defined) means an individual who is acting for purposes other than the individual's trade, business or profession;

"controller" has the meaning given in section 131(3);

"credit institution" has the meaning given in Article 4(1) of the Capital Requirements Regulation;

"the data protection legislation" has the meaning given in section 2(1) of the Data Protection Act 2004;

"decision notice" means a decision notice issued in accordance with section 613;

"document" includes information recorded in any form and, where information is not recorded in legible form, any obligation to produce a document imposed by or under this Act includes an obligation to produce the information in legible form or in a form from which a copy in legible form can readily be produced.

"durable medium" means any medium which–

(a) allows information to be addressed personally to the recipient;

(b) enables the recipient to store the information so that it is accessible for future reference for an adequate period for the purposes of the information; and

(c) allows the unchanged reproduction of the information stored;

"enactment" means an Act, any subsidiary legislation made under an Act or an enactment contained in an Order in Council for the time being in force in Gibraltar and includes any retained direct EU legislation;

"exempt person", in relation to a regulated activity, means a person who is exempt from the general prohibition in relation to that activity as a result of Exemption Regulations made under section 61;

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"financial institution" has the meaning given in Article 4(1) of the Capital Requirements Regulation;

"financial instrument" has the meaning given in Chapter 2 of Part 6 of Schedule 2;

"general prohibition" has the meaning given in section 8;

"the GFSC" means the Gibraltar Financial Services Commission within the meaning of section 21;

"Gibraltar firm" has the meaning given in section 59;

"group" has the meaning given in section 109;

"investment firm" means a legal person whose regular occupation or business is the provision or performance of investment services and activities on a professional basis;

"investment services and activities" has the meaning given in Chapter 2 of Part 6 of Schedule 2;

"the Minister" (other than in references to the Minister of Finance) means the Minister with responsibility for financial services;

"MTF" (multilateral trading facility) has the meaning given in paragraph 55(2) of Schedule 2;

"notice" means notice in writing;

"OTF" (organised trading facility) has the meaning given in paragraph 56(2) of Schedule 2;

"parent undertaking" has the meaning given in section 276 of the Companies Act 2014;

"partnership" includes a partnership constituted under the law of a country or territory outside Gibraltar that is not a body corporate;

"prescribed" (where not otherwise defined) means prescribed in regulations made by the Minister and "prescribe" is to be construed accordingly;

"regulated activity" has the meaning given in section 5 (see also section 7 for meaning of references to regulated activities of a particular kind);

"regulated firm" has the meaning given in section 63(4);

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"regulated market" has the meaning given in paragraph 1 of Schedule 2;

"regulated person" means a person who is authorised, has a permission or is licensed, registered, approved or recognised under this Act;

"repealed enactment" means an enactment which is repealed or revoked by or under this Act;

"standard scale" has the meaning given in section 2 of the Crimes Act 2011;

"statutory maximum fine" has the meaning given in section 2 of the Crimes Act 2011;

"subsidiary undertaking" has the meaning given in section 276 of the Companies Act 2014;

"technical standards" has the meaning given in section 626A(2);

"threshold conditions" has the meaning given in section 64;

"trading venue" has the meaning given in paragraph 1 of Schedule 2;

"UK-adopted international accounting standards" has the meaning given in section 237 of the Companies Act 2014;

"warning notice" means a warning notice issued in accordance with section 612; and

"working day" means any day other than a Saturday, Sunday or which is a bank holiday or public holiday.

(3) A reference in this Act to the "competent authority" means–

(a) in Gibraltar, the GFSC; and

(b) in another country or territory, the authority which exercises functions equivalent to those exercised by the GFSC under the relevant provisions of this Act.

(4) In this Act or any provision made under it, except where there is express provision to the contrary–

(a) a reference to an amount in euros includes a reference to an equivalent amount in sterling; and

(b) the equivalent in sterling on a particular day of a sum expressed in euros is to be determined by converting that sum into its equivalent in sterling using the exchange rate for the euro and sterling for the previous working day.

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(5) The Minister may by notice in the Gazette specify the exchange rate to be used for the purposes of subsection (4).

Electronic communication.

3.(1) A requirement imposed by or under this Act for a person to send or serve on another person ("the recipient") any notice or other document may be satisfied by sending it to the recipient by electronic means.

(2) Subsection (1) does not apply where a recipient has notified the sender in writing that the recipient does not wish to receive notices or documents (either of a particular kind or at all) by electronic means.

(3) For the purposes of subsection (1), where the intended recipient is–

(a) the GFSC, it must publish on its website an email address to which the notice or document may be sent;

(b) a relevant body, it must publish on its website or the GFSC's website an email address to which the notice or document may be sent; or

(c) a person other than the GFSC or a relevant body, the recipient must provide the sender with the recipient's email address.

(4) In subsection (3) a "relevant body" means–

(a) the Decision Making Committee (see section 24);

(b) the Financial Services Resolution and Compensation Committee (see section 27);

(c) the Gibraltar Resolution Authority (see section 284);

(5) A notice or document sent by electronic means must be sent in a form that the sender reasonably considers will enable the recipient to–

(a) read it, and

(b) retain a copy of it.

(6) For the purposes of subsection (5), a notice or document can be read only if it can be read (or, to the extent that it consists of images, seen) with the naked eye.

PART 2

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REGULATED AND PROHIBITED ACTIVITIES

Introduction

Overview.

4. This Part makes provision–

(a) prohibiting any person from carrying on regulated activities by way of business in Gibraltar unless the person is either an authorised person or an exempt person; and

(b) restricting the circumstances in which it is possible for persons who are not authorised or exempt to advertise or otherwise encourage others to enter into agreements with persons carrying on regulated activities.

Regulated activities

Regulated activities.

5.(1) An activity is a regulated activity for the purposes of this Act if–

(a) it is an activity of a kind specified in Schedule 2;

(b) it is carried on by way of business; and

(c) it relates to any of the items listed in subsection (2) (as defined in that Schedule).

(2) The listed items are–

(a) deposits (see Part 2 of Schedule 2);

(b) electronic money (see Part 3 of that Schedule);

(c) payment services (see Part 4 of that Schedule);

(d) contracts of insurance (see Part 5 of that Schedule);

(e) financial instruments (see Part 6 of that Schedule);

(f) structured deposits (see Part 7 of that Schedule);

(g) benchmarks (see Part 8 of that Schedule);

(h) markets in connection with financial instruments (see Part 9 of that Schedule);

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(i) data reporting services (see Part 10 of that Schedule);

(j) property of any kind (see Part 11 of that Schedule);

(k) credit agreements in connection with residential immovable property (see Part 12 of that Schedule);

(l) companies, foundations, partnerships and unincorporated associations (see Part 13 of that Schedule);

(m) trusts and foundations (see Part 14 of that Schedule);

(n) foreign currency, precious metals or cheques (see Part 15 of that Schedule);

(o) value belonging to another which is stored or transmitted by means of a database system or virtual asset arrangements (see Part 16 of that Schedule).

(3) The Minister may by regulations amend subsection (2) and Schedule 2 by adding, modifying or removing provisions.

(4) Regulations under subsection (3) may–

(a) provide for exclusions from the regulated activities;

(b) confer powers on the Minister or the GFSC;

(c) authorise the making of regulations or other instruments by the Minister for the purposes of, or connected with, any provision of, or made under, this section;

(d) make such consequential, transitional or supplemental provision as the Minister considers appropriate for the purposes of, or connected with, any provision of, or made under, this section.

(5) Provision made as a result of subsection (4)(d) may amend any enactment, including any provision of, or made under, this Act.

Carrying on regulated activities by way of business.

6.(1) The Minister may by regulations make provision for the purposes of section 5(1)(b)–

(a) as to the circumstances in which a person who would otherwise not be regarded as carrying on a regulated activity by way of business is to be regarded as doing so; and

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(b) as to the circumstances in which a person who would otherwise be regarded as carrying on a regulated activity by way of business is to be regarded as not doing so.

(2) Regulations under subsection (1) may be made so as to apply–

(a) generally in relation to all regulated activities;

(b) in relation to a specified category of regulated activity; or

(c) in relation to a particular regulated activity.

(3) Regulations under subsection (1) may be made so as to apply–

(a) for the purposes of all provisions;

(b) for a specified group of provisions; or

(c) for a specified provision.

(4) Provision means a provision of, or made under, this Act.

(5) Nothing in this section is to be read as affecting the provisions of section 627.

References to regulated activities of a particular kind.

7.(1) Any reference in this Act to the carrying on of a regulated activity of a particular kind is to be understood in accordance with section 5 and Schedule 2.

(2) In connection with subsection (1), Column 1 of the Table in Schedule 3 lists each kind of regulated activity specified Schedule 2 and, in relation to each such activity–

(a) Column 2 of the Table specifies the item listed in section 5(2)(a) to (o) to which the activity relates;

(b) Column 3 specifies the provisions of Schedule 2 which define the activity; and

(c) Column 4 specifies the general description used to identify a person carrying on the activity.

Carrying on regulated activities

The general prohibition.

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8.(1) No person may carry on a regulated activity in or from Gibraltar, or purport to do so, unless the person is–

(a) an authorised person; or

(b) an exempt person.

(2) The prohibition in subsection (1) is referred to in this Act as the general prohibition.

Contravention of the general prohibition.

9.(1) A person who contravenes the general prohibition commits an offence and is liable–

(a) on summary conviction, to imprisonment for six months or the statutory maximum fine, or both;

(b) on conviction on indictment, to imprisonment for two years or a fine, or both.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

False claims to be authorised or exempt.

10.(1) It is an offence for a person ("P") who is neither an authorised person nor, in relation to the regulated activity in question, an exempt person–

(a) to describe P (in whatever terms) as being an authorised person;

(b) to describe P (in whatever terms) as being an exempt person in relation to the regulated activity; or

(c) to behave or otherwise hold P out in a manner which indicates (or which is reasonably likely to be understood as indicating) that P is–

(i) an authorised person; or

(ii) an exempt person in relation to the regulated activity.

(2) A person who commits an offence under subsection (1) is liable–

(a) on summary conviction, to imprisonment for six months or the statutory maximum fine, or both;

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(b) on conviction on indictment, to imprisonment for two years or a fine, or both.

(3) It is a defence for a person charged with an offence under subsection (1) to prove that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Requirement for authorised persons to have permission

Authorised persons acting without permission.

11.(1) An authorised person ("AP") is to be taken to have contravened a requirement imposed on AP by or under this Act if AP carries on a regulated activity in or from Gibraltar, or purports to do so, otherwise than in accordance with permission–

(a) given to AP under Part 7; or

(b) resulting from any other provision of this Act.

(2) A contravention within subsection (1)–

(a) does not make AP guilty of an offence; and

(b) does not make any transaction void or unenforceable.

Financial promotion

Restrictions on financial promotion.

12.(1) A person ("P") must not, in the course of business, communicate an invitation or inducement to engage in investment activity.

(1A) "Engaging in investment activity" means–

(a) entering or offering to enter into an agreement the making or performance of which by either party constitutes–

(i) the carrying on of a regulated activity; or

(ii) a restricted activity; or

(b) exercising any rights conferred by a controlled investment to acquire, dispose of, underwrite or convert a controlled investment.

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(1B) For the purposes of subsection (1A)–

"controlled investment" means an investment of a specified kind or one which falls within a specified class of investment; and

"restricted activity" means an activity of a specified kind or one which falls within a specified class of activity,

and "specified" means specified in regulations made by the Minister.

(2) Subsection (1) applies, in particular, to–

(a) any unsolicited communication made in the course of a personal visit, telephone conversation or other interactive dialogue with a recipient (whether in Gibraltar or elsewhere);

(b) any kind of advertising irrespective of the means used to communicate it to a recipient or recipients.

(3) For the purposes of subsection (2)(a), a communication is unsolicited if the personal visit, telephone conversation or other interactive dialogue in course of which the communication is made–

(a) was not initiated at the request of the recipient; or

(b) takes place otherwise than in response to an express request from the recipient.

(4) In the case of a communication originating outside Gibraltar, subsection (1) applies only if the communication is capable of having effect in Gibraltar.

(5) Subsection (1) does not apply if P is–

(a) an authorised person; or

(b) an exempt person in relation to the regulated activity or restricted activity to which the communication relates.

(6) Subsection (1) also does not apply in relation to any advertising if–

(a) the content is approved for the purposes of this section by an authorised person;

(b) it is communicated by–

(i) the Government;

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(ii) the government of any state or territory outside Gibraltar;

(iii) the central bank of any country or territory;

(iv) any international organisation whose members include Gibraltar or the United Kingdom; or

(c) it is communicated by a media organisation acting in good faith.

(7) The Minister may prescribe circumstances in which subsection (1) does not apply.

(8) In this section–

"communicate" includes causing a communication to be made;

"media organisation" means a body or other organisation whose activities consist of or include journalism.

Contravention of section 12.

13.(1) A person who contravenes section 12(1) commits an offence and is liable–

(a) on summary conviction, to imprisonment for six months or the statutory maximum fine, or both;

(b) on conviction on indictment, to imprisonment for two years or a fine, or both.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that the person–

(a) believed on reasonable grounds that the content of the communication was prepared, or approved for the purposes of section 12, by an authorised person; or

(b) took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Enforceability of agreements

Agreements made by persons contravening the general prohibition.

14.(1) An agreement made by a person in the course of carrying on a regulated activity in contravention of the general prohibition is unenforceable against the other party.

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(2) The other party to the agreement ("B") is entitled to recover–

(a) any money or other property paid or transferred by B under the agreement: and

(b) compensation for any loss sustained by B as a result of having parted with it.

(3) "Agreement" means an agreement–

(a) which is made after this section comes into operation; and

(b) the making or performance of which constitutes, or is part of, the regulated activity in question.

(4) This section does not apply if the regulated activity is accepting deposits (see section 17).

Agreements made through persons contravening the general prohibition.

15.(1) An agreement made by an authorised person ("the provider") is unenforceable against the other party if it is made by the provider–

(a) in the course of the provider carrying on a regulated activity (not in contravention of the general prohibition); but

(b) in consequence of something said or done by another person ("the third party") in the course of a regulated activity carried on by the third party in contravention of the general prohibition.

(2) The other party to the agreement ("B") is entitled to recover–

(a) any money or other property paid or transferred by B under the agreement: and

(b) compensation for any loss sustained by B as a result of having parted with it.

(3) "Agreement" means an agreement–

(a) made after this section comes into operation; and

(b) the making or performance of which constitutes, or is part of, the regulated activity in question carried on by the provider.

(4) This section does not apply if the regulated activity is accepting deposits (see section 17).

Agreements made unenforceable by section 14 and 15.

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16.(1) This section applies to an agreement which is unenforceable because of section 14 or 15.

(2) The amount of compensation recoverable as a result of that section is–

(a) the amount agreed by the parties; or

(b) on the application of either party, the amount determined by the Supreme Court.

(3) If the court is satisfied that it is just and equitable in the circumstances of the case, it may allow–

(a) the agreement to be enforced; or

(b) money and property paid or transferred under the agreement to be retained.

(4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must–

(a) if the case arises as a result of section 14, have regard to whether the person carrying on the regulated activity concerned reasonably believed that the general prohibition was not contravened by that person in making the agreement;

(b) if the case arises as a result of section 15, have regard to whether the provider knew that the third party was (in carrying on the regulated activity) contravening the general prohibition.

(5) A person against whom an agreement is unenforceable must repay any money and return any other property received by that person if–

(a) the person elects not to perform the agreement; or

(b) as a result of this section, the person recovers money paid or other property transferred by the person under the agreement.

(6) If property transferred under the agreement has passed to a third party, a reference in section 14 or 15 or this section to that property is to be read as a reference to its value at the time of its transfer under the agreement.

(7) The commission of an offence under section 9 does not make the agreement concerned illegal or invalid to any greater extent than is provided in section 14 or 15.

Accepting deposits in breach of general prohibition.

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17.(1) "Agreement" means an agreement between a person ("the depositor") and another person ("the deposit-taker")–

(a) which is made after this section comes into operation; and

(b) the making or performance of which constitutes, or is part of, the regulated activity of accepting deposits; and

(c) which is made in the course of the carrying on by the deposit-taker of that activity in contravention of the general prohibition.

(2) If the depositor is not entitled under the agreement to recover without delay any money deposited by the depositor, the depositor may apply to the Supreme Court for an order directing the deposit-taker to return the money to the depositor.

(3) The court need not make such an order if it is satisfied that it would not be just and equitable for the money deposited to be returned, having regard to whether the deposit-taker reasonably believed that the deposit-taker was not contravening the general prohibition by making the agreement.

Agreements resulting from contravention of section 12.

18.(1) In this section–

"unlawful communication" means a communication in relation to which there has been a contravention of section 12(1); and

"restricted agreement" means an agreement the making or performance of which by either party constitutes the carrying on a regulated activity.

(2) If in consequence of an unlawful communication a person enters as a customer into a restricted agreement, it is unenforceable against that person and that person is entitled to recover–

(a) any money or other property paid or transferred by the person under the agreement; and

(b) compensation for any loss sustained by the person as a result of having parted with it.

(3) If the Supreme Court is satisfied that it is just and equitable in the circumstances of the case, it may allow–

(a) the restricted agreement to be enforced; or

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(b) money or property paid or transferred under the agreement to be retained.

(4) In considering whether to allow the restricted agreement to be enforced or (as the case may be) the money or property paid or transferred to be retained the court must–

(a) if the applicant made the unlawful communication, have regard to whether the applicant reasonably believed that the applicant was not making an unlawful communication;

(b) if the applicant did not make the unlawful communication, have regard to whether the applicant knew that the agreement was entered into in consequence of an unlawful communication.

(5) "Applicant" means the person seeking to enforce the restricted agreement or retain the money or property paid or transferred.

(6) Any reference to making a communication includes causing a communication to be made.

(7) The amount of compensation recoverable as a result of subsection (2) is–

(a) the amount agreed between the parties; or

(b) on the application of either party, the amount determined by the Supreme Court.

(8) If a person ("A") elects not to perform an agreement which by virtue of subsection (2) is unenforceable against A, A must repay any money and return any other property received by A under the agreement.

(9) If, by virtue of subsection (2), A recovers any money or property transferred by A under an agreement, A must repay any money and return any other property received by A under the agreement.

(10) If any property required to be returned under this section has passed to a third party, references to that property are to be read as references to its value at the time of its receipt by the person required to return it.

Miscellaneous

Carrying on regulated activities from Gibraltar.

19.(1) In the cases described in this section, a person ("A") who is carrying on a regulated activity but would not otherwise be regarded as carrying it on in Gibraltar is, for the purposes of this Act, to be regarded as carrying it on from Gibraltar.

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(2) The first case is where–

(a) A's registered office (or if A has no registered office, A's head office) is in Gibraltar; and

(b) the day-to-day management of the carrying on of the regulated activity is the responsibility of A's registered office (or head office) or another establishment maintained by A in Gibraltar.

(3) The second case is where–

(a) A's head office is not in Gibraltar; but

(b) the activity is carried on from an establishment maintained by A in Gibraltar.

(4) The third case is where–

(a) the regulated activity being carried on by A is the regulated activity of managing an AIF;

(b) the AIF being managed–

(i) has its registered office in Gibraltar; or

(ii) is marketed in Gibraltar;

(c) A's registered office is in Gibraltar or, if A does not have a registered office, A's head office is in Gibraltar; and

(d) the activity is carried on from an establishment maintained in a country or territory outside Gibraltar.

(5) For the purposes of subsections (2) to (4) it is irrelevant where the person with whom the regulated activity is carried on is situated.

(6) For the purposes of this section, an AIF is "marketed" when–

(a) the person managing the AIF ("the AIFM") makes a direct or indirect offering or placement of units or shares of the AIF to or with an investor domiciled or with a registered office in Gibraltar; or

(b) another person makes such an offering or placement at the initiative of, or on behalf of, the AIFM.

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PART 3
GIBRALTAR FINANCIAL SERVICES COMMISSION

Interpretation of Part 3.

20. In this Part–

"Committee" means any Committee established under section 25 or paragraph 3(1) of Schedule 4 but does not include the DMC or FSRCC;

"Chair" (other than in the expressions "DMC Chair" and "FSRCC Chair") means the Chair of the GFSC appointed under section 21;

"Chief Executive" means the person appointed under section 30;

"the DMC" means the Decision Making Committee established by section 24;

"financial crime" includes an offence involving–

(a) money laundering,

(b) the financing of terrorism or proliferation financing,

(c) fraud or dishonesty,

(d) misconduct in, or misuse of information relating to, a financial market, or

(e) handling the proceeds of crime,

and for the purpose of this definition, "offence" means an act or omission which is an indictable offence or would be an indictable offence if it had taken place in Gibraltar;

"financial services" means any services provided in connection with financial services business;

"financial services business" means–

(a) a business or activity for which an authorisation, permission, licence, approval or registration is required under this Act; or

(b) a business or activity that is prescribed by the Minister as a financial services business;

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"the FSRCC" means the Financial Services Resolution and Compensation Committee (see section 27);

"the GFSC" means the Gibraltar Financial Services Commission (see section 21);

"resolution functions" has the meaning given in section 26(2).

Gibraltar Financial Services Commission.

21.(1) The Gibraltar Financial Services Commission ("GFSC"), established as the Financial Services Commission under the Financial Services Commission Act 2007, continues to exist in accordance with this Part.

(2) The GFSC is a body corporate with perpetual succession which is to comprise–

(a) seven persons appointed by the Minister in accordance with subsection (5), at least two of whom must have significant experience in another jurisdiction of financial services business or its regulation; and

(b) the Chief Executive (without further appointment).

(3) The GFSC must, with the consent of the Minister, appoint one of the members appointed under subsection (2)(a) to be the Chair of the GFSC.

(4) Appointments as Chair must be for a period of not more than one year but a member may be reappointed as Chair any number of times.

(5) A member must be appointed for not more than three years, on the terms specified in the instrument appointing the member.

(6) When there is a vacancy among the members appointed under subsection (2)(a)–

(a) the GFSC, within four weeks of the vacancy arising, must nominate no fewer than three persons to the Minister; and

(b) the Minister must either–

(i) appoint a person from among those nominated; or

(ii) if the Minister declines to do so, direct the GFSC to nominate, within a further four weeks, no fewer than three further persons,

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and, if the Minister declines to appoint a person from among those further nominations, the Minister may appoint any person whom the Minister believes to be suitably qualified to be a member.

(7) The Minister, having consulted the other members, may–

(a) remove a member appointed under subsection (2)(a) if the Minister is satisfied that the member–

(i) has been absent from three consecutive meetings of the GFSC without the permission of the Chair;

(ii) is bankrupt;

(iii) has been convicted of a criminal offence punishable by a term of imprisonment of three months or more;

(iv) is incapacitated by physical or mental illness;

(v) is in material breach of the terms under which the member was appointed; or

(vi) is otherwise unable or unfit to discharge the functions of a member;

(b) remove a member (including the Chief Executive) for any reason in the public interest with the consent of Parliament expressed in a resolution which sets out the reasons for doing so.

(8) The removal becomes effective when it is published in the Gazette.

(9) A member may resign from office by giving notice to the GFSC.

(10) Any member of the GFSC appointed under subsection (2)(a) who ceases to be a member (other than by removal under subsection (7)) is eligible for re-appointment by the Minister for a further period of not more than three years except where the member has already served for a total of nine years or more.

(11) The GFSC must designate an employee of the GFSC to be the Secretary to the GFSC.

(12) The GFSC may sue and (subject to section 38) be sued in its corporate name and service of any process or notice on the GFSC may be effected by leaving it at, or sending it by registered post to, the GFSC's principal office.

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(13) The GFSC is not to be treated for any purposes as a body exercising functions on behalf of the Crown and no person is to be treated as a servant of the Crown by reason only of being a member or employee of, or on secondment to, the GFSC.

(14) Schedule 4 makes further provision about the GFSC.

Functions of the GFSC.

22.(1) The functions of the GFSC are–

(a) to supervise regulated persons in accordance with this Act;

(b) to consider and determine applications for authorisation, permission, licensing, approval, registration or recognition made under this Act;

(c) to monitor compliance by regulated persons with this Act and any regulations, rules, codes and guidance made under it and, when appropriate, take enforcement action in respect of any non-compliance;

(d) to monitor compliance by regulated persons with legislation, rules, codes and guidance relating to the prevention of financial crime and, when appropriate, take enforcement action in respect of any non-compliance;

(e) to monitor financial services business carried on in or from Gibraltar and to take such appropriate action as it is empowered to take against persons carrying on such business without the necessary authorisation, permission, licence, approval, registration or recognition;

(f) to carry out the duties and discharge the functions imposed on, or given to, it under this or any other Act;

(g) to determine subject to the approval of the Minister the terms of service of the Chief Executive;

(h) to determine the number and skill mix of employees required by the GFSC to carry out its functions and to determine their terms and conditions of employment;

(i) to monitor and oversee the performance by the Chief Executive of all functions delegated to the Chief Executive by the GFSC;

(j) to approve the annual estimates of income and expenditure to be submitted to the Minister under paragraph 6 of Schedule 4; and

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(k) in respect of regulated activities which persons authorised in Gibraltar may carry on in, and under the law of, the United Kingdom, to supervise and regulate those regulated activities in accordance with standards and supervisory practices which are aligned to the standards and supervisory practices governing those activities in the United Kingdom.

(2) The GFSC must advise the Minister if, at any time, it considers that this Act does not provide it with sufficient powers, or otherwise does not enable it, or it does not have such financial, technical and other resources, and such personnel, as are necessary to enable it –

(a) to supervise and regulate financial services business carried on in or from Gibraltar to internationally accepted standards; or

(b) to discharge its functions under this or any other Act.

GFSC's discharge of its functions.

23.(1) In discharging its functions under this or any other Act, the GFSC–

(a) must, so far as reasonably possible, act in a way–

(i) which is compatible with the regulatory objectives specified in subsection (2),

(ii) which has regard to generally accepted principles of good corporate governance, and

(iii) which the GFSC considers most appropriate for the purposes of meeting those objectives; and

(b) must have regard to–

(i) the need to use resources in the most efficient and effective way;

(ii) the principle that the duty to manage a business falls on the senior management of that business;

(iii) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;

(iv) the desirability of facilitating innovation in connection with financial services business;

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(v) the international character of financial services and markets and the desirability of maintaining the competitive position of Gibraltar;

(vi) the desirability of minimising, as far as reasonably practicable, the adverse effects of regulation on competition and consumer choice;

(vii) the promotion of the macro-economic interests of Gibraltar and, in particular, the development of financial services business, in accordance with the policies of the Government as advised to the GFSC by the Minister;

(viii) the policy of the Government, as advised to the GFSC by the Minister, where it relates to matters of general application regarding the authorisation, licensing, recognition and registration of financial services business which, in the judgement of the Minister, affects or relates to the macro-economic or other public interest of Gibraltar; and

(ix) the need to maintain the good international reputation of Gibraltar generally and as a jurisdiction for the conduct of financial services business.

(2) The regulatory objectives, which are more specifically described in Schedule 5 are–

(a) the promotion of market confidence;

(b) the reduction of systemic risk;

(c) the promotion of public awareness;

(d) the protection of the good reputation of Gibraltar;

(e) the protection of consumers; and

(f) the reduction of financial crime.

Directions by Minister concerning macro-economic interests, etc.

23A.(1) The Minister may give a direction to the GFSC requiring it, in exercising its functions, to have regard to Government policy in respect of any macro-economic or other public interest of Gibraltar (including, in particular, financial stability) described in the direction.

(2) The Minister must consult the GFSC before giving a direction under subsection (1).

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(3) A direction may relate to all regulated persons or to regulated persons of a specified class or description, but may not relate to a particular regulated person.

(4) A direction may specify particular matters to which the GFSC is or is not to have regard in complying with the direction, but those matters must be specified in relation to all regulated persons or a specified class or description of regulated person rather than a particular regulated person.

(5) Subsection (3) or (4) does not prevent the GFSC from taking any steps in respect of a particular regulated person who falls within a specified class or description to which a direction applies.

(6) Nothing in this section permits the Minister to give a direction in respect of a particular matter which the GFSC is considering in relation to the taking of any enforcement or sanctioning action against a particular regulated person.

(7) This section applies without limiting section 23(1)(b)(vii) or (viii) or any other power of the Minister.

Decision Making Committee

Decision Making Committee.

24.(1) The Decision Making Committee ("the DMC") is hereby established as a statutory committee of the GFSC.

(2) The functions of the DMC are to exercise, on behalf of the GFSC, the GFSC's powers in respect of specified regulatory decisions and, except where this Act specifically provides otherwise, a specified regulatory decision may only be taken by the GFSC acting by the DMC.

(3) In this section a "specified regulatory decision" means a decision by the GFSC–

(a) to issue–

(i) a decision notice under Part 11 in respect of which a warning notice has been issued;

(ii) *Omitted*

(iii) a decision to impose a sanction, having dispensed with the requirement to issue a warning notice; or

(iv) a decision notice which, in accordance with section 382(1), has immediate effect.;

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(b) to issue a decision notice under–

(i) section 79(2)(a) (other than where section 79(3) applies) imposing a variation–

(aa) under section 69(2)(a)(ii); or

(bb) under section 69(2)(a)(iii) which is a specified restriction;

(ii) section 79(2)(b) (other than where section 79(3) applies)–

(aa) imposing under section 70(3)(a) a requirement which is a specified restriction; or

(bb) varying under section 70(3)(b) an existing requirement so as to impose a specified restriction;

(iii) section 82(2);

(c) to give a direction under–

(i) section 80(1)(a)(i); or

(ii) section 80(1)(a)(ii) or (b) or 516 which imposes a specified restriction;

(d) to issue a decision notice withdrawing approval of a regulated individual under section 103(1)(c);

(e) to issue–

(i) a notice under section 160(5) dispensing with the issue of a warning notice; or

(ii) a further notice under section 160(10) or (11), continuing or varying a sanctioning action;

(f) *Omitted*

(g) to refuse to extend the period for making representations–

(i) under section 160(8) in respect of a notice issued under section 160(5); or

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(ii) under section 612(5) in respect of a warning notice concerning a decision which, if confirmed, would be a specified regulatory decision;

(h) *Omitted*

(i) to publish an inspector's report under section 140(4);

(j) to issue a decision notice under section 141(2) requiring a person to pay an inspection costs contribution;

(k) to–

(i) issue a decision notice under section 306(2) or 315(2)–

(aa) imposing or varying a condition which is a specified restriction; or

(bb) varying an existing condition so as to impose a specified restriction;

(ii) issue a decision notice under section 327(6) suspending or revoking a scheme's authorisation or recognition; or

(iii) under section 330(2), issue a direction under section 329(2) which is a specified restriction

(l) to issue a decision notice under section 348ZA(1)(b)–

(i) exercising any of the powers in section 347(2)(b) or 348 in respect of a prospectus or any public offering or trading to which a prospectus relates; or

(ii) without first issuing a warning notice, in accordance with the procedure in section 348ZA(2);

(m) to issue a decision notice–

(i) under section 544(2) exercising any of the powers specified in section 544(1)(b) or (c) imposing a specified restriction;

(ii) under section 549(1) suspending or revoking a licence under section 546 or giving a direction under section 548(a) or (b); or

(iii) under section 549(1) without first issuing a warning notice, in accordance with the procedure in section 549(2);

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(n) to issue a decision notice under section 564(3)–

(i) imposing on an IORP under section 563(2)(a) a condition which is a specified restriction; or

(ii) varying an existing condition on an IORP under section 563(2(b) so as to impose a specified restriction;

(o) to issue a decision notice under section 571(1)–

(i) imposing a condition which is a specified restriction on, suspending or revoking an IORP's authorisation under section 570(1);

(ii) suspending or revoking an IORP's authorisation under section 570(3);

(iii) suspending or revoking a small institution's registration under section 570(5); or

(iv) in respect of any matter in sub-paragraphs (i) to (iii) without first issuing a warning notice in accordance with the procedure in section 571(2)

(p) to issue–

(i) a decision notice under section 600(3)(b), (c) or (d)–

(aa) imposing on a personal pension scheme a condition which is a specified restriction;

(bb) varying an existing condition on a personal pension scheme so as to impose a specified restriction; or

(cc) revoking the approval of a personal pension scheme;

(ii) a decision notice under section 601(1)(b) suspending a scheme's approval on the ground specified in section 598(2)(a); or

(iii) a decision notice under section 601(1)(b) without first issuing a warning notice, in accordance with the procedure in section 601(2); or

(q) *Omitted*

(r) to issue a notice under section 423 or 424 or a decision notice under section 425, 426 or 428 in respect of the suspension or removal of a financial instrument from trading or not to revoke such a requirement;

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(s) *Omitted*

(t) *Omitted*

(u) *Omitted*

(v) to make any other regulatory decision that the Minister may prescribe.

(3A) In subsection (3), "specified restriction" means a condition, requirement, direction or other decision, the terms of which provide or have the effect that the person concerned–

(a) is prohibited from conducting new business which the person would otherwise be permitted to conduct; or

(b) must–

(i) cease conducting business of a particular class or description which the person conducts or would otherwise be permitted to conduct; or

(ii) reduce the level or volume of existing business which the person conducts or would otherwise be permitted to conduct.

(4) A GFSC decision does not fall within subsection (3)(a), (b), (c), (d), (i), (j), (k), (l), (m), (n), (o) (p) or (r) if the person concerned–

(a) has agreed in writing to the steps proposed being taken by the GFSC; or

(b) where the proposed decision is set out in a warning notice, has not made any representations to the GFSC within the notice period specified in section 612(2)(a) (and in that event the GFSC may regard the facts and matters set out in the warning notice as undisputed).

(5) Schedule 6 makes further provision about the membership, powers and procedures of the DMC.

(6) The Minister may by regulations–

(a) amend subsection (3) by adding, modifying or removing an entry;

(b) amend the definition of specified restriction in subsection (3A); or

(c) prescribe a decision which the GFSC may make, whether under this Act or any other enactment, as a specified regulatory decision to which subsection (2) applies.

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Regulation of auditors

GFSC's function as regulator of auditors.

25.(1) The Auditors Regulatory Committee ("the ARC"), established under section 6A of the Financial Services Commission Act 2007, and which exercises the functions conferred on the GFSC by Part 24, is to continue to exist as a committee of the GFSC in accordance with this Part.

(2) The ARC is to comprise–

(a) not less than four members appointed by the GFSC from among its members; and

(b) the Chief Executive (without further appointment).

(3) All of the members of the ARC must be non-practitioners (within the meaning of Part 24).

(4) Paragraph 3 of Schedule 4 applies in relation to the ARC with the following modifications–

(a) a committee established under paragraph 3(1)(b) may not discharge any function of the ARC; and

(b) paragraph 3(3) does not apply to the ARC.

Resolution functions

GFSC as resolution authority.

26.(1) The GFSC continues to be designated as the Gibraltar Resolution Authority, to carry out the functions of the resolution authority under Part 17.

(2) Subject to subsection (3), the GFSC's functions as the Gibraltar Resolution Authority (its "resolution functions") are to be exercised by the GFSC acting through the FSRCC.

(3) The GFSC may exercise its resolution functions other than in accordance with subsection (2) in circumstances where, in the opinion of the GFSC–

(a) it would be more appropriate for the GFSC to exercise those functions; or

(b) in particular (and without limiting paragraph (a)) it would be inappropriate for the FSRCC to do so because of a conflict between the FSRCC's interests in the

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discharge of the resolution functions and its functions under Part 15 in relation to the deposit guarantee scheme.

(4) The costs incurred by the GFSC and the FSRCC in discharging the resolution functions are to be met from fees of such amount as the Minister may by regulations prescribe and payable by institutions established in Gibraltar; and for this purpose "institution" has the same meaning as in Part 17.

(5) Part 17 makes further provision about the Gibraltar Resolution Authority.

Financial Services Resolution and Compensation Committee.

27.(1) The Financial Services Resolution and Compensation Committee ("the FSRCC"), established under the Financial Services Commission Act 2007, continues to exist as a statutory committee of the GFSC in accordance with this Part and Part 15.

(2) The functions of the FSRCC are–

(a) the exercise of the GFSC's resolution functions in accordance with section 26(2);

(b) the functions under Part 15 in relation to–

(i) the financing arrangements for the resolution functions; and

(ii) the Gibraltar deposit guarantee scheme; and

(c) the functions under Part 16 in relation to the Gibraltar investor compensation scheme.

(3) Schedule 7 makes further provision about the membership, powers and procedures of the FSRCC.

(4) Schedule 18 makes further provision about the powers and obligations of the FSRCC in exercising its functions under Parts 15 and 16.

Operational independence of resolution functions.

28.(1) The GFSC must make adequate structural arrangements to ensure that–

(a) its resolution functions and supervisory functions are operationally independent of one another;

(b) conflicts of interest are avoided between its resolution functions and supervisory functions; and

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(c) staff involved in performing its resolution functions are separate from and subject to separate reporting lines from those involved in performing its supervisory or other functions.

(2) Without limiting subsection (1), as part of those arrangements the GFSC must maintain the Resolution and Compensation Unit, established under the Financial Services Commission Act 2007, which is staffed by GFSC employees who report to the FSRCC and are operationally independent from those employees who are not involved in performing its resolution functions.

(3) The functions of the Resolution and Compensation Unit are–

(a) to support and advise the FSRCC in the discharge of its functions;

(b) to act as the secretariat of the FSRCC; and

(c) to perform such other functions as the FSRCC may require.

(4) The GFSC must prepare and issue–

(a) a statement of its arrangements under subsections (1) and (2); and

(b) a revised statement, if there is any material change to those arrangements.

References to resolution authority.

29. References in this Act or any other law to–

(a) the GFSC do not (unless otherwise provided) include the GFSC acting in its capacity as the Gibraltar Resolution Authority; or

(b) the Gibraltar Resolution Authority do not include the GFSC or the FSRCC acting otherwise than in the capacity of the Gibraltar Resolution Authority.

Chief Executive

Appointment of Chief Executive.

30.(1) The GFSC with the approval of the Minister must appoint a person to be the Chief Executive of the GFSC.

(2) The Chief Executive must be appointed for a term of not more than three years, and may be re-appointed for one or more further terms as the GFSC with the approval of the Minister may determine.

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(3) The Chief Executive must perform such functions, and exercise such powers as are from time to time conferred on the Chief Executive by this or any other Act or are delegated to the Chief Executive by the GFSC.

(4) The Chief Executive is, with the approval of the GFSC, additionally responsible for drawing up and implementing codes for regulating the terms of service, discipline and training of all persons employed by the GFSC.

(5) If the Chief Executive is absent–

(a) for five days or more, the Chief Executive (or, if the Chief Executive is incapacitated, the Chair of the GFSC) must appoint another GFSC officer to act as Chief Executive during that absence (but for a period of not more than one month); or

(b) for fewer than five days, the Chief Executive may make such an appointment for the duration of that absence.

(6) The Minister may declare the office of Chief Executive to be vacant–

(a) if the Minister and the GFSC are satisfied that the Chief Executive–

(i) has been absent from three consecutive meetings of the GFSC without the permission of the GFSC;

(ii) is bankrupt;

(iii) has been convicted of a criminal offence punishable by a term of imprisonment of three months or more;

(iv) is incapacitated by physical or mental illness;

(v) is in material breach of the terms of the Chief Executive's appointment; or

(vi) is otherwise unable or unfit to discharge the functions of the Chief Executive; or

(b) if the Chief Executive is removed as a member of the GFSC in accordance with section 21(7).

Delegation, incidental powers, etc.

Delegation of functions.

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31.(1) Subject to any contrary provision in this or any other Act, the GFSC may delegate the discharge of any of its functions to–

(a) the Chief Executive; or

(b) with the consent of the Minister, any other person that the GFSC may propose.

(2) The Chief Executive, with the consent of the GFSC and the Minister, may–

(a) sub-delegate to a GFSC employee any function delegated to the Chief Executive under subsection (1)(a); and

(b) authorise the GFSC employee to exercise the Chief Executive's powers in connection with the exercise of the sub-delegated function.

(3) The delegation by the GFSC of any of its functions does not affect the exercise by the GFSC of those functions.

(4) A delegation or sub-delegation to which the Minister has consented under this section ceases with immediate effect if the Minister by notice to the GFSC revokes that consent.

Powers of the GFSC.

32.(1) Subject to the provisions of this or any other Act, the GFSC may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any function conferred on the GFSC by or under this or any other Act.

(2) Without limiting subsection (1), the GFSC may, in particular–

(a) purchase, or otherwise acquire and hold any personal property and lease any real property required for the purposes of the GFSC and dispose of any such property no longer required for such purposes;

(b) contract with any person for the supply to, or by, the GFSC of any goods, services or personnel;

(c) pay expenses properly incurred by the GFSC.

Designation of GFSC as competent authority.

33.(1) The GFSC is designated as the competent authority in Gibraltar in respect of the legislation specified in Schedule 8.

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(2) The Minister may by regulations amend Schedule 8 by adding, modifying or removing an entry.

Ministerial oversight

Review of the GFSC's supervisory activities.

34.(1) The Minister may at any time appoint a suitable person to–

(a) review the discharge by the GFSC of its supervisory activities, in relation to any of its functions under this Act or any other Act; and

(b) report and, as appropriate, make recommendations to the Minister.

(2) The reasonable costs of any review are to be charged to the GFSC unless the Minister (with the agreement of the Minister for Finance, if different) decides to charge those costs to the Consolidated Fund.

Right to obtain documents and information.

35.(1) A person conducting a review under section 34–

(a) has a right of access at any reasonable time to any documents relating to the GFSC's discharge of its supervisory activities as the person may reasonably require for the purposes of the review, and

(b) may require any person holding or accountable for any of those documents to provide any information and explanation that is reasonably necessary for that purpose.

(2) Subsection (1) applies only to documents in the custody or control of the GFSC.

(3) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction.

Default powers of the Minister.

36.(1) If at any time it appears to the Minister that the GFSC has failed to comply with any provision made by or under this or any other Act, the Minister may, by notice direct the GFSC to make good the default within the time specified in the notice.

(2) If the GFSC fails to comply with a direction under subsection (1), for the purpose of giving effect to the direction the Minister may exercise any power of the GFSC or do any act or other thing authorised to be done by the GFSC.

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(3) The Minister's powers under subsections (1) and (2) may be exercised by a person appointed by the Minister for that purpose.

Rules and guidance

Rules and Guidance.

37.(1) The GFSC may, with the consent of the Minister, make rules in respect of anything required or permitted to be prescribed by this Act.

(2) The GFSC may issue guidance consisting of such information and advice as it considers appropriate–

(a) with respect to the operation of this Act;

(b) with respect to any matters relating to functions of the GFSC;

(c) for the purpose of meeting the regulatory objectives of the GFSC; and

(d) with respect to any other matters about which it appears to the GFSC to be desirable to give information or advice.

(3) The GFSC must make and maintain effective arrangements for consulting practitioners and consumers prior to making rules or issuing guidance under this section.

(4) The GFSC must provide the Minister with notice of its intention to make rules or issue guidance under this section, or to revoke or amend rules or guidance already made.

(5) The period of notice to be provided under subsection (4) is –

(a) not less than 28 days prior to the date that the rules or guidance take effect; or

(b) such shorter period as the Minister may agree to accept.

(6) The Minister may, during the period specified under subsection (5)(a), require the GFSC to do the following -

(a) not to issue the intended rules or guidance,

(b) not to revoke or amend the existing rules or guidance in the manner proposed, or

(c) to issue the intended rules or guidance, revocation or amendment in a manner prescribed by the Minister.

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(7) Rules or guidance made under this section may make different provision for different persons, circumstances or cases.

(8) A breach of any rules or guidance made under this section may be used by the GFSC as grounds for such action as permitted by the Act to which it relates.

(9) The Minister may require the GFSC to revoke or to amend in the manner specified by the Minister any rules or guidance made under this section and if the GFSC does not do so within a period of 30 days, the Minister may revoke or amend those rules or that guidance.

Miscellaneous

Immunity.

38.(1) The GFSC is not liable in damages for anything done or omitted in the discharge or purported discharge of any of its functions.

(2) Any person who is, or (when the act or omission occurred) was, a member, officer, employee or delegate of the GFSC is not liable in damages for anything done or omitted in the discharge or purported discharge of any of the GFSC's functions.

(3) Subsection (1) does not apply to the exercise or purported exercise by the GFSC of the powers specified in section 32(2).

(4) Subsections (1) and (2) do not apply to an act or omission which is shown to have been in bad faith.

(5) The GFSC must (unless bad faith is definitively found to have existed) indemnify any person to whom subsection (2) applies for all costs and damages incurred in defending any action brought by a third party in respect of anything the person is alleged to have done or omitted in the discharge or purported discharge of any of the GFSC's functions.

(6) In this section–

"delegate" means any person to whom the GFSC has delegated any of its functions or who it has authorised to perform any functions on its behalf, and includes an inspector appointed under Part 10 or 24; and

"functions" means the powers or duties of the GFSC conferred by or under this or any other Act.

Restriction on execution.

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39. No execution by attachment of property or process of a similar kind is to be issued against the GFSC.

Exemption from Income Tax.

40. The income of the GFSC is exempt from income tax under the Income Tax Act.

Deregistration of Part XII companies.

41. The Minister may, at the request of the GFSC, direct the Registrar to deregister a company registered under Part XII of the Companies Act 2014 if–

(a) it appears to the GFSC that the company is carrying on, or has carried on, financial services business without the necessary authorisation, permission, licence, approval or registration;

(b) the GFSC is entitled to cancel or suspend the authorisation, permission, licence, approval or registration of the company under this Act; or

(c) the company has had its authorisation, permission, licence, approval or registration cancelled or suspended under this Act.

Transitional and saving provisions

Transitional provisions.

42.(1) On the coming into force of this Part, the members of the GFSC and the FRSCC, appointed under the Financial Services Commission Act 2007, continue to serve as members of the GFSC and FSRCC until the expiry of the terms of office in their instruments of appointment and may, subject to section 21(10), be re-appointed.

(2) On the coming into force of this Part, the Chief Executive, appointed under the Financial Services Commission Act 2007 continues to be the Chief Executive until the expiry of the term of office in the Chief Executive's instrument of appointment and may, subject to section 30(2), be re-appointed.

Saving.

43. The repeal by this Act of section 10(2)(d) to (f) of the Financial Services Commission Act 2007 does not, whether by virtue of section 38 or otherwise, affect any right or cause of action that has accrued to, or any legal claim commenced by, any person before those provisions were repealed.

PART 4

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THE REGISTER

The Register.

44.(1) The GFSC must establish and maintain a register of regulated persons.

(2) The GFSC must keep the register–

(a) in writing (which may be in electronic form);

(b) correct and up to date; and

(c) securely, in a manner which guards against falsification.

(3) The GFSC may publish the register in such manner as it considers appropriate.

(4) The Minister, having consulted the GFSC, may by regulations make such provision in connection with the register as the Minister considers appropriate.

(5) Regulations under subsection (4) may, in particular, provide for–

(a) the form and keeping of the register;

(b) the procedure for making, altering and removing entries in the register; or

(c) the information which may be included in any version of the register published under subsection (3).

PART 5
CONFIDENTIALITY AND COOPERATION

Interpretation

Interpretation of Part 5.

45.(1) In this Part–

"confidential information" means information in any form which–

(a) has been obtained by or on behalf of the GFSC in the course of carrying out its functions and from which a person can be identified; or

(b) the Government has provided in confidence to the GFSC;

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"domestic authority" means a person listed in Schedule 9;

"European supervisory authority" means–

(a) the European Banking Authority;

(b) the European Securities and Markets Authority; or

(c) the European Insurance and Occupational Pensions Authority;

"foreign authority" means a person performing functions similar to those of a domestic authority, under the law of a country or territory outside Gibraltar; and

"foreign regulator" means a person performing functions similar to those of the GFSC, under the law of a country or territory outside Gibraltar and includes a European supervisory authority, the scheme manager of the United Kingdom's Financial Services and the scheme operator of the United Kingdom's Financial Ombudsman Scheme.

(2) For the purpose of this Part a "relevant person" means–

(a) any person who–

(i) is a regulated person;

(ii) is applying to be a regulated person; or

(iii) is a former regulated person, in relation to the time when the person was a regulated person;

(b) any director, officer or senior manager of a person in paragraph (a);

(c) any person who is or at any time was directly or indirectly employed (whether or not under a contract of service) by a person in paragraph (a) or (b);

(d) any person who is seeking to obtain, has or at any time had any direct or indirect proprietary, financial or other interest in or connection with a person in paragraph (a) or (b); or

(e) any person who is, or has been, directly or indirectly involved in a transaction which the GFSC considers to be relevant to the discharge of its functions under this Act.

Confidential information

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Use of confidential information.

46.(1) The GFSC may disclose confidential information only to the extent that doing so appears to the GFSC to be necessary–

(a) for the purpose of facilitating the carrying out of a function conferred on it by or under this Act or any other enactment;

(b) for the purpose of facilitating the carrying out of a similar function by a foreign regulator;

(c) for the prevention or detection of crime or the prosecution of offenders;

(d) for the purpose of assisting a domestic authority in carrying out of its functions;

(e) with the consent of the Minister, for the purpose of assisting a foreign authority in carrying out of its functions;

(f) in connection with the discharge of any international obligation to which Gibraltar is subject;

(g) for the purpose of facilitating the supervision on a consolidated basis of a relevant person in section 45(2)(a);

(h) for the purpose of assisting any person responsible for–

(i) conducting statutory audits of relevant persons in section 45(2)(a);

(ii) conducting insolvency and similar procedures in respect of relevant persons in section 45(2)(a); or

(iii) the detection and investigation of breaches of Gibraltar company law.

(2) The restriction imposed by subsection (1) also applies to the disclosure of any confidential information by–

(a) any person who is or has been–

(i) a member of the GFSC or any of its committees;

(ii) employed by the GFSC; or

(iii) engaged to provide services to the GFSC; or

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(b) any auditor, actuary or expert who is or has been instructed by the GFSC.

(3) Subsections (1) and (2) do not prevent confidential information from being disclosed–

(a) with the consent of the person to whom it relates;

(b) in summary or aggregate form, from which information relating to any particular person cannot be ascertained;

(c) for the purpose of any proceedings under this Act or any other enactment which confers functions on the GFSC;

(d) by direction of the Supreme Court; or

(e) if it is a matter of public knowledge and was made available to the public in circumstances or for purposes which are not precluded by this Part.

(4) In disclosing any information to which subsection (1) applies, the GFSC may require the recipient–

(a) to use the information only for the purposes for which the GFSC has provided it; and

(b) not to disclose the information without the GFSC's express agreement.

Cooperation agreements.

47. The GFSC may conclude cooperation agreements with domestic authorities, foreign regulators and, with the consent of the Minister, foreign authorities, establishing procedures for the exchange of information in accordance with this Part.

Exchanging information with other authorities

Cooperation with other authorities.

48.(1) Subject to section 46, the GFSC may assist, exchange information or cooperate with–

(a) a domestic authority;

(b) a foreign regulator; or

(c) with the consent of the Minister, a foreign authority,

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for the purposes of any investigation or supervisory activity being undertaken by the GFSC or similar activity being undertaken by the authority or regulator.

(2) The GFSC, when it provides information to an authority or regulator under subsection (1), may require it–

(a) to use the information only for the purposes for which the GFSC has provided it; and

(b) not to disclose the information without the GFSC's express agreement.

(3) The GFSC−

(a) must not disclose information which it has received under subsection (1) to any other person without the express agreement of the authority or regulator that provided it; and

(b) must use the information only for the purposes for which it was provided, other than in justified circumstances (of which it must immediately inform the disclosing authority or regulator).

(4) Where the GFSC reasonably suspects that this Act or any provision made under it has been contravened by a person who is not subject to supervision by the GFSC, but is subject to supervision by a foreign regulator, the GFSC must inform the foreign regulator without delay, in as specific a manner as possible.

(5) Where a foreign regulator informs the GFSC of a suspected contravention of this Act or any provision made under it, the GFSC must take appropriate action and inform the foreign regulator of the outcome of the action, including (to the extent possible) any significant interim developments.

(6) The GFSC may cooperate with a domestic authority, foreign regulator or foreign authority under this section even in cases where the conduct under investigation would not constitute a contravention of this Act or any provision made under it.

Refusing to share information.

49. The GFSC may refuse to exchange information under section 48 if it is not satisfied that the person or body requesting the information is subject to confidentiality provisions which are at least equivalent to those in section 46.

Provision of assistance to other regulators

Providing assistance to other regulators.

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50.(1) The GFSC, at the request of a foreign regulator, may exercise its powers under Part 10 or arrange for those powers to be exercised by a person appointed by the GFSC for that purpose.

(2) The GFSC may direct a person appointed under subsection (1) to permit a representative of the foreign regulator to attend, and take part in, any interview which the appointed person conducts, subject to any conditions the GFSC considers appropriate.

(3) A representative of a foreign regulator must not be permitted to attend or take part in an interview in accordance with subsection (2) unless the GFSC is satisfied that any information obtained by the foreign regulator as a result of the interview will be subject to safeguards equivalent to those set out in sections 46 and 48.

(4) The GFSC must issue a statement of its policy with respect to the conduct of interviews in relation to which a direction under subsection (2) has been given.

(5) Any statement issued under subsection (4) must be approved by the Minister.

(6) In deciding whether to exercise its powers under subsection (1) or (2), the GFSC may take into account, in particular–

(a) whether similar assistance would be given to the GFSC in the country or territory of the requesting foreign regulator;

(b) whether the case concerns the contravention of a law or other requirement which has no close parallel in Gibraltar or involves the assertion of a jurisdiction not recognised by Gibraltar;

(c) the seriousness of the case and its importance to persons in Gibraltar;

(d) whether in Gibraltar, in respect of the same person and the same matter–

(i) criminal proceedings have been initiated or a criminal penalty has been imposed; or

(ii) an administrative sanction has been imposed under this Act,

unless the requesting foreign regulator can show that the relief or sanction sought in any proceedings it has initiated or proposes to initiate is of a different nature to that sought or obtained in Gibraltar; or

(e) whether the requesting foreign regulator has undertaken to make such contribution towards the costs incurred by the GFSC as the GFSC considers appropriate.

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Refusing to provide assistance.

51.(1) Where the GFSC refuses to provide the assistance requested or is unable to do so, it must inform the requesting foreign regulator and provide it with the reasons for the decision.

(2) The GFSC may refuse to act at the request of a foreign regulator on grounds of public interest or essential national interest.

(3) For the purpose of subsection (2) it is for the Minister to determine the public interest or essential national interest, and the GFSC must refuse to act at the request of a foreign regulator when the Minister so determines.

Transitional Provision.

52. The GFSC may exercise the powers to share information under Part 5 in respect of any information obtained by the GFSC under a repealed enactment.

Offences.

52A.(1) A person ("P") commits an offence if–

(a) P discloses confidential information in contravention of this Part or causes or permits such a disclosure; or

(b) P uses confidential information which has been disclosed to P in contravention of this Part.

(2) In any proceedings for an offence under subsection (1), it is a defence for P to prove–

(a) that P did not know and had no reason to suspect that–

(i) the information was confidential information; and

(ii) the information was disclosed in contravention of this Part; and

(b) that P took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(3) A person who commits an offence under subsection (1) is liable–

(a) on summary conviction, to imprisonment for six months, to the statutory maximum fine, or both; or

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(b) on conviction on indictment, to imprisonment for two years or a fine, or both.

PART 6
AUTHORISATION AND EXEMPTION

Introduction

Overview.

53. This Part–

(a) lists the kinds of authorised person;

(b) *Omitted*

(c) confers power to prescribe the persons who are exempt from the general prohibition.

Authorisation

Authorised persons.

54.(1) The following persons are authorised for the purposes of this Act–

(a) a firm to which the GFSC has given a permission under Part 7 to carry on one or more regulated activities (referred to in this Act as "a regulated firm");

(b) *Omitted*

(c) *Omitted*

(d) a person who is authorised by a provision made under Part 31 (transitional provisions, including acquired rights).

(2) In this Act "authorised person" means a person who is authorised for the purposes of this Act.

Partnerships and unincorporated associations.

55.(1) In this section, "entity" means–

(a) a partnership; or

(b) an unincorporated association of persons.

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(2) If an entity is authorised–

(a) it is authorised to carry on the regulated activities concerned in the name of the entity; and

(b) its authorisation is not affected by any change in membership.

(3) If an entity which is authorised is dissolved, its authorisation continues to have effect in relation to any individual or entity which succeeds to the business of the dissolved entity.

(4) For the purposes of this section, an individual or entity is to be regarded as succeeding to the business of a dissolved entity only if succession is to the whole or substantially the whole of the business of the former entity.

UK-based persons carrying on activities in Gibraltar.

55A. Schedule 3A makes provision about the carrying on of regulated activities in Gibraltar by UK-based persons.

Gibraltar-based persons carrying on activities in the UK.

55B. Schedule 3B makes provision about the carrying on of activities corresponding to regulated activities in the United Kingdom by Gibraltar-based persons.

Provision about market access and alignment.

55C.(1) The Minister may by regulations make such provision as the Minister considers appropriate for the purpose of, or in connection with–

(a) amending a market access provision; or

(b) aligning the law and practice concerning or related to the regulation of financial services, in particular, as it affects the carrying on of relevant regulated activities, with the corresponding law and practice of the United Kingdom.

(2) In this section–

a "market access provision" means a provision or set of provisions in an enactment so far as it relates to or affects–

(a) the carrying on of activities in Gibraltar by UK-based persons;

(b) the carrying on of activities in the United Kingdom by Gibraltar-based persons; or

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(c) interaction of any other kind between Gibraltar and the United Kingdom, whether relating to persons, activities, financial instruments, other property or other matters; and

a "relevant regulated activity" means a regulated activity which a person in Gibraltar is authorised to carry on there and may also be authorised to carry on in, and under the law of, the United Kingdom.

(3) Without limiting subsection (1)(a), regulations under this section may–

(a) replace or supplement a market access provision with provisions similar to any provision of Schedule 3A or 3B;

(b) amend a market access provision so as to restore any aspect of the effect the provision had immediately before IP completion day; or

(c) amend a market access provision so as to secure that the same provision is made in connection with Gibraltar as is made in connection with most or all other countries or territories outside the United Kingdom.

(4) Regulations under this section may–

(a) make different provision for different purposes;

(b) amend, revoke, repeal or otherwise modify an enactment; or

(c) make consequential, incidental, supplementary, transitional, transitory or saving provisions.

Ending of authorisation

Withdrawal of authorisation by the GFSC.

56. If–

(a) a regulated firm's permission under Part 7 is cancelled; and

(b) as a result, there is no regulated activity for which the regulated firm has permission,

the GFSC must give a direction withdrawing the regulated firm's status as an authorised person.

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57. *Omitted*.

58. *Omitted*.

59. *Omitted*.

60. *Omitted*.

Exemptions

Exemption Regulations.

61.(1) The Minister may by regulations ("Exemption Regulations") specify circumstances in which a person is exempt from the general prohibition.

(2) Exemption Regulations may, in particular–

(a) provide for specified persons, or persons falling within a specified class, to be exempt from the general prohibition;

(b) exempt a person ("P") who carries on a regulated activity on behalf of an authorised person who accepts full and unconditional responsibility for any act or omission of P when acting on the authorised person's behalf; or

(3) But a person cannot be an exempt person as a result of Exemption Regulations if the person has a permission under Part 7.

(4) Exemption Regulations may–

(a) provide for an exemption to have effect–

(i) in respect of all regulated activities;

(ii) in respect of one or more regulated activities;

(iii) only in specified circumstances;

(iv) only in relation to specified functions; or

(v) subject to specified conditions (including a person being entered on a specified register);

(b) make provision as to the powers, duties, rights and liabilities of–

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(i) any exempt person; or

(ii) any authorised person who accepts responsibility for an exempt person;

(c) apply to exempt persons (with or without modifications) any provision of, or made under, this Act; or

(d) confer functions on the GFSC.

(5) "Specified" means specified by the Exemption Regulations.

PART 7
PERMISSION FOR REGULATED FIRMS TO CARRY ON REGULATED ACTIVITIES

Interpretation

Interpretation of Part 7.

62.(1) In this Part–

"designated regulatory objectives", in relation to the GFSC, means–

(a) the regulatory objectives of the promotion of market confidence, the reduction of systemic risk and the reduction of financial crime, in so far as those objectives protect and enhance the integrity of the Gibraltar financial system, including–

(i) its soundness, stability and resistance;

(ii) the orderly operation of the financial markets; and

(iii) the transparency of the price formation process in those markets;

(iv) its not being used for a purpose connected with financial crime; and

(v) its not being affected by contraventions by persons of sections 410 (insider dealing), 411 (disclosing inside information) or 412 (market manipulation); and

(b) the regulatory objective of the protection of consumers; and

(c) the regulatory objective of the good reputation of Gibraltar,

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as determined, in any case where specified factors are set out in Schedule 5 in relation to a particular regulatory objective, in accordance with those factors;

"in-scope Gibraltar AIFM" means a Gibraltar AIFM which–

(a) has permission under this Part to carry on the regulated activity of managing an AIF (in-scope AIFM); and

(b) is not a small Gibraltar AIFM;

"Gibraltar AIFM" means an AIFM which has its registered office in Gibraltar;

"small AIFM" means an AIFM which is the AIFM of portfolios of AIFs, the value of whose assets under management (valued in accordance with subsection (2))–

(a) does not exceed 500 million euros in total in cases where the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in each AIF; or

(b) does not exceed 100 million euros in total in other cases, including any assets acquired through the use of leverage;

"the threshold conditions", in relation to a regulated activity, has the meaning given in section 64(1).

(2) For the purposes of the definition of "small AIFM", the value of the AIFM's assets under management is to be calculated in accordance with Article 2 of Regulation (EU) No 231/2013.

Initial applications for permission

Persons who can apply for permission.

63.(1) This Part applies to any person ("a firm") which is–

(a) an individual;

(b) a body corporate;

(c) a partnership; or

(d) an unincorporated association.

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(2) A firm within subsection (1) may make an application to the GFSC for permission under this Part to carry on one or more regulated activities.

(3) The Minister may make regulations which provide–

(a) that only such kinds of firms within subsection (1) as may be specified in the regulations may apply to carry on particular regulated activities; and

(b) that an application to carry on a regulated activity of a specified kind may not include an application for permission to carry on any other kind of regulated activity.

(4) A firm which has permission given by the GFSC under this Part, or has permission having effect as if so given, is referred to in this Act as "a regulated firm".

(5) A regulated firm may not make an application under this section if the firm already has permission which–

(a) is given by the GFSC under this Part or has effect as if so given; and

(b) is in force.

Meaning of "the threshold conditions".

64.(1) In this Act, "the threshold conditions", in relation to a regulated activity, means the conditions set out in or specified under Schedule 12, as supplemented by regulations under subsection (3).

(2) The Minister may by regulations amend Schedule 12 by adding, modifying or removing provisions, or by substituting for provisions contained in the Schedule as they have effect for the time being provisions specified in the regulations.

(3) The Minister may make regulations–

(a) supplementing any of the conditions for the time being set out in or specified under Schedule 12; or

(b) in relation to particular regulated activities, disapplying one or more of those conditions or applying them with modifications.

(4) Different provision may be made under this section in relation to different regulated activities.

Requirement to satisfy the threshold conditions.

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65.(1) In giving or varying permission or imposing or varying a requirement under this Part, the GFSC must ensure that the firm concerned will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which the firm has or will have permission.

(2) But the duty imposed by subsection (1) does not prevent the GFSC, having due regard to that duty, from taking in relation to a particular firm the steps that it considers–

(a) are desirable in order to avoid or reduce significant risk to any of the GFSC's designated regulatory objectives; and

(b) would be reasonable and proportionate having regard to all the circumstances.

Firms based outside Gibraltar.

66.(1) This section applies in relation to a firm ("the foreign firm") which–

(a) is a body incorporated in, or formed under the law of, or is an individual who is a national of, any country or territory outside Gibraltar; and

(b) is carrying on a regulated activity in any country or territory outside Gibraltar in accordance with the law of that country or territory ("the foreign state").

(2) In determining whether the foreign firm is satisfying or will satisfy, and continue to satisfy, any one or more of the threshold conditions, the GFSC may have regard to any opinion notified to it by a regulatory authority in the foreign state ("the foreign regulator") which relates to the foreign firm and appears to the GFSC to be relevant to compliance with those conditions.

(3) In considering how much weight (if any) to attach to the opinion, the GFSC must have regard to the nature and scope of the supervision exercised in relation to the foreign firm by the foreign regulator.

Giving permission.

67.(1) "The applicant" means an applicant under section 63 for permission under Part 7.

(2) The GFSC may give permission for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the permission.

(3) If the GFSC gives permission, the GFSC must specify the permitted regulated activities or activity, described in such manner as the GFSC considers appropriate.

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(4) The GFSC may–

(a) incorporate in the description of a regulated activity such limitations (for example as to the circumstances in which the activity may, or may not, be carried on) as it considers appropriate;

(b) specify a narrower or wider description of regulated activity than that to which the application relates; or

(c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates.

(5) If an applicant–

(a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of regulations made under section 61 (exemption regulations); but

(b) has applied for permission in relation to another regulated activity,

the application is to be treated as relating to all the regulated activities which, if permission is given, the applicant will carry on.

Variation and cancellation of permission

Variation or cancellation at request of a regulated firm.

68.(1) The GFSC may, on the application of a regulated firm, vary the firm's permission under Part 7 by–

(a) adding a regulated activity to those to which the permission relates;

(b) removing a regulated activity from those to which the permission relates; or

(c) varying the description of a regulated activity to which the permission relates.

(2) The GFSC may, on the application of the regulated firm, cancel the permission.

(3) The GFSC may refuse an application under this section if it appears to it that refusing the application–

(a) is desirable in order to avoid or reduce significant risk to any of the GFSC's designated regulatory objectives; and

(b) would be reasonable and proportionate having regard to all the circumstances.

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(4) If, as a result of a variation under this section of a regulated firm's permission there are no longer any regulated activities for which the firm has permission, the GFSC must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

(5) The GFSC's power under this section to vary a permission extends to including in the permission as varied any provision that could be included if a fresh permission were being given by it in response to an application under section 63.

Variation or cancellation on initiative of GFSC.

69.(1) The GFSC may exercise its power under this section in relation to a regulated firm if it appears to the GFSC–

(a) that the firm is failing, or is likely to fail, to satisfy the threshold conditions;

(b) that the firm has failed, during a period of at least 12 months, to carry on a regulated activity to which its permission under Part 7 relates;

(c) that any of the conditions specified in Schedule 13 is met in relation to the carrying on by the firm of a regulated activity to which that condition applies; or

(d) that exercising the power–

(i) is desirable in order to avoid or reduce significant risk to any of the GFSC's designated regulatory objectives; and

(ii) would be reasonable and proportionate having regard to all the circumstances.

(2) The GFSC's power under this section is the power–

(a) to vary the firm's permission by–

(i) adding a regulated activity to those to which the permission relates;

(ii) removing a regulated activity from those to which the permission relates; or

(iii) varying the description of a regulated activity to which the permission relates; or

(b) to cancel the permission.

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(3) If, as a result of a variation under this section of a regulated firm's permission, there are no longer any regulated activities for which the firm has permission, the GFSC must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

(4) The GFSC's power under this section to vary a permission extends to including in the permission as varied any provision that could be included if a fresh permission were being given in response to an application under section 63.

Imposition and variation of requirements

Imposition of requirements by GFSC.

70.(1) Where a firm has applied for a permission under this Part or for the variation of such a permission, the GFSC may impose on that firm such requirements, taking effect on or after the giving or variation of the permission, as the GFSC considers appropriate.

(2) The GFSC may exercise its power under subsection (3) in relation to a regulated firm if it appears to the GFSC–

(a) that the firm is failing, or is likely to fail, to satisfy the threshold conditions;

(b) that the firm has failed, during a period of at least 12 months, to carry on a regulated activity to which the permission under Part 7 relates; or

(c) that exercising the power–

(i) is desirable in order to avoid or reduce significant risk to any of the GFSC's designated regulatory objectives; and

(ii) would be reasonable and proportionate having regard to all the circumstances.

(3) The GFSC's power under this subsection is a power–

(a) to impose a new requirement;

(b) to vary a requirement imposed by the GFSC under this section; or

(c) to cancel such a requirement.

(4) The GFSC may, on the application of a regulated firm–

(a) impose a new requirement;

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(b) vary a requirement imposed by the GFSC under this section; or

(c) cancel such a requirement.

(5) The GFSC may refuse an application under subsection (4) if it appears to it that refusing the application–

(a) is desirable in order to avoid or reduce significant risk to any of the GFSC's designated regulatory objectives; and

(b) would be reasonable and proportionate having regard to all the circumstances.

Requirements under section 70: further provisions.

71.(1) In this section "requirement" means a requirement imposed under section 70.

(2) A requirement may, in particular, be imposed–

(a) so as to require the firm concerned to take specified action; or

(b) so as to require the firm concerned to refrain from taking specified action.

(3) A requirement may extend to activities which are not regulated activities.

(4) A requirement may be imposed by reference to a firm's relationship with–

(a) the firm's group; or

(b) other members of the firm's group.

(5) A requirement may be expressed to expire at the end of such period as the GFSC may specify, but the imposition of a requirement that expires at the end of a specified period does not affect the GFSC's power to impose a new requirement.

(6) A requirement may refer to the past conduct of the firm concerned (for example, by requiring the firm to review or take remedial action in respect of past conduct).

(7) No requirement may be imposed to require anything which can be done by an asset protection order made by the Supreme Court under section 72.

(8) Subsection (7) does not apply in such circumstances, and subject to such conditions, as the Minister may by regulations prescribe in relation to insurance undertakings, reinsurance undertakings or third country insurance undertakings.

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Application to the Supreme Court: asset protection orders.

72.(1) The GFSC may apply to the Supreme Court for an asset protection order in relation to a regulated firm if it appears to the GFSC that any ground specified in section 70(2)(a) to (c) is satisfied in relation to a regulated firm.

(2) An "asset protection order" means an order–

(a) to prohibit the disposal of, or other dealing with, any of the assets (whether in Gibraltar or elsewhere) of a regulated firm;

(b) to restrict such disposals or dealings; or

(c) to require that any of the following assets be transferred to and held by a trustee approved by the Supreme Court–

(i) all or any of the assets of a regulated firm; or

(ii) all or any of those assets which belong to consumers but are held by the firm or to the firm's order.

(3) On an application made under subsection (1), the Court may make such order as it considers necessary or desirable to protect the interests of consumers or to protect the public interest.

(4) An application under subsection (1) must not be made unless the GFSC has either–

(a) given the regulated firm, and any other person whom the GFSC considers is likely to be subject to an asset protection order, at least two working days' notice of its intention to make the application; or

(b) certified to the court that the circumstances of the case are such that the GFSC considers that the purpose of the application would be likely to be frustrated or seriously prejudiced by the giving of notice under paragraph (a).

(5) The Court may rescind or vary an asset protection order on its own motion or on the application of the GFSC, the regulated firm or any other person subject to the order.

Exercise of certain powers in support of foreign regulator

Conditions for exercise of powers in support of foreign regulator.

73.(1) In this section–

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"foreign regulator" has the meaning given in section 45;

"relevant power", in relation to the GFSC, means–

(a) the GFSC's power under section 69; or

(b) the GFSC's power under section 70.

(2) The GFSC may exercise any relevant power in respect of a regulated firm at the request of, or for the purposes of assisting, a foreign regulator.

(3) Subsection (4) applies where a request to the GFSC for the exercise of a relevant power has been made by a foreign regulator.

(4) *Omitted*.

(5) In deciding whether or not to exercise a relevant power, the GFSC may take into account in particular–

(a) whether in the country or territory of the foreign regulator concerned, corresponding assistance would be given to a Gibraltar regulatory authority;

(b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in Gibraltar or involves the assertion of a jurisdiction not recognised by Gibraltar;

(c) the seriousness of the case and its importance to persons in Gibraltar; and

(d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(6) The GFSC may decide not to exercise a relevant power, in response to a request made by a foreign regulator, unless the foreign regulator concerned undertakes to make such contribution towards the costs of the exercise as the GFSC considers appropriate.

(7) *Omitted*.

(8) The GFSC must obtain the prior consent of the Minister to the exercise of any power under the preceding provisions of this section.

Connected persons

Persons connected with an applicant.

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74. In considering–

(a) an application for a permission under this Part;

(b) whether to vary or cancel such a permission; or

(c) whether to impose or vary a requirement under this Part,

the GFSC may have regard to any person appearing to it to be, or to be likely to be, in a relationship with the firm given permission which is relevant.

Persons whose interests will be protected

Persons whose interests will be protected.

75. For the purpose of any provision of this Part which refers to the designated regulatory objectives of the GFSC in relation to the exercise of a power in relation to a particular firm, it does not matter whether there is a relationship between that firm and the persons whose interests will be protected by the exercise of the power.

Procedure

Applications under this Part.

76.(1) An application for a permission under this Part must–

(a) contain a statement of the regulated activity or regulated activities which the applicant proposes to carry on and for which the applicant wishes to have permission; and

(b) give the address of a place in Gibraltar for service on the applicant of any notice or other document which is required or authorised to be served on the applicant under this Act.

(2) An application for the variation of a permission under this Part must contain a statement–

(a) of the desired variation; and

(b) of the regulated activity or regulated activities which the applicant proposes to carry on if the permission is varied.

(3) An application for the variation of a requirement imposed under section 70 or for the imposition of a new requirement must contain a statement of the desired variation or requirement.

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(4) An application under this Part must–

(a) be made in such manner as the GFSC may direct; and

(b) contain, or be accompanied by, such other information as the GFSC may reasonably require.

(5) At any time after the application is received and before it is determined, the GFSC may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(6) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(7) The GFSC may require an applicant to provide information which the applicant is required to provide to it under this section in such form, or to verify it in such a way, as the GFSC may direct.

Determination of applications.

77.(1) An application under this Part must be determined by the GFSC before the end of the relevant period beginning with the date on which the GFSC received the completed application.

(2) If the application relates to permission to carry on the regulated activity of managing an AIF–

(a) the relevant period is three months; but

(b) the GFSC may extend that period for an additional period of three months where it considers it necessary due to the specific circumstances of the case.

(3) If the application relates to permission to carry on one of the following regulated activities, the relevant period is three months–

(a) issuing electronic money;

(b) providing payment services; or

(c) taking up or pursuing insurance distribution or reinsurance distribution in relation to a risk or commitment located in Gibraltar.

(4) In any other case, the relevant period is six months.

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(5) The GFSC may determine an incomplete application if it considers it appropriate to do so, but must determine such an application within 12 months beginning with the date on which it received the application unless, in its discretion and with the applicant's consent, the GFSC decides otherwise (but, other than in exceptional circumstances, any additional period must not exceed 12 months).

(5A) The Minister may by regulations prescribe different periods to–

(a) the relevant period specified in subsection (2)(a), (3) or (4);

(b) the additional period specified in subsection (2)(b); or

(c) the periods specified in subsection (5).

(5B) Regulations under subsection (5A) may–

(a) make different provision in respect of different regulated activities or different classes or types of application;

(b) make consequential, incidental, supplementary, transitional, transitory or saving provisions; or

(c) make provision which has retrospective effect in relation to applications received by the GFSC before the coming into operation of subsection (5A).

(6) The applicant may withdraw the application, by giving the GFSC notice, at any time before the GFSC determines it.

(7) The GFSC must give the applicant notice if it grants an application–

(a) for a permission under Part 7;

(b) for the variation or cancellation of a permission under Part 7;

(c) for the variation or cancellation of a requirement imposed under section 70; or

(d) for the imposition of a new requirement under that section.

(8) The notice must state the date from which the permission, variation, cancellation or requirement has effect.

Determination of applications: notice procedure.

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78.(1) The GFSC must give an applicant for permission under Part 7 a warning notice if the GFSC proposes–

(a) to give the applicant a permission but to exercise its power under section 67(4)(a) or (b);

(b) to give a permission under Part 7 but to exercise its power under section 70 in connection with the application for permission;

(c) to vary a permission under Part 7 on the application of a regulated firm but to exercise its power under section 67(4)(a) or (b) in connection with the application for variation; or

(d) to vary a permission under Part 7 on the application of a regulated firm but to exercise its power under section 70 in connection with the application for variation; or

(e) to refuse an application made under this Part.

(2) The GFSC must give the applicant a decision notice if the GFSC decides–

(a) to give a permission under Part 7 but to exercise its power under section 67(4)(a) or (b);

(b) to give a permission under Part 7 but to exercise its power under section 70 in connection with the giving of the permission;

(c) to vary a permission under Part 7 on the application of a regulated firm but to exercise its power under section 67(4)(a) or (b);

(d) to vary a permission under Part 7 on the application of a regulated firm but to exercise its power under section 70 in connection with the variation; or

(e) to refuse an application under this Part.

(2A) The requirement to give–

(a) a warning notice under subsection (1)(a), (b), (c) or (d); or

(b) a decision notice under subsection (2)(a), (b), (c) or (d),

does not apply in a case where the GFSC exercises its powers under section 67(4)(a) or (b) or 70(1) in a manner which the applicant has requested or to which it has consented (but see section 79A).

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(3) In relation to any one or more steps the GFSC is required to take under this section, the Minister may by regulations–

(a) disapply the requirement to the take step in prescribed circumstances; or

(b) make provision for the GFSC to follow such other step or steps as may be specified in the regulations.

GFSC's variation or requirement power: notice procedure.

79.(1) Except in any case to which section 80 applies, the GFSC must give a regulated firm a warning notice if the GFSC proposes–

(a) to exercise the GFSC's power under section 69(2)(a) to vary the firm's permission under Part 7 ("GFSC's variation power"); or

(b) to exercise the GFSC's power under section 70 to impose a requirement on the firm or to vary any such requirement ("GFSC's requirement power").

(2) The GFSC must give the regulated firm a decision notice if the GFSC decides–

(a) to exercise the GFSC's variation power; or

(b) to exercise the GFSC's requirement power.

(3) The requirement to give–

(a) a warning notice under subsection (1)(a) or (b); or

(b) a decision notice under subsection (2)(a) or (b),

does not apply where the regulated firm has consented in writing to the variation or requirement or, in the case of a requirement, has requested it by means of an application under section 70(4) (but see section 79A).

Notice: sections 78(2A) and 79(3).

79A. In a case to which section 78(2A) or 79(3) applies, the GFSC must give the applicant or regulated firm notice of the requirement, limitation or variation and the date from which it has effect.

Directions in urgent cases.

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80.(1) If all of conditions A to D are met in relation to a regulated firm ("RF") the GFSC may by direction–

(a) vary RF's permission by–

(i) suspending a regulated activity from those to which the permission relates; or

(ii) varying the description of a regulated activity to which the permission relates; or

(b) impose a requirement on RF or vary a requirement already imposed on RF under section 70.

(2) Condition A is that the GFSC is considering whether to exercise–

(a) the GFSC's power under section 69(2)(a)(ii) or (iii) to vary RF's permission; or

(b) the GFSC's power under section 70 to impose a requirement on RF or to vary any such requirement.

(3) Condition B is that the GFSC, having regard to the ground on which it is considering exercising the power in question, reasonably considers that that there is an immediate risk of substantial damage to–

(a) the interests of consumers;

(b) the public interest; or

(c) the reputation of Gibraltar.

(4) Condition C is that the GFSC reasonably considers that the giving of a direction under this section is–

(a) to a material extent, likely to avoid the occurrence of the damage referred to in subsection (3) or to reduce the extent of such damage; and

(b) proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the regulated firm that may result from that direction.

(5) Condition D is that the GFSC gives RF a notice which states that the variation of permission, or the imposition or variation of a requirement, takes effect on the date of the notice or on such later date as may be specified in the notice.

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(6) A direction under subsection (1) takes effect on the date specified in the notice under subsection (5).

(7) A notice under subsection (5) must–

(a) give details of the variation of the permission, or the requirement or its variation, which is the subject of the direction under subsection (1);

(b) identify which of the grounds specified in subsection (3) the GFSC is relying on and how that ground is engaged;

(c) state the GFSC's reasons for varying the permission or imposing or varying the requirement;

(d) specify why the GFSC considers that the requirements of each of paragraphs (a) and (b) of subsection (4) is met;

(e) inform RF that RF may make representations to the GFSC within such period as may be specified in the notice;

(f) inform RF of when the variation of permission or the imposition or variation of the requirement takes effect;

(g) inform RF of the right to make an application under section 81(1); and

(h) indicate the procedure to be followed in making any such application.

(8) The GFSC may extend the period allowed under the notice for making representations.

Revocation or variation of directions.

81.(1) The Supreme Court may, on an application made to it by the regulated firm of which not less than two working days' notice has been given to the GFSC–

(a) direct the GFSC to revoke any direction given under section 80(1); or

(b) quash or vary anything done by the GFSC under section 80.

(2) A regulated firm may apply to the GFSC for the revocation or variation of a direction and, if the GFSC refuses to grant the application, it must give the firm a notice stating the reasons for the refusal.

(3) The GFSC—

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(a) may revoke or vary a direction under section 80(1); and

(b) must revoke the direction if either condition B or C specified in section 80 ceases to be met.

(4) A direction under section 80(1) ceases to have effect–

(a) if it is revoked under this section; or

(b) unless subsection (5) applies, on the expiry of the period of two months beginning with the date of the notice under section 80(5).

(5) Where, before the end of the period referred to in subsection (4)(b), a warning notice under section 79(1) is given to the regulated firm in connection with the regulated activity or requirement that is subject to the direction under section 80(1), the direction does not cease to have effect until–

(a) the expiry of the period within which an appeal may be made against any decision notice under section 79(2) which has been given to the firm in connection with that regulated activity or requirement; or

(b) when any appeal is finally determined or withdrawn.

Cancellation of permission under Part 7: notice procedure.

82.(1) If the GFSC proposes to cancel a regulated firm's permission under Part 7 otherwise than at the firm's request, it must give the firm a warning notice.

(2) If the GFSC decides to cancel a regulated firm's permission otherwise than at the firm's request, it must give the firm a decision notice.

Notification

Notification of supervisory authorities.

83.(1) The Minister may by regulations require the GFSC to notify a supervisory authority of matters relating to any permission under Part 7 which a person may have to carry on a regulated activity.

(2) Regulations under subsection (1) may include provision specifying–

(a) the supervisory authority to which notification is to be given;

(b) the circumstances in which notification is to be made;

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(c) the persons to which such information relates.

(d) the matters which are to be notified; and

(e) any additional information that is to be provided in addition to a notification.

Consent to material changes to regulated firms and their business

GFSC consent to material changes to a regulated firm or its business.

83A.(1) A regulated firm must obtain the GFSC's consent to any material change that the firm proposes to make to its business plan, financial resources or corporate governance arrangements–

(a) which may affect the firm's continuing satisfaction of the threshold conditions in relation to any of the regulated activities for which the firm has permission; or

(b) which is a specified material change.

(2) An application by a regulated firm to exercise a UK market access right is a material change which requires the GFSC's consent under subsection (1).

(3) The GFSC may issue guidance on changes of the kind in subsection (1)(a) which may affect a regulated firm's continuing satisfaction of the threshold conditions.

(4) A regulated firm must obtain the GFSC's consent before implementing a change to which subsection (1) applies.

(5) A consent application must–

(a) be made in the form and manner the GFSC directs;

(b) contain such information as the GFSC reasonably requires; and

(c) be accompanied by any prescribed fee.

(6) The GFSC may, in respect of an application made under subsection (5)–

(a) give consent;

(b) give consent subject to conditions; or

(c) refuse consent.

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(7) Where the GFSC–

(a) decides to give consent, it must give the regulated firm written notice of that decision and the date from which it takes effect; or

(b) proposes to give consent subject to conditions or to refuse consent, it must give the regulated firm written notice specifying–

(i) the GFSC's reasons for proposing to do so; and

(ii) the period during which the firm may make representations to the GFSC about the proposal.

(8) Before reaching a decision to which subsection (7)(b) applies, the GFSC must have regard to any representations made by the regulated firm during the period specified and must give the regulated firm written notice of the decision reached and the reasons for that decision.

(8A) The requirement to give notice under subsection (7)(b) or (8) does not apply where the regulated firm has consented in writing to conditions being imposed under subsection (6)(b) but, in that event, the GFSC must give the regulated firm written notice of the conditions and the date from which they have effect.

(9) The conditions which the GFSC may impose under subsection (6)(b) are such conditions relevant to the material change to which the consent application under subsection (5) relates as it considers appropriate having regard to all the circumstances including, in particular, conditions which have the effect of varying, or imposing requirements on, the regulated firm's Part 7 permission.

(10) A variation or requirement imposed under subsection (9) has the same effect as if it were imposed under section 69 or 70 (as the case may be) but its imposition is not a specified regulatory decision to which section 24(3) applies.

(11) The Minister may by regulations specify changes to a firm's business plan, financial resources or corporate governance arrangements to which subsection (1) applies (a "specified material change").

(12) Regulations under subsection (11) may–

(a) make different provision for different purposes;

(b) make further provision as to how consent to specified material changes is given or refused including, in particular, requiring the Minister to be consulted on any

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change which may affect any macro-economic or other public interest of Gibraltar; or

(c) make consequential, incidental, supplementary, transitional, transitory or saving provisions.

(13) In this section –

"specified material change" has the meaning given in subsection (11); and

"UK market access right" means a deemed passporting right to carry on business in the United Kingdom provided by the Financial Services (Passport Rights and Transitional Provisions) (EU Exit) Regulations 2020 and the corresponding law of the United Kingdom.

(14) This section applies without limiting any notification obligation imposed by any other provision of this Act or any regulations made under it.

PART 8
REGULATED INDIVIDUALS

Introduction

Application of Part 8.

84. This Part applies to regulated firms and audit firms.

Interpretation of Part 8.

85. In this Part–

"audit firm" has the meaning given in Part 24;

"candidate" means an individual in respect of whom an application for approval as a regulated individual is made;

"independent", in relation to a non-executive director, has the meaning given in Schedule 15;

"large investment firm" means an investment firm to which regulation 4(3) of the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021 applies;

"non-executive director" has the meaning given in Schedule 15;

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"outsourced provider" has the meaning given in section 94A(2);

"regulated individual" means an individual who has been approved under section 93 by the GFSC to perform a specified regulated function and includes a non-executive director to whom section 88A(2) applies;

"RI firm" means a person in section 84 in respect of which this Part applies.

"senior independent director" has the meaning given in Schedule 15.

Regulated individuals

Regulated functions.

86.(1) A regulated function is a function, in a regulated firm or audit firm, listed in Part 1, 2 or 3 of Schedule 14.

(2) The exercise of significant influence over an RI firm within the meaning of section 89 is also a regulated function.

Obligation to ensure regulated functions being performed.

87.(1) An RI firm must ensure that it has an individual performing the regulated functions set out in Part 1 of Schedule 14.

(2) An RI firm in a category listed in Part 2 of Schedule 14 must ensure that it has an individual performing the regulated functions set out in Part 2 in respect of that category.

(2A) An RI firm must ensure that it has an individual performing the regulated functions set out in Part 3 of Schedule 14 except where–

(a) the function is not relevant to the regulated activity undertaken by the firm; or

(b) the GFSC has waived the application of this Part to that function–

(i) in the firm, by agreement with that firm; or

(ii) in firms of a specified class or description to which the firm belongs.

(2B) For the purposes of subsection (2A)(b)(ii), "specified" means specified by the GFSC, with the consent of the Minister, in a notice published in the manner it considers appropriate.

(3) *Omitted*.

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(4) The same individual may perform more than one regulated function.

Regulated functions only to be performed by regulated individuals.

88.(1) A person is only permitted to perform a regulated function if the person is a regulated individual.

(2) An RI firm must take appropriate steps to ensure that subsection (1) is not breached in relation to a regulated function in that RI firm.

(3) *Omitted*.

(4) If a person purports or attempts to perform a regulated function but is not a regulated individual, that person is to be treated as a regulated individual for the purposes of any civil or criminal liability under this Act or any other enactment.

(5) Without limiting subsection (4), where the GFSC is satisfied that–

(a) a person ("P") has at any time performed a regulated function without being a regulated individual; and

(b) at that time P knew, or could reasonably be expected to have known, that P was performing a controlled function without approval,

it may impose such sanctions under Part 11 on P as it considers appropriate.

Non-executive directors.

88A.(1) Schedule 15 requires certain categories of RI firm–

(a) to appoint one or more non-executive directors; and

(b) to ensure that certain regulated functions are performed by non-executive directors.

(2) Subject to subsection (3), an individual appointed as a non-executive director, whether or not they perform any other regulated function, must be a regulated individual.

(3) Paragraph 2(3) of Schedule 15 provides for certain categories of RI firm to appoint non-executive directors who may but need not be regulated individuals.

Significant influence.

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89.(1) A person ("P") exercises significant influence over an RI firm if, despite not formally having that role–

(a) P performs a regulated function;

(b) P instructs or purports to instruct the person that formally has that role as to how that person should perform a regulated function; or

(c) the person that formally has that role habitually or to a material extent performs the regulated function in accordance with P's wishes or instructions.

(2) In the case of an RI firm which is part of a group, a person ("P") exercises significant influence over a regulated firm if P is an individual within the firm's parent entity or another entity within the group who has a significant influence on the management or conduct of one or more aspects of the firm's affairs in relation to its regulated activities.

Temporary position.

90.(1) This section applies where a regulated individual who was exercising a regulated function ceases to perform it in circumstances where it would be unreasonable to expect the RI firm to find a replacement immediately.

(2) The following obligations do not apply in respect of that regulated function until the regulated function is being performed by a regulated individual–

(a) the obligation in section 87 to ensure that regulated functions are being performed; and

(b) the obligation in section 88 to ensure that regulated functions are only to be performed by regulated individuals.

(3) RI firms must take all necessary steps, as quickly as possible, to–

(a) temporarily appoint an individual to perform that regulated function; and

(b) make an application for an individual to be approved to perform that regulated function by the GFSC.

Power to amend Schedules 14 and 15.

91.(1) The Minister may by regulations amend Schedule 14 or 15.

(2) Without limiting subsection (1), regulations under this section may, in particular–

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(a) add, modify or remove a regulated function, a category of RI firm or any other entry;

(b) specify a regulated function which may or may not be performed by an outsourced provider or specified category of outsourced provider; or

(c) specify a regulated function which must be performed by a non-executive director (including whether the director must be independent).

Power to issue guidance on regulated functions.

92. The GFSC may issue guidance on the nature of the responsibilities of a regulated function.

Approval of regulated individuals by the GFSC

Regulated individuals to be approved by the GFSC.

93. An individual may only act as a regulated individual if the GFSC has approved the individual to perform a specified regulated function in a specified RI firm.

Criteria for approval.

94.(1) The criteria for approval are that the individual–

(a) is fit and proper to perform the regulated function; and

(b) is able to perform the regulated function in the RI firm.

(1A) Without limiting subsection (1)(a), in considering whether an individual is fit and proper, the GFSC must have regard to whether the individual (whether in Gibraltar or elsewhere) has at any time–

(a) participated in serious misconduct in relation to the business of an authorised person;

(b) been the subject of a prohibition or other serious adverse decision by a financial services or professional regulatory body;

(c) engaged in serious or persistent non-compliance or other misconduct in relation to the individual's tax obligations or participated in such non-compliance or misconduct in relation to the tax obligations of an authorised person;

(d) been convicted of an offence involving–

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(i) fraud, dishonesty, deception or breach of trust;

(ii) money laundering, terrorist financing or proliferation financing; or

(iii) tax evasion;

(e) been disqualified or prohibited from being a company director or a trustee of any trust; or

(f) been adjudged bankrupt or made a composition or arrangement with creditors.

(2) Without limiting subsection (1)(b), in considering whether an individual is able to perform a regulated function, the GFSC must have regard to whether the individual has the skills, qualifications, experience and capacity required to do so.

(3) For the purposes of subsection (2), whether an individual has the capacity to perform a regulated function means whether that individual has adequate time to perform the function and meet the responsibilities associated with that function.

Additional requirements for outsourced providers.

94A.(1) An RI firm may seek approval for a regulated function in Schedule 14 to be performed by an outsourced provider where, and to the extent, that Schedule so provides.

(2) In this Part an "outsourced provider" means an individual who is not an employee, officer or director (or equivalent) of the RI firm.

(3) The GFSC may only approve an outsourced provider if, in addition to meeting the criteria for approval in section 94, it is satisfied that the appointment of that individual–

(a) whether on its own or when considered with other regulated individuals appointed within the RI firm, will not result in the RI firm's senior management delegating its responsibility for complying with the requirements imposed on the firm by or under this Act;

(b) will not impair–

(i) the quality of the firm's internal controls and system of governance;

(ii) the firm's compliance with the obligations it must meet in order to be and remain authorised; or

(iii) the GFSC's ability to supervise the firm's compliance with its obligations; and

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(c) is or will be the subject of a legally enforceable agreement between the RI firm and the outsourced provider (or any employer or other third party through whom the outsourced provider is engaged) which–

(i) clearly defines the rights and obligations of the RI firm and the outsourced provider (and any relevant third party);

(ii) enables the RI firm to terminate the outsourcing arrangement, if necessary, without detriment to the continuity and quality of its provision of services to clients; and

(iii) requires the outsourced provider and any relevant third party to cooperate with the GFSC in connection with the outsourced provider's activities.

Applications for approval.

95.(1) An application for approval must be made by the RI firm concerned.

(2) The application must–

(a) be made in the form and manner the GFSC directs;

(b) include a statement of the individual's responsibilities; and

(c) contain such information as the GFSC reasonably requires.

(3) The GFSC may require the individual to be interviewed by it.

(4) The GFSC may require the RI firm to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(5) Where more than one application for approval is sought in respect of the same individual, the GFSC may deal with some or all of the applications at the same time if it considers that it is appropriate to do so.

Pre-application vetting of candidates by RI firms.

96. Before an RI firm makes an application for approval, the RI firm must be satisfied that the candidate satisfies the criteria for approval.

Determination of applications.

97.(1) The GFSC may approve a candidate's application if–

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(a) the candidate satisfies the criteria for approval in section 94; and

(b) where the candidate is an outsourced provider, the GFSC is satisfied that the additional requirements in section 94A are met.

(2) The GFSC may give approval subject to such conditions as it considers appropriate and desirable to advance one or more of its regulatory objectives.

(3) If the GFSC considers that a candidate will satisfy the criteria for approval, provided that the candidate complies with specified requirements within a specified period of time, the GFSC may provisionally approve the application.

(4) Where approval is provisional and the GFSC considers that the candidate–

(a) has satisfied the criteria for approval, then approval is no longer provisional;

(b) has not satisfied the criteria within the specified period, then the provisional approval lapses at the end of that period.

(5) The GFSC may extend the specified period on one or more occasions.

(6) The GFSC must, before the end of the period for consideration, determine whether–

(a) to approve the application;

(b) to provisionally approve the application; or

(c) to proceed under section 103.

(7) If the GFSC approves or provisionally approves the application, it must give notice to–

(a) the RI firm; and

(b) the candidate.

(8) The RI firm which makes an application may withdraw it by giving notice to the GFSC at any time before the GFSC determines it.

(9) Where subsection (8) applies, the RI firm must notify the candidate of the withdrawal.

Period of consideration for determination of applications.

98.(1) In section 97 and this section, the "period for consideration" means–

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(a) in any case where an application is made for permission under Part 7 or approval under Part 24, the period within which that application must be determined;

(b) in other cases, the period of 30 working days beginning with the date on which the GFSC receives the completed application.

(1A) If the GFSC imposes a requirement under section 95(3), the application is not to be regarded as a completed application until the day that the interview process is completed.

(2) If the GFSC imposes a requirement under section 95(4), the period for consideration stops running on the day on which the requirement is imposed but starts running again–

(a) on the day on which the required information is received by the GFSC; or

(b) if the information is not provided on a single day, on the last of the days on which it is received by the GFSC.

(3) If the GFSC requires additional information from another person in order to properly determine an application, the period for consideration stops running on the day the GFSC seeks that information from that person, but starts running again–

(a) on the day on which that information is received by the GFSC; or

(b) if the information is not provided on a single day, on the last of the days on which it is received by the GFSC.

(4) In exceptional circumstances, the GFSC may extend the period for consideration.

Notification of changes

Changes in responsibilities of regulated individuals.

99.(1) This section applies where there has been a significant change in the nature or extent of the responsibilities of a regulated individual from the original statement of responsibilities.

(2) The RI firm must provide the GFSC with a revised statement of responsibilities of the regulated individual.

(3) The GFSC may require the RI firm–

(a) to provide it with such further information as the GFSC reasonably considers necessary; or

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(b) to verify such information in such a way that the GFSC reasonably considers necessary.

Withdrawal or variation of approval

Withdrawal of approval.

100.(1) The GFSC may withdraw an approval if it is satisfied that the individual in respect of whom it was given no longer satisfies the criteria for approval or, where the individual is an outsourced provider, the additional requirements in section 94A are no longer met.

(2) Without limiting subsection (1), the GFSC must, in particular, consider the matters in section 94(1A) or whether the individual–

(a) has participated in serious misconduct in relation to the business of an authorised person;

(b) has intentionally misled the GFSC; or

(c) has directly or indirectly provided information to the GFSC that the individual knew or ought to have known was false or misleading;

Variation of approval on application by RI firm.

101.(1) Where approval has effect subject to conditions, the RI firm concerned may apply to the GFSC to vary the approval by–

(a) varying a condition;

(b) removing a condition; or

(c) imposing a new condition.

(2) When considering whether to vary its approval, the GFSC may take into account any matter which it could take into account if it were considering an application for approval.

(3) The GFSC must, before the end of the period for consideration, determine whether–

(a) to grant the application; or

(b) to proceed under section 103.

(4) The "period for consideration" means the period of 30 working days beginning with the date on which the GFSC receives the application.

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(5) The GFSC may extend the period for consideration in exceptional circumstances.

Variation of approval on initiative of GFSC.

102.(1) The GFSC may vary an approval–

(a) by removing a condition; or

(b) in exceptional circumstances, by imposing or varying a condition.

(2) When considering whether to vary its approval, the GFSC may take into account any matter which it could take into account if it were considering an application for approval.

Notices and appeals

Notice procedure and appeals.

103.(1) This section applies where the GFSC proposes or decides to–

(a) refuse an application for approval;

(b) approve an application subject to conditions;

(c) withdraw an approval;

(d) refuse an application to vary an approval; or

(e) vary an approval on its own initiative.

(2) Where the GFSC–

(a) proposes to make a decision in subsection (1), it must give the interested parties a warning notice; or

(b) decides to make a decision in that subsection, it must give the interested parties a decision notice.

(3) Subsection (2)(a) does not apply if the GFSC is satisfied that a warning notice–

(a) cannot be given because of urgency;

(b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the refusal, withdrawal or variation (as the case may be); or

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(c) is superfluous having regard to the need to give notice of legal proceedings, or for some other reason.

(4) A person aggrieved by a decision notice under subsection (2)(b) may appeal against the decision under section 615, but a decision notice in respect of any of the following decisions takes effect immediately–

(a) a refusal of an application for approval; or

(b) a refusal of an application to vary an approval.

(5) In this section "the interested parties" means–

(a) the RI firm who made the application; and

(b) the individual in respect of whom the application was made.

(6) For the purposes of subsection (3)(a), the GFSC must not consider that urgency exists unless Condition B and Condition C in section 80(3) and (4) are met.

(7) If those conditions are met, the GFSC must give the interested parties a notice stating that the conditions, withdrawal, refusal or variation takes effect on the date of the notice or on such later date as may be specified in the notice.

(8) Sections 80(7) and (8) and 81 apply to a decision by the GFSC under subsection (3)(a) with such modifications as may be required by the circumstances and context of subsection (3).

Duty to report to GFSC

Duty to report to GFSC.

104.(1) An RI firm must report the following matters to the GFSC without delay–

(a) when an individual has ceased to perform the functions of a regulated individual;

(b) the reason why the individual has ceased to perform those functions; and

(c) any disciplinary action (or, in the case of an outsourced provider, any other steps) taken in relation to the individual's performance of those functions.

(2) In this section "disciplinary action" in relation to a regulated individual includes–

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(a) the issuing of a formal written warning;

(b) the suspension or dismissal of the individual; or

(c) the reduction or recovery of the individual's remuneration.

Conduct of regulated individuals

Conduct regulations.

105. The Minister may make regulations governing the conduct required of regulated individuals.

PART 9
CONTROL OVER REGULATED FIRMS

Introduction

Application of Part 9.

106.(1) This Part only applies to Gibraltar regulated firms.

Interpretation of Part 9.

107.(1) In this Part–

"acquisition" means the acquisition of control of, or an increase in control over, a Gibraltar regulated firm;

"credit institution" means–

(a) a credit institution which has Part 7 permission to carry on the regulated activity of accepting deposits; or

(b) an institution which would satisfy the requirements for being given permission under Part 7 to carry on that activity if it had its registered office (or if it does not have a registered office, its head office) in Gibraltar;

"Gibraltar regulated firm" means a regulated firm which is a body incorporated in, or an unincorporated association formed under, the law of Gibraltar;

"section 111 notice" and "section 111 notice giver" have the meaning given in section 111(3);

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"shares", in relation to–

(a) an undertaking with a share capital, means allotted shares;

(b) an undertaking with capital but no share capital, means rights to share in the capital of the undertaking; and

(c) an undertaking without capital, means interests–

(i) conferring any right to share in the profits, or liability to contribute to the losses, of the undertaking; or

(ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up; and

"voting power"–

(a) includes, in relation to a person ("H")–

(i) voting power held by a third party with whom H has concluded an agreement, which obliges H and the third party to adopt, by concerted exercise of the voting power they hold, a lasting common policy towards the management of the undertaking in question;

(ii) voting power held by a third party under an agreement concluded with H providing for the temporary transfer for consideration of the voting power in question;

(iii) voting power attaching to shares which are lodged as collateral with H, provided that H controls the voting power and declares an intention to exercise it;

(iv) voting power attaching to shares in which H has a life interest;

(v) voting power which is held, or may be exercised within the meaning of sub-paragraphs (i) to (iv), by a controlled undertaking of H;

(vi) voting power attaching to shares deposited with H which H has discretion to exercise in the absence of specific instructions from the shareholders;

(vii) voting power held in the name of a third party on behalf of H; or

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(viii) voting power which H may exercise as a proxy where H has discretion about the exercise of the voting power in the absence of specific instructions from the shareholders; and

(b) in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution.

(2) For the purposes of this Part, an undertaking ("B") is a controlled undertaking of H if–

(a) H holds a majority of the voting rights in B;

(b) H is a member of B and has the right to appoint or remove a majority of the members of the board of directors (or, if there is no such board, the equivalent management body) of B;

(c) H is a member of B and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in B; or

(d) H has the right to exercise, or actually exercises, dominant influence or control over B.

(3) For the purposes of subsection (2)(b), the following rights are treated as held by H–

(a) any rights of a person controlled by H; and

(b) any rights of a person acting on behalf of H or a person controlled by H.

Parent and subsidiary undertaking.

108. In this Part–

(a) a parent undertaking includes an individual who would be a parent undertaking if the individual were an undertaking (and subsidiary undertaking is to be read accordingly); and

(b) a subsidiary undertaking includes, in relation to a body incorporated in or formed under the law of a country or territory outside Gibraltar, an undertaking controlled by a parent undertaking or a subsidiary undertaking of an ultimate parent undertaking (and parent undertaking is to be read accordingly).

Groups.

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109.(1) In this Part "group", in relation to a person ("A"), means A and any person who is–

(a) a parent undertaking of A;

(b) a subsidiary undertaking of A;

(c) a subsidiary undertaking of a 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.

(2) "Participating interest" has the meaning given in section 110, but includes an interest held by an individual which would be a participating interest for the purposes of that section if the individual were an undertaking.

Meaning of "participating interest".

110.(1) In section 109 a "participating interest" means an interest held by an undertaking in the shares of another undertaking which it holds on a long-term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.

(2) A holding of 20% or more in the shares of an undertaking is presumed to be a participating interest unless the contrary is shown.

(3) The reference in subsection (1) to an interest in shares includes–

(a) an interest which is convertible into an interest in shares; and

(b) an option to acquire shares or any such interest.

(4) An interest or option falls within subsection (3)(a) or (b) notwithstanding that the shares to which it relates are, until the conversion or the exercise of the option, unissued.

(5) For the purposes of this section an interest held on behalf of an undertaking is to be treated as held by it.

(6) In this section "undertaking" has the meaning given in section 277(1) of the Companies Act 2014.

Notice of acquisition of control over Gibraltar regulated firm

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Obligation to notify the GFSC of acquisitions of control.

111.(1) A person who decides to acquire or increase control over a Gibraltar regulated firm must give the GFSC notice before making the acquisition.

(2) For the purposes of calculations relating to this section, the holding of shares or voting power by a person ("A1") includes any shares or voting power held by another ("A2") if A1 and A2 are acting in concert.

(3) In this Part, a notice given under this section is a "section 111 notice" and a person giving notice is a "section 111 notice-giver".

Section 111 notices.

112.(1) A section 111 notice must be in the form, and include any information and be accompanied by any documents, that the GFSC may reasonably require.

(2) The GFSC must publish a list of its requirements as to the form, information and accompanying documents for a section 111 notice.

(3) The GFSC may impose different requirements for different cases and may vary or waive requirements in particular cases.

Acknowledgement of receipt.

113.(1) The GFSC must as soon as reasonably possible acknowledge in writing receipt of a completed section 111 notice.

(2) If the GFSC receives an incomplete section 111 notice it must inform the section 111 notice-giver as soon as reasonably possible.

Acquiring control and other changes of holding

Acquiring control.

114.(1) For the purposes of this Part, a person ("A") acquires control over a Gibraltar regulated firm ("B") if any of the cases in subsection (2) begin to apply.

(2) The cases are where A holds–

(a) 10% or more of the shares in B or in a parent undertaking of B ("P");

(b) 10% or more of the voting power in B or P; or

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(c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

Increasing control.

115.(1) For the purposes of this Part, a person ("A") increases control over a Gibraltar regulated firm ("B") whenever–

(a) the percentage of shares which A holds in B or a parent undertaking of B ("P") increases by any of the steps mentioned in subsection (2);

(b) the percentage of voting power which A holds in B or P increases by any of the steps mentioned in subsection (2); or

(c) A becomes a parent undertaking of B.

(2) The steps are–

(a) from less than 20% to 20% or more;

(b) from less than 30% to 30% or more; or

(c) from less than 50% to 50% or more.

Reducing or ceasing to have control.

116.(1) For the purposes of this Part, a person ("A") reduces control over a Gibraltar regulated firm ("B") whenever–

(a) the percentage of shares which A holds in B or a parent undertaking of B ("P") decreases by any of the steps mentioned in subsection (2);

(b) the percentage of voting power which A holds in B or P decreases by any of the steps mentioned in subsection (2); or

(c) A ceases to be parent undertaking of B.

(2) The steps are–

(a) from 50% or more to less than 50%;

(b) from 30% or more to less than 30%; or

(c) from 20% or more to less than 20%.

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(3) For the purposes of this Part, a person ("A") ceases to have control over a Gibraltar regulated firm ("B") if A ceases to be in the position of holding–

(a) 10% or more of the shares in B or in a parent undertaking of B ("P");

(b) 10% or more of the voting power in B or P; or

(c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

Disregarded holdings.

Disregarded holdings.

117.(1) For the purposes of sections 114 to 116, shares and voting power that a person holds in a Gibraltar regulated firm ("B") or in a parent undertaking of B ("P") are disregarded in the following circumstances.

(2) Shares held only for the purposes of clearing and settling within a short settlement cycle are disregarded.

(3) Shares held by a custodian or its nominee in a custodian capacity are disregarded, if the custodian or nominee is only able to exercise voting power represented by the shares in accordance with instructions given in writing.

(4) Shares representing no more than 5% of the total voting power in B or P held by an investment firm are disregarded, if it–

(a) holds the shares in the capacity of a market maker (as defined in paragraph 44 of Schedule 2;

(b) has a Part 7 permission to carry on one or more investment services and activities;

(c) neither intervenes in the management of B or P nor exerts any influence on B or P to buy the shares or back the share price.

(5) Shares held by a credit institution or investment firm in its trading book are disregarded if–

(a) the shares represent no more than 5% of the total voting power in B or P; and

(b) the voting power is not used to intervene in the management of B or P.

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(6) Shares held by a credit institution or an investment firm are disregarded if–

(a) the shares are held as a result of performing the investment services and activities of–

(i) underwriting a share issue; or

(ii) placing shares on a firm commitment basis in accordance with paragraph 53 of Schedule 2; and

(b) the credit institution or investment firm–

(i) does not exercise voting power represented by the shares or otherwise intervene in the management of the issuer; and

(ii) retains the holding for a period of less than one year.

(7) When a management company (as defined regulation 3(1) of the Financial Services (UCITS) Regulations 2020) and its parent undertaking both hold shares or voting power, each may disregard the holdings of the other, if each exercises its voting power independently of the other.

(8) But subsection (7) does not apply if the management company–

(a) manages holdings for its parent undertaking or a controlled undertaking of its parent undertaking;

(b) has no discretion as to the exercise of the voting power attached to such holdings; and

(c) may only exercise the voting power in relation to such holdings under direct or indirect instruction from–

(i) its parent undertaking; or

(ii) a controlled undertaking of the parent undertaking.

(9) Where an investment firm and its parent undertaking both hold shares or voting power, the parent undertaking may disregard the holdings managed by the investment firm on a client by client basis and the investment firm may disregard holdings of the parent undertaking if the investment firm–

(a) has permission to provide portfolio management;

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(b) exercises its voting power independently from the parent undertaking; and

(c) may only exercise the voting power under instructions given in writing or has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of other services.

(10) Shares acquired for stabilisation purposes in accordance with EUMAR as regards exemptions for buy-back programmes and stabilisation of financial instruments are disregarded, if the voting power attached to those shares is not exercised or otherwise used to intervene in the management of B or P.

(11) For the purposes of this section, an undertaking is a controlled undertaking of the parent undertaking ("P") if it is controlled by the parent undertaking; and for this purpose the question of whether one undertaking controls another is to be determined in accordance with section 107(2) and (3).

Assessment procedure

Assessment: general.

118.(1) Where the GFSC receives a section 111 notice, it must–

(a) determine whether to approve the acquisition to which the notice relates unconditionally; or

(b) propose to–

(i) approve the acquisition subject to conditions (see section 120); or

(ii) object to the acquisition.

(2) The GFSC must–

(a) consider the suitability of the section 111 notice-giver and the financial soundness of the acquisition in order to ensure the sound and prudent management of the Gibraltar regulated firm;

(b) have regard to the likely influence that the section 111 notice-giver will have on the Gibraltar regulated firm; and

(c) disregard the economic needs of the market.

(3) The GFSC may only object to an acquisition–

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(a) if there are reasonable grounds for doing so on the basis of the matters set out in section 119; or

(b) if the information provided by the section 111 notice-giver is incomplete.

Assessment criteria.

119. The matters specified in section 118(3)(a) are–

(a) the reputation of the section 111 notice-giver;

(b) the reputation, knowledge, skills and experience of any person who will direct the business of the Gibraltar regulated firm as a result of the proposed acquisition;

(c) the financial soundness of the section 111 notice-giver, in particular in relation to the type of business that the Gibraltar regulated firm pursues or envisages pursing;

(d) whether the Gibraltar regulated firm will be able to comply with prudential requirements (including the threshold conditions in relation to all of the regulated activities for which it has or will have permission);

(e) if the Gibraltar regulated firm is to become part of a group as a result of the acquisition, whether that group has a structure which makes it possible to–

(i) exercise effective supervision;

(ii) exchange information among regulators; and

(iii) determine the allocation of responsibility among regulators; and

(f) whether there are reasonable grounds to suspect that in connection with the proposed acquisition–

(i) money laundering, terrorist financing or proliferation financing (within the meaning of section 7(2) of the Proceeds of Crime Act 2015) is being or has been committed or attempted; or

(ii) the risk of such activity could increase.

Approval with conditions.

120.(1) The GFSC may impose conditions on its approval of an acquisition.

(2) The GFSC may only impose conditions where–

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(a) if it did not impose those conditions, it would propose to object to the acquisition; or

(b) it appears to the GFSC that imposing those conditions is desirable in order to advance one or more of its regulatory objectives.

(3) The GFSC may not impose conditions requiring a particular level of holding to be acquired.

(4) The GFSC may vary or cancel the conditions.

121. *Omitted*.

Assessment: procedure.

122.(1) The GFSC must act under section 118 within the assessment period, which–

(a) begins on the day the GFSC acknowledges receipt of a completed section 111 notice; and

(b) ends on the day–

(i) 60 working days later in the case of a change of control which the GFSC considers to be non-complex or moderately complex; or

(ii) 6 months later in the case of a change of control which the GFSC considers to be complex.

(2) The assessment period may be interrupted in accordance with section 123.

(3) The GFSC must inform the section 111 notice-giver in writing of–

(a) the duration of the assessment period;

(b) its expiry date; and

(c) any change to the expiry date by virtue of section 123.

(4) The GFSC must, as soon as reasonably possible after acting under section 118 (and in any event no later than the expiry date of the assessment period)–

(a) notify the section 111 notice-giver that it has determined to approve the acquisition unconditionally; or

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(b) give a warning notice stating that it proposes to–

(i) approve the acquisition subject to conditions; or

(ii) object to the acquisition.

(5) Where the GFSC gives a warning notice stating that it proposes to approve the acquisition subject to conditions–

(a) it must, in the warning notice, specify those conditions; and

(b) the conditions take effect as interim conditions.

(6) *Omitted*

(7) If the GFSC decides to approve an acquisition subject to conditions or to object to an acquisition–

(a) the GFSC must give the section 111 notice-giver a decision notice; and

(b) the GFSC's decision may be the subject of an appeal under section 615.

(8) The requirement to give–

(a) a warning notice under subsection (4)(b)(i); or

(b) a decision notice under subsection (7),

does not apply where the section 111 notice-giver has consented in writing to the acquisition being approved subject to conditions.

(9) In a case to which subsection (8) applies, the GFSC must give the section 111 notice-giver notice of the approval, the conditions to which it is subject and the date from which it has effect.

Duration of approval.

122A.(1) Approval of an acquisition (whether granted unconditionally or subject to conditions) is effective for such period as the GFSC may specify in writing.

(2) Where the GFSC has specified a period under subsection (1), it may extend the period.

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(3) Where the GFSC has not specified a period, the approval is effective for one year beginning with the date of–

(a) the notice given under section 122(4)(a) or (b)(i); or

(b) any decision on an appeal under section 122(7) which results in the person receiving approval.

Requests for further information.

123.(1) The GFSC may by notice in writing ask the section 111 notice-giver to provide any further information necessary to complete the assessment.

(1A) A notice under subsection (1) must be given no later than–

(a) the 50th working day of the assessment period, in any case to which section 122(1)(b)(i) applies; or

(b) the last day of the fifth month of the assessment period, in any case to which section 122(1)(b)(ii) applies.

(2) If the GFSC asks for further information, the assessment period is interrupted from the date of the request until the date the GFSC receives the requested information.

(3) *Omitted*

(4) *Omitted*

(5) *Omitted*

(6) The GFSC must as soon as reasonably possible acknowledge in writing receipt of the further information.

Incomplete notices.

123A. The GFSC may determine an incomplete section 111 notice if it considers it appropriate to do so, but must determine such a notice within 12 months beginning with the date on which it was received unless, in its discretion and with the section 111 notice-giver's consent, the GFSC decides otherwise (but, other than in exceptional circumstances, any additional period must not exceed 12 months).

Objections

Objections to existing control.

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124.(1) The GFSC may object to a person's control over a Gibraltar regulated firm in any of the circumstances specified in subsection (2).

(2) The circumstances are that the GFSC reasonably believes that–

(a) the person acquired or increased control without giving notice under section 111(1) in circumstances where notice was required;

(b) the person is in breach of a condition imposed under section 120; or

(c) there are grounds for objecting to control on the basis of the matters dealt with in section 119.

(3) The GFSC–

(a) must take into account whether influence exercised by the person is likely to operate to the detriment of the sound and prudent management of the Gibraltar regulated firm; and

(b) may take into account whether the person has cooperated with any information requests made or requirements imposed by the GFSC.

(4) If the GFSC proposes to object to a person's control over a Gibraltar regulated firm, it must give that person a warning notice.

(5) *Omitted*

(6) If the GFSC decides to object to a person's control over a Gibraltar regulated firm–

(a) the GFSC must give that person a decision notice; and

(b) the person may appeal under section 615 against the decision.

Restriction notices.

125.(1) The GFSC may give notice (a "restriction notice") to a person in the following circumstances.

(2) The circumstances are that–

(a) the person has control over a Gibraltar regulated firm by virtue of holding shares or voting power; and

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(b) in relation to the shares or voting power, the GFSC has given the person a warning notice or a decision notice under section 122 or 124.

(3) In a restriction notice, the GFSC may direct that shares or voting power to which the notice relates are, until further notice, subject to one or more of the following restrictions–

(a) except by order of the Supreme Court, an agreement to transfer or a transfer of any such shares or voting power or, in the case of unissued shares, any agreement to transfer or transfer of the right to be issued with them, is void;

(b) no voting power is to be exercisable;

(c) no further shares are to be issued in pursuance of any right of the holder of any such shares or voting powers or in pursuance of any offer made to their holder;

(d) except in a liquidation, no payment is to be made of any sums due from the body corporate on any such shares, whether in respect of capital or otherwise.

(4) A restriction notice takes effect–

(a) immediately, if the notice so provides; or

(b) on the date specified in the notice.

(5) A copy of the restriction notice must be served on–

(a) the Gibraltar regulated firm in question; and

(b) in the case of shares or voting power held in a parent undertaking of a Gibraltar regulated firm, the parent undertaking.

(6) A person aggrieved by the GFSC's decision to issue a restriction notice may appeal under section 615 against that decision.

Orders for sale of shares.

126.(1) The Supreme Court may, on the application of the GFSC, order the sale of the shares or the disposition of the voting power in the following circumstances.

(2) The circumstances are that–

(a) a person has control over a Gibraltar regulated firm by virtue of holding the shares or voting power; and

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(b) the acquisition or continued holding of the shares or voting power by that person is in contravention of a decision notice given under section 122 or 124 which has taken effect.

(3) A decision notice takes effect–

(a) at the end of the period for bringing an appeal if no appeal is brought; or

(b) when any appeal is finally determined or withdrawn.

(4) Where the court orders the sale of shares or disposition of voting power it may–

(a) if a restriction notice has been given in relation to the shares or voting power, order that the restrictions cease to apply; and

(b) make any further order.

(5) Where the court makes an order under this section, it must take into account the level of holding that the person would have been entitled to acquire, or continue to hold, without contravening the decision notice.

(6) If shares are sold or voting power disposed of in pursuance of an order under this section, any proceeds, less the costs of the sale or disposition, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for payment of the whole or a part of the proceeds.

Notices of reductions of control of Gibraltar regulated firms

Obligation to notify GFSC: dispositions of control.

127.(1) A person who decides to reduce or cease to have control over a Gibraltar regulated firm must give the GFSC notice before making the disposition.

(2) For the purposes of calculations relating to this section, the holding of shares or voting power by a person ("A1") includes any shares or voting power held by another person ("A2") if A1 and A2 are acting in concert.

Notices under section 127.

128.(1) A notice under section 127 must be in such form, and include such information and be accompanied by such documents, as the GFSC may reasonably require.

(2) The GFSC must publish a list of its requirements as to the form, information and accompanying documents for a notice under section 127.

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(3) The GFSC may impose different requirements for different cases and may vary or waive requirements in particular cases.

Offences

Offences under this Part.

129.(1) A person who fails to comply with an obligation to notify the GFSC under section 111(1) or 127(1) commits an offence.

(2) A person who gives notice to the GFSC under section 111(1) and makes the acquisition to which the notice relates commits an offence unless the GFSC has approved the acquisition or given a warning notice under section 122(4)(b)(i).

(3) A person who contravenes an interim condition in a warning notice given under section 122(4)(b)(i) or a condition in a decision notice given under section 122(7) commits an offence.

(4) A person who makes an acquisition in contravention of a warning notice given under section 122(4)(b)(ii) or a decision notice given under section 122(7) commits an offence.

(4A) A person who makes an acquisition after the GFSC's approval for the acquisition has ceased to be effective by virtue of section 122A commits an offence.

(5) A person who provides information to the GFSC which is false in a material particular commits an offence.

(6) A person who breaches a direction contained in a restriction notice given under section 125 commits an offence.

(7) A person who commits an offence under subsection (1), (2) (3), (4A), (5) or (6) is liable–

(a) on summary conviction, to the statutory maximum fine; or

(b) on conviction on indictment, to a fine.

(8) A person convicted an offence under subsection (4) is liable–

(a) on summary conviction, to the statutory maximum fine; or

(b) on conviction on indictment, to imprisonment for two years or a fine, or both.

Miscellaneous

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Power to change definitions of control etc. or deadlines.

130.(1) The Minister may by regulations–

(a) provide for exemptions from the obligations to notify imposed by section 111 and 127;

(b) amend section 114 by varying, or removing, any of the cases in which a person is treated as acquiring control over a Gibraltar regulated firm or by adding a case;

(c) amend section 115 by varying, or removing, any of the cases in which a person is treated as increasing control over a Gibraltar regulated firm or by adding a case;

(d) amend section 116 by varying, or removing, any of the cases in which a person is treated as reducing or ceasing to have control over a Gibraltar regulated firm or by adding a case; or

(e) amend section 131(3) by modifying, or removing, any of the cases in which a person is treated as being a controller of a person or by adding a case.

(2) The Minister may by regulations prescribe different periods to those specified in–

(a) section 122(1) for assessing a section 111 notice;

(b) section 123(1A) for seeking further information in respect of a section 111 notice; or

(c) section 123A for the determination of incomplete notices.

PART 10
INFORMATION GATHERING AND INVESTIGATORY POWERS

Interpretation

Relevant persons.

131.(1) In this Part, a "relevant person" means–

(a) an authorised person;

(b) an approved statutory auditor or audit firm;

(c) a former authorised person, in relation to the time when the person was an authorised person;

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(d) a former approved statutory auditor or audit firm, in relation to the time when the person was so approved;

(e) a fund or scheme which falls within the following provisions of this Act–

(i) a collective investment scheme authorised under Chapter 3 or 4 of Part 18 or recognised under Chapter 5 or 6 of that Part;

(ii) an experienced investor fund established in accordance with regulations made under section 339;

(iii) an IORP authorised under Part 26; or

(iv) a personal pension scheme approved under Part 27;

(f) a person who has or at any time had a direct or indirect proprietary, financial or other interest in a person in the preceding paragraphs or who is seeking to obtain such an interest;

(g) a person who is or was involved, directly or indirectly, in a transaction which the GFSC considers to be relevant to the discharge of its functions under this Act or any other enactment; or

(h) a connected person.

(2) In subsection (1), a "connected person" means a person who is or at any relevant time has been connected to a person in subsection (1)(a), (b), (c), (d), (e) or (f) ("A") as–

(a) a member of A's group;

(b) a controller of A;

(c) a member of a partnership of which A is a member; or

(d) in relation to A, a person mentioned in Schedule 16.

(3) "Controller" ("A"), in relation to an undertaking ("B"), means–

(a) a person who falls within any of the cases in subsection (4); or

(b) a beneficial owner of a person referred to in paragraph (a),

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and for the purposes of paragraph (b), "beneficial owner" has the meaning given to it in section 7(1A) of the Proceeds of Crime Act 2015.

(4) The cases are where A holds–

(a) 10% or more of the shares in B or a parent undertaking of B ("P");

(b) 10% or more of the voting power in B or P; or

(c) shares or voting power in B or P as a result of which A is able to exercise a significant influence over the management of B.

(5) For the purposes of calculations relating to this section, the holding of shares or voting power by a person ("A1") includes any shares or voting power held by another ("A2") if A1 and A2 are acting in concert.

(6) In this section, "shares" and "voting power" have the meaning given in Part 9.

(7) For the purposes of subsections (4) to (6), shares and voting power that a person holds in an undertaking ("B") or in a parent undertaking of B ("P") are to be disregarded in the circumstances set out in section 117(2) to (11).

Powers to obtain information and documents

Power to require documents and information.

132.(1) The GFSC may by notice require a relevant person–

(a) to provide the GFSC with specified information or information of a specified description;

(b) to produce to the GFSC specified documents or documents of a specified description; or

(c) to attend before the GFSC, at a specified time and place, to–

(i) answer questions appearing to the GFSC to be relevant in connection with the exercise of its functions specified in subsection (2); and

(ii) provide any information that the GFSC may require.

(2) Subsection (1) only applies to information and documents that the GFSC reasonably requires for the purpose of or in connection with–

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(a) exercising any function conferred on it by or under this Act or any applicable retained EU law; or

(b) assisting a foreign regulator in accordance with section 50.

(3) A notice under subsection (1)(a) or (b) may require–

(a) a relevant person to provide information or produce documents–

(i) before the end of a specified period;

(ii) at specified intervals; or

(iii) at a specified time or place;

(b) any information which a relevant person is required to provide to be verified in a specified manner; or

(c) any document which a relevant person is required to produce to be authenticated in a specified manner.

(4) In this section "specified" means specified in a notice given under subsection (1).

(5) Where any information or document is not recorded in legible form, a requirement to provide or produce it includes the requirement to supply a copy of it in legible form.

(6) The GFSC may–

(a) take copies of or extracts from any document produced;

(b) require the person who has provided information or produced a document to provide an explanation of that information or document; and

(c) require a person to state, to the best of the person's knowledge and belief, where any information or document might be found.

(7) The GFSC may require a person ("P"), who is neither the relevant person specified in a notice under subsection (1) (the "relevant notice") nor a person connected with the relevant person–

(a) to provide any information or produce any document specified in the relevant notice to the GFSC if it appears to the GFSC that P is in possession of that information or document; or

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(b) to attend before the GFSC, at a specified time and place, to–

(i) answer questions appearing to the GFSC to be relevant; and

(ii) provide any information or produce any document appearing to the GFSC to be relevant.

(7A) Where it appears to the GFSC that there are reasonable grounds to suspect that a provision made by or under this Act or any applicable retained EU law has been contravened, or for the purpose of assisting a foreign regulator in accordance with section 50, the GFSC may require a person–

(a) to provide any information or produce any document to the GFSC which appears to the GFSC to be in that person's possession and relevant; or

(b) to attend before the GFSC, at a specified time and place, to–

(i) answer questions appearing to the GFSC to be relevant; and

(ii) provide any information or produce any document appearing to the GFSC to be relevant,

where the GFSC is satisfied that doing so is necessary or expedient for the purposes of exercising its functions in connection with the suspected contravention or assisting the foreign regulator.

(7B) The GFSC may retain any document which is produced under subsections (1), (7) or (7A) for so long as it is necessary to retain it in connection with the exercise of its functions under this Part.

(8) In respect of a person who is a barrister or solicitor acting in their professional capacity–

(a) this section applies subject to section 143(2); and

(b) nothing in this section requires a barrister or solicitor to disclose any information or document which is subject to legal professional privilege.

(9) In this section "applicable retained EU law" means retained EU law which confers regulatory or supervisory powers on the GFSC or is otherwise concerned with or related to the regulation of financial services.

Extension of powers to obtain information, etc.

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133. The GFSC's powers under section 132 may also be exercised in respect of any person who appears to the GFSC to be carrying on, or holding out as carrying on, in or from Gibraltar, a regulated activity or an activity which requires authorisation, a licence, registration, approval or recognition under this Act.

Power to carry out on-site inspection.

134.(1) The GFSC may carry out on-site inspections of any premises of a relevant person (other than a dwelling) in connection with the exercise of functions conferred on the GFSC by or under this Act.

(2) The power in subsection (1) may be exercised by the GFSC, at reasonable times and on reasonable notice, with the consent of the relevant person and, in the case of the business premises of a barrister or solicitor, only in accordance with a court order under section 143(2).

(3) In conducting an on-site inspection (and subject to the terms of any order under section 143(2)) the GFSC may–

(a) inspect any part of the premises;

(b) question any person on the premises; and

(c) require access to and a copy of any document or information which is kept on the premises.

(4) Nothing in this section requires a barrister or solicitor to disclose any information or document which is subject to legal professional privilege.

Entry of premises under warrant.

135.(1) A magistrate may issue a warrant under this section if the magistrate is satisfied, on information on oath, that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.

(2) The first set of conditions is–

(a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it; 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.

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(3) The second set of conditions is–

(a) that the premises specified in the warrant are premises of a relevant person;

(b) that there are on the premises documents or information in relation to which an information requirement could be imposed; and

(c) that if an information requirement was imposed–

(i) it would not be complied with; or

(ii) the documents or information would be removed, tampered with or destroyed.

(4) The third set of conditions is–

(a) that a relevant offence 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 offence has been (or is being) committed;

(c) that an information requirement could be imposed in relation to those documents or information; and

(d) that if an information requirement was imposed–

(i) it would not be complied with; or

(ii) the documents or information would be removed, tampered with or destroyed.

(5) An application for a warrant under this section may be made by a constable or the GFSC.

(6) A warrant under this section–

(a) authorises any constable–

(i) to enter the premises specified in the warrant;

(ii) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which the warrant was issued ("the relevant kind") or take any other steps which may

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appear to be necessary for preserving or preventing interference with any documents or information appearing to be of the relevant kind;

(iii) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;

(iv) 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; and

(v) to use any force that may be reasonably necessary; and

(b) may authorise a person acting under the authority of the GFSC–

(i) to accompany any constable who is executing the warrant; and

(ii) to exercise any powers under subsection (a) in the company and under the supervision of a constable.

(7) In this section–

"information requirement" means any requirement imposed by the GFSC under section 132 or 133; and

"relevant offence" means–

(a) an offence under this Act for which a penalty of two years imprisonment may be imposed; or

(g) an offence under Part III of the Proceeds of Crime Act 2015 (money laundering offences).

(8) A person who wilfully obstructs another person in the exercise of any power under subsection (6) commits an offence and is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine, or both.

(9) A warrant under subsection (1) may only be issued in respect of the business premises of a barrister or solicitor if the Supreme Court has made an order under section 142(2).".

Skilled persons' reports

Skilled Person's Report.

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136.(1) The GFSC may by notice require a person in subsection (2) to appoint a person ("the skilled person") to provide the GFSC with a report on any matter about which the GFSC may reasonably require information in connection with the exercise of the functions conferred on it by or under this Act.

(2) Subsection (1) applies to–

(a) an authorised person ("A");

(b) any other member of A's group;

(c) a partnership of which A is a member; or

(d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c), who is, or was at the relevant time, carrying on a business.

(3) The skilled person must be–

(a) a person appearing to the GFSC to have the professional skills necessary to make a report on the matter concerned; and

(b) nominated or approved by the GFSC.

(4) Without limiting subsection (1), the GFSC may specify in a notice under that subsection–

(a) the date by which a skilled person must be appointed;

(b) the date by, or intervals at which, the skilled person's report must be provided to the GFSC; and

(c) the form in which a skilled person's report must be made.

(5) The GFSC, with the consent of the Minister, must prepare and publish a policy statement setting out the principles that it will apply in exercising its powers under subsections (1) to (4).

(6) The costs of producing a skilled person's report are to be borne by the person required to provide the report.

(7) It is the duty of the person who is the subject of a skilled person's report to give the skilled person any assistance that the skilled person may reasonably require.

(8) An auditor of a relevant person is not to be regarded as contravening any duty owed to the relevant person if the auditor communicates to the GFSC in good faith (and whether or not in response to a request made by the GFSC)–

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(a) any information relating to the business or affairs of the relevant person of which the auditor becomes aware; or

(b) any opinion which the auditor may form concerning the business or affairs of the relevant person,

when acting in the capacity of the auditor of the relevant person or as a person appointed to make a skilled person's report in respect of the relevant person.

(9) In subsection (8) any reference to information relating to or concerning the business or affairs of the relevant person includes a reference to information that relates to or concerns the business or affairs of a body with which the relevant person is linked by control and which is relevant to the exercise of any functions conferred on the GFSC by or under this Act.

Inspectors

Appointment of inspectors.

137.(1) The GFSC may appoint a person who it considers to be competent to do so ("an inspector") to investigate, on the GFSC's behalf, the affairs of a person in subsection (2) if–

(a) it has reasonable grounds to suspect that the person has contravened a requirement imposed by or under this Act; or

(b) if it appears to the GFSC that on other grounds there are good reasons for doing so.

(2) Subsection (1) applies to any person in Gibraltar who–

(a) carries on, or who the GFSC reasonably suspects of carrying on, a regulated activity in or from Gibraltar;

(b) has carried on, or who the GFSC reasonably suspects has carried on, a regulated activity in or from Gibraltar; or

(c) is a relevant person (other than a banker, auditor or actuary mentioned in paragraph 6 of Schedule 16).

(3) In deciding whether to appoint an inspector who is not a GFSC employee, the GFSC must have regard to the proportionality of the cost of doing so, having regard to–

(a) the seriousness of the suspected contravention or the matters giving rise to the good reasons for appointing an inspector on other grounds;

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(b) any sanction it could reasonably impose in respect of that contravention or any measure it could reasonably take in respect of those other grounds; and

(c) the seriousness of the consequences of the suspected contravention or the matters relating to those other grounds in terms of the GFSC's regulatory objectives.

(4) The Gibraltar courts have exclusive jurisdiction in relation to any matter arising from or relating to the discharge by an inspector of any function under this Part and–

(a) in accepting appointment as an inspector under this Part, a person is to be treated as having submitted to that exclusive jurisdiction; and

(b) in the case of an inspector who has no place of business or residence in Gibraltar, any process or notice required to be served on the inspector is sufficiently served if it is–

(i) addressed to or marked for the attention of the inspector at the GFSC; and

(ii) left at or sent by post to the GFSC's offices or sent by email to the GFSC.

(5) In exercising any functions under this Part, an inspector acts as agent for the GFSC, which is responsible for the acts and omissions of the inspector in exercising those functions.

(6) Subject to any immunity granted under this Act, nothing in subsection (4) affects an inspector's liability in contract or tort to any person, including the GFSC.

Powers of inspectors.

138.(1) An inspector appointed under section 137 may in Gibraltar–

(a) examine on oath (and has the power to administer oaths for that purpose)–

(i) the person whose affairs are being investigated;

(ii) any employee of that person;

(iii) where that person is a company, any of its officers, agents or employees; or

(iv) any banker to or auditor, barrister or solicitor of that person; or

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(b) if the inspector considers that it is necessary for the purpose of the investigation which the inspector has been appointed to conduct, the inspector may also investigate the affairs of any other person that is or at the relevant time was–

(i) a member of any group of which the person under investigation ("A") is a part; or

(ii) a partnership of which A is a member.

(2) If an inspector decides to investigate the business of any person in accordance with subsection (1)(b)–

(a) the inspector must give the person notice of the decision; and

(b) the inspector's report may only include matters concerning that person to the extent that they are directly relevant to the investigation which the inspector has been appointed to conduct.

(3) Nothing in subsection (1)(a)(iv) requires–

(a) a person to disclose any information or document which is subject to legal professional privilege; or

(b) a person to disclose any information or document in respect of which the person owes an obligation of confidence by virtue of carrying on the business of banking unless–

(i) the person is the person whose affairs are being investigated or a member of that person's group;

(ii) the person to whom the obligation of confidence is owed is the person whose affairs are being investigated or a member of that person's group;

(iii) the person to whom the obligation of confidence is owed consents to the disclosure or production; or

(iv) the making of the requirement was authorised by the Minister.

(4) An auditor of a person whose affairs are being investigated is not to be regarded as contravening any duty owed to that person if the auditor communicates to the inspector in good faith (and whether or not in response to a request made by the inspector)–

(a) any information relating to the business or affairs of that person of which the auditor becomes aware; or

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(b) any opinion which the auditor may form concerning the business or affairs of that person,

when acting in the capacity of the auditor of that person.

(5) In respect of a person who is a barrister or solicitor acting in their professional capacity–

(a) this section applies subject to section 143(2); and

(b) nothing in this section requires a barrister or solicitor to disclose any information or document which is subject to legal professional privilege.

Duty to produce records, etc.

139.(1) It is the duty of–

(a) any person whose affairs are being investigated by an inspector; and

(b) any other person whom an inspector examines under section 138,

to supply the inspector with any information or document which is in the person's possession or control and which the inspector may reasonably require.

(2) In respect of a person who is a barrister or solicitor acting in their professional capacity–

(a) this section applies subject to section 143(2); and

(b) nothing in this section requires a barrister or solicitor to disclose any information or document which is subject to legal professional privilege.

Inspector's report.

140.(1) The inspector–

(a) may (and, if the GFSC so directs, must) make interim reports to the GFSC during the course of the investigation; and

(b) must make a final report to the GFSC on the conclusion of the investigation.

(2) Where an interim report is made and–

(a) within six months of being made, it is not followed by a final report; or

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(b) the GFSC relies on the interim report to take regulatory action against any person,

that interim report is to be treated as the inspector's final report for the purposes of this section.

(3) The GFSC—

(a) must provide a copy of an inspector's final report to–

(i) every person who is the subject of the report (each of who is a "person concerned");

(ii) any member of a person concerned;

(iii) any person who is criticised or whose testimony to the inspector is referred to in the report; and

(iv) the Minister, on request; and

(b) may provide a copy of an inspector's final report to–

(i) the auditors of a person concerned;

(ii) the Minister;

(iii) other public authorities in Gibraltar or any other country or territory; and

(iv) any person whose financial interests appear to the GFSC to be affected by the matters dealt with in the report.

(4) Subject to subsection (5), the GFSC must not publish an inspector's report unless–

(a) based on the report, the GFSC has found a person concerned culpable of a material contravention of this Act;

(b) the report (or part of it) is published as part of the GFSC's reasons for its decision in respect of the contravention;

(c) publication is proportionate in the public interest, having regard to the GFSC's regulatory objectives and its likely effect on the person concerned;

(d) the person concerned has been given at least seven days notice of the GFSC's intention to publish the report;

(e) the requirements of subsection (6) are met; and

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(f) the report is published in an anonymised or redacted form from which any other person concerned cannot be identified (whether directly or indirectly).

(5) Where–

(a) an inspector's report contains no adverse findings in respect of a person concerned; or

(b) based on the report, the GFSC has not found a person concerned to be culpable of a material contravention of this Act,

at the request of the person concerned (and subject to any other limitation under this Part on its ability to do so), the GFSC must publish the report or a summary of the inspector's findings in respect of the person concerned and, where relevant, a summary of any decision made by the GFSC.

(6) If any other person is criticised or their testimony is referred to in an inspector's report which the GFSC proposes to publish, before doing so the GFSC must–

(a) provide the person with a copy of the report (if it has not already done so under subsection (3)(a)(iii));

(b) inform the person of its intention to publish the report; and

(c) either–

(i) obtain the person's consent to publication of any part of the report from which the person or, if applicable, their testimony may be identified (whether directly or indirectly); or

(ii) where the person does not consent, only publish that part of the report in an anonymised or redacted form from which the person or, if applicable, their testimony cannot be identified (whether directly or indirectly).

(7) In any case where subsection (4) applies, the GFSC must not publish the inspector's report until any appeal against the GFSC's decision in respect of the contravention or to publish the report is finally decided or withdrawn or, if there is no appeal, when the period for appealing has expired.

Costs of inspectors' reports.

141.(1) Subject to subsection (2), the costs of producing an inspector's report must be borne by the GFSC.

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(2) The GFSC may by decision notice require a person in subsection (3) to pay a specified sum ("an inspection costs contribution") equal to all or part of the costs reasonably and properly incurred by the GFSC in producing an inspector's report, including all of the work reasonably and necessarily carried out by the inspector in the conduct of the investigation and the preparation of the report.

(3) Subsection (2) applies to any of the following persons who, based on the inspector's report, the GFSC has found culpable of a material contravention of this Act–

(a) an authorised person;

(b) an approved statutory auditor or audit firm;

(c) a former authorised person, in relation to the time when the person was an authorised person;

(d) a former approved statutory auditor or audit firm, in relation to the time when the person was so approved;

(e) a fund or scheme which falls within the following provisions of this Act–

(i) a collective investment scheme authorised under Chapter 3 or 4 of Part 18 or recognised under Chapter 5 or 6 of that Part;

(ii) an experienced investor fund established in accordance with regulations made under section 339;

(iii) an IORP authorised under Part 26; or

(iv) a personal pension scheme approved under Part 27; or

(f) in relation to a person in paragraphs (a) to (e) which is a company, a person who is or was a director or manager of that company, and in the case of any other body corporate, a person who is or was a similar officer of that body corporate.

(4) In deciding whether to require a person to make an inspection costs contribution and, if so, the specified sum to be paid, the GFSC must have regard to the following factors–

(a) the reasonableness and proportionality of the inspection costs incurred by the GFSC;

(b) the reasonableness of any decision of the GFSC under section 137(3) to appoint an inspector who is not a GFSC employee;

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(c) the proportionality of imposing the requirement, taking account of the nature and gravity of the contravention of which the person has been found culpable;

(d) the extent to which other persons may be liable to have an inspection cost contribution requirement imposed on them in respect of that report; and

(e) whether it is just and equitable.

(5) An inspection costs contribution is not reasonable or proportionate to the extent that, in any case where the inspector is a GFSC employee, any part of the specified sum which represents the cost of the inspector's time, when calculated on an hourly basis, is more than the hourly cost to the GFSC of employing that person.

(6) The GFSC must not issue a decision notice under subsection (2) in respect of an inspection costs contribution to any person–

(a) until any appeal against the GFSC's decision in relation to the person's culpability is finally decided or withdrawn or, if there is no appeal, when the period for appealing has expired; and

(b) unless it has given the person a warning notice stating that the GFSC proposes to require the person to make an inspection costs contribution and specifying the proposed sum to be paid.

(7) An appeal against a decision notice under subsection (2), is to be by way of re-hearing and the court must have regard to the factors in subsection (4).

Legal safeguards

Self-incrimination.

142. A statement made by a person in compliance with any requirement imposed under this Part may be used in evidence in criminal proceedings against that person only if–

(a) the person has introduced the statement in evidence; or

(b) the proceedings concern the prosecution of the person for–

(i) failing or refusing to provide information, produce documents or give assistance in accordance with this Part;

(ii) omitting to disclose information which should have been disclosed; or

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(iii) providing an untruthful statement.

Legal privilege.

143.(1) A person is not required to produce a document or disclose information under this Part if the person would be entitled to refuse to produce or disclose it on grounds of legal privilege in proceedings in the Supreme Court.

(2) In respect of a person who is a barrister or solicitor acting in their professional capacity–

(a) the GFSC may only–

(i) issue a notice to the person under 132(1); or

(ii) inspect the person's premises under section 134; and

(b) an inspector may only–

(i) examine the person under section 138; or

(ii) require the person under section 139 to supply any information or document,

in accordance with the terms of an order of the Supreme Court authorising the GFSC or inspector (as the case may be) to do so.

(3) An application for an order under subsection (2) must be made by the GFSC and a copy of the application notice must be served on the solicitor or barrister concerned.

Liens on documents.

144. The production of a document under this Part does not affect any lien which a person may have in respect of the document and the existence of such a lien is not a valid reason for refusing to produce that document.

Appeals.

145.(1) A person aggrieved has a right of appeal under section 615 against any of the following decisions–

(a) a decision by the GFSC–

(i) under section 132(1)(a) or (b), (7)(a) or (b)(ii) or (7A)(a) or (b)(ii) to require a person other than an authorised person to provide specified information

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or information of a specified description, or produce specified documents or documents of a specified description; or

(ii) under section 132(1)(c), (7)(b)(i) or (7A)(b)(i) to require a person, other than a person specified in subsection (2), to attend before the GFSC to answer questions or provide information;

(iii) under section 140(4) to publish an inspector's report;

(iv) to refuse to provide a copy of an inspector's report under section 140(3);

(b) a decision by an inspector under section 138(1)(b) to investigate the affairs of any person other than the person whose affairs the inspector was appointed to investigate;

(c) a decision by the GFSC or an inspector requiring a person to produce a document or disclose information to which section 143(1) applies; or

(d) a decision by the GFSC under section 141(2) to require a person to pay an inspection costs contribution.

(2) For the purposes of subsection (1)(a)(ii) the specified persons are–

(a) an authorised person or former authorised person;

(b) a controller of an authorised person or former authorised person;

(c) a director, manager or similar officer of an authorised person or former authorised person; or

(d) an agent or employee of an authorised person or former authorised person.

Offences

Offences.

146.(1) A person ("P") commits an offence if–

(a) P, without reasonable excuse–

(i) fails or refuses to comply with a requirement imposed under this Part; or

(ii) omits to disclose material which P should have disclosed in accordance with this Part;

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(b) P, in purported compliance with a requirement imposed under this Part–

(i) gives information or makes a statement which P knows to be false or misleading; or

(ii) recklessly gives information or makes a statement which is false or misleading; or

(c) P knows or suspects that an investigation under this Part is being or is likely to be conducted and–

(i) P falsifies, conceals, destroys or otherwise disposes of a document which P knows or suspects is or would be relevant to such an investigation; or

(ii) P causes or permits the falsification, concealment, destruction or disposal of such a document.

(2) P does not commit an offence under subsection (1)(a) if the reason for P's failure or refusal to comply with a requirement or to disclose material is that–

(a) P is prevented from doing so by an order of the court under this Part; or

(b) P's obligation to do so is the subject of an appeal or other legal challenge before the courts.

(3) In any proceedings for an offence under subsection (1)(c), it is a defence for P to prove that P had no intention of concealing from the person conducting the investigation facts disclosed by the documents.

(4) A person who commits an offence under subsection (1) is liable–

(a) on summary conviction, to imprisonment for six months, to the statutory maximum fine, or both;

(b) on conviction on indictment, to imprisonment for two years or a fine, or both.

PART 11
COMMON SANCTIONING POWERS

Liability for contravention of regulatory requirement

Liability for contravention of regulatory requirement.

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147.(1) The GFSC may exercise a sanctioning power against a person if–

(a) the person contravened a regulatory requirement; and

(b) at the time of the contravention, the person was–

(i) an authorised person; or

(ii) a regulated individual.

(2) Whether a regulated firm has complied with requirements imposed by or under this Act may also be relevant in determining whether—

(a) the firm continues to satisfy the threshold condition in relation to all of the regulated activities for which the firm has permission; or

(b) to vary or cancel the firm's permission to carry on a regulated activity on the grounds that a condition specified in Schedule 13 is met in relation to that activity.

Liability of regulated individual for authorised person's contravention of regulatory requirement.

148. The GFSC may exercise a sanctioning power against a regulated individual in respect of a contravention of a regulatory requirement by an authorised person if–

(a) the individual contravened the regulatory requirement or was knowingly concerned in that contravention; and

(b) at the time of the contravention, the individual was a regulated individual at that authorised person.

Liability: general and sector specific.

149.(1) In this Part a regulatory requirement means an obligation imposed on a person–

(a) as a condition of being a regulated firm;

(b) under this Act or any regulations made under it;

(c) under any applicable retained EU law; or

(d) by the GFSC under–

(i) this Act or any regulations made under it; or

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(ii) any applicable retained EU law.

(2) This Part does not limit any other power the GFSC may have to investigate, supervise or sanction a person, under this Act or any other enactment.

(3) In this section "applicable retained EU law" means retained EU law which confers regulatory or supervisory powers on the GFSC or is otherwise concerned with or related to the regulation of financial services.

Sector specific regulatory requirements.

150.(1) Regulations may modify how this Part applies in relation to different types of financial services businesses.

(2) In particular, regulations may–

(a) add, delete or modify the regulatory requirements in respect of which sanctioning actions may be brought;

(b) add, delete or modify sanctioning powers (including the size of an administrative penalty);

(c) add, delete or modify the persons against whom sanctioning actions may be brought.

Sanctioning powers

Sanctioning powers.

151.(1) The sanctioning powers are–

(a) an administrative penalty;

(b) a public statement;

(c) a cease and desist order;

(d) a temporary suspension of permission order;

(e) a prohibition order.

(2) More than one sanctioning power may be exercised against a person in respect of the same contravention.

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Administrative penalties.

152.(1) The GFSC may impose an administrative penalty on a person in accordance with this section.

(2) An administrative penalty is an amount of money that the person is liable to pay.

(3) The amount is to be determined by the GFSC, subject to any limit imposed by or under this Act.

(4) The penalty must be paid within 28 days of the date on which the notice imposing it takes effect.

(5) The GFSC may extend the period within which the penalty must be paid.

Public statement.

153.(1) The GFSC may publish a statement limited to specifying–

(a) the identity of a person who has contravened a regulatory requirement;

(b) the type and nature of the contravention.

(2) The public statement may be in whatever form the GFSC thinks fit, but must be appropriate, proportionate, balanced and fair.

Cease and desist order.

154.(1) The GFSC may issue a cease and desist order against a person in accordance with this section.

(2) A cease and desist order obliges the person to–

(a) cease any conduct which constitutes a contravention; and

(b) desist from any repetition of that conduct.

Temporary suspension of permission order.

155.(1) The GFSC may issue a temporary suspension of permission order against an authorised person in accordance with this section.

(2) A temporary suspension of permission order may–

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(a) suspend permission to carry on a regulated activity; or

(b) impose a limitation or other restriction in relation to the carrying on of a regulated activity.

(3) The order must not exceed 12 months.

(4) The order may relate only to the carrying on of an activity in specified circumstances.

(5) A restriction may, in particular, be imposed so as to require the person to take, or refrain from taking, specified action.

(6) The GFSC may–

(a) withdraw an order; or

(b) vary an order, so as to reduce the period for which it has effect or otherwise limit its effect.

(7) The power under this section may (but need not) be exercised so as to have effect in relation to all the regulated activities that the person carries on.

Prohibition order.

156.(1) The GFSC may issue a prohibition order against an individual in accordance with this section.

(2) A prohibition order prohibits the individual from exercising regulated functions, within the meaning of Part 8, in an authorised person.

(3) The prohibition order must specify the period during which it has effect.

(4) The prohibition order must specify–

(a) which regulated functions it applies in respect of, or

(b) that it applies in respect of all regulated functions.

(5) If the prohibition order is in response to repeated contraventions, it may have effect for an indefinite period.

Sanctioning actions

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Sanctioning actions.

157. Sections 158 to 161 apply where the GFSC takes a sanctioning action by exercising a sanctioning power.

Criteria for sanctioning actions.

158.(1) The GFSC must ensure that the type and level of any sanctioning action is reasonable, proportionate, effective and dissuasive, taking account of all relevant circumstances, including where appropriate–

(a) the gravity and the duration of the contravention;

(b) the degree of responsibility of the person against whom the sanctioning power is being exercised;

(c) the financial strength of the person, for example as indicated by turnover or annual income;

(d) in so far as they can be determined–

(i) the importance of the profits gained or losses avoided by virtue of the contravention;

(ii) the losses sustained by others as a result of the contravention;

(iii) where applicable, the damage to the functioning of markets or the wider economy;

(e) the level of cooperation with the GFSC by the person;

(f) previous contraventions by the person;

(g) measures taken after the contravention by the person to prevent its repetition; and

(h) whether the person has complied with guidance relevant to the subject matter of the contravention.

(2) The GFSC must issue, and may from time to time revise, a guide setting out–

(a) how it will exercise its sanctioning powers;

(b) aggravating and mitigating factors it will take into account (which may be in addition to the criteria set out in subsection (1));

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(c) how the GFSC will determine the level of administrative penalties.

(3) The guide must not be issued or revised unless it has first been approved by the Minister.

(4) The GFSC must have regard to the guide before exercising its sanctioning powers.

Notice procedure and appeals.

159.(1) Where the GFSC–

(a) proposes to take a sanctioning action, it must give the person concerned a warning notice; or

(b) decides to take a sanctioning action, it must give the person concerned a decision notice.

(2) A person aggrieved by a decision notice under subsection (1)(b) may appeal under section 615.

Dispensing with a warning notice: sanctions in urgent cases.

160.(1) Section 159(1)(a) does not apply if all of conditions A to D are met in relation to a person ("P").

(2) Condition A is that the GFSC is considering whether to exercise a sanctioning power in relation to P.

(3) Condition B is that the GFSC, having regard to the ground on which it is considering exercising the sanctioning power in question, reasonably considers that there is an immediate risk of substantial damage to–

(a) the interests of consumers;

(b) the public interest; or

(c) the reputation of Gibraltar.

(4) Condition C is that the GFSC reasonably considers that–

(a) the issuing of a warning notice would, to a material extent, be likely to increase the damage referred to in subsection (3) or the extent of such damage; and

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(b) dispensing with the issue of a warning notice would be proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the regulated firm that may result from the proposed sanctioning action.

(5) Condition D is that the GFSC gives P a notice which states that the sanctioning action takes effect on the date of the notice or on such later date as may be specified in the notice.

(6) The sanctioning action takes effect on the date specified in the notice under subsection (5).

(7) A notice under subsection (5) must–

(a) give details of the sanctioning action;

(b) identify which of the grounds specified in subsection (3) the GFSC is relying on and how that ground is engaged;

(c) state the GFSC's reasons for taking the sanctioning action;

(d) specify why the GFSC considers that the requirements of each of paragraphs (a) and (b) of subsection (4) is met;

(e) inform P that P may make representations to the GFSC within such period as may be specified in the notice;

(f) inform P of when the sanctioning action takes effect;

(g) inform P of the right to make an application under sub-section (9); and

(h) indicate the procedure to be followed in making any such application.

(8) The GFSC may extend the period allowed under the notice for making representations.

(9) The Supreme Court may, on an application made to it by P of which not less than two working days' notice has been given to the GFSC–

(a) direct the GFSC to revoke any sanctioning action taken by the GFSC without issuing a warning notice; or

(b) quash or vary any such sanctioning action,

if the Court considers that it was not reasonable, proportionate or appropriate for the GFSC to have taken the action without issuing a warning notice.

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(10) If, having considered, any representations made by P, the GFSC decides not to revoke the sanctioning action, the GFSC must give P another notice which informs P of the right to appeal under section 615 against the decision to take that action.

(11) If, having considered, any representations made by P, the GFSC decides–

(a) to make any changes to the particular sanctioning action taken;

(b) to substitute a different sanctioning action; or

(c) to revoke a sanctioning action which has effect,

the GFSC must give P another notice.

(12) A notice under subsection (11)(a) or (b) must–

(a) give details of the GFSC's decision;

(b) state the GFSC's reasons for taking it;

(c) inform P that P may make representations to the GFSC within such period as may be specified in the notice;

(e) inform P of when the sanctioning action takes effect; and

(d) inform P of P's right to appeal under section 615 against the decision.

(13) A notice informing P of P's right of appeal must give an indication of the procedure to be followed in making an appeal.

Administrative penalty a civil debt.

161. An administrative penalty may be enforced as if it were a civil debt owed to the GFSC.

Revocation or variation of prohibition order.

162.(1) An individual subject to a prohibition order may apply to the GFSC to–

(a) vary the prohibition order;

(b) revoke the prohibition order.

(2) The GFSC must, before the end of the period for consideration–

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(a) grant the application; or

(b) give a warning notice stating why it proposes not to grant the application.

(3) The "period for consideration" means the period of three months beginning with the date on which the GFSC receives the application.

(4) A warning notice–

(a) must give the recipient not less than 28 days to make representations; and

(b) must specify a period within which the recipient may decide whether to make oral representations.

(5) The period for making representations may be extended by the GFSC.

(6) After considering any representations made the GFSC must issue–

(a) a decision notice stating that the GFSC will refuse the application; or

(b) an acceptance notice stating that the GFSC will accept the application.

(7) An application made by an individual has no effect if it is made within one year of the GFSC giving a warning notice in respect of a previous application by that individual.

(8) A decision notice under this section takes effect immediately.

Transitional and savings

Transitional and savings.

163.(1) This section applies in respect of a contravention of a regulatory requirement in a repealed enactment.

(2) If the GFSC has commenced a sanctioning action in respect of that contravention before the repealed enactment is repealed or revoked, subject to subsection (4), that sanctioning action is to continue in accordance with the procedure set out in the repealed enactment.

(3) If the GFSC has not commenced a sanctioning action in respect of that contravention before the repealed enactment is repealed or revoked, subject to subsection (4), any sanctioning action is to be undertaken in accordance with the procedures set out in this Part and Part 28.

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(4) Despite any provision in this Act or a repealed enactment to the contrary, in any case to which subsection (2) or (3) applies, the repealed enactment is to apply with any necessary modification so that–

(a) any decision to impose a sanction or supervisory measure (other than one to which the person concerned has consented) is taken by the DMC as if it were a specified regulatory decision within the meaning of section 24(3); and

(b) the provisions of this Act apply in relation to–

(i) the publication of the sanctioning action; and

(ii) the costs of any inspector's report.

(5) For the purposes of this section, a sanctioning action commences–

(a) on the issue of a warning notice; or

(b) if the issue of a warning notice has been lawfully dispensed with, on the issue of a decision notice.

(6) Nothing in this section permits the GFSC to impose any penalty or sanction for a contravention of a repealed enactment which exceeds the penalty or sanction which could have been imposed under that enactment for that contravention at the time it occurred.

PART 12
DUTIES OF AUDITORS AND ACTUARIES

Appointment of auditors and actuaries

Appointment of auditors and actuaries.

164.(1) The Minister may by regulations require an authorised person, or an authorised person falling within a specified class–

(a) to appoint an auditor; or

(b) to appoint an actuary,

if the authorised person is not already under a statutory obligation to do so.

(2) The Minister may by regulations require an authorised person, or an authorised person falling within a specified class–

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(a) to produce periodic financial reports; and

(b) to have them reported on by an auditor or actuary.

(3) The Minister may by regulations impose on auditors of, or actuaries acting for, authorised persons such duties as may be specified.

(4) Regulations under subsection (1) may–

(a) specify the manner in which and the time within which an auditor or actuary is to be appointed;

(b) require the GFSC to be notified of an appointment;

(c) enable the GFSC to make an appointment if no appointment has been made or notified; or

(d) make provision as to an auditor's or actuary's–

(i) remuneration; or

(ii) term of office, removal and resignation.

(5) An auditor or actuary appointed as a result of regulations under subsection (1), or on whom duties are imposed by regulations under subsection (3)–

(a) must act in accordance with such provision as may be made by the regulations; and

(b) is to have such powers in connection with the discharge of functions as may be provided by the regulations.

(6) In subsections (1) to (3) "auditor" or "actuary" means an auditor or actuary, who satisfies such requirements as to qualifications, experience and other matters (if any) as may be specified.

(7) "Specified" means specified in regulations.

Information

Access to books, etc.

165.(1) This section applies in respect of a person ("A") who is–

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(a) an appointed auditor of an authorised person; or

(b) an appointed actuary acting for an authorised person.

(2) A–

(a) has a right of access at all times to the authorised person's books, accounts and vouchers; and

(b) is entitled to require from the authorised person's officers such information and explanations as A reasonably considers necessary for the performance of A's duties as auditor or actuary.

(3) "Appointed" means appointed under or as a result of this Act.

Information given by auditor or actuary to the GFSC.

166.(1) This section applies in respect of a person ("A") who is, or has been–

(a) an auditor of an authorised person, appointed under or as a result of an enactment; or

(b) an actuary acting for an authorised person and appointed under or as a result of an enactment.

(2) The Minister may make regulations prescribing circumstances in which A must communicate to the GFSC–

(a) information on a matter on which A has, or had, become aware in A's capacity as auditor of, or actuary acting for, the authorised person; or

(b) A's opinion on such a matter.

(3) It is the duty of an auditor or actuary to whom any such regulations apply to communicate a matter to the GFSC in the circumstances prescribed by the regulations.

(4) If the authorised person is a credit institution or an investment firm and an auditor or actuary communicates a matter to the GFSC in accordance with the regulations, the matter must be disclosed simultaneously to the management body of the authorised person, unless there are compelling reasons not to do so.

(5) The matters to be communicated to the GFSC in accordance with the regulations may include matters relating to persons other than the authorised person concerned.

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(6) A does not contravene any duty to which A is subject merely because A communicates with the GFSC in accordance with subsection (2) if–

(a) A is acting in good faith; and

(b) A reasonably believes that the communications are relevant to any functions of the GFSC.

(7) Subsection (6) applies whether or not A is responding to a request from the GFSC.

Information given by auditor or actuary to the GFSC: persons with close links.

167.(1) This section applies in respect of a person ("A") who–

(a) is, or has been, an auditor of an authorised person, appointed under or as a result of an enactment; and

(b) is, or has been, an auditor of a person ("CL") who has close links with the authorised person.

(2) This section also applies in respect of a person ("A") who–

(a) is, or has been, an actuary acting for an authorised person and appointed under or as a result of an enactment; and

(b) is, or has been, an actuary acting for a person ("CL") who has close links with the authorised person.

(3) The Minister may prescribe the circumstances in which A must communicate to the GFSC–

(a) information on a matter on which A has, or had, become aware in A's capacity as auditor of, or actuary acting for, CL; or

(b) A's opinion on such a matter.

(4) It is the duty of an auditor or actuary to whom any such regulations apply to communicate a matter to the GFSC in the circumstances prescribed by the regulations.

(5) If the authorised person is a credit institution or an investment firm and an auditor or actuary communicates a matter to the GFSC in accordance with the regulations, the matter must be disclosed simultaneously to the management body of the authorised person, unless there are compelling reasons not to do so.

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(6) The matters to be communicated to the GFSC in accordance with the regulations may include matters relating to persons other than the authorised person concerned.

(7) A does not contravene any duty to which A is subject merely because A communicates with the GFSC in accordance with subsection (3) if–

(a) A is acting in good faith; and

(b) A reasonably believes that the communications are relevant to any functions of the GFSC.

(8) Subsection (7) applies whether or not A is responding to a request from the GFSC.

(9) CL has close links with the authorised person concerned ("B") if CL is–

(a) a parent undertaking of B;

(b) a subsidiary undertaking of B;

(c) a parent undertaking of a subsidiary undertaking of B; or

(d) a subsidiary undertaking of a parent undertaking of B.

Duty of auditor or actuary resigning etc. to give notice.

168.(1) This section applies to an auditor or actuary to whom section 166 applies ("A").

(2) A must without delay notify the GFSC if A–

(a) is removed from office by an authorised person;

(b) resigns before the expiry of A's term of office with such a person; or

(c) is not re-appointed by such a person.

(3) If A ceases to be an auditor of, or actuary acting for, such a person, A must without delay notify the GFSC–

(a) of any matter connected with A so ceasing which A thinks ought to be drawn to the GFSC's attention; or

(b) that there is no such matter.

Misleading an auditor or actuary

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Provision of false or misleading information to auditor or actuary.

169.(1) An authorised person who knowingly or recklessly gives an appointed auditor or actuary information which is false or misleading in a material particular commits an offence and is liable–

(a) on summary conviction, to imprisonment for six months or a fine at level 5 on the standard scale, or both;

(b) on conviction on indictment, to imprisonment for two years or a fine, or both.

(2) Subsection (1) applies equally to an officer, controller or manager of an authorised person.

(3) "Appointed" means appointed under or as result of this Act.

Enforcement powers

Liability for contravention.

170.(1) The GFSC may exercise an enforcement power against an auditor or actuary who–

(a) has contravened a duty imposed on the auditor or actuary to communicate information to the GFSC; or

(b) has contravened a duty imposed on the auditor or actuary by regulations made under this Part.

(2) This Part does not limit any other powers the GFSC may have to investigate, supervise or sanction a person, under this Act or any other enactment.

Enforcement powers.

171.(1) The enforcement powers are–

(a) a public statement;

(b) an administrative penalty; and

(c) a disqualification order.

(2) More than one enforcement power may be exercised against a person in respect of the same contravention.

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Public statement.

172.(1) The GFSC may publish a statement limited to specifying–

(a) the identity of a person who has committed the contravention; and

(b) the type and nature of the contravention.

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

Administrative penalties.

173.(1) The GFSC may impose an administrative penalty on a person in accordance with this section.

(2) An administrative penalty is an amount of money, determined by the GFSC, that the person is liable to pay which does not exceed the higher of the following–

(a) in the case of a legal entity–

(i) £250,000; or

(ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body; or

(b) in the case of an individual, £125,000.

(3) The penalty must be paid within 28 days of the date on which the notice imposing it takes effect.

(4) The GFSC may extend the period within which the penalty must be paid.

(5) Section 161 applies to the enforcement of an administrative penalty imposed under this section.

Disqualification order.

174.(1) The GFSC may make a disqualification order in respect of a person in accordance with this section.

(2) The disqualification order may–

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(a) disqualify an auditor from being the auditor of any authorised person or any particular class of authorised person; or

(a) disqualify an actuary from acting as an actuary for any authorised person or any particular class of authorised person.

(3) The GFSC may remove any disqualification imposed under this section if it is satisfied that the disqualified person will in the future comply with the duty which was contravened and in respect of which the disqualification order was made.

Enforcement actions

Enforcement actions.

175.(1) This section applies where the GFSC takes an enforcement action by exercising an enforcement power of–

(a) public statement;

(b) administrative penalty; or

(c) disqualification order.

(2) Sections 158 to 162 apply in respect of enforcement actions for auditors and actuaries as they apply in respect of enforcement action under Part 11, but the GFSC has no power to dispense with a warning notice and, accordingly, section 160 does not apply in respect of enforcement actions for auditors and actuaries.

PART 13
SPECIAL REMEDIES

Interpretation of Part 13.

176.(1) In this Part a "relevant requirement" means a requirement which is–

(a) imposed by or under this Act or any applicable retained EU law; or

(b) prescribed or of a prescribed description.

(2) In this section "applicable retained EU law" means retained EU law which confers regulatory or supervisory powers on the GFSC or is otherwise concerned with or related to the regulation of financial services.

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Injunctions.

177.(1) If, on the application of the GFSC, the Supreme Court is satisfied that–

(a) there is a reasonable likelihood that a person will contravene a relevant requirement; or

(b) a person has contravened a relevant requirement and there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining the contravention.

(2) If, on the application of the GFSC, the Supreme Court is satisfied that a person ("P") may have–

(a) contravened a relevant requirement; or

(b) been knowingly concerned in the contravention of a relevant requirement,

the court may make an order restraining P from disposing of, or otherwise dealing with, any of P's assets which it is satisfied that P is reasonably likely to dispose of or otherwise deal with.

(3) If, on the application of the GFSC, the Supreme Court is satisfied that–

(a) a person ("P") has–

(i) contravened a relevant requirement; or

(ii) been knowingly concerned in the contravention of a relevant requirement; and

(b) there are steps which P could take to remedy the contravention or mitigate its effect,

the court may make an order requiring P to take such steps as the court may direct to remedy the contravention or mitigate its effect.

Restitution orders.

178.(1) The Supreme Court may make an order under subsection (2) if, on the application of the GFSC, the court is satisfied that–

(a) a person ("P") has–

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(i) contravened a relevant requirement; or

(ii) been knowingly concerned in the contravention of relevant requirement; and

(b) as a result of that contravention–

(i) profits have accrued to P; or

(ii) one or more persons have suffered loss or been otherwise adversely affected.

(2) The court may order P to pay to the GFSC such sum as appears to the court to be just having regard–

(a) in a case within subsection (1)(b)(i), to the profits appearing to the court to have accrued;

(b) in a case within subsection (1)(b)(ii), to the extent of the loss or other adverse effect; or

(c) in a case within both of those provisions, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(3) Any amount paid to the GFSC in accordance with an order made under subsection (2) must be paid by the GFSC to the persons that the court may direct, being the persons appearing to the court–

(a) to whom the profits mentioned in subsection (1)(b)(i) are attributable; or

(b) who have suffered the loss or adverse effect mentioned in subsection (1)(b)(ii).

(4) On an application under subsection (1) the court may require P to provide it with any accounts or other information that it may require for the purposes of–

(a) establishing whether any and, if so, what profits have accrued to P;

(b) establishing whether any person has suffered a loss or adverse effect and, if so, the extent of that loss or adverse effect; and

(c) determining how any amount is to be paid under subsection (3).

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(5) The court may require any accounts or other information provided under subsection (4) to be verified in the manner that it may direct.

(6) Nothing in this section affects the right of any person other than the GFSC to bring proceedings in respect of the matters to which this section applies.

PART 14
FINANCIAL SERVICES OMBUDSMAN

Interpretation

Interpretation of Part 14.

179.(1) In this Part—

"consumer" means–

(a) an individual who is acting outside of the individual's trade, business, craft or profession;

(b) a charity which, on the date that it submits a financial service dispute, has an annual income of less than £1 million; or

(c) a trustee of a trust which, on the date that it submits a financial service dispute, has a net asset value of less than £1 million;

"financial service dispute" mean a dispute submitted by or on behalf of a consumer to the Ombudsman and arising from a contract in respect of a financial service between the consumer and a financial service provider;

"financial service provider" means a person who is authorised under this Act to carry on a regulated activity and does so in or from Gibraltar and includes–

(a) a collective investment scheme authorised under Chapter 3 or 4 of Part 18;

(b) an experienced investor fund established in accordance with regulations made under section 339;

(c) an IORP authorised under Part 26; or

(d) a personal pension scheme approved under Part 27;

"the Ombudsman" means the Financial Services Ombudsman; and

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"resolution procedure" means an alternative dispute resolution procedure.

The Ombudsman

Financial Services Ombudsman.

180. The Financial Services Ombudsman is established.

Appointment, etc. of Ombudsman.

181.(1) The Ombudsman is to be appointed by the Minister on terms specified by the Minister and may be re-appointed.

(2) The Ombudsman may resign at any time by giving notice to the Minister.

(3) The Minister may remove the Ombudsman from office if the Minister is satisfied that the Ombudsman–

(a) is guilty of misconduct;

(b) is bankrupt;

(c) is incapacitated by physical or mental illness;

(d) is in material breach of the terms of appointment; or

(e) is otherwise unable or unfit to discharge the functions of the Ombudsman.

(4) The salary, expenses and allowances of the Ombudsman are to be–

(a) approved by resolution of Parliament; and

(b) a charge on the Consolidated Fund without the need for appropriation.

(5) Subsection (4) does not apply if the person appointed as Ombudsman is a public officer or authority appointed under any other enactment.

(6) The Minister may by regulations make provision in relation to the Ombudsman.

(7) Without limiting subsection (6), such regulations may provide for–

(a) the expertise, independence and impartiality required of the Ombudsman;

(b) the Ombudsman's dispute resolution procedures;

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(c) the transparency, effectiveness, fairness and legality of those procedures;

(d) the general information to be made available by the Ombudsman;

(e) cooperation by the Ombudsman with other dispute resolution entities; or

(f) any other matter relating to the functioning of the Ombudsman that the Minister considers appropriate.

Ombudsman's functions.

182.(1) The Ombudsman has the function of investigating, and facilitating, mediating, proposing or determining solutions to, financial service disputes.

(2) The Ombudsman may do anything which is intended to facilitate, or is conducive or incidental to, the exercise of the functions of the Ombudsman.

(3) The Ombudsman may only consider a financial service dispute if–

(a) the act or omission which is the subject of the dispute occurred–

(i) not more than six years before the date when the dispute is received by the Ombudsman; or

(ii) at an earlier date but with reasonable diligence the consumer could not have known of it until after that date and it is received by the Ombudsman not more than three years after the date when, in the opinion of the Ombudsman, the consumer first knew or ought reasonably to have known of the act or omission; and

(b) it is received by the Ombudsman within one year of the date on which the consumer first complained to the financial service provider concerned about that act or omission.

(4) Subject to subsection (5), this Part only applies to a financial service dispute relating to an event which–

(a) occurs after the date when this Part comes into operation; or

(b) with reasonable diligence the consumer could not have known about until after that date.

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(5) The Ombudsman, with the consent of the financial service provider concerned, may deal with a financial service dispute relating to an event which occurred (or which with reasonable diligence the consumer first knew of) within the 12 months before that date.

Excluded disputes

Excluded disputes.

183.(1) The Ombudsman may refuse to deal with a financial service dispute where–

(a) the consumer has not attempted to contact the financial service provider concerned in order to seek to resolve the dispute directly with the financial service provider;

(b) the financial service provider has offered compensation (or some other payment) to the consumer in respect of the dispute which–

(i) in the opinion of the Ombudsman is fair and reasonable; and

(ii) remains available for acceptance by the consumer;

(c) in the opinion of the Ombudsman–

(i) the consumer has not suffered (or is unlikely to suffer) financial loss, material distress or material inconvenience;

(ii) the consumer does not have a reasonable prospect of success; or

(iii) the dispute is frivolous or vexatious;

(d) the dispute relates solely to the performance of investments;

(e) the dispute relates to the legitimate exercise of a financial services provider's commercial judgment;

(f) the dispute relates to the financial service provider's–

(i) exercise of a discretion under a will or private trust; or

(ii) failure to consult a beneficiary, in circumstances where there was no obligation to do so, before exercising such a discretion;

(g) the dispute relates (or may relate) to more than one consumer and–

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(i) it has been referred to the Ombudsman without the consent of all of those consumers; and

(ii) the Ombudsman considers that it would be inappropriate to pursue it without that consent;

(h) the dispute is being or has previously been considered by an alternative dispute resolution provider or by a court;

(i) the value of the claim is less than £250 or such other monetary threshold as may be prescribed (which must not be set at a level which significantly impairs consumers' access to dispute resolution by the Ombudsman); or

(j) the dispute is of a particular type specified by the Ombudsman, dealing with which would seriously impair the effective operation of the Ombudsman.

(2) Where, in accordance with subsection (1), the Ombudsman refuses to deal with a financial service dispute, the Ombudsman must provide the parties with a reasoned explanation of the grounds for not doing so.

(3) The Minister may by regulations amend subsection (1).

Staff and delegation of functions

Ombudsman's Staff.

184.(1) The Ombudsman may appoint such staff as the Ombudsman thinks necessary or convenient for the purpose of performing the Ombudsman's functions, powers and duties under this Part.

(2) Appointments under subsection (1) may only be made with the written approval of the Minister and within the limits of allowances and expenses approved by Parliament under section 181(4).

Delegation of functions.

185.(1) The Ombudsman may arrange for any person to exercise any function of the Ombudsman other than a function under this subsection or sections 184(1), 192(1) or 193(1).

(2) A person exercising a function of the Ombudsman delegated under this section may, in doing so, deal with any property or rights vested in the Ombudsman as if they were vested in that person.

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(3) Any act done or omitted to be done by a person exercising a function delegated under this section is taken to have been done or omitted to have been done by the Ombudsman.

Obligations of financial service providers

Financial service providers.

186.(1) A financial service provider who is a party to a financial service dispute must–

(a) cooperate with any investigation by the Ombudsman; and

(b) participate in any resolution procedure which the Ombudsman conducts in respect of that dispute.

(2) An agreement made between a financial service provider and a consumer to submit a dispute to the Ombudsman or any other alternative dispute resolution procedure is not binding on the consumer if the agreement–

(a) was concluded before the dispute materialised; and

(b) has the effect of depriving the consumer of the right to commence court proceedings for the settlement of the dispute.

(3) The Minister may prescribe arrangements which financial service providers must establish for the investigation and resolution of complaints made to them directly by consumers.

Information to consumers.

187.(1) If a dispute arises from a contract in respect of a financial service between a consumer and a financial service provider which the parties are unable to resolve, the financial service provider must–

(a) inform the consumer that the consumer may submit the dispute to the Ombudsman;

(b) provide the consumer with the address and other contact details of the Ombudsman; and

(c) inform the consumer that, if the consumer does submit the dispute to the Ombudsman, the financial service provider–

(i) must cooperate with any investigation conducted by the Ombudsman;

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(ii) must participate in any resolution procedure conducted by the Ombudsman; and

(iii) may be required by the Ombudsman to accept the outcome of a resolution procedure if the consumer has agreed to accept the outcome.

(2) The information in subsection (1) must be provided in writing, in a clear, comprehensible and easily accessible manner–

(a) when a financial service provider enters into a contract with a consumer (and must be included in the general terms and conditions of that contract); and

(b) if the consumer has submitted a complaint directly to the financial service provider, when the financial service provider concludes that it is unable to resolve the dispute and informs the consumer of that outcome in writing (which the financial service provider must do without delay).

(3) The information provided under subsection (1) must include the website address of the Ombudsman and be included on the financial services provider's website (if any).

(4) A person who fails to comply with subsection (1), (2) or (3) commits an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

Procedure

Ombudsman's procedure.

188.(1) Subject to any regulations made under section 181(6) or subsection (2), the Ombudsman may adopt any procedure that the Ombudsman considers appropriate for the purpose of investigating, or facilitating, mediating, proposing or determining a solution to, a financial service dispute.

(2) The Minister may prescribe–

(a) the form and manner in which a financial service dispute is to be submitted to the Ombudsman;

(b) any fees or costs payable in connection with submitting, investigating, or facilitating, mediating, proposing or determining a solution to, such a dispute;

(c) the procedure to be adopted by the Ombudsman in connection with investigating, or facilitating, mediating, proposing or determining a solution to, such a dispute; and

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(d) the award of costs to and against the parties to such a dispute.

(3) Regulations made under subsection (2) must not significantly impair consumers' access to alternative dispute resolution procedures.

Determinations.

189.(1) Subject to subsections (3) and (5), a determination of the Ombudsman arising from a resolution procedure in respect of a financial service dispute is final and binding if it is–

(a) accepted by the consumer and the financial service provider; or

(b) accepted by the consumer and subject to a direction by the Ombudsman that it is binding on the financial service provider.

(2) A determination by the Ombudsman may include any of the following–

(a) a direction requiring the financial service provider to take specified steps within a specified time in order to remedy a specified act or omission;

(b) an award of compensation, to be paid by the financial service provider, of an amount the Ombudsman considers just and equitable but which does not exceed any prescribed maximum; or

(c) where regulations made under section 188(2)(d) so provide, an award against one party in respect of the costs (or any part of them) incurred by another party in connection with the financial service dispute.

(3) A determination awarding costs under subsection (2)(c) may be imposed and is final and binding on a consumer even if the consumer has not accepted a determination proposed by the Ombudsman in respect of the financial service dispute to which the costs relate.

(4) A compensation award under subsection (2)(b) may consist of or include an amount which is payable if the financial service provider fails to comply with a direction made under subsection (2)(a).

(5) A party has a right of appeal to the Supreme Court on a point of law arising from a determination or direction of the Ombudsman.

(6) That right may be exercised only with permission given by the court on an application by the party.

(7) A determination or direction of the Ombudsman is enforceable in the Supreme Court as if it were a judgment or order of that court.

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Power to require information.

190.(1) The Ombudsman may require a party to a financial service dispute to provide any information or produce any document which the Ombudsman considers necessary for the determination of that dispute.

(2) A requirement under subsection (1) must be made by notice setting out–

(a) the information (or a description of the information) to be provided;

(b) the document (or a description of the document) to be produced;

(c) the form and manner in which it is to be provided or produced; and

(d) the date and time by and place at which it must be provided or produced.

(3) Where any information is provided or document is produced in response to a requirement imposed under this section, the Ombudsman may–

(a) take copies of, or extracts from, any document; and

(b) require the person providing the information or producing the document to provide an explanation of that information or document.

Confidentiality.

191.(1) The Ombudsman must treat as confidential any information which the Ombudsman acquires in performing any function under this Part and from which an individual or other person can be identified.

(2) The Ombudsman may only disclose information to which subsection (1) applies–

(a) with the consent of the individual or person who can be identified from that information;

(b) to the extent that its disclosure appears to the Ombudsman to be necessary–

(i) to enable the Ombudsman to perform any function under this Part;

(ii) to prevent or detect crime; or

(iii) to comply with any order or direction of the Supreme Court; or

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(c) to the extent that its disclosure to the GFSC appears to the Ombudsman to be in the public interest.

Obstruction and contempt.

192.(1) The Ombudsman may certify to the Supreme Court any circumstances in which a person–

(a) fails to comply with a requirement imposed under section 190; or

(b) obstructs any investigation by or proceeding of the Ombudsman under this Part.

(2) The Supreme Court may enquire into a matter certified under subsection (1) and, if after hearing–

(a) any witness who may be produced against or on behalf of the person; and

(b) any statement made by or on behalf of the person,

the court is satisfied that the person would have been in contempt if the inquiry or proceeding had been proceedings before the court, it may deal with the matter as if the person had committed a contempt of court in relation to the Supreme Court.

Annual report

Annual reports.

193.(1) The Ombudsman must provide a report to the Minister at least once each year (on or by a date the Minister may specify) on the discharge of the Ombudsman's functions.

(2) A report under subsection (1) must include, in respect of the year to which it relates–

(a) the number and type of financial service disputes referred to the Ombudsman;

(b) the average time taken to resolve the disputes received;

(c) the number and percentage share of financial service disputes which were discontinued before an outcome was reached;

(d) if known, the rate of compliance with the outcomes of the Ombudsman's resolution procedures in respect of financial service disputes;

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(e) any systematic or significant problems that frequently lead to disputes between consumers and financial service providers, together with any recommendations as to how they can be avoided or resolved in future;

(f) any cooperation within networks of alternative dispute resolution entities facilitating the resolution of cross-border disputes, together with an assessment of the effectiveness of that co-operation (if any);

(g) any training provided or undertaken by the Ombudsman or member of the Ombudsman's staff in respect of conducting resolution procedures;

(h) an assessment of the effectiveness of the Ombudsman's resolution procedures and how performance could be improved; and

(i) any other information that the Minister may specify.

(3) The Ombudsman must publish a copy of any report under this section on its website, on a durable medium on request and by any other means the Ombudsman considers appropriate.

Liability

Liability of Ombudsman.

194.(1) The Ombudsman has no liability for any act or thing done or omitted to be done in that capacity.

(2) A person who is the Ombudsman has no personal liability for any act or thing done or omitted to be done by the person in the exercise of the Ombudsman's functions.

(3) A person has no personal liability for any act or thing done or omitted to be done by that person in performing their duties as a member of the Ombudsman's staff.

(4) Subsections (1) to (3) do not apply to any act or thing which is shown to have been done or omitted to be done in bad faith.

PART 15
DEPOSIT GUARANTEE AND RESOLUTION FINANCING ARRANGEMENTS

CHAPTER 1
PRELIMINARY

Overview.

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195. This Part provides for deposit guarantee and resolution financing arrangements in Gibraltar and, in particular–

(a) Chapter 3 provides for the operation of a deposit guarantee scheme ("the Scheme"); and

(b) Chapter 4 provides for the operation of resolution financing arrangements ("the financing arrangements") for the effective application of the resolution tools and powers provided for by or under Part 17.

Interpretation of Part 15.

196.(1) In this Part–

"covered deposit" means the part of an eligible deposit that does not exceed the coverage levels set out in section 214;

"credit institution" means a credit institution as defined in Article 4(1) of the Capital Requirements Regulation, other than an entity in regulation 5 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;

"deposit guarantee scheme" means the Scheme or any deposit guarantee scheme of a similar kind;

"eligible deposit" has the meaning given in section 212;

"the financing arrangements" means the resolution financing arrangements under Chapter 4;

"the FSRCC" has the meaning given in section 27;

"low-risk assets" means items within the first or second category of Table 1 of Article 336 of the Capital Requirements Regulation or any assets which are considered to be similarly safe and liquid by the GFSC or the FSRCC;

""micro, small or medium-sized enterprise" means an enterprise which employs fewer than 250 persons and which has an annual turnover not exceeding €50,000,000 or an annual balance sheet total not exceeding €43,000,000;

"the Scheme" means the deposit guarantee scheme under Chapter 3; and

"Scheme participant" means a credit institution which is required under section 206(1) or 207(3) to participate in the Scheme.

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"third country" means a country or territory outside Gibraltar;

Functions of the FSRCC.

197.(1) The FSRCC has the functions conferred on it by or under this Part.

(2) *Omitted*

CHAPTER 2
THE FUNDS

The Funds

Maintenance of funds.

198.(1) The FSRCC must continue to maintain the following funds established under the Financial Services (Compensation and Resolution Schemes) Act 2015–

(a) a fund called the Deposit Guarantee Fund;

(b) a fund called the Resolution Financing Fund; and

(c) an administration fund.

(2) The FSRCC must hold, manage and apply the funds in accordance with this Part.

(3) The FSRCC must establish sound and transparent practices for–

(a) the governance of the Scheme;

(b) the governance of the financing arrangements; and

(c) its governance in respect of the performance of its functions under this Part.

Deposit Guarantee Fund.

199.(1) The Deposit Guarantee Fund is to consist of–

(a) contributions levied on Scheme participants under Chapter 3;

(b) money received as income or capital gain arising from any investments or other assets of the fund;

(c) money borrowed by the FSRCC for the purposes of the Scheme;

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(d) money received by the FSRCC on any policy of insurance it takes out for the purposes of the Scheme;

(e) money received from a liquidator or receiver of a Scheme participant in default; and

(f) any other money required to be paid into the fund or received by the FSRCC for the purposes of the Scheme.

(2) The FSRCC may invest any money which forms part of the fund provided that it does so in a low-risk and sufficiently diversified manner.

(3) The FSRCC may borrow money and take out insurance policies for the purposes of the Scheme.

(4) The fund may be applied for the following purposes–

(a) payment of compensation under the Scheme;

(b) repayment of money borrowed by the FSRCC and interest on any money so borrowed under subsection (3);

(c) payment of premiums on insurance policies effected under subsection (3); and

(d) payment of any other money by the FSRCC for the purposes of the Scheme.

Resolution Financing Fund.

200.(1) The Resolution Financing Fund is to consist of–

(a) any contributions to the financing arrangements which are levied on or contributed by authorised institutions under Chapter 4;

(b) money received as income or capital gain arising from any investments or other assets of the financing arrangements;

(c) money borrowed by the FSRCC for the purposes of the financing arrangements;

(d) money received by the FSRCC on any policy of insurance it takes out for the purposes of the financing arrangements;

(e) any amount received from an institution under resolution or bridge institution within the meaning of the Financial Services (Recovery and Resolution)

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Regulations 2020, but subject to regulations 37, 38, 40, 41 and 42 of those Regulations; and

(f) any other money required to be paid into the fund or received by the FSRCC for the purposes of the financing arrangements.

(2) The FSRCC may invest any money which forms part of the fund provided that it does so in a low-risk and sufficiently diversified manner.

(3) The FSRCC may borrow money and take out insurance policies for the purposes of the financing arrangements.

(4) The fund may be applied for the following purposes–

(a) making the financing arrangements available to the Gibraltar Resolution Authority in accordance with the Financial Services (Recovery and Resolution) Regulations 2020;

(b) repayment of money borrowed by the FSRCC and interest on any money so borrowed under subsection (3);

(c) payment of premiums on insurance policies effected under subsection (3); or

(d) payment of any other money by the FSRCC for the purposes of the financing arrangements.

Administration fund.

201.(1) The FSRCC may require–

(a) Scheme participants to pay administrative fees to meet the costs of the FSRCC in administering the Scheme; and

(b) authorised institutions to pay administrative fees to meet the costs of the FSRCC in administering the financing arrangements.

(2) Any fee under subsection (1) is to be determined by the FSRCC and the costs which may be taken into account in doing so include the expenses of the members of the FSRCC.

(3) Any fee imposed under subsection (1) must be paid into the administration fund and used only for the purposes specified in that subsection and must not be counted towards the available financial means of the Scheme or the financing arrangements.

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(4) Sections 209(17) and 230(10) (which provide for levy contributions from institutions which cease activities part way through a financial year) apply to a fee under this section as if it was a levy under Chapter 3 or 4 (as the case may be).

(5) Any fee payable under this section–

(a) is due within 30 days of the date when the invoice for the fee is issued; and

(b) may be enforced as a civil debt owed to the FSRCC.

(6) Failure to pay a fee payable under this section–

(a) by a Scheme participant, may be proceeded against under Part 11 as if it was a contravention of an obligation imposed under Chapter 3; or

(b) by an authorised institution, may be proceeded against under Part 11 as if it was a contravention of an obligation imposed under Chapter 4.

Penalties to be paid into funds

Proceeds from administrative penalties.

202.(1) Subsection (2) applies where an administrative penalty under section 152 has been imposed–

(a) on a credit institution for a contravention of this Chapter 3; or

(b) an authorised institution for a contravention of Chapter 4.

(2) The GFSC, after deducting the costs of its compliance and enforcement activity in respect of the contravention, must pay the proceeds of the administrative penalty to the FSRCC for the benefit of–

(a) in a case to which subsection (1)(a) applies, the Deposit Guarantee Fund; or

(b) in a case to which subsection (1)(b) applies, the Resolution Financing Fund.

Exemption from taxes

Tax treatment.

203.(1) The income of the FSRCC is exempt from income tax and all other taxes, and any property of the FSRCC is exempt from all duties and rates levied by the Government.

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(2) For the purposes of the Income Tax Act 2010, a person may deduct as an allowable expense any money paid on a levy or other contribution requirement imposed by the FSRCC under this Act or any other enactment.

CHAPTER 3
DEPOSIT GUARANTEE SCHEME

Introduction

Interpretation of Chapter 3.

204. In this Chapter–

"available financial means" means cash, deposits and low-risk assets which can be liquidated within seven working days;

"branch" means a place of business which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions;

"compensation date" means the date on which–

(a) the FSRCC makes a determination under section 215; or

(b) a judicial authority determines that deposits held by a Scheme participant are unavailable deposits such that the Scheme participant is in default;

"deposit" means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed term deposit and a savings deposit, but excluding a credit balance where–

(a) its existence can only be proven by a financial instrument unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which exists in an EEA State on 2 July 2014;

(b) its principal is not repayable at par; or

(c) its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party;

"depositor" means the holder or, in the case of a joint account, each of the holders, of a deposit;

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"joint account" means an account opened in the name of two or more persons or over which two or more persons have rights that are exercised by means of the signature of one or more of those persons;

"Scheme target level" means the target level specified in section 209(2); and

"unavailable deposit" means a deposit that is due and payable but has not been paid by a Scheme participant under the applicable legal or contractual conditions where either–

(a) the FSRCC has made a determination under section 215; or

(b) a judicial authority has made a ruling for reasons which are directly related to the Scheme participant's financial circumstances and the ruling has had the effect of suspending the rights of depositors to make claims against it.

Competent authority and designated authority.

205.(1) For the purpose of this Chapter –

(a) the GFSC is the competent authority; and

(b) the FSRCC is the designated authority.

(2) The competent authority and designated authority must cooperate with each other.

Scheme participation

Participation in Scheme.

206.(1) A credit institution with permission under Part 7 to carry on the regulated activity of accepting deposits must participate in the Scheme if it is–

(a) incorporated in or formed under the law of Gibraltar; or

(b) incorporated in or formed under the law of a third country and does not participate in a deposit guarantee scheme in that country which offers protection equivalent to that offered by the Scheme.

(2) *Omitted*.

(3) The FSRCC must notify the GFSC immediately if the FSRCC becomes aware of any instance of a credit institution not complying with its obligations under this Chapter.

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(4) Where the GFSC receives notification in accordance with subsection (3), it must without delay take appropriate measures in co-operation with the FSRCC to ensure that the credit institution complies with its obligations which, in the case of a Scheme participant, may include the imposition of a sanction under Part 11.

(5) If measures taken under subsection (4) fail to secure a Scheme participant's compliance, the FSRCC, with the consent of the GFSC–

(a) may give the Scheme participant not less than one month's notice of the FSRCC's intention to exclude it from the Scheme; and

(b) must, if on the expiry of that notice period the Scheme participant has not complied with its obligations, exclude the Scheme participant.

(6) The Scheme must continue to cover deposits–

(a) made with a Scheme participant before the expiry of the notice period of any notice given to the Scheme participant under subsection (5)(a); or

(b) held by a Scheme participant on the date on which the Scheme participant is excluded from the Scheme.

Branches of third country institutions.

207.(1) The FSRCC must check that any branch established in Gibraltar by a third country institution has deposit protection equivalent to that provided under this Act.

(2) In performing a check under subsection (1), the FSRCC must at least check that depositors benefit from the same coverage level and scope of protection as provided under this Act.

(3) If the FSRCC considers that the protection provided in respect of a branch of a third country institution is not equivalent, it must require the branch to be a Scheme participant.

(4) Each branch in Gibraltar of a third country institution which is a member of a deposit guarantee scheme other than the Scheme must provide all relevant information concerning its guarantee arrangements for the deposits of actual and intending depositors at that branch.

(5) The information referred to in subsection (4) must be made available in a clear and comprehensible form in English or the language that was agreed by the depositor and the credit institution when the account was opened.

(6) In this section "third country institution" means a credit institution which has its head office outside Gibraltar.

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Duties of FSRCC

FSRCC's duties in respect of the Scheme.

208.(1) The FSRCC must administer the Scheme in accordance with this Part.

(2) The FSRCC must have in place–

(a) adequate systems to determine the potential liabilities of the Scheme and ensure that the Scheme's available financial means are proportionate to those liabilities; and

(b) adequate alternative funding arrangements to enable it to obtain short-term funding to meet claims against the Scheme.

(3) The FSRCC must publish for depositors on its website all necessary information–

(a) on the operation of the Scheme; and

(b) on the process, eligibility, exclusions from protection and conditions for payment of compensation (including all information specified in the depositor information sheet).

(4) The FSRCC must perform stress tests of its systems relating to the payment of compensation in respect of eligible deposits at least once every three years and more frequently where it considers it appropriate.

(5) The FSRCC must use the information necessary to perform stress tests of its systems only for the performance of those tests and must not keep the information for longer than is necessary for that purpose.

(6) The FSRCC must protect and ensure the confidentiality of the data pertaining to depositors' accounts, which must be processed in accordance with the data protection legislation.

(7) The FSRCC must correspond with a depositor in–

(a) English; or

(b) the language that was chosen by the depositor when the account was opened.

(8) The FSRCC must establish procedures to enable it, where appropriate, to share information and communicate effectively with other deposit guarantee schemes, their affiliated

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credit institutions and relevant competent authorities, designated authorities and other agencies in Gibraltar and other jurisdictions.

Funding

Scheme levy.

209.(1) The FSRCC must raise the Scheme's available financial means by imposing a levy on Scheme participants at least once in each year.

(2) By 31st December 2026, the Scheme's available financial means must reach the Scheme target level of 0.8% of the amount of covered deposits of Scheme participants.

(3) Subject to subsections (4) to (7), any levy imposed on Scheme participants under subsection (1) must be based on the amount of covered deposits incurred by, and the risk weighting (if any) of, the respective participant.

(4) The FSRCC may decide that a Scheme participant must pay a minimum levy irrespective of the amount of its covered deposits.

(5) The FSRCC may decide that Scheme participants who are members of an institutional protection scheme (a contractual or statutory liability arrangement which protects the institutions concerned and, in particular, ensures their liquidity and solvency) which is recognised by the FSRCC are to pay lower contributions to the Scheme.

(6) Subject to the approval of the GFSC, the FSRCC may develop its own risk weighting methods for determining and calculating the risk-based contributions of Scheme participants and any such method–

(a) must be proportional to the risk of the Scheme participants;

(b) must take due account of the risk profiles of the various business models; and

(c) may take account of the asset side of the balance sheet and risk indicators such as capital adequacy, asset quality and liquidity.

(7) A central body and all credit institutions permanently affiliated to it, as referred to in Article 10.1 of the Capital Requirements Regulation, is to be subject to the risk weight determined on a consolidated basis for the central body and its affiliated institutions as a whole.

(8) If the Scheme's available financial means are insufficient to compensate depositors when deposits become unavailable, the FSRCC may require Scheme participants to pay extraordinary contributions.

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(9) Any extraordinary contributions payable under subsection (8) must not exceed 0.5% of covered deposits per calendar year other than in exceptional circumstances and with the prior consent of the GFSC.

(10) The GFSC may defer, in whole or in part, a Scheme participant's obligation to pay extraordinary contributions under subsection (8) if payment would jeopardise the liquidity or solvency of the Scheme participant.

(11) A deferral under subsection (10) must not be granted for longer than six months but may be renewed at the request of the Scheme participant.

(12) Any contribution which is deferred under subsections (10) or (11) must be paid by the Scheme participant when doing so would no longer jeopardise its liquidity or solvency.

(13) If, after the Scheme's available financial means have reached the Scheme target level for the first time, they have been reduced to less than two-thirds of that target level, the FSRCC must impose regular levies on Scheme participants at a level that will allow the Scheme target level to be reached again within six years.

(14) If, before the date specified in subsection (2) the Scheme has made cumulative disbursements in excess of 0.8% of covered deposits, the FSRCC may extend that date by not more than four years.

(15) Any levy imposed under this section must take due account of the phase of the business cycle and the impact that procyclical contributions may have when setting annual contributions.

(16) Any levy payable under this section–

(a) is due within 30 days of the date when the invoice for the levy is issued; and

(b) may be enforced as a civil debt owed to the FSRCC.

(17) If a Scheme participant ceases to carry on the activities of a credit institution part way through a financial year of the Scheme–

(a) it will remain liable for any unpaid levies which the FSRCC has already made on the Scheme participant; and

(b) the FSRCC may make further levies on it (which may be before or after the Scheme participant has withdrawn or been excluded from the Scheme, but must be before it ceases to be permitted to act as a credit institution) for the costs which it would have been liable to pay had the FSRCC made a levy on all Scheme participants in the financial year it ceased to carry on those activities.

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(18) The FSRCC may enter into arrangements with the GFSC for the GFSC to collect the levy on behalf of the FSRCC and for that purpose any levy payable under this section may be enforced as if it was a debt due to the GFSC.

(19) The FSRCC, may authorise a minimum Scheme target level which is lower than that specified in subsection (2) but not less than 0.5% of the amount of covered deposits of Scheme participants, where doing so is justified and the following conditions are met–

(a) the reduction is based on the assumption that it is unlikely that a significant share of the Scheme's available financial means will be used for measures to protect covered depositors, other than under sections 222(2), (3) and (9); and

(b) the banking sector in which Scheme participants operate is highly concentrated with a large quantity of assets held by a small number of credit institutions or banking groups, subject to supervision on a consolidated basis which, given their size, are likely in the event of failure to be subject to resolution proceedings.

Funds from other mandatory schemes.

210.(1) Despite section 209(1), the FSRCC may raise the Scheme's available financial means from existing schemes established in Gibraltar to which Scheme participants are required to make mandatory contributions for the purpose of covering the costs related to systemic risk, failure, and resolution of credit institutions.

(2) Subject to subsection (3), the Scheme is entitled to receive an amount equal to the amount of such contributions up to the Scheme target level and those funds must be made available at the request of the FSRCC for use exclusively for the purposes provided for in section 222.

(3) Subsection (2) only applies if the GFSC considers that the FSRCC is unable to raise extraordinary contributions from Scheme participants.

(4) Any sum paid to the Scheme under subsection (2) must be repaid by the FSRCC from contributions made by Scheme participants to the Scheme levy.

(5) Contributions to the financing arrangements must not be counted towards the Scheme target level.

211. *Omitted*.

Deposits covered by Scheme

Eligible deposits.

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212.(1) A deposit is an eligible deposit only if it is held–

(a) in Gibraltar by a Scheme participant; or

(b) in the United Kingdom by a branch of a Scheme participant established in the United Kingdom.

(2) Each of the following is not an eligible deposit–

(a) a deposit made by another credit institution on its own behalf or for its own account;

(b) own funds as defined in Article 4(1) of the Capital Requirements Regulation;

(c) a deposit arising out of a transaction in connection with which there has been a criminal conviction for a money laundering offence under the Proceeds of Crime Act 2015 or the equivalent law of a country or territory outside Gibraltar;

(d) a deposit by a financial institution;

(e) a deposit by an investment firm;

(f) a deposit, when it becomes unavailable, the holder of which has never been identified in accordance with Part III of the Proceeds of Crime Act 2015 or the equivalent law of a country or territory outside Gibraltar;

(g) a deposit by an insurance undertaking or a reinsurance undertaking;

(h) a deposit by a collective investment undertaking;

(i) a deposit by a pension or retirement fund (other than a deposit by a personal pension scheme or occupational pension scheme of a micro, small or medium-sized enterprise);

(j) a deposit by a public authority; or

(k) a debt security issued by a credit institution and any liabilities arising out of own acceptances and promissory notes.

Marking of deposits.

213.(1) A Scheme participant must mark eligible deposits in a manner that allows for the immediate identification of those deposits.

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(2) Where a depositor holds an account on behalf of one or more beneficiaries who are absolutely entitled to the sums in the account and which are or may be eligible deposits, a Scheme participant must mark the account in a manner that allows for the immediate identification of the account and the beneficiaries.

(3) A Scheme participant must–

(a) at any time be able to provide the FSRCC with the aggregated amount of eligible deposits of every depositor; and

(b) without delay provide that information to the FSRCC at its request.

(4) A Scheme participant must be able to provide the FSRCC with all information necessary to enable the FSRCC to prepare for the payment of compensation under this Chapter.

Coverage limits.

214.(1) Subject to subsections (2) and (3), in the event of deposits being unavailable, the maximum compensation payable under the Scheme for the aggregate eligible deposits of each depositor is £120,000.

(2) The limit on the compensation payable in subsection (1) is £1,000,000 in respect of deposits which comprise–

(a) monies–

(i) deposited in preparation for the purchase of a private residential property (or an interest in a private residential property) by the depositor;

(ii) which represent the proceeds of sale of a private residential property (or an interest in a private residential property) of the depositor; or

(iii) which represent the proceeds of an equity release by the depositor in a private residential property;

(b) sums paid to the depositor in respect of–

(i) benefits payable under an insurance policy;

(ii) a claim for compensation for personal (including criminal) injury;

(iii) public benefits paid in respect of a disability or incapacity;

(iv) a claim for compensation for wrongful conviction;

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(v) a claim for compensation for unfair dismissal;

(vi) their redundancy (whether voluntary or compulsory);

(vii) their marriage or civil partnership;

(viii) their divorce or dissolution of their civil partnership; or

(ix) benefits payable on retirement;

(c) sums paid to the depositor in respect of–

(i) benefits payable on death;

(ii) a claim for compensation in respect of a person's death; or

(iii) a legacy or other distribution from the estate of a deceased person;

(d) sums held in an account on behalf of the personal representatives of a deceased person for the purpose of realising and administering the deceased's estate; or

(e) sums paid in accordance with the law of Gibraltar for some other social purpose which is linked to the marriage, civil partnership, divorce, dissolution of civil partnership, retirement, incapacity, death of an individual, or to the buying or selling of a depositor's only or main residence.

(3) Subsection (2) only applies for a period of six months from the later of–

(a) the first date on which a deposit of a kind specified in subsection (2) is credited to a depositor's account; or

(b) the first date on which the sum deposited becomes legally transferable to the depositor.

Determination that deposit is unavailable.

215.(1) The FSRCC must make a determination that a deposit is unavailable if–

(a) it is satisfied that, under the applicable legal or contractual conditions, a Scheme participant has failed to repay a deposit which is due and payable; and

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(b) it appears to the FSRCC that, for reasons which are directly related to the Scheme participant's financial circumstances, it is unable for the time being to repay the deposit and has no current prospect of being able to do so.

(2) A deposit is also unavailable if a judicial authority has made a ruling for reasons which are directly related to the Scheme participant's financial circumstances and the ruling has had the effect of suspending the rights of depositors to make claims against it.

(3) The FSRCC must notify the relevant Scheme participant in writing of any determination under subsection (1) or ruling under subsection (2).

(4) Notice under subsection (3) must be given as soon as reasonably possible and in any event before the end of five working days beginning with the day on which the determination was made or the FSRCC was notified of the ruling.

Compensation

Calculating the repayable amount.

216.(1) Any compensation payable is to be calculated by reference to eligible deposits held on the compensation date.

(2) The limit provided for in section 214 applies to the aggregate eligible deposits placed by a depositor with the same Scheme participant in Gibraltar or the United Kingdom, irrespective of the number of accounts or currency (and in calculating the aggregate eligible deposits of a depositor any liabilities of the depositor against the Scheme participant must not be taken into account).

(3) The share of each depositor of a joint account is to be considered separately in calculating the limits provided for in section 214 and, in the absence of contrary provision, the joint account is to be divided equally among the depositors.

(4) Deposits in an account to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, must be aggregated and treated as if made by a single depositor for the purpose of calculating the limits provided for in section 214.

(5) Where a depositor is not absolutely entitled to the sums held in an account but the person who is absolutely entitled has been identified or is identifiable before the compensation date, that person is to be treated as the depositor for the purpose of calculating the amount of compensation payable.

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(6) Where several persons are absolutely entitled to a beneficial interest in a deposit, the share of each under the arrangements subject to which the deposit is managed must be taken into account in calculating the amount of compensation payable to each of them.

(7) Subject to section 214(1), the compensation payable must include reimbursement of any interest on an eligible deposit which has accrued but has not been credited at the compensation date.

(8) A deposit which is for a prescribed social purpose and in respect of which a third party has given a guarantee is not to be taken into account when aggregating the deposits held by the same depositor with the same Scheme participant for the purpose of subsection (2).

(9) The amount of compensation payable under a third party guarantee in respect of a deposit to which subsection (8) applies must not exceed the maximum amount specified in section 214(1).

Repayment.

217.(1) The FSRCC must ensure that any compensation payable under this Chapter is available within seven working days of the compensation date.

(2) Subject to subsection (5), any compensation payable must be made available without it being necessary for a request to be made to the FSRCC.

(3) Until 31 December 2023, subsection (1) is to apply as if the reference to "seven working days" was a reference to–

(a) "15 working days" from the date this section comes into operation until 31 December 2020; and

(b) "10 working days" from 1 January 2021 until 31 December 2023.

(4) In respect of a deposit to which section 216(5) or (6) applies, subsection (1) is to apply as if the reference to "seven working days" was a reference to "three months".

(5) Until 31 December 2023, if the FSRCC cannot make the compensation payable available within seven working days it must ensure that, on request, within five working days depositors have access to an appropriate amount of their covered deposits to cover the cost of living ("the appropriate amount").

(6) The FSRCC must only grant a depositor access to the appropriate amount based on data held by the FSRCC or provided to it by the relevant Scheme participant.

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(7) The appropriate amount, if paid to a depositor, must be deducted from the compensation payable to the depositor as calculated under section 216.

(8) Repayment under subsections (1) to (7) may be deferred where–

(a) it is uncertain whether a person is entitled to receive any compensation or the deposit is subject to legal dispute;

(b) the deposit is subject to restrictive measures imposed by a national government or international body;

(c) without limiting subsection (10), there has been no transaction relating to the deposit within the last 24 months (the account is dormant);

(d) the amount to be repaid is deemed to be part of a deposit to which section 214(2) and (3) applies; or

(9) Where a depositor or any person entitled to or interested in sums held in an account has been charged with an offence arising out of or in relation to money laundering, the FSRCC may suspend any payment relating to the depositor or person concerned pending the judgment of the court.

(10) The FSRCC is not required to make any repayment under subsection (1) where there has been no transaction relating to the deposit in the 24 months before the compensation date and the value of the deposit is lower than the administrative costs that would be incurred by the FSRCC in making a repayment.

(11) A depositor whose deposits were not repaid or acknowledged within the time limits specified in subsections (1) or (4) must submit a claim for compensation in respect of an eligible deposit within the prescribed period.

(12) In subsection (11), the "prescribed period" means within one year of the compensation date or such other period as the Minister may prescribe.

Currency.

218.(1) The FSRCC must make compensation payments in respect of eligible deposits in sterling.

(2) Where the account in which the eligible deposit was held was maintained in a currency other than sterling, the FSRCC must use the exchange rate applying on the compensation date.

Claims against the FSRCC.

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219.(1) The FSRCC must ensure that a person who is or may be affected by a decision of the FSRCC in relation to compensation has an opportunity to make representations to the FSRCC in respect of that decision before it becomes final.

(2) The FSRCC must, if requested to do so by a depositor, give reasons for any decision not to pay compensation to that depositor.

(3) Any compensation which a depositor is entitled to receive from the Scheme and which is not paid in accordance with section 217 may be recovered as a debt due to the depositor.

Subrogation.

220.(1) The FSRCC may determine that the payment of compensation has the effect that the FSRCC–

(a) is immediately and automatically subrogated to all or any part of the rights and claims of the compensation recipient against the Scheme participant or any third party in respect of or arising out of the compensation recipient's deposits being unavailable; and

(b) has the right to bring legal or any other proceedings in its own name or in the name of, and on behalf of, the compensation recipient against the relevant Scheme participant or any third party.

(2) Where the FSRCC makes payments in the context of resolution proceedings, including the application of resolution tools or the exercise of resolution powers under section 222, the rights and claims conferred on the FSRCC include the right of recovery against the relevant credit institution for an amount equal to those payments.

(3) A claim under subsection (2) ranks at the same level as covered deposits in insolvency proceedings.

Information for depositors

Depositor information.

221.(1) Scheme participants must make available to depositors (and potential depositors) information about–

(a) its participation in the Scheme; and

(b) the exclusions from protection which apply to the Scheme.

(2) Depositors must–

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(a) be provided with the information referred to in subsection (1) before entering into a deposit-taking contract; and

(b) acknowledge receipt of that information in the depositor information sheet set out in Schedule 19.

(3) Depositors must be provided with confirmation that their deposits are eligible deposits in their statements of account which must–

(a) be provided at least annually; and

(b) be accompanied by the depositor information sheet in Schedule 19 which must identity the currency of repayment and include a reference to the Scheme's website.

(4) The information in subsection (1) must be provided in–

(a) English; or

(b) the language that was agreed by the depositor and the Scheme participant when the account was opened.

(5) In the case of a merger, conversion of subsidiaries into branches or similar operations, depositors must be informed at least one month before the operation takes legal effect unless the GFSC allows a shorter deadline on the grounds of commercial secrecy or financial stability.

(6) Following notification of the merger, conversion or similar operation, depositors must be given a three-month period to withdraw or transfer to another credit institution, without incurring any penalty, their eligible deposits including all accrued interest and benefits in so far as they exceed the coverage level in section 214 at the time of the operation.

(7) If a Scheme participant withdraws or is excluded from the Scheme, it must inform its depositors within one month of such withdrawal or exclusion.

(8) If a depositor uses internet banking, the information required to be disclosed under this Chapter may be communicated by electronic means but, where the depositor so requests, it must be communicated on paper.

(9) A Scheme participant that operates under different trademarks must inform depositors clearly that the coverage levels specified in section 214 apply to the aggregated deposits that the depositor holds with the Scheme participant.

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(10) The information required under subsection (9) must be included in the depositor information sheet in Schedule 19.

(11) In any advertising or promotional materials a Scheme participant must not provide any information about the Scheme other than–

(a) a factual statement as to whether the product being advertised or promoted is or is not covered by the Scheme;

(b) a factual description of the functioning of the Scheme; and

(c) any further factual information which the Scheme participant is required by law to include.

Scheme funds

Use of Scheme funds.

222.(1) The FSRCC must primarily use the Scheme's available financial means to compensate depositors in accordance with this Chapter.

(2) The Scheme's available financial means must be used in order to finance the resolution of credit institutions in accordance with regulation 100 of the Financial Services (Recovery and Resolution) Regulations 2020.

(3) The Gibraltar Resolution Authority, after consulting the FSRCC, must determine any amount which is to be provided under subsection (2).

(4) The FSRCC may use the Scheme's available financial means for alternative measures in order to prevent a Scheme participant from failing where all of the following conditions are met–

(a) the Gibraltar Resolution Authority has not taken any resolution action in accordance with regulation 32 of the Financial Services (Recovery and Resolution) Regulations 2020;

(b) the FSRCC has appropriate systems and procedures in place for selecting and implementing alternative measures and monitoring affiliated risks;

(c) the costs of the measures do not exceed the costs of fulfilling the FSRCC's mandatory obligations under this Chapter;

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(d) the FSRCC's use of alternative measures is linked to conditions imposed on the Scheme participant that is being supported, involving at least more stringent risk monitoring and greater verification rights for the FSRCC;

(e) the FSRCC's use of alternative measures is linked to commitments by the Scheme participant being supported with a view to securing access to covered deposits; and

(f) the ability of Scheme participants to pay extraordinary contributions under subsection (7) has been assessed and confirmed by the GFSC.

(5) The FSRCC must consult the Gibraltar Resolution Authority and the GFSC on the measures and the conditions imposed on the Scheme participant.

(6) Alternative measures under subsection (4) must not be applied where the GFSC, after consulting the Gibraltar Resolution Authority, considers the conditions for resolution action in accordance with regulation 27 of the Financial Services (Recovery and Resolution) Regulations 2020 to be met.

(7) If the Scheme's available financial means are used under subsection (4), Scheme participants must immediately provide the FSRCC with the means used for alternative measures, where necessary in the form of extraordinary contributions, where–

(a) the need to reimburse depositors arises and the available financial means of the Scheme amount to less than two-thirds of the Scheme target level; or

(b) the available financial means fall below 25% of the Scheme target level.

(8) Until the Scheme's available financial means reach the Scheme target level for the first time, subsections (7)(a) and (b) apply as if the reference to two-thirds or 25% of the Scheme target level were references to two-thirds or 25% of the financial means which were available immediately before the Scheme's available financial means were used for alternative measures under subsection (4).

(9) The FSRCC may use the Scheme's available financial means to preserve the access of depositors to covered deposits, including transfer of assets and liabilities and deposit book transfer, in the context of insolvency proceedings, provided that the costs borne by the Scheme do not exceed the net amount of compensating covered depositors of the Scheme participant concerned.

223. *Omitted*.

224. *Omitted*.

225. *Omitted*.

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Transitional arrangements

Transitional provision.

226. A deposit or other instrument which–

(a) has an initial maturity date;

(b) was paid in or issued before 2 July 2014; and

(c) would otherwise cease to be covered (in whole or part) by a deposit guarantee scheme following the coming into operation of this Part,

is to be covered by the Scheme until the initial maturity date of the deposit or instrument.

CHAPTER 4
RESOLUTION FINANCING ARRANGEMENTS

Interpretation

Interpretation of Chapter 4.

227. In this Chapter–

"authorised institution" means–

(a) a credit institution with permission under Part 7 to carry on the regulated activity of accepting deposits; or

(b) an investment firm with permission under Part 7 to carry on a regulated activity specified in Chapter 2 of Part 6 of Schedule 2 (investment services and investment activities;

"available financial means" means cash, deposits and low-risk assets which can be liquidated within seven working days;

"branch" means a place of business which forms a legally dependent part of a credit institution or investment firm and which carries out directly all or some of the transactions inherent in the business of credit institutions or investment firms;

"financing target level" means the target level specified in section 230(2);

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"investment firm" means an investment firm as defined in Article 4(1) of the Capital Requirements Regulation that is subject to the initial capital requirement specified in regulation 19(2) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020; and

"third country institution" has the meaning given in section 282.

The financing arrangements

Administration and use of financing arrangements.

228.(1) The FSRCC is responsible for administering the resolution financing arrangements established under this Chapter ("the financing arrangements").

(2) The Gibraltar Resolution Authority is designated as the public authority that may trigger the use of the resolution financing arrangements as provided for by or under Part 17.

(3) Subject to Part 17, the FSRCC must hold, manage and apply in accordance with section 200 any funds which form part of the financing arrangements.

(4) The FSRCC must ensure that the financing arrangements have adequate financial resources and for that purpose may, in particular–

(a) impose the levy provided for in section 230(1) with a view to reaching the financing target level;

(b) where the contributions specified in paragraph (a) are insufficient, raise extraordinary contributions in accordance with section 231(1); and

(c) contract borrowings and other forms of support in accordance with section 232.

(5) The FSRCC must–

(a) establish appropriate accounting and reporting arrangements to ensure that contributions to the financing arrangements are paid correctly and in full; and

(b) take appropriate steps to verify that contributions have been so paid and to prevent evasion, avoidance and abuse.

Authority's use of financing arrangements.

229. The financing arrangements may be used by the Gibraltar Resolution Authority only–

(a) in accordance with–

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(i) the resolution objectives in regulation 31 of the Financial Services (Recovery and Resolution) Regulations 2020; and

(ii) the general principles in regulation 34 of the Financial Services (Recovery and Resolution) Regulations 2020; and

(b) to the extent and for the purposes provided for in–

(i) regulation 97 of the Financial Services (Recovery and Resolution) Regulations 2020; or

(ii) this Chapter.

Funding

Financing arrangements levy.

230.(1) The FSRCC must raise the financing arrangements' available financial means by imposing a levy on authorised institutions at least once in each year.

(2) By 31st December 2026 the financing arrangements' available financial means must reach the financing target level of 1% of the amount of covered deposits of all authorised institutions.

(3) Until 31st December 2026 contributions levied under subsection (1) must be spread out in time as evenly as possible until the financing target level is reached.

(4) If, after 31st December 2026 the available financial means diminish below the financing target level, the FSRCC must impose a levy under subsection (1) until the financing target level is reached.

(5) If, after the financing target level has been reached for the first time the available financial means have subsequently been reduced to less than two thirds of that target level, the FSRCC must impose a levy under subsection (1), contributions to which are set at a level which allows for the financing target level to be reached within six years.

(6) In setting any levy under this section the FSRCC must take due account of the phase of the business cycle and the impact procyclical contributions may have on the financial position of authorised institutions.

(7) Subject to subsection (8), any levy imposed on authorised institutions under subsection (1) must be based on the amount of its liabilities (excluding own funds) less covered deposits

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as a proportion of the aggregate liabilities (excluding own funds) less covered deposits of all authorised institutions.

(8) Levy contributions must be adjusted in proportion to the risk profile of the authorised institution concerned.

(9) Any levy payable under this section–

(a) is due within 30 days of the date when the invoice for the levy is issued; and

(b) may be enforced as a civil debt owed to the FSRCC.

(10) If an authorised institution ceases to carry on the activities of such an institution part way through a financial year of the financing arrangements–

(a) it will remain liable for any unpaid levies which the FSRCC has already made on the institution; and

(b) the FSRCC may make further levies on it (which must be before it ceases to be an authorised institution) for the costs which it would have been liable to pay had the FSRCC made a levy on all authorised institutions in the financial year it ceased to carry on those activities.

(11) The FSRCC may enter into arrangements with the GFSC for the GFSC to collect the levy on behalf of the FSRCC and for that purpose any levy payable under this section may be enforced as if it was a civil debt owed to the GFSC.

Extraordinary contributions.

231.(1) If the financing arrangements' available financial means are insufficient to cover the losses, costs or other expenses incurred by their use, the FSRCC may require authorised institutions to pay extraordinary contributions to cover the additional amounts.

(2) Any extraordinary contributions payable under subsection (1) must–

(a) be allocated among institutions in accordance with section 230(7) and (8); and

(b) not exceed three times the annual amount of contributions determined in accordance with section 230.

(3) The Gibraltar Resolution Authority may require the FSRCC to defer, in whole or part, an authorised institution's obligation to pay extraordinary contributions under subsection (1) if the Gibraltar Resolution Authority considers that payment would jeopardise the liquidity or solvency of the institution.

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(4) A deferral under subsection (3) must not be granted for longer than six months but may be renewed at the request of the institution.

(5) Any contribution which is deferred under subsections (3) or (4) must be paid by the institution when doing so would no longer jeopardise its liquidity or solvency.

(6) *Omitted*.

(7) Sections 230(9) and (10) apply to contributions under this section.

Alternative funding.

232. The FSRCC may contract borrowings or other forms of support from institutions, financial institutions or other third parties in the event that–

(a) the amounts raised in accordance with section 230(1) are insufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements, and

(b) the extraordinary contributions provided for in section 231(1) are not immediately accessible or sufficient.

233. *Omitted*.

Group resolution.

Group resolution.

234.(1) The FSRCC must establish procedures to enable the financing arrangements to be able to effect its contribution to the financing of any group resolution in accordance with regulation 98 of the Financial Services (Recovery and Resolution) Regulations 2020.

(2) The FSRCC must consult the Gibraltar Resolution Authority before establishing any procedures under subsection (1).

Power to require information.

FSRCC's power to require information.

235.(1) The FSRCC may by notice require an authorised institution–

(a) to provide specified information or information of a specified description; or

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(b) to produce specified documents or documents of a specified description.

(2) The information or documents must be provided or produced to the FSRCC–

(a) before the end of such reasonable period as may be specified;

(b) in the form or manner specified; and

(c) subject to such verification or authentication as may be specified.

(3) This section applies only to information and documents that the FSRCC may reasonably require in connection with the exercise of its functions under this Chapter.

(4) In this section "specified" means specified in a notice under subsection (1).

PART 16
INVESTOR COMPENSATION SCHEME

Introduction

Overview.

236. This Part provides for a Gibraltar Investor Compensation Scheme ("the Gibraltar scheme").

Interpretation of Part 16.

237.(1) In this Part–

"branch" means a place of business (other than a head office) which–

(a) is part of a participating firm;

(b) has no legal personality of its own; and

(c) undertakes investment business for which the participating firm has been authorised (including ancillary services for which the firm has been authorised);

"FSRCC" has the meaning given in section 27;

"Gibraltar investment firm" means a regulated firm which is an investment firm;

"Gibraltar scheme" has the meaning given in section 236;

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"Gibraltar UCITS management company" means a regulated firm which is a UCITS management company;

"in-scope Gibraltar AIFM" means a regulated firm which is an AIFM and which is not a small scheme manager;

"investment business" means–

(a) the investment services and activities listed in Chapter 2 of Part 6 to Schedule 2;

(b) the activities specified in regulation 12(4) of the Financial Services (Alternative Investment Fund Managers) Regulations 2020; and

(c) the activities specified in regulation 15(1) of the Financial Services (UCITS) Regulations 2020;

"participating firm" means any of the following which participates in the Gibraltar scheme–

(a) an investment firm;

(b) an AIFM; or

(c) a UCITS management company.

"third country" means a country other than Gibraltar or the United Kingdom;

"third country firm" means a firm which has its head office or registered office in a third country;

"third country investment firm" means a third country firm which is an investment firm;

"UK firm" has the meaning given in section 248; and

"UK Scheme" has the meaning given in section 248.

(2) For the purposes of this Part, all places of business set up in one country or territory by a participating firm with a head office in another country or territory are to be regarded as a single branch.

(3) Where a branch participates in the Gibraltar scheme, references in this Part to a participating firm are to be read as including references to that branch.

Right of investors to compensation

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Right of investors to compensation where firm in default.

238. The FSRCC must pay compensation to a claimant if–

(a) the claimant is an investor in an eligible investment;

(b) a participating firm holds or controls the eligible investment; and

(c) the participating firm is in default.

Meaning of investor.

239.(1) An investor is a person who has entrusted an investment to a participating firm in connection with investment business.

(2) But this Part does not apply to the investors listed in Schedule 20.

Meaning of eligible investments.

240.(1) An investment is an eligible investment if it is money or a financial instrument held on behalf of the client in connection with investment business.

(2) Subsection (1) does not apply to anything for which compensation is payable under Part 15.

(3) Subsection (1) does not apply to anything arising out of transactions in connection with which there has been a criminal conviction–

(a) for a money laundering offence under the Proceeds of Crime Act 2015 (or the equivalent law of a country or territory outside Gibraltar); or

(b) for a market abuse offence within the meaning of Part 21.

(4) The FSRCC may delay payment to a claimant until the determination of any criminal charge referred to in subsection (3).

Meaning of in default.

241.(1) A participating firm is in default if the GFSC declares it is in default.

(2) The GFSC must make this declaration within 21 days of the earlier of–

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(a) it appearing to the GFSC that the firm is unable, for reasons directly related to its financial circumstances, to meet its obligations arising out of investors' claims and has no early prospect of being able to do so; or

(b) a court (whether in Gibraltar or elsewhere) having made an order which has the effect of suspending the power of investors to make a claim against the firm.

(3) Subsection (2)(a) or (b) may be satisfied, for example, if–

(a) a winding up order has been made;

(b) a voluntary winding up resolution has been passed;

(c) a creditors' meeting has been called;

(d) a receiver has been appointed; or

(e) a voluntary arrangement with creditors has been made.

(4) The compensation is to cover the inability of the participating firm to–

(a) repay money owed or belonging to investors and held on their behalf by the participating firms; and

(b) return to investors any financial instruments belonging to them and held, administered or managed on their behalf by the participating firm,

and is to be paid in accordance with the legal and contractual conditions applicable.

Amount of compensation.

242.(1) The total amount of compensation payable to any claimant is limited to 90% of the value of the eligible investment, up to a maximum of EUR 20,000.

(2) In this section, the value of the eligible investment means the market value, at the date of default, of eligible investments of the investor with the participating firm in default, but this is subject to subsection (3).

(3) The value of the eligible investment is to be calculated in accordance with the legal and contractual conditions applicable, and is, for example, to be reduced by any amount owing from the investor to the participating firm in default, including any amount owing by way of set-off or counterclaim.

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(4) The compensation payable to a person must be reduced by the amount of any other payment which the person receives or is entitled to receive in respect of the eligible investment, including–

(a) from another investor compensation scheme;

(b) from an insurance policy taken out by or on behalf of the investor in respect of the investment;

(c) from the liquidator, receiver or similar person appointed in respect of the participating firm in default; or

(d) following any right of set-off at the date default is declared under section 241(2).

(5) Where the investment is not in euros, its value is to be calculated by reference to the official exchange rate on or nearest to the date of declaration of the default.

(6) The compensation is to be paid in pounds sterling, calculated by reference to the official exchange rate on or nearest to the date of declaration of the default.

(7) For the purposes of calculating entitlement to compensation, all eligible investments that an investor holds with the same participating firm are to be aggregated, irrespective of–

(a) the number of different accounts the investor holds with the firm;

(b) the currencies in which the investments are held; or

(c) the location of the investments.

Payment of compensation: joint investments, partnerships, trusts etc.

243.(1) Subject to subsections (2) to (4), where an eligible investment is held in a joint investment–

(a) each investor is entitled to the compensation set out in section 242; and

(b) each investor is to be regarded as having an equal share in the investment, unless there is evidence to the contrary.

(2) Where an eligible investment is held by a business partnership, association or grouping of a similar nature, which does not have legal personality, it is to be treated as a sole investor.

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(3) Where an eligible investment is held by a person who is not absolutely entitled to it, compensation is to be paid to the person who is absolutely entitled to it, if that person can be identified at the date of default and it is practicable to do so.

(4) Where subsection (3) applies, but two or more persons are absolutely entitled to the eligible investment–

(a) each of them is entitled to the compensation set out in section 242; and

(b) each of them is to be regarded as having an equal share in the investment, unless there is evidence to the contrary.

(5) In this section "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.

Procedure for payment of compensation.

244.(1) Claimants must apply to the FSRCC for compensation in a form specified by the FSRCC.

(2) The FSRCC must make administrative arrangements for verifying claims, including–

(a) providing a clearly understandable application form for claimants (in English);

(b) providing for the exercise of the FSRCC's right of subrogation under section 274; 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 jurisdiction), where applicable, of the participating firm in default; and

(v) any other information or documents reasonably required by the FSRCC.

(3) The FSRCC may set a time limit, of not less than five months from the date of default, within which a potential claimant must make a claim.

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(4) The FSRCC may accept a claim outside this time limit if satisfied that it was unreasonable to expect the claimant to make the claim within the time limit.

(5) Compensation must be paid as soon as is possible, and in any event within three months of the FSRCC being satisfied that the conditions for payment have been met.

(6) In exceptional circumstances, the FSRCC may apply to the GFSC for that three-month period to be extended by a further three months.

Right of investors to appeal.

245.(1) A claimant may appeal a decision of the FSRCC relating to compensation to the Supreme Court.

(2) The court may–

(a) dismiss the appeal;

(b) allow the appeal and quash the decision appealed against;

(c) substitute for the decision appealed against any other decision which the FSRCC could have made; or

(d) remit the matter to the FSRCC for further consideration, in accordance with any directions of the court.

Participation in investor compensation scheme

Gibraltar investor compensation scheme.

246. The investor compensation scheme established under the Financial Services (Investor Compensation Scheme) Act 2002 continues to exist in accordance with the provisions of this Part, and is referred to as the Gibraltar Investment Compensation Scheme or the Gibraltar scheme.

Participation in scheme: Gibraltar investment firms.

247.(1) A Gibraltar investment firm must participate in the Gibraltar scheme.

(2) An in-scope Gibraltar AIFM whose Part 7 permission includes providing the discretionary portfolio management service in paragraph (a) of regulation 12(4) of the Financial Services (Alternative Investment Fund Managers) Regulations 2020 must participate in the Gibraltar scheme in respect of the services it provides under that regulation.

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(3) A Gibraltar UCITS management company whose Part 7 permission includes providing the discretionary portfolio management service in paragraph (a) of regulation 15(1) of the Financial Services (UCITS) Regulations 2020 must participate in the Gibraltar scheme in respect of the services it provides under that regulation.

Participation in scheme: UK firms.

248.(1) Where a UK firm has a branch in Gibraltar, that branch is not obliged to participate in the Gibraltar scheme if the firm participates in the United Kingdom's Financial Services Compensation Scheme (the "UK Scheme").

(2) A branch which, by virtue of subsection (1) is not obliged to participate in the Gibraltar scheme, may apply to participate voluntarily in that scheme (see section 258).

(3) In this Part a "UK firm" means a firm which has its head office or registered office in the United Kingdom and which is regulated under the law of the United Kingdom as–

(a) an investment firm;

(b) an AIFM which–

(i) provides discretionary portfolio management services of the kind in regulation 12(4)(a) of the Financial Services (Alternative Investment Fund Managers) Regulations 2020; and

(ii) participates in the UK scheme in respect of the services it provides of the kind in regulation 12(4) of those regulations; or

(c) a UCITS management company which–

(i) provides discretionary portfolio management services of the kind in regulation 15(1)(a) of the Financial Services (UCITS) Regulations 2020; and

(ii) participates in the UK scheme in respect of the services it provides of the kind in regulation 15(1) of those regulations.

Participation in scheme: third country investment firm.

249.(1) Where a third country investment firm has a branch in Gibraltar, the branch must participate in the Gibraltar scheme unless subsection (2) applies.

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(2) A branch is not obliged to participate in the Gibraltar scheme if the GFSC determines that the firm participates in an investor compensation scheme which will provide cover to investors at its Gibraltar branch at least equivalent to the cover provided under this Part.

(3) A branch which, by virtue of subsection (2) is not obliged to participate in the Gibraltar scheme, may apply to participate voluntarily in that scheme (see section 258).

250. *Omitted*.

251. *Omitted*.

252. *Omitted*.

253. *Omitted*.

Failure to participate

Failure to comply with Gibraltar scheme: measures short of exclusion.

254.(1) This section applies in respect of any firm which is obliged, by virtue of this Part, to participate in the Gibraltar scheme.

(2) If a firm fails to comply with this Part, or any requirements of the Gibraltar scheme, the FSRCC must notify the GFSC.

(3) On notification, the GFSC must take all appropriate measures (short of consenting to exclusion) to secure the firm's compliance.

Failure to comply with Gibraltar scheme: exclusion.

255.(1) This section applies if, following the measures referred to in section 254, the participating firm still fails to comply with this Part or any requirements of the Gibraltar scheme.

(2) The FSRCC may, with the consent of the GFSC, issue a notice to the firm warning that unless it complies within 12 months, the firm will be excluded from the scheme.

(3) On expiry of those 12 months, if the firm still fails to comply, the FSRCC, with the consent of the GFSC, may exclude the firm from the scheme.

(4) Where a firm is excluded from the scheme, its Part 7 permission or other authorisation under this Act to carry on any investment business must be immediately revoked by the GFSC.

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(5) The scheme continues to provide cover to investors in respect of any investment business transacted during the period of the notice under subsection (2).

Failure to participate in scheme.

256. A person who–

(a) is obliged, under sections 247 or 249, to participate in the Gibraltar scheme; but

(b) fails to participate in the scheme,

is not permitted to carry on any investment business in or from Gibraltar.

Co-operation with FSRCC

Co-operation of participating firms with the FSRCC.

257.(1) Participating firms must co-operate with the FSRCC in making available to the FSRCC any information it requires (and in the form it directs) to carry out its functions.

(2) The duty of co-operation extends to any successor of the participating firm, including–

(a) a liquidator, if the participating firm is being wound up;

(b) a receiver, if the participating firm is in receivership; and

(c) any other person who appears to the FSRCC to be carrying out duties similar to those in paragraph (a) or (b) in respect of the participating firm, or who has continuing responsibility for the affairs of the participating firm.

(3) If a person fails to provide the FSRCC with any information it requires, the FSRCC may inform the GFSC.

(4) The GFSC may by notice require the person to provide the information at a time and place specified in the notice.

(5) A person who, without reasonable excuse, fails to comply with a notice under subsection (4) commits an offence and is liable, on summary conviction, to a fine at level 5 on the standard scale.

Voluntary participation

Voluntary application to join scheme.

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258.(1) This section makes provision in respect of an application to participate in the Gibraltar scheme voluntarily made by–

(a) a branch of a UK firm by virtue of section 248(2); or

(b) a branch of a third country firm by virtue of section 249(3).

(2) The branch may apply in order to supplement the cover which its investors already enjoy by virtue of–

(a) in the case of a branch of a UK firm, the firm's participation in the UK scheme; or

(b) in the case of a branch of a third country firm, the firm's participation in the investor compensation scheme in that country.

(2A) A branch which participates in the Gibraltar scheme voluntarily must comply with the scheme in the same manner as any other participating firm.

(3) A branch which participates in the Gibraltar scheme under this section may withdraw on giving the FSRCC at least six months' notice.

(4) A branch which has given notice is to continue to be treated as a participating firm until the expiry of those six months.

(5) A branch which applies to participate voluntarily but whose application is refused may appeal to the Supreme Court.

259. *Omitted*.

260. *Omitted*.

Default by Gibraltar firm

Gibraltar firm or branch in default.

261.(1) This section applies where a participating firm which is a Gibraltar investment firm, in-scope Gibraltar AIFM or Gibraltar UCITS management company–

(a) is in default in Gibraltar or the United Kingdom; or

(b) has a branch in default in the United Kingdom.

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(2) Where compensation is payable, it is to be paid by the Gibraltar scheme (in accordance with section 242).

262. *Omitted*.

263. *Omitted*.

UK firm with branch in default in Gibraltar.

264.(1) This section applies where a UK firm–

(a) has a branch in default in Gibraltar; and

(b) voluntarily participates in the Gibraltar scheme.

(2) Where compensation is payable–

(a) the UK scheme is liable for any compensation which is payable to investors at the branch in Gibraltar; and

(b) the amount payable by the Gibraltar scheme is limited to the excess (if any) of compensation that the Gibraltar scheme offers over the compensation which investors are entitled to receive under the UK scheme.

Third country investment firm with branch in default in Gibraltar (participating in third country scheme).

265.(1) This section applies where a third country investment firm –

(a) participates or is required to participate in an investor compensation scheme in the third country; and

(b) has a branch in default in Gibraltar.

(2) The investor compensation scheme in that third country is liable for any compensation which is payable to investors at the branch in Gibraltar.

Third country investment firm with branch in default in Gibraltar (not participating in third country scheme).

266.(1) This section applies where a third country investment firm –

(a) does not participate, in the third country, in an investor compensation scheme;

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(b) has a branch in default in Gibraltar; and

(c) participates in the Gibraltar scheme.

(2) Where compensation is payable, it is to be paid by the Gibraltar scheme.

267. *Omitted*

Administration of the Gibraltar scheme

Administration of the Gibraltar scheme.

268. The Gibraltar scheme is to be administered by the FSRCC.

Establishment of fund.

269.(1) The FSRCC –

(a) must establish an Administration Fund which is separate from any administration fund it maintains under section 198(1)(c); and

(b) may establish a Gibraltar Investor Compensation Fund.

(2) The FSRCC must hold, manage and apply the Funds in accordance with this Part.

(3) The Funds are to consist of any–

(a) money paid to the FSRCC as annual fees by all participating firms;

(b) money levied on all participating firms by the FSRCC;

(c) money received by the FSRCC as income from investments;

(d) money borrowed by the FSRCC for the purposes of the scheme;

(e) money received by the FSRCC on any policy of insurance it takes out;

(f) money received by the FSRCC from a liquidator or receiver of a participating firm in default; and

(g) other money required to be paid into the funds or received by the FSRCC for the purposes of the scheme.

(4) The FSRCC may invest any money in the Funds in–

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(a) stock issued by the UK government;

(b) Government of Gibraltar debentures or bonds;

(c) deposits in the Gibraltar Savings Bank; and

(d) deposits in credit institutions which are regulated firms with permission under Part 7 to carry on the regulated activity of accepting deposits.

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

(6) There is to be paid out of the Funds–

(a) money determined by the FSRCC 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 FSRCC and payments to persons to whom contracts are granted under paragraph 7(1) of Schedule 21; and

(d) any other money authorised to be paid out by the FSRCC for the purposes of the scheme.

Annual fee.

270.(1) Participating firms must pay the FSRCC an annual fee in each financial year.

(2) The FSRCC must fix the annual fee at a level to cover its expected administrative expenses under this Part in that year, together with any shortfalls from previous years.

(3) The annual fee is due at the beginning of the financial year, or at such other time during the year that the FSRCC may decide.

(4) If a participating firm joins the Gibraltar scheme during the year–

(a) the fee is reduced to cover the proportion of the year for which the firm is a participating firm; and

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(b) the fee is due when the firm joins the scheme, or such other time during the year that FSRCC may decide.

Levies on participating firms (in cases of default).

271.(1) This section applies where a participating firm is in default.

(2) The FSRCC may impose one or more levies on the other participating firms to meet the costs of compensating investors for that default.

(3) The FSRCC may make rules, with the approval of the Minister, for calculating the proportion of the levy to be paid by each participating firm.

(4) Where the FSRCC imposes a levy, it must give notice to each participating firm liable to contribute stating–

(a) the amount of the participating firm's contribution;

(b) the method by which it is calculated; and

(c) the date on which it is due (which must not be earlier than 14 days after the date of the notice).

(5) If at any time after a levy is imposed, any participating firm liable for a contribution to that levy is itself declared to be in default before paying its contribution, that liability is to be cancelled (so that the total amount raised by the levy will be reduced accordingly).

(6) The levy is to be imposed on persons who were participating firms at the date of the default, even if they were not participating firms at the date of the levy.

Levies on participating firms (precautionary).

272.(1) The FSRCC may impose one or more levies on participating firms for the purposes of making provision for potential defaults in the future.

(2) The FSRCC may make rules, with the approval of the Minister, for calculating the proportion of the levy to be paid by each participating firm.

(3) Where the FSRCC imposes a levy, it must give notice to each participating firm liable to contribute stating–

(a) the amount of the participating firm's contribution;

(b) the method by which it is calculated; and

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(c) the date on which it is due (which must not be earlier than 14 days after the date of the notice).

(4) If at any time after a levy is imposed, any participating firm liable for a contribution to that levy is declared to be in default before paying its contribution, that liability is to be cancelled (so that the total amount raised by the levy will be reduced accordingly).

Liquidation or receivership of participating firm in default.

273.(1) This section applies if a participating firm is being wound up or is in receivership.

(2) The FSRCC is–

(a) in the position of a creditor of the participating firm;

(b) entitled to nominate a member of the FSRCC or any other appropriately qualified person to sit on any creditors' committee or committee of inspection of the participating firm; and

(c) entitled to receive any notice addressed to creditors and to attend (and vote at) any creditors' meeting under the Companies Act 2014.

(3) The liquidator or receiver of any participating firm in default must pay the FSRCC any amount realised in respect of an eligible investment up to the amount of compensation paid or payable by the FSRCC to the claimant.

Subrogation.

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

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

(a) rights in respect of that investment will vest in the FSRCC;

(b) the claimant will provide any assistance the FSRCC may ask to enable the FSRCC to exercise those rights;

(c) the claimant will pay the FSRCC any amount received in respect of those rights, after deduction of any amount the FSRCC may be required to repay the claimant under subsection (3); and

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(d) any prospect of recovering an amount in excess of the compensation paid or payable will vest in the FSRCC, who may settle the claim.

(3) Any amount received by the FSRCC under this section is to be paid into the fund established in respect of the default in question, and the FSRCC must pay each claimant any amount which it receives in respect of the claimant's 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 FSRCC specifically in relation to that investment.

Information to investors.

275.(1) Participating firms must provide scheme information to all actual and intending investors, and must in addition make scheme information available to any person on request.

(2) In this section "scheme information" means information about the Gibraltar scheme which must–

(a) include details of the amount and scope of cover provided by the scheme;

(b) include details on the conditions and formalities for claiming compensation; and

(c) be in English in Gibraltar and in the official language of the jurisdiction where a branch of a participating firm is established.

(3) Where a participating firm participates in any other investor compensation scheme, the scheme information must also include information about that scheme.

(4) Where a firm to which section 248 or 249 applies does not participate in the Gibraltar scheme, it must inform actual and intending investors of that fact.

(5) Information which is required to be provided under this section must be in a readily comprehensible form.

(6) Despite the other requirements of this section, advertisements by a participating firm inviting an investment (or which may lead to an investment being made) must not refer to the cover offered by the Gibraltar scheme or any other scheme to which the participant belongs, but may include a simple factual reference to the firm's participation in the Gibraltar scheme or any other scheme.

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

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Miscellaneous provisions

Income tax treatment of participating firms.

276. For the purposes of the Income Tax Act, a participating firm may deduct as an allowable expense any money paid as a contribution to the funds of the FSRCC (whether as a fee or on any levy).

277 *Omitted*.

Information requirements: third country investment firm with a branch in Gibraltar.

278.(1) This section applies if–

(a) a third country investment firm has a branch in Gibraltar; and

(b) the GFSC has determined, under section 249(2), that it participates in an investor compensation scheme which will provide cover to investors at its Gibraltar branch at least equivalent to cover under the Gibraltar scheme.

(2) The firm must provide actual and intending investors with all relevant information about the compensation arrangements which cover their investments.

(3) The information required must be–

(a) in English; and

(b) in a readily comprehensible form.

Co-operation with other authorities.

279. The GFSC and the FSRCC may cooperate with the relevant bodies responsible for investor compensation schemes in other jurisdictions, in particular where, where a firm (or branch of a firm) whose head office or registered office is outside Gibraltar participates in the Gibraltar scheme.

Information sharing with other authorities.

280. The FSRCC must establish procedures to enable it, where appropriate, to share information and communicate effectively with the GFSC, other investor compensation schemes, relevant competent authorities, and other agencies in Gibraltar and other jurisdictions.

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PART 17
RECOVERY AND RESOLUTION

Overview.

281.(1) This Part provides for the recovery and resolution of credit institutions and relevant investment firms.

Interpretation of Part 17.

282.(1) In this Part–

"credit institution" means a credit institution as defined in Article 4(1) of the Capital Requirements Regulation, other than an entity in regulation 5 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;

"financial holding company" means a financial holding company as defined in Article 4(1) of the Capital Requirements Regulation;

"institution" means a credit institution or a relevant investment firm;

"mixed-activity holding company" means a mixed-activity holding company as defined in Article 4(1) of the Capital Requirements Regulation;

"mixed financial holding company" means a mixed financial holding company as defined in Article 4(1) of the Capital Requirements Regulation; and

"relevant investment firm" means an investment firm to which Article 2(4) of the Capital Requirements Regulation applies;

"third-country institution" means an entity, the head office of which is established in a country or territory other than Gibraltar, that would, if it were established within Gibraltar, be covered by the definition of an institution.

(2) Expressions used in this Part that are also used in the Recovery and Resolution Regulations are to be construed in accordance with those regulations.

Recovery and Resolution Regulations.

283.(1) The Minister may make regulations ("Recovery and Resolution Regulations") which set procedural and other requirements relating to the recovery and resolution of the following entities–

(a) institutions established in Gibraltar;

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(b) financial institutions established in Gibraltar where the financial institution is–

(i) a subsidiary of a credit institution, an investment firm, or a company in paragraph (c) or (d); and

(ii) covered by the supervision of the parent undertaking on a consolidated basis in accordance with Articles 6 to 17 of the Capital Requirements Regulation;

(c) financial holding companies, mixed financial holding companies and mixed-activity holding companies that are established in Gibraltar;

(d) parent financial holding companies and parent mixed financial holding companies that are established in Gibraltar; and

(e) Gibraltar branches of third-country institutions, which operate in Gibraltar in accordance with the conditions imposed by or under this Part.

(2) *Omitted*.

Gibraltar Resolution Authority.

284.(1) The GFSC is designated by section 26 as the Gibraltar Resolution Authority and–

(a) section 27 provides for its resolution functions to be exercised by the FSRCC;

(b) section 28 requires the GFSC to separate and avoid conflicts between its resolution and other functions; and

(c) section 29 specifies how references to the GFSC, FSRCC and Gibraltar Resolution Authority are to be construed.

(2) The Gibraltar Resolution Authority's principal function is to apply the resolution tools and exercise the resolution powers provided by or under this Part.

(3) The Gibraltar Resolution Authority must inform the GFSC of decisions made under this Part and obtain the GFSC's approval before implementing decisions that have a direct fiscal impact or systemic implications.

(4) Subject to any specific provision to the contrary, when exercising their respective functions under this Part in relation to an entity in section 283(1), the Gibraltar Resolution Authority and the GFSC must take account of–

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(a) the nature of the entity's business;

(b) its shareholding structure;

(c) its legal form, risk profile, size and legal status;

(d) its interconnectedness to other institutions or to the financial system in general;

(e) the scope and the complexity of its activities;

(f) *Omitted*

(g) *Omitted*

(5) When making decisions under this Part the GFSC or the Gibraltar Resolution Authority must–

(a) take account of the decision's potential impact on Gibraltar; and

(b) seek to minimise any negative effects on financial stability or any negative economic and social effects in Gibraltar.

Resolution authority's powers.

285.(1) In the discharge of its functions under this Part, the Gibraltar Resolution Authority may exercise the powers provided under the following provisions of this Act–

(a) in Part 10–

(i) section 132 (power to require documents and information);

(ii) section 134 (power to carry out on-site inspection);

(iii) section 136 (skilled person's report); and

(iv) section 137 (appointment of inspectors); and

(b) in Part 11–

(i) section 152 (administrative penalties);

(ii) section 153 (public statement);

(iii) section 154 (cease and desist order); and

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(iv) section 156 (prohibition order).

(2) For the purposes of subsection (1), Parts 10 and 11 are to be applied with any necessary modifications and, in particular, the procedural requirements, limitations and other safeguards in those Parts are to apply to the exercise by the Gibraltar Resolution Authority of the powers specified in subsection (1) as they would apply to the GFSC.

(3) Any administrative penalty imposed under section 152 by the Gibraltar Resolution Authority in accordance with subsection (1)(b)(i) must be of an amount which does not exceed the higher of the following–

(a) where the profit gained or loss avoided because of the contravention can be determined, twice the amount of the profit or avoided loss;

(b) in the case of a legal entity, 10% of the total annual net turnover in the preceding business year (and where the entity is a subsidiary of a parent undertaking, the relevant turnover is the turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year); or

(c) in the case of an individual, EUR 5,000,000.

(4) Section 161 applies to the enforcement of any administrative penalty imposed by the Gibraltar Resolution Authority, but as if the reference in that section to the GFSC was a reference to the Gibraltar Resolution Authority.

Immunity of resolution authority.

286.(1) The Gibraltar Resolution Authority is not liable in damages for anything done or omitted in the discharge or purported discharge of any of its functions.

(1A) Any person who is, or (when the act or omission occurred) was, a member, officer, employee or delegate of the Gibraltar Resolution Authority is not liable in damages for anything done or omitted in the discharge or purported discharge of any of the Authority's functions.

(1B) Subsections (1) and (1A) do not apply to an act or omission which is shown to have been in bad faith.

(2) The Gibraltar Resolution Authority must (unless bad faith is definitively found to have existed) indemnify any person to whom subsection (1A) applies for all costs and damages incurred in defending any action brought by a third party in respect of anything the person is alleged to have done or omitted in the discharge or purported discharge of any of the Authority's functions.

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(3) In this section–

"delegate" means any person to whom the Authority has delegated any of its functions or who it has authorised to perform any functions on its behalf; and

"functions" means the powers or duties of the Authority conferred by or under this Act.

287. *Omitted*.

PART 18
COLLECTIVE INVESTMENT SCHEMES

CHAPTER 1
INTRODUCTION

Overview.

288. This Part makes provision–

(a) prohibiting the promotion of any collective investment scheme in or from Gibraltar unless the scheme has been authorised or recognised in accordance with this Part; and

(b) as to circumstances in which collective investment schemes may become–

(i) an authorised UCITS scheme under Chapter 3;

(ii) an authorised non-UCITS retail scheme under Chapter 4; or

(iii) a recognised scheme under Chapter 5.

Interpretation.

289. In this Part, unless the context otherwise requires—

"authorised UCITS scheme" means a UCITS which is authorised under Chapter 3 by the GFSC;

"common funds" includes unit trusts;

"experienced investor fund" means a collective investment scheme established in accordance with regulations made under section 339;

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"management company", in relation to a UCITS scheme, means a company whose regular business is the management of UCITS schemes in the form of common funds or open-ended investment companies (collective portfolio management of UCITS schemes);

"non-UCITS retail scheme" means a collective investment scheme which is authorised under Chapter 4 by the GFSC;

"open-ended investment company" has the meaning given in section 291;

"operator" means–

(a) in relation to a common fund with a separate trustee, the manager of the scheme;

(b) in relation to an open-ended investment company which is a UCITS scheme, the person appointed to manage the scheme; and

(c) in relation to any other open-ended investment company, the company itself;

"participant", in relation to a collective investment scheme–

(a) has the meaning given in section 290(2); and

(b) includes a shareholder in a scheme that is a body corporate;

"private scheme" has the meaning given in section 293(4)(b);

"the public interest" means the public interest of Gibraltar as determined by the Minister;

"recognised scheme" mean a foreign collective investment scheme which is recognised under Chapter 5 by the GFSC;

"transferable securities" has the meaning given in paragraph 5 of Schedule 23;

"trustee", in relation to a common fund, means the person holding the property subject to the scheme on behalf of the participants;

"UCITS" and "UCITS Scheme" have the meaning given in section 292(1); and

"unitholder", in relation to a collective investment scheme, means–

(a) in relation to a unit which is represented by a bearer certificate, the person who holds that certificate;

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(b) in any other case, the person whose name is entered on the register of the scheme as the holder of the unit in question;

"units" means the rights or interests (however described) of the participants in a collective investment scheme, including shares in an open-ended investment company.

Collective investment schemes.

290.(1) In this Part "collective investment scheme" means any arrangement with respect to property of any description, the purpose or effect of which is to enable persons taking part in the arrangement (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that the persons who are to participate ("participants") do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.

(3) The arrangements must also have either or both of the following characteristics–

(a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;

(b) the property is managed as a whole by or on behalf of the operator of the scheme.

(4) If arrangements provide for such pooling as is mentioned in sub-section (3)(a) in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

(5) Arrangements of the kind specified in Schedule 22 do not amount to a collective investment scheme.

(6) The Minister may by regulations provide that arrangements do not amount to a collective investment scheme–

(a) in specified circumstances; or

(b) if the arrangements fall within a specified category of arrangement.

(7) Regulations under this section may make different provision for different purposes or provisions.

Open-ended investment companies.

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291.(1) In this Part "open-ended investment company" means a collective investment scheme which satisfies both the property condition and the investment condition.

(2) The property condition is that the property belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of–

(a) spreading investment risk; and

(b) giving its members the benefit of the results of the management of those funds by or on behalf of that body corporate.

(3) The investment condition is that, in relation to that body corporate, a reasonable investor ("P") would, if P were to participate in the scheme–

(a) expect that P would be able to realise, within a period appearing to P to be reasonable, P's investment in the scheme, represented, at any given time, by the value of shares in, or securities of, the body corporate held by P as a participant in the scheme; and

(b) be satisfied that P's investment would be realised on a basis calculated wholly or mainly by reference to the value of property in respect of which the scheme makes arrangements.

(4) In determining whether the investment condition is satisfied, no account is to be taken of any actual or potential redemption or repurchase of shares or securities under–

(a) sections 105 to 126 of the Companies Act 2014 and other relevant provisions of that Act; or

(b) provisions in force in a country or territory outside Gibraltar which the Minister has, by regulations, designated as corresponding provisions.

Undertakings for collective investment in transferable securities.

292.(1) In this Act, an undertaking for collective investment in transferable securities (a "UCITS" or "UCITS scheme") means an undertaking–

(a) which has the sole object of the collective investment of capital raised from the public in transferable securities or other liquid financial assets of the kind referred to in Schedule 23;

(b) which operates on the principle of risk-spreading;

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(c) whose units are, at the request of unitholders, repurchased or redeemed, directly or indirectly, out of the undertaking's assets; and

(d) which is not an excluded undertaking.

(2) Action taken by a UCITS scheme to ensure that the stock exchange value of its units does not significantly vary from their net asset value is deemed equivalent to a repurchase or redemption for the purposes of subsection (1)(c).

(3) The reference in subsection (1)(d) to excluded undertakings are to–

(a) collective investment undertakings of the closed-ended type;

(b) collective investment undertakings which raise capital without promoting the sale of their units to the public in or from Gibraltar;

(c) collective investment undertakings whose units, under the constitutional documents of the undertaking, may be sold only to the public in third countries; and

(d) such other categories of collective investment undertakings as the Minister may by regulations prescribe for which, in view of their investment and borrowing policies, the requirements for UCITS schemes that are prescribed by regulations made under section 337(2)(k) are inappropriate.

(4) A UCITS scheme may consist of several investment compartments with the GFSC's written consent.

(5) A UCITS scheme may be constituted in accordance with–

(a) contract law (as common funds managed by management companies);

(b) trust law (as unit trusts); or

(c) statute (as investment companies).

(6) An open-ended investment company is not a UCITS scheme if the company's assets are–

(a) invested through the intermediary of subsidiary companies; and

(b) invested mainly other than in transferable securities.

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(7) A UCITS scheme may not transform itself into a collective investment scheme of a type not covered by this section.

(8) A UCITS scheme which is authorised under Chapter 3 is to be regarded as established in Gibraltar.

CHAPTER 2
RESTRICTIONS AND REQUIREMENTS

Restrictions on promotion of collective investment schemes.

293.(1) A person (including an authorised person) must not promote a collective investment scheme in or from Gibraltar unless the scheme is–

(a) an authorised scheme; or

(b) a recognised scheme.

(2) Promoting a collective investment scheme includes, in particular–

(a) communicating an invitation or inducement to any person to participate (or offer to participate) in a collective investment scheme; or

(b) advising or procuring any person to participate (or offer to participate) in a collective investment scheme.

(3) Subsection (1) applies in the case of a communication originating outside Gibraltar only if the communication is capable of having an effect in Gibraltar.

(4) Subsection (1) does not apply–

(a) to anything done by a person listed in Part 1 of Schedule 24;

(b) to the promotion otherwise than to the general public of collective investment schemes to which Part 2 of that Schedule applies ("private schemes") and which are promoted in accordance with, and as permitted by, the provisions of that Part;

(c) to any experienced investor fund which is established and promoted in accordance with regulations made under section 339;

(d) to the marketing in accordance with regulations made under section 340 by an AIFM to investors in Gibraltar of units of AIFs which are managed by the AIFM in accordance with any such regulations; or

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(e) in such other circumstances as the Minister may specify in regulations.

(5) Regulations under subsection (4)(e) may, in particular, provide that subsection (1) does not apply in relation to promotions–

(a) of a specified description;

(b) made in specified circumstances; or

(c) made by specified persons.

(6) "Communicate" includes causing a communication to be made.

(7) "Participate", in relation to a collective investment scheme, means becoming a participant.

Requirement for UCITS schemes to be authorised or recognised.

294. A UCITS scheme must not carry on any of its activities in or from Gibraltar unless it is–

(a) authorised in accordance with Chapter 3; or

(b) a foreign scheme recognised in accordance with Chapter 5.

Restrictions as to the use of certain names.

295.(1) The GFSC may by notice specify–

(a) words or phrases as restricted words or phrases;

(b) categories of collective investment scheme, or of authorised persons, which may use the restricted words or phrases;

(c) the circumstances in which they may be used; and

(d) conditions attaching to their use.

(2) No company may be incorporated under a name that contains a word or phrase specified in a notice under subsection (1) unless the company is a collective investment scheme which–

(a) is–

(i) an authorised scheme;

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(ii) a recognised scheme; or

(iii) an experienced investor fund; and

(b) is using the word or phrase in accordance with the terms of the notice.

(3) No business may be carried on in or from Gibraltar under a name that contains a word or phrase specified in a notice under subsection (1) unless—

(a) the business is carried on by a regulated firm with permission under Part 7 to carry on a regulated activity of a kind specified by Chapter 2 of Part 11 of Schedule 2; and

(b) the firm is using the word or phrase in accordance with the terms of the notice.

(4) Subsection (2) and (3) do not apply in any case where the GFSC gives prior written consent to the use of the word or phrase in question.

(5) A notice under subsection (1) must be published in the prescribed manner.

Contravention of section 293, 294 or 295.

296.(1) A person who contravenes section 293(1), 294 or 295(2) or (3) commits an offence and is liable–

(a) on summary conviction, to imprisonment for six months or the statutory maximum fine, or both;

(b) on conviction on indictment, to imprisonment for two years or a fine, or both.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

CHAPTER 3
AUTHORISATION OF UCITS SCHEMES

Applications for authorisation

UCITS schemes: authorisation.

297. A UCITS may be authorised by the GFSC under this Chapter as a UCITS scheme if the requirements of section 299 are met in relation to the scheme.

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Application for authorisation of a UCITS scheme.

298.(1) Any application for authorisation of a UCITS scheme under this Chapter must be made to the GFSC–

(a) by the management company; or

(b) where applicable, by the open-ended investment company.

(2) The application must–

(a) be made in such manner as the GFSC may direct;

(b) contain or be accompanied by such other information as the GFSC may reasonably require; and

(c) specify the names of the directors of the depositary.

(3) At any time after the application is received and before it is determined, the GFSC may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) The GFSC may require applicants to provide information which the applicant is required to provide to it under this section in such form, or to verify it in such a way, as the GFSC may direct.

(5) "Director", in relation to a depositary, means a person who, under the law or the instruments of incorporation, represents the depositary, or who effectively determines the policy of the depositary.

Authorisation of a UCITS scheme.

299.(1) A UCITS may be authorised as an authorised UCITS scheme if the GFSC is satisfied that it meets, and will continue to meet, the requirements of–

(a) this section; and

(b) regulations made under section 337 which apply to UCITS schemes.

(2) A UCITS scheme may be–

(a) a common fund; or

(b) an open-ended investment company incorporated under the Companies Act 2014.

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(3) The GFSC may authorise a UCITS common fund only if it has approved–

(a) the application of the management company to manage that common fund;

(b) the fund rules; and

(c) the choice of depositary.

(4) The GFSC may authorise a UCITS open-ended investment company only if–

(a) the company's registered office is situated in Gibraltar; and

(b) the GFSC has approved–

(i) the company's instruments of incorporation;

(ii) the choice of depositary; and

(iii) if relevant, the application of the designated management company to manage that open-ended investment company.

(5) *Omitted*.

(6) The GFSC must not authorise a UCITS scheme where the GFSC has reason to believe that the open-ended investment company does not comply with such requirements applying to UCITS schemes as may be specified in regulations made under section 337.

(7) The GFSC must not authorise a UCITS scheme where the directors of the depositary designated in relation to the scheme–

(a) are not of sufficiently good repute; or

(b) are not sufficiently experienced in relation to the type of UCITS scheme to be managed.

(8) The GFSC must not authorise a UCITS scheme where the scheme is legally prevented (for example, through a provision in the fund rules or instruments of incorporation) from marketing its units in Gibraltar.

(9) An authorised UCITS scheme which is an open-ended investment company is authorised to carry on, so far as it is a regulated activity–

(a) the operation of the scheme; and

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(b) any activity in connection with, or for the purposes of, the operation of the scheme.

300. *Omitted*.

Determination of application: UCITS schemes.

301.(1) "The applicant" means an applicant for authorisation under section 298.

(2) An application for the authorisation of a UCITS scheme must be determined by the GFSC before the end of the period of two months beginning with the date on which the GFSC receives the completed application.

(3) Subsection (2) does not apply in such cases as may be specified in regulations made under section 337.

(4) The applicant may withdraw the application by giving the GFSC written notice, at any time before the GFSC determines it.

Certificate of authorisation of a UCITS scheme.

302.(1) Where the GFSC authorises a UCITS scheme, it must issue a certificate of authorisation which–

(a) states the date on which the authorisation takes effect;

(b) states that the scheme is authorised as a UCITS scheme; and

(c) if the scheme is authorised as a feeder UCITS or an umbrella scheme, states that the scheme is so authorised.

(2) If the GFSC issues a certificate under subsection (2), it must give written notice of the certificate to the applicant.

(3) In this section–

"feeder UCITS" has the meaning given in Part 9 of the Financial Services (UCITS) Regulations 2020; and

"umbrella scheme" means a UCITS scheme under which the contributions of the participants and the profits or income out of which payments are to be made to them are pooled separately in relation to separate parts of the scheme property.

Procedure when refusing authorisation: UCITS schemes.

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303.(1) If the GFSC proposes to refuse an application for the authorisation of a UCITS scheme, it must give the applicant a warning notice.

(2) If the GFSC decides to refuse an application for the authorisation of a UCITS scheme, it must give the applicant a decision notice.

Application for revocation of authorisation

Application for revocation of authorisation.

304.(1) The GFSC may revoke the authorisation of a UCITS scheme under this Chapter if an application is made for the authorisation to be revoked.

(2) The application must–

(a) be made by such persons and in such manner as the GFSC may direct; and

(b) contain or be accompanied by such other information as the GFSC may reasonably require.

(3) The GFSC must give the applicant written notice if it grants an application under subsection (1).

(4) The GFSC may refuse an application under subsection (1) if it considers that–

(a) the public interest requires that any matter concerning the scheme should be investigated before a decision is taken as to whether the scheme's authorisation should be revoked; or

(b) revocation would not be in the interests of participants.

(5) If the GFSC proposes to refuse an application under subsection (1), it must give the applicant a warning notice.

(6) If the GFSC decides to refuse an application under subsection (1), it must give the applicant a decision notice.

Power to impose conditions

Power to impose conditions on authorised UCITS schemes.

305.(1) This section applies–

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(a) where the GFSC authorises a UCITS scheme; and

(b) at any time after the scheme has been authorised.

(2) The GFSC may–

(a) impose such conditions on the scheme's authorisation as the GFSC considers necessary for the protection of investors;

(b) vary any condition imposed; and

(c) revoke any condition imposed.

(3) A condition imposed under subsection (2) may, in particular–

(a) prohibit a scheme from–

(i) entering into transactions of any specified description or in specified circumstances or to a specified extent or with persons of a specified description;

(ii) soliciting participants of a specified description or in a specified place;

(iii) operating the scheme in a specified manner or otherwise than in a specified manner;

(iv) disposing of, or otherwise dealing with any, or with any specified, assets of the scheme in a specified manner or otherwise than in a specified manner;

(b) require a scheme to take all necessary steps to transfer to the custody of a person approved by the GFSC all, or any specified, property of the scheme;

(c) impose any prohibition or requirement within paragraph (a) or (b) on–

(i) the manager of the scheme; or

(ii) the scheme's depositary;

(iii) the scheme's trustee; or

(iv) any administrator or other person undertaking any function with respect to the scheme.

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(4) A prohibition or requirement within subsection (3) may relate to assets outside Gibraltar.

Imposition of conditions under section 305: procedure.

306.(1) The GFSC must give a warning notice if the GFSC proposes–

(a) to impose a condition under section 305(2)(a); or

(b) to vary a condition under section 305(2)(b).

(2) The GFSC must give a decision notice if it decides–

(a) to impose the condition;

(b) to vary the condition in the way proposed; or

(c) to vary the condition in a different way.

(3) If the GFSC proposes to revoke a condition under section 305(2)(c), it must give written notice.

(4) Any notice under this section must be given to–

(a) in the case of a common fund, the trustee;

(b) in the case of an open-ended investment company, the manager.

CHAPTER 4
AUTHORISATION OF NON-UCITS RETAIL SCHEMES

Applications for authorisation

Non-UCITS retail schemes: authorisation.

307. A collective investment scheme may be authorised by the GFSC under this Chapter as a non-UCITS retail scheme if the requirements of section 309 are met in relation to the scheme.

Application for authorisation of a non-UCITS retail scheme.

308.(1) Any application for authorisation of a non-UCITS retail scheme must be made to the GFSC–

(a) in the case of a common fund, by the manager and trustee (or the proposed manager and trustee) of the common fund; or

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(b) in the case of an open-ended investment company, by the manager and depositary (or the proposed manager and depositary) of the open-ended investment company.

(2) The application must–

(a) be made in such manner as the GFSC may direct; and

(b) contain or be accompanied by such other information as the GFSC may reasonably require.

(3) At any time after the application is received and before it is determined, the GFSC may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) The GFSC may require applicants to provide information which the applicant is required to provide to it under this section in such form, or to verify it in such a way, as the GFSC may direct.

Authorisation of a non-UCITS retail scheme.

309.(1) A collective investment scheme may be authorised as a non-UCITS retail scheme if the GFSC is satisfied that it meets, and will continue to meet, the requirements of–

(a) this section; and

(b) regulations made under section 337 which apply to non-UCITS retail schemes.

(2) A non-UCITS retail scheme may be–

(a) a common fund; or

(b) an open-ended investment company incorporated under the Companies Act 2014.

(3) The GFSC may authorise a non-UCITS retail scheme only if the GFSC–

(a) has approved the constituting instrument of the scheme (whether it is a trust deed or binding agreement made between the manager and trustee of a common fund or is an instrument of incorporation of an open-ended investment company);

(b) in the case of a common fund, is satisfied that both the manager and trustee are fit and proper to act as such; and

(c) in the case of an open-ended investment company, is satisfied that–

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(i) the company's registered office is situated in Gibraltar; and

(ii) the manager, the depositary and each director is fit and proper to act as such.

(4) The constituting instrument of an authorised non-UCITS retail scheme must not contain any provision that–

(a) conflicts with the requirements of or made under this Act;

(b) prevents the units of the scheme being marketed in Gibraltar; or

(c) is unfairly prejudicial to the unitholders of any class of units.

(5) The trustee of an authorised non-UCITS retail scheme which is a common fund must–

(a) be independent of the manager;

(b) have permission under Part 7 to carry on the regulated activity of acting as depositary of an AIF;

(c) be a body corporate incorporated in Gibraltar;

(d) have a place of business in Gibraltar, except to the extent that regulations under section 337 provide otherwise; and

(e) have their business and affairs administered in the jurisdiction in which the trustee is incorporated.

(6) The depositary of an authorised non-UCITS retail scheme which is an open-ended investment company must–

(a) be a body corporate incorporated in Gibraltar;

(b) have a place of business in Gibraltar, except to the extent that regulations under section 337 provide otherwise;

(c) have permission under Part 7 to carry on the regulated activity of acting as depositary of an AIF; and

(d) have their business and affairs administered in the jurisdiction in which the depositary is incorporated.

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(7) In considering whether to authorise a non-UCITS retail scheme, the GFSC must have regard to the need to protect the public against financial loss and the reputation of Gibraltar and must consider, in particular–

(a) the general nature and specific attributes of the scheme to which the application relates and whether the purposes of the scheme are reasonably capable of being successfully carried into effect;

(b) the manner in which it is proposed to organise the operation of the scheme to which the application relates, the number of persons who will be responsible for carrying on each aspect of the operation of the scheme and the experience of and the relationship between the persons who will be so responsible;

(c) the adequacy of the systems of control and record keeping, having regard to the nature of the proposed scheme;

(d) whether the name of the scheme is undesirable or misleading;

(e) any written representations received from any member of the public in response to and within three weeks of the advertisement of the application for authorisation; and

(f) any other factors which the GFSC considers appropriate.

(8) *Omitted*.

(9) An authorised non-UCITS retail scheme which is an open-ended investment company is authorised to carry on, so far as it is a regulated activity–

(a) the operation of the scheme; and

(b) any activity in connection with, or for the purposes of, the operation of the scheme.

Determination of application: non-UCITS retail schemes.

310.(1) "The applicant" means an applicant for authorisation under section 308.

(2) An application for the authorisation of a non-UCITS retail scheme must be determined by the GFSC before the end of the period of six months beginning with the date on which the GFSC receives the completed application.

(3) The GFSC may determine an incomplete application if it considers it appropriate to do so; and, if it does, it must determine the application within 12 months beginning with the date on which it first received the application.

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(4) The applicant may withdraw the application by giving the GFSC written notice, at any time before the GFSC determines it.

Certificate of authorisation of a non-UCITS retail scheme.

311.(1) Where the GFSC authorises a non-UCITS retail scheme, it must issue a certificate of authorisation which–

(a) states the date on which the authorisation takes effect;

(b) states that the scheme is authorised as a non-UCITS retail scheme; and

(c) if the scheme is authorised as a feeder fund or an umbrella fund, states that the scheme is so authorised.

(2) If the GFSC issues a certificate under subsection (1), it must give written notice of the certificate to the applicant.

Procedure when refusing authorisation: non-UCITS retail schemes.

312.(1) If the GFSC proposes to refuse an application for the authorisation of a collective investment scheme as a non-UCITS retail fund, it must give each of the applicants a warning notice.

(2) If the GFSC decides to refuse an application for the authorisation of a non-UCITS retail fund, it must give each of the applicants a decision notice.

Application for revocation of authorisation

Application for revocation of authorisation.

313.(1) The GFSC may revoke the authorisation of a non-UCITS retail scheme under this Chapter if an application is made for the authorisation to be revoked.

(2) The application must–

(a) be made by such persons and in such manner as the GFSC may direct; and

(b) contain or be accompanied by such other information as the GFSC may reasonably require.

(3) The GFSC must give the applicant written notice if it grants an application under subsection (1).

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(4) The GFSC may refuse an application under subsection (1) if it considers that–

(a) the public interest requires that any matter concerning the scheme should be investigated before a decision is taken as to whether the scheme's authorisation should be revoked; or

(b) revocation would not be in the interests of participants.

(5) If the GFSC proposes to refuse an application under subsection (1), it must give the applicant a warning notice.

(6) If the GFSC decides to refuse an application for the authorisation of a non-UCITS retail scheme it must give the applicant a decision notice.

Power to impose conditions

Power to impose conditions on authorised non-UCITS retail schemes.

314.(1) This section applies–

(a) where the GFSC authorises a non-UCITS retail scheme; and

(b) at any time after the scheme has been authorised.

(2) The GFSC may–

(a) impose such conditions on the scheme's authorisation as the GFSC considers necessary for the protection of investors;

(b) vary any condition imposed; and

(c) revoke any condition imposed.

(3) A condition imposed under subsection (2) may, in particular–

(a) prohibit a scheme from–

(i) entering into transactions of any specified description or in specified circumstances or to a specified extent or with persons of a specified description;

(ii) soliciting participants of a specified description or in a specified place;

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(iii) operating the scheme in a specified manner or otherwise than in a specified manner;

(iv) disposing of, or otherwise dealing with any, or with any specified, assets of the scheme in a specified manner or otherwise than in a specified manner;

(b) require a scheme to take all necessary steps to transfer to the custody of a person approved by the GFSC all, or any specified, property of the scheme;

(c) impose any prohibition or requirement within paragraph (a) or (b) on–

(i) the manager of the scheme; or

(ii) the scheme's depositary;

(iii) the scheme's trustee; or

(iv) any administrator or other person undertaking any function with respect to the scheme.

(4) A prohibition or requirement within subsection (3) may relate to assets outside Gibraltar.

Imposition of conditions under section 314: procedure.

315.(1) The GFSC must give a warning notice if the GFSC proposes–

(a) to impose a condition under section 314(2)(a); or

(b) to vary a condition under section 314(2)(b).

(2) The GFSC must give a decision notice if it decides–

(a) to impose the condition;

(b) to vary the condition in the way proposed; or

(c) to vary the condition in a different way.

(3) If the GFSC proposes to revoke a condition under section 314(2)(c), it must give written notice.

(4) Any notice under this section must be given to–

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(a) in the case of a common fund, the trustee; or

(b) in the case of an open-ended investment company, the manager.

CHAPTER 5
RECOGNITION OF FOREIGN SCHEMES

Recognised schemes.

316. A collective investment scheme managed in a jurisdiction outside Gibraltar may be recognised by the GFSC under this Chapter if the requirements of section 318 are met in relation to the scheme.

Application for recognition of a foreign scheme.

317.(1) Any application for the recognition of a foreign scheme must be made to the GFSC by the operator of the scheme.

(2) The application must–

(a) be made in such manner as the GFSC may direct; and

(b) contain or be accompanied by such other information as the GFSC may reasonably require.

(3) At any time after the application is received and before it is determined, the GFSC may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) The GFSC may require applicants to provide information which the applicant is required to provide to it under this section in such form, or to verify it in such a way, as the GFSC may direct.

Recognition of a foreign scheme.

318.(1) The GFSC may grant an application to recognise a foreign scheme if the GFSC is satisfied that–

(a) the scheme complies with the requirements of any provision contained in or made under this Part with respect to recognition under this Chapter;

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(b) on being recognised, the scheme will, and will continue to, comply with the requirements of any provision contained in or made under this Part which is applicable to schemes recognised under this Chapter;

(c) the scheme is subject to an authorisation and supervisory regime in the jurisdiction in which it is constituted which the GFSC considers provides participants in Gibraltar with protection at least equivalent to the protection provided under this Part for comparable authorised schemes;

(d) adequate arrangements exist, or will exist, for co-operation between the GFSC and the authorities of the country or territory responsible for the authorisation and supervision of the scheme; and

(e) the scheme is being operated and managed in compliance with the authorisation and supervisory regime to which it is subject.

(2) The GFSC may, by notice published in the prescribed manner, designate jurisdictions–

(a) which, in respect of the classes of scheme specified in the notice, have an authorisation and supervisory regime which the GFSC considers provides participants in Gibraltar with protection at least equivalent to the protection provided under this Part; and

(b) in relation to which adequate arrangements exist for co-operation between the GFSC and the authorities of that jurisdiction responsible for the authorisation and supervision of the classes of schemes specified in the notice.

(3) Subsection (1)(c) and (d) are to be treated as satisfied with respect to a scheme where–

(a) a scheme is constituted in a jurisdiction designated under subsection (2); and

(b) the scheme is of a class specified in the designation.

Determination of application: foreign schemes.

319.(1) "The applicant" means an applicant for recognition of a foreign scheme under section 317.

(2) An application for the recognition of a foreign scheme must be determined by the GFSC before the end of the period of six months starting with the date on which the GFSC receives the completed application.

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(3) The GFSC may determine an incomplete application if it considers it appropriate to do so; and, if it does, it must determine the application within 12 months beginning with the date on which it first received the application.

(4) An applicant may withdraw the application by giving the GFSC written notice, at any time before the GFSC determines it.

(5) The GFSC must give the applicant written notice if it grants the application.

(6) The notice must state the date from which the recognition has effect.

Procedure when refusing an application for recognition.

320.(1) If the GFSC proposes to refuse an application for the recognition of a foreign scheme, it must give the applicant a warning notice.

(2) If the GFSC decides to refuse an application for recognition of a foreign scheme, it must give the applicant a decision notice.

Application for revocation of recognition.

321.(1) The GFSC may revoke a scheme's recognition under this Chapter if an application is made for the authorisation to be revoked.

(2) The application must–

(a) be made by such persons and in such manner as the GFSC may direct; and

(b) contain or be accompanied by such other information as the GFSC may reasonably require.

(3) The GFSC must give the applicant written notice if it grants an application under subsection (1).

CHAPTER 6
Omitted

322. *Omitted*.

323. *Omitted*.

324. *Omitted*.

CHAPTER 7

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REGULATORY POWERS

Intervention

Intervention powers.

325.(1) The GFSC may exercise the following powers against or with respect to collective investment schemes—

(a) to revoke a scheme's authorisation or recognition (see section 327);

(b) to suspend a scheme's authorisation or recognition (see section 327);

(c) to apply to the Court for a protection order in relation to a scheme (see section 328);

(d) to issue directions to or with respect to a scheme (see section 329);

(e) to appoint an examiner to conduct an investigation into the affairs of a scheme or persons connected with it (see section 331);

(f) to publish a statement about–

(i) any steps taken in connection with a scheme in exercise of a power listed in paragraphs (a) to (e); or

(ii) the operation or promotion of a scheme in contravention of this Act (see section 325).

(2) The power specified in each section referred to in subsections (1)(a) to (f) is exercisable–

(a) in relation to the descriptions of collective investment schemes to which that section applies; and

(b) on the grounds specified in that section (which include those specified in section 326(2)).

Certain grounds for intervention.

326.(1) If, in the GFSC's opinion, any of Grounds 1 to 8 apply–

(a) the powers listed in section 325(1)(a) to (f) are exercisable against or with respect to–

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(i) UCITS schemes authorised under Chapter 3;

(ii) non-UCITS retail schemes authorised under Chapter 4;

(iii) foreign schemes recognised under Chapter 5; or

(iv) experienced investor funds authorised in accordance with regulations made under section 339; and

(b) the powers listed in section 325(1)(c) to (f) are also exercisable against or with respect to any entity which qualifies to become an experienced investor fund in accordance with regulations made under section 339.

(2) The Grounds are–

GROUND 1

Any person specified in subsection (3) in relation to the scheme–

(a) has contravened or is in contravention of this Act or any applicable regulations;

(b) has contravened or is in contravention of any provision relating to money laundering or the combating of the financing of terrorism;

(c) has failed to comply with a direction given to the scheme or the person by the GFSC; or

(d) has provided the GFSC with any false, inaccurate or misleading information, whether on making any application to the GFSC or subsequent to the grant of any application.

GROUND 2

The scheme is operating or being operated–

(a) in a manner detrimental to the public interest or to the interest of any of its participants or potential participants; or

(b) in breach of any term or condition of its authorisation or recognition.

GROUND 3

Any person specified in subsection (3) in relation to the scheme is not a fit and proper person to act in that capacity with respect to the scheme.

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GROUND 4

The scheme–

(a) is or is likely to become insolvent;

(b) is compulsorily wound up, passes a resolution for voluntary winding up or is dissolved; or

(c) has a receiver appointed in respect of any of its property.

GROUND 5

In the case of a foreign scheme recognised under Chapter 5, one or more of the requirements for recognition are no longer satisfied.

GROUND 6

In the case of an authorised experienced investor fund, one or more of the requirements for authorisation of an experienced investor fund are no longer satisfied.

GROUND 7

Any fee or penalty payable by or with respect to the scheme by virtue of this Act or any other enactment has not been paid.

GROUND 8

The GFSC is entitled to exercise an intervention power under a provision in another enactment.

(3) The specified persons, in relation to any scheme within subsection (1) are–

(a) the scheme operator;

(b) the scheme manager;

(c) the scheme administrator;

(d) a scheme trustee;

(e) a scheme depositary;

(f) any other person undertaking any function with respect to the scheme;

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(g) if the scheme is a body corporate–

(i) the scheme itself; or

(ii) any of its directors.

(4) For the purposes of this Chapter, the protection of the reputation of Gibraltar as a financial services centre is in the public interest.

Suspension or revocation of authorisation or recognition.

327.(1) This section applies to–

(a) any UCITS scheme authorised under Chapter 3;

(b) any non-UCITS retail scheme authorised under Chapter 4;

(c) any foreign scheme recognised under Chapter 5; or

(d) any experienced investor fund authorised in accordance with regulations made under section 339.

(2) The GFSC may–

(a) suspend the authorisation or recognition of a scheme listed in subsection (1); or

(b) revoke the authorisation or recognition of any such scheme.

(3) The power in subsection (2) may be exercised–

(a) on any ground specified in section 326(2);

(b) if it appears to the GFSC that a scheme listed in subsection (1)(a), (b) or (d)–

(i) has not commenced operation within six months of the date of its authorisation; or

(ii) has failed, during a period of at least 12 months, to operate as a collective investment scheme; or

(c) in the case of a scheme listed in subsection (1)(c), if it appears to the GFSC that it is not in the interests of the participants or potential participants that the scheme should continue to be recognised.

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(4) The suspension of a scheme's authorisation or recognition may be–

(a) for a period specified in the notice;

(b) until the occurrence of a specified event; or

(c) until specified conditions are complied with.

(5) If the GFSC proposes to suspend or revoke a scheme's authorisation or recognition, it must give a warning notice to the scheme and to the manager, administrator, trustee or depositary of the scheme.

(6) If the GFSC decides to suspend or revoke a scheme's authorisation or recognition, it must give a decision notice to the scheme and to the manager, administrator, trustee or depositary of the scheme.

(7) Subsection (5) does not apply if the GFSC proposes to suspend a scheme's approval under paragraph (a) of Ground 1 specified in section 326(2) and it is satisfied that–

(a) there is an immediate risk of substantial damage to–

(i) the interests of consumers;

(ii) the public interest; or

(iii) the reputation of Gibraltar; and

(b) the exercise of the power to suspend the scheme's approval with immediate effect is–

(i) to a material extent, likely to avoid the occurrence or reduce the extent of that damage; and

(ii) proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the person concerned that may result from that direction.

(8) A decision notice suspending a scheme's approval under paragraph (a) of Ground 1 specified in section 326(2) takes effect–

(a) in respect of any decision to which subsection (7) applies, immediately or on the date specified in the notice;

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(b) in any other case, at the end of the period within which an appeal may be made or, if an appeal is made, when the appeal is determined or withdrawn.

(9) The GFSC must not revoke the authorisation of a scheme which is a body corporate unless the GFSC is satisfied that all necessary and appropriate steps have been taken to secure the winding up of that body corporate.

Protection order.

328.(1) This section applies to–

(a) any UCITS scheme authorised under Chapter 3;

(b) any non-UCITS retail scheme authorised under Chapter 4;

(c) any foreign scheme recognised under Chapter 5;

(d) any experienced investor fund authorised in accordance with regulations made under section 339;

(e) any entity which qualifies to become an experienced investor fund in accordance with such regulations;

(f) any private scheme which is promoted in accordance with, and as permitted by, section 293(4)(b); or

(g) any other description of collective investment scheme operating in or from Gibraltar.

(2) The GFSC may apply to the Court for a protection order with respect to a scheme listed in subsection (1).

(3) The power in subsection (2) may be exercised–

(a) in the case of any scheme listed in subsection (1)(a) to (e), on any ground specified in section 326(2);

(b) in the case of any scheme listed subsection (1)(a) to (g), if the GFSC considers that it is desirable for a protection order to be made to protect the interests of participants or potential participants of the scheme or to protect the public interest.

(4) An application under subsection (1) may be made–

(a) on an ex-parte basis or on such notice as the Court may require; and

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(b) before the GFSC has given notice of intention to revoke an authorisation or recognition.

(5) On an application made under subsection (1), the Court may make such order as it considers necessary–

(a) to protect or preserve the business or property of the scheme; or

(b) to protect the interests of its participants or potential participants or to protect the public interest.

(6) An order under subsection (5) may, in particular–

(a) prevent any person from transferring, disposing of or otherwise dealing with any scheme property in the person's custody or control;

(b) remove any director of the scheme or the operator, manager, administrator, depositary, or any other person undertaking any function with respect to the scheme and replace that person with a person nominated by the GFSC; and

(c) appoint an administrator to take over and manage the scheme.

(7) An order which appoints an administrator–

(a) must specify the powers of the administrator (which may include the powers of a person with permission to carry on a regulated activity of a kind specified in Chapter 2 of Part 11 of Schedule 2 or of a liquidator under the Companies Act 2014);

(b) must make provision for reports to be submitted by the administrator to the Court and to the GFSC; and

(c) may, in particular–

(i) require the administrator to provide security to the satisfaction of the Court;

(ii) fix and provide for the remuneration of the administrator;

(iii) require such persons as the Court considers necessary to appear before it for the purposes of giving information or producing records concerning the scheme.

(8) The Court may–

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(a) rescind or vary an order made under subsection (5);

(b) give directions to an administrator ("A") concerning the exercise of the administrator's powers;

(c) vary A's powers;

(d) terminate A's appointment as an administrator.

(9) The Court may exercise the power conferred by subsection (8)–

(a) on its own motion;

(b) on the application of the GFSC; or

(c) if an administrator has been appointed, on the application of the administrator.

Directions.

329.(1) This section applies to–

(a) any UCITS scheme authorised under Chapter 3;

(b) any non-UCITS retail scheme authorised under Chapter 4;

(c) any foreign scheme recognised under Chapter 5;

(d) any experienced investor fund authorised in accordance with regulations made under section 339; or

(e) any entity which qualifies to become an experienced investor fund in accordance with such regulations.

(2) The GFSC may issue a direction in writing to or with respect to a scheme listed in subsection (1).

(3) The power in subsection (2) may be exercised–

(a) on any ground specified in section 326(2); or

(b) if the GFSC considers that it is desirable for a direction to be issued to protect the interests of participants or potential participants of the scheme or to protect the public interest.

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(4) A direction under subsection (2) may–

(a) impose a prohibition, restriction or limitation on a scheme, including a prohibition on the issue or redemption, or on both the issue and redemption, of units under the scheme;

(b) require that any director of the scheme, manager, administrator, depositary, key employee or any other person undertaking any function with respect to the scheme be removed and replaced by another person acceptable to the GFSC;

(c) if the scheme is a body corporate, require one of its directors to present a petition to the Court for the winding up of the body or require that its affairs be wound up otherwise than by the Court;

(d) require that such other action be taken with respect to the scheme as the GFSC considers to be necessary to protect the scheme property or to protect participants or potential participants of the scheme (including that the scheme be wound up).

(5) A direction under subsection (2) takes effect from the date of the direction or such later date as may be specified in the direction.

(6) The revocation under section 327 of a scheme's authorisation or recognition does not affect any direction under this section which is then in force.

(7) A direction may be issued under subsection (2) in relation to a scheme whose authorisation or recognition has been revoked if a direction was already in force at the time of revocation.

(8) The GFSC may at any time revoke or vary a direction issued under subsection (2).

Directions: procedure.

330.(1) If the GFSC proposes to give a direction under section 329(2), it must give a warning notice to the scheme and to the manager, administrator, trustee or depositary of the scheme.

(2) If the GFSC decides to give a direction under section 329(2), it must give a decision notice to both the scheme and to the manager, administrator, trustee or depositary of the scheme.

(3) Subsection (1) does not apply if the GFSC is satisfied that–

(a) there is an immediate risk of substantial damage to–

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(i) the interests of consumers;

(ii) the public interest; or

(iii) the reputation of Gibraltar; and

(b) the exercise of the power to give a direction with immediate effect is–

(i) to a material extent, likely to avoid the occurrence or reduce the extent of that damage; and

(ii) proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the person concerned that may result from that direction.

(4) A decision notice takes effect–

(a) in respect of any decision to which subsection (3) applies, immediately or on the date specified in the notice;

(b) in any other case, at the end of the period within which an appeal may be made or, if an appeal is made, when the appeal is determined or withdrawn.

Appointment of examiner.

331.(1) This section applies to—

(a) any UCITS scheme authorised under Chapter 3;

(b) any non-UCITS retail scheme authorised under Chapter 4;

(c) any foreign scheme recognised under Chapter 5, so far as relating to activities carried on in or from Gibraltar;

(d) any experienced investor fund authorised in accordance with regulations made under section 339;

(e) any entity which qualifies to become an experienced investor fund in accordance with such regulations;

(f) any private scheme which is promoted in accordance with, and as permitted by section 293(4)(b); or

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(g) any other description of collective investment scheme operating in or from Gibraltar.

(2) In relation to a scheme listed in subsection (1), the GFSC may appoint one or more competent persons as examiners to conduct an investigation on the GFSC's behalf into the affairs of the scheme or the affairs of—

(a) the scheme operator;

(b) the scheme manager;

(c) the scheme administrator;

(d) a scheme trustee;

(e) a scheme depositary;

(f) a director of the scheme; or

(g) any other person undertaking any function with respect to the scheme.

(3) The power in subsection (2) may be exercised—

(a) in the case of a scheme listed in subsection (1)(a) to (e), on any ground specified in section 326(2);

(b) if the G FSC has suspended or revoked the authorisation or recognition of a scheme listed in subsection (1)(a) to (d); or

(c) in the case of any scheme listed in subsection (1), the GFSC considers that it is desirable for an investigation to be conducted to protect the interests of participants or potential participants of the scheme or to protect the public interest.

(4) If an examiner appointed under subsection (2) considers it necessary for the purposes of the investigation, the examiner may also investigate the business of any person who is, or at any relevant time has been a person listed in subsection (2)(b) to (g).

Public statements.

332.(1) The GFSC may issue a public statement specifying–

(a) any steps that it has taken, or proposes to take, under sections 327 to 331; and

(b) its reasons for doing so.

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(2) The GFSC may, if it considers it is in the public interest to do so, issue a public statement relating to a person who is promoting or operating a collective investment scheme in contravention of this Act.

(3) The public statement may be in whatever form the GFSC thinks fit.

(4) Before exercising the power in subsection (1) or (2), the GFSC must give written notice to the scheme concerned and to any person to whom a public statement under subsection (2) will relate.

(5) A notice under subsection (4) must–

(a) specify the GFSC's reasons for the issue of the statement; and

(b) be given at least seven days before the statement is issued.

(6) On application by the GFSC, the Supreme Court may disapply subsection (4) or order a reduction in the period of notice required by subsection (5)(b) if the court is satisfied that—

(a) it is in the public interest to do so; or

(b) it is in the interests of any of the participants or creditors of a scheme to do so.

(7) An application under subsection (6) may be made on an ex-parte basis or on such notice as the court may require.

Sanctions

Sanctions: general.

333.(1) The following provisions of this Chapter apply to—

(a) the following schemes–

(i) a UCITS scheme authorised under Chapter 3;

(ii) a non-UCITS retail scheme authorised under Chapter 4;

(iii) a foreign scheme recognised under Chapter 5; and

(iv) an experienced investor fund authorised in accordance with regulations made under section 339: and

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(b) a person ("P") acting in relation to any such scheme as–

(i) a scheme operator;

(ii) a scheme manager;

(iii) a scheme administrator;

(iv) a scheme trustee;

(v) a scheme depositary;

(vi) a director of the scheme; or

(vii) a person undertaking any other function with respect to the scheme,

(2) The GFSC may take one or more of the steps specified in sections 153, 154, 334 and 335 ("relevant sanctioning action") against a scheme or P if it is satisfied that the scheme or P has contravened a requirement specified in subsection (4).

(3) The GFSC may take one or more relevant sanctioning actions against P in respect of a contravention by a scheme of a requirement specified in subsection (4) if it is satisfied that–

(a) P contravened the requirement or was knowingly concerned in that contravention; and

(b) at the time of the contravention, P was acting in the capacity described in subsection (1)(b).

(4) The specified requirements are any obligation imposed on a scheme or P–

(a) as a condition of being an authorised or recognised scheme within subsection (1)(a);

(b) under this Act or any regulations made under it;

(c) by the GFSC in exercise of the functions conferred on it by or under this Act.

(5) Nothing in this section prevents the GFSC from taking any other steps which it has power to take under this Act.

(6) Sections 158 to 162 apply to the exercise of any relevant sanctioning action.

Administrative penalties.

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334.(1) The GFSC may impose an administrative penalty in accordance with section 152 and subsections (2) and (3).

(2) In the case of a UCITS scheme authorised under Chapter 3, the administrative penalty must be of an amount which does not exceed the higher of the following–

(a) where the amount of the benefit derived as a result of the contravention can be determined, two times the amount of that benefit;

(b) in the case of a legal person–

(i) EUR 5,000,000 (or the Sterling equivalent); or

(ii) 10% of the total annual turnover according to the last available annual accounts approved by its management body;

(c) in the case of a natural person, EUR 5,000,000 (or the Sterling equivalent).

(3) In the case of any other scheme listed in section 333(1)(ii) to (iv), the administrative penalty must be of an amount which does not exceed the higher of the following–

(a) where the amount of the benefit derived or loss avoided as a result of the contravention can be determined, twice the amount of that benefit;

(b) in the case of a legal person, £250,000;

(c) in the case of a natural person, £125,000.

(4) The "Sterling equivalent" means an equivalent amount in Sterling based on the exchange rate on 17 September 2014

(5) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Part 7 of the Companies Act 2014, the relevant total turnover for the purpose of subsection (2)(b)(ii) is the total annual turnover (or the corresponding type of income) according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

(6) Section 161 applies to the enforcement of an administrative penalty imposed under this section.

Prohibition order.

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335.(1) The GFSC may issue a prohibition order against any person listed in section 333(1)(b) who is an individual.

(2) A prohibition order prohibits the person from–

(a) exercising, in relation to schemes within section 333(1)(a), the functions of a person listed in 333(1)(b);

(b) exercising relevant functions (within the meaning of Part 26) in relation to IORPs;

(c) exercising relevant functions (within the meaning of Part 27) in relation to approved personal pension schemes;

(d) exercising regulated functions (within the meaning of section 86).

(3) The prohibition order must specify the period during which it has effect.

(4) The prohibition order must specify–

(a) the descriptions of functions to which it applies; or

(b) that it applies in respect of all of the functions listed in subsection (2).

(5) If the prohibition order is in response to repeated contraventions, it may have effect for an indefinite period.

CHAPTER 8
MISCELLANEOUS

Publication of information in connection with UCITS schemes.

336. The GFSC must ensure that–

(a) complete information on the laws, regulations and administrative provisions which relate to the constitution and functioning of UCITS schemes are easily accessible at a distance or by electronic means;

(b) such information is available in the English language and is provided in a clear and unambiguous manner and is kept up to date.

Regulations for schemes authorised under Chapter 3 or 4.

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337.(1) The Minister may make regulations which apply to schemes which are authorised or are seeking authorisation under Chapter 3 or 4.

(2) Regulations under subsection (1) may contain provision as to, in particular–

(a) the form, content, issuance and validity of, authorisations granted under this Part;

(b) the constituting instrument, constitution, management, operation, winding up and dissolution of authorised schemes;

(c) the matters to be contained in the constituting instrument of authorised schemes, including rules incorporating into the constituting instrument provisions overriding its express terms and rendering those terms void to the extent of any inconsistency with any overriding provisions incorporated;

(d) the constitution, powers, duties, rights and liabilities of operators, managers, directors, trustees and depositaries of authorised schemes;

(e) the rights and obligations of the participants in an authorised scheme;

(f) the publication of such particulars as regards authorised schemes as may be specified;

(g) restrictions on the names that may be used by authorised schemes;

(h) the issue and redemption of the units in authorised schemes;

(i) the expenses of authorised schemes and the means of meeting them;

(j) the appointment, removal, powers and duties of auditors of authorised schemes;

(k) the restriction or regulation of the investment and borrowing powers exercisable in relation to authorised schemes;

(l) the keeping of records with respect to the transactions and financial position of authorised schemes and for the inspection of those records;

(m) the preparation of periodical reports with respect to authorised schemes and the provision of those reports to the participants and to the GFSC;

(n) the preparation, publication and submission to the GFSC of the particulars of authorised schemes;

(o) the amendment of authorised schemes;

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(p) the application (with or without modification) in relation to authorised schemes of such provisions of or made under this Act as may be specified in the regulations.

(3) Regulations under subsection (1) containing such provision as is referred to in subsection (2)(b) to (e)–

(a) are binding on the manager, directors, trustee, depositary and participants of an authorised scheme independently of the contents of the constituting instrument of the scheme; and

(b) in the case of the participants, have effect as if contained in it.

(4) Regulations under subsection (1) may make different provision for–

(a) UCITS schemes; and

(b) non-UCITS retail schemes; and

(c) different classes and kinds of authorised scheme.

Regulations for schemes recognised under Chapter 5.

338.(1) The Minister may make regulations which apply to schemes which are recognised or are seeking recognition under Chapter 5.

(2) Regulations under subsection (1) may contain provision as to, in particular–

(a) the procedure for making an application to become a scheme recognised under Chapter 5;

(b) the submission to the GFSC and the publication of such particulars as regards recognised schemes as may be prescribed;

(c) the notifications to be provided to the GFSC with respect to recognised schemes, including as to the amendment of the constituting instruments of a scheme and changes of the operator, manager, trustee or depositary of a recognised scheme; and

(d) in relation to recognised schemes, the maintenance in Gibraltar of deposits, property and facilities.

Regulations for experienced investor funds.

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339.(1) The Minister may make regulations which permit the establishment of experienced investor funds.

(2) Regulations under subsection (1) may, in particular, provide for–

(a) the circumstances in which an experienced investor fund may be formed without the prior authorisation of the GFSC;

(b) the circumstances in which an experienced investor fund may be established only with the prior authorisation of the GFSC and applications for such authorisation;

(c) the management, control and administration of experienced investor funds;

(d) the arrangements for safekeeping of the assets of experienced investor funds;

(e) names that may be used by experienced investor funds;

(f) the issuance by experienced investor funds of an offer document and the information, explanations and other matters to be contained in the offer document;

(g) the returns to be filed with the GFSC by and in respect of, an experienced investors fund;

(h) the fees payable by and in respect of experienced investor funds; and

(i) the application (with or without modification) in relation to experienced investor funds of such provisions of or made under this Act as may be specified in the regulations.

(3) Regulations under subsection (1) may provide for offences and penalties for any prohibition or contravention or failure to comply with a requirement prescribed in the regulations.

Other regulations.

340.(1) The Minister may make regulations generally for giving effect to this Part and specifically in respect of anything required or permitted to be prescribed by this Act in respect of collective investment schemes.

(2) Regulations under subsection (1) may provide for offences and penalties for any prohibition or contravention or failure to comply with a requirement specified in the regulations.

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(3) Regulations under subsection (1) do not apply to an experienced investor fund except to the extent specified in the regulations made under section 339.

Codes of practice and guidance notes.

341.(1) The GFSC may issue codes of practice and guidance notes with respect to the operation of collective investment schemes.

(2) A code of practice or guidance note under subsection (1) may provide for, in particular–

(a) meetings of unit holders, including class meetings, and the serving of notices, including but not limited to–

(i) the convening and requisitioning of meetings of unit holders;

(ii) the giving and service of notices of meetings of unit holders;

(iii) proceedings at a meeting of unit holders, including the quorum, voting rights, the passing of resolutions, polls, proxies and adjournments;

(iv) the appointment of a chairman;

(v) minutes of meetings; and

(vi) the notice to be given of meetings;

(b) reports to be provided to unit holders;

(c) the investment and borrowing powers of authorised funds;

(d) the duties and responsibilities of the manager of an authorised scheme;

(e) the duties and responsibilities of the depositary of an authorised scheme;

(f) the issue, sale, redemption and cancellation of units;

(g) the valuation of scheme property and the calculation of the price of units, including the treatment of dealing costs;

(h) the records to be maintained with respect to an authorised scheme, including registers of unit holders;

(i) the appointment and replacement of managers and depositaries;

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(j) the powers and duties of managers and depositaries;

(k) payments out of scheme property;

(l) accounting for, allocating and distributing the income of an authorised scheme;

(m) the independence of depositaries and managers;

(n) restrictions on the names that may be used by collective investment schemes; or

(o) returns to be made, and information supplied, to the GFSC.

(3) The GFSC must obtain the consent of the Minister before issuing or amending any code of practice.

(4) Guidance notes issued under subsection (1) may cover the factors that the GFSC will take into account in determining whether a person is fit and proper for the purposes of this Part.

(5) Codes of practice or guidance notes issued under subsection (1) may make different provision in relation to different persons, circumstances or cases.

(6) The GFSC must publish in the prescribed manner–

(a) any code of practice or guidance note issued under this section; and

(b) any amendments to each of them.

(7) Regulations made under this Part may specify matters which are or may be provided for in codes of practice and guidance notes issued under subsection (1).

PART 19
LISTING AND PROSPECTUSES

CHAPTER 1
PRELIMINARY

Overview.

342. This Part establishes requirements for–

(a) the admission of securities to trading on a regulated market;

(b) the disclosure of information about issuers of traded securities; and

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(c) the publication of prospectuses when securities are admitted to trading or offered to the public.

CHAPTER 2
LISTING OF SECURITIES

Official Listing Rules.

343.(1) The Minister may make rules ("Official Listing Rules") on–

(a) the admission of securities to listing on any stock exchange in Gibraltar; and

(b) the information to be published with respect to those securities and the bodies by whom they are issued.

(2) Official Listing Rules may incorporate any provision that the Minister considers appropriate relating to the listing of securities and the obligations of issuers of listed securities.

(3) Official Listing Rules may–

(a) impose obligations and grant discretions on the Listing Authority; and

(b) make provision for persons to pay compensation in respect of statements made for the purposes of the Rules which are untrue or misleading.

(4) In this Chapter "the Listing Authority" means the GFSC or any other person that the Minister may, by order, designate as the listing authority.

(5) A person who, for the purpose of, or in connection with, any requirement made by or under Official Listing Rules makes any statement which is false in a material particular commits an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

CHAPTER 3
PROSPECTUSES

Interpretation

Interpretation of Chapter 3.

344.(1) In this Chapter–

"issuer" means a legal entity which issues or proposes to issue securities;

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"market operator" has the meaning given in paragraph 1 of Schedule 2;

"offeror" means a legal entity or individual which offers securities to the public;

"relevant financial intermediary" means a financial intermediary commissioned by a relevant person to carry out an offer of securities to the public or seek admission to trading on a regulated market;

"relevant person" means the relevant issuer, offeror or person seeking admission to trading on a regulated market; and

"securities" means transferable securities within the meaning of paragraph 44 of Schedule 2 other than money market instruments within the meaning of that paragraph having a maturity of less than 12 months.

(2) Other expressions used in this Chapter that are also used in the Prospectus Regulation are to be construed in accordance with that Regulation.

(3) In this Chapter a monetary amount expressed in euro may be treated as a reference to the corresponding value in Sterling on 20th July 2017.

Prospectus Rules

Prospectus Rules.

345.(1) The Minister may make rules ("Prospectus Rules") in relation to the publication of prospectuses when securities are offered to the public or admitted to trading on a regulated market.

(2) Prospectus Rules may, in particular, incorporate provisions that supplement the Prospectus Regulation.

(3) Prospectus Rules may, in particular, make provision–

(a) for the form and content of a prospectus (including a summary);

(b) for the period of validity of a prospectus;

(c) where the final offer price or the amount of securities to be offered to the public is not included in the prospectus, for disclosing the maximum price or the criteria or conditions according to which these matters are to be determined;

(d) for the form and content of other summary documents relating to a prospectus;

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(e) for cases where a summary need not be included in a prospectus;

(f) for making public a prospectus once it has been approved;

(g) for the disclosure of any information that the GFSC may reasonably require;

(h) for the languages in which a prospectus (including a summary) and other summary documents are to be written;

(i) for attaching conditions to the approval of a prospectus which has been approved outside Gibraltar; and

(j) for advertisements relating to an offer of securities to the public or admission of securities to trading on a regulated market.

346. *Omitted*.

Prospectuses

Obligation to publish prospectus.

346A.(1) An offer of securities to the public made in or from Gibraltar is exempt from the obligation to publish a prospectus under Article 3 of the Prospectus Regulation if the total consideration of the offer is not more than €8,000,000 calculated over a period of 12 months.

(2) Subsection (1) applies without affecting the right of an issuer, offeror or person seeking admission to trading on a regulated market to draw up a prospectus voluntarily in accordance with Article 4 of the Prospectus Regulation.

(3) The Minister may by regulations–

(a) amend subsection (1)(a) so as to reduce the monetary amount specified in that subsection; or

(b) impose proportionate disclosure requirements in respect of offers of securities to the public to which the exemption provided by Article 1.3 of the Prospectus Regulation applies (offers where the total consideration is less than €1,000,000, calculated over a period of 12 months).

Responsibility for prospectus.

346B.(1) Each of the following persons are responsible for the information provided in a prospectus–

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(a) the issuer or its administrative, management or supervisory body;

(b) the offeror;

(c) the person seeking the admission to trading on a regulated market; or

(d) the guarantor.

(2) The persons responsible must be clearly identified in a prospectus, which must include–

(a) their names and functions or, in the case of legal persons, their names and registered offices; and

(b) declarations by them that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import.

(3) Section 346E provides for the person responsible for a prospectus to be liable to pay compensation to a person who has suffered loss as a consequence of false or misleading particulars in the prospectus.

(4) In this section, section 346E and Schedule 24A "prospectus" includes a supplement to a prospectus.

(5) A person has no civil liability solely on the basis of the summary of a prospectus or the specific summary a Gibraltar Growth prospectus (within the meaning of Articles 7 and 15 of the Prospectus Regulation respectively) unless when read together with the other parts of the prospectus–

(a) it is misleading, inaccurate or inconsistent; or

(b) it does not provide key information in order to aid investors when considering whether to invest in the securities.

(6) The persons specified in subsection (1) are only responsible for the information provided in a registration document or universal registration document where the document is in use as a constituent part of an approved prospectus.

(7) Subsection (6) applies without limiting sections 359 and 360 where the information required under those Articles is included in a universal registration document.

Language.

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346C. Where an offer of securities to the public is made or admission to trading on a regulated market is sought in Gibraltar, the prospectus must be drawn up in English.

Approval of prospectus.

346D.(1) An application for approval of a prospectus must be made to the GFSC in the form and manner it may direct.

(2) The GFSC may, after receiving an application for the approval of a prospectus–

(a) require the relevant person to include in the prospectus supplementary information, where necessary for investor protection;

(b) require the relevant person or any person that controls or is controlled by the relevant person to provide to the GFSC any information and documents that it may reasonably require; or

(c) require auditors and managers of the relevant person or a relevant financial intermediary to provide to the GFSC any information that it may reasonably require.

(3) The GFSC may–

(a) suspend the scrutiny of a prospectus submitted for approval; or

(b) suspend or restrict an offer of securities to the public or admission to trading on a regulated market,

where it has imposed a prohibition or restriction under Article 42 of MiFIR in respect of the same securities or a related financial instrument, structured deposit or financial activity or practice.

(4) A suspension or restriction imposed under subsection (3) applies until the relevant prohibition or restriction under MiFIR has ceased to apply.

(5) The GFSC may, for a period of not more than five years, refuse to approve any prospectus drawn up by a person who has repeatedly and severely infringed the Prospectus Regulation.

Compensation for false or misleading particulars.

346E.(1) The person responsible for a prospectus is liable to pay compensation to a person who has–

(a) acquired securities to which the prospectus applies; and

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(b) suffered loss in respect of them as a result of–

(i) any untrue or misleading statement in the prospectus; or

(ii) the omission from the prospectus of any matter required to be included by this Act or the Prospectus Regulation.

(2) Subsection (1) is subject to section 346B(5) and the exemptions in Schedule 24A.

(3) If a prospectus is required to include information about the absence of a particular matter, the omission of that information from the prospectus is to be treated as a statement in the prospectus that there is no such matter.

(4) A person ("P"), by reason of being a promoter of a company or otherwise, does not incur any liability for failing to disclose in a prospectus in respect of a company's securities information–

(a) which P would not be required to disclose if P was responsible for those particulars; or

(b) if P is responsible for them, which P is entitled to omit by virtue of any provision made by or under this Act or the Prospectus Regulation.

(5) In subsection (4) the reference to P incurring liability includes a reference to any other person being entitled as against P to be granted any civil remedy or to rescind or repudiate an agreement.

Investigations and intervention powers

Investigations.

347.(1) Where it appears to the GFSC that there are reasonable grounds for suspecting that this Chapter or the Prospectus Regulation has been or is being infringed, it may conduct an investigation or appoint one or more competent persons to do so on its behalf.

(2) Without limiting subsection (1), the GFSC may also–

(a) disclose or require an issuer to disclose all material information which may affect the assessment of the securities admitted to trading, in order to ensure investor protection or the smooth operation of the market;

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(b) suspend or require a regulated market, MTF or OTF to suspend securities from trading where the GFSC considers that the issuer's situation is such that trading would be detrimental to investors' interests; or

(c) carry out on-site inspections or investigations of any premises (other than a dwelling) under a warrant issued by a magistrate in accordance with section 349.

Intervention powers.

348. For the purpose of regulating offers of securities to the public or admissions to trading on a regulated market in accordance with the Prospectus Regulation, the GFSC may–

(a) suspend a public offer or admission to trading, for not more than 10 consecutive working days on any single occasion, where the GFSC reasonably suspects that the Prospectus Regulation has been infringed;

(b) prohibit or suspend advertisements or require the relevant person or a relevant financial intermediary to cease or suspend advertisements, for not more than 10 consecutive working days on any single occasion, where the GFSC reasonably believes that the Prospectus Regulation has been infringed;

(c) prohibit an offer of securities to the public or admission to trading on a regulated market where the GFSC finds that the Prospectus Regulation has been infringed or reasonably suspects that it would be infringed;

(d) suspend or require a regulated market, MTF or OTF to suspend trading on a regulated market, for not more than 10 consecutive working days on any single occasion, where the GFSC reasonably believes that the Prospectus Regulation has been infringed;

(e) prohibit trading on a regulated market, MTF or OTF where the GFSC is satisfied that the Prospectus Regulation has been infringed; or

(f) disclose or require the disclosure to the public that a relevant person is failing to comply with its obligations under the Prospectus Regulation.

Notice: sections 347 and 348.

348ZA.(1) The GFSC must give the person concerned–

(a) a warning notice, if the GFSC proposes to exercise any power under section 347(2)(b) or section 348; or

(b) a decision notice, if the GFSC decides to exercise any of those powers.

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(2) Subsection (1)(a) does not apply if the GFSC is satisfied that–

(a) there is an immediate risk of substantial damage to–

(i) the interests of consumers;

(ii) the public interest; or

(iii) the reputation of Gibraltar; and

(b) the exercise of the power is–

(i) to a material extent, likely to avoid the occurrence or reduce the extent of that damage; and

(ii) proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the person concerned that may result from that direction.

(3) A decision notice in respect of any decision to which subsection (2) applies has immediate effect.

Infringements

Reporting of infringements.

348A.(1) The GFSC must establish appropriate arrangements which enable any person to report an infringement or potential infringement of the Prospectus Regulation to the GFSC.

(2) The arrangements established under subsection (1) must include–

(a) secure communication channels for the reporting of infringements;

(b) specific procedures for the receipt and investigation of reported infringements; and

(c) arrangements which accord with the Data Protection Act 2004 for the protection of the personal data of an individual who reports an infringement and any individual who is allegedly responsible for an infringement.

(3) The GFSC must treat information about the identity of a person who reports an infringement as confidential, except where its disclosure is necessary for the purpose of any further investigations or subsequent judicial proceedings.

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(4) Employers who conduct regulated financial services activities ("financial services firms") must establish appropriate internal procedures for their employees to report infringements through a specific, independent and autonomous channel.

(5) An employee of a financial services firm who reports an infringement in accordance with arrangements established under subsection (1) or (4)–

(a) is not to be considered to be in breach of any restriction on disclosure of information imposed by contract or by any law and any provision in an agreement is void in so far as it purports to preclude an employee from reporting an infringement; and

(b) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the employee has reported an infringement.

(6) An employee who has been subjected to a detriment contrary to subsection (5)(b) may present a complaint to the Employment Tribunal as if the reporting of an infringement was a protected disclosure within the meaning of Part IVA of the Employment Act.

Entry of premises under warrant.

349.(1) A magistrate may issue a warrant authorising a person to enter and search premises if the magistrate is satisfied, on information on oath, that there are reasonable grounds for suspecting 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 documents or information made under this Chapter or the Prospectus Regulation; and

(b) those documents or that information are to be found on the premises specified in the application for a warrant.

(3) The second set of conditions is–

(a) that an offence under this Chapter or the Prospectus Regulation has been or is being committed by any person;

(b) that there are on the premises specified in the application for a warrant, documents or information relevant to whether that offence has been or is being committed; and

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(c) that if a request for information were made under this Chapter or the Prospectus Regulation –

(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) An application for a warrant under this section–

(a) may be made by a person acting under the authority of the GFSC or a constable; and

(b) must specify the premises to which it relates.

(5) A warrant issued under this section–

(a) continues in force for one month beginning with the date on which it was issued; and

(b) authorises a person acting under the authority of the GFSC or a constable–

(i) to enter the premises specified in the warrant;

(ii) to search the premises and inspect any relevant information found on the premises;

(iii) to take copies of or seize and remove any relevant information found on the premises or take any other steps which may appear to be necessary for preserving or preventing interference with any relevant information;

(iv) to require any person on the premises to provide an explanation of any relevant information or to state where it may be found; and

(v) to use such force as may be reasonably necessary.

(6) Any relevant information of which possession is taken under this section may be retained–

(a) for up to three months; or

(b) if within that time relevant proceedings are commenced, until the conclusion of those proceedings.

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(7) In this section–

"relevant information" means any document or information which a person acting under a warrant issued under this section reasonably believes may be required as evidence for the purposes of relevant proceedings; and

"relevant proceedings" means–

(a) proceedings against a person for an offence under this Chapter or the Prospectus Regulation; or

(b) the exercise by the GFSC of any supervisory or regulatory powers which may lead to the imposition of an administrative sanction on a person in respect of a contravention of this Chapter or the Prospectus Regulation.

(8) A person who wilfully obstructs another person in the exercise of any power under this section commits an offence and is liable–

(a) on summary conviction, to the statutory maximum fine; or

(b) on conviction on indictment, to a fine.

Sanctions for contraventions.

350.(1) The GFSC may take one or more of the steps specified in subsection (2) if it is satisfied that–

(a) an issuer who has requested or approved the admission of the instrument to trading on a regulated market;

(b) a person discharging managerial responsibilities within an issuer;

(c) a person connected to a person discharging managerial responsibilities;

(d) an offeror, person seeking admission to trading on a regulated market, any other applicant for approval of a prospectus or a supplementary prospectus or any other person to whom the Prospectus Regulation applies; or

(e) any other person,

has contravened any provision of this Chapter or the Prospectus Regulation.

(2) The GFSC may take one or more of the following steps where a person is responsible for a contravention to which subsection (1) applies–

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(a) issue a public statement in relation to the person in accordance with section 153;

(b) issue a cease and desist order against the person in accordance with section 154; or

(c) subject to subsection (3), impose an administrative penalty on the person under section 152.

(3) An administrative penalty under subsection (2)(c) must be imposed in accordance with section 152 but, in the case of a contravention to which subsection (1)(a), (b), (c) or (d) applies, must be of an amount which does not exceed the higher of the following–

(a) where the profit gained or loss avoided because of the contravention can be determined, twice the amount of the profit or avoided loss;

(b) in the case of a legal entity–

(i) EUR 5,000,000; or

(ii) 3% of the total annual turnover according to the last available annual accounts approved by its management body; or

(c) in the case of an individual, EUR 700,000.

(4) For the purposes of subsection (3), where a legal person is a parent undertaking or subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Part 7 of the Companies Act 2014, the relevant total annual turnover is the total annual turnover (or the corresponding type of income) according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

(5) In the case of a contravention to which subsection (1)(a) applies, if the GFSC is satisfied that a person who was at the material time a director of the issuer was knowingly concerned in the contravention, it may also issue a public statement in relation to, or impose an administrative penalty on, that person.

(6) Nothing in this section prevents the GFSC from taking any other steps which it has power to take under this Act.

(7) The GFSC may not take action against a person under this section after the end of the period of two years beginning with the first day on which it knew of the contravention, unless proceedings against that person in respect of the contravention were begun before the end of that period.

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(8) For the purposes of subsection (7), the GFSC is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.

Exercise of powers.

351.(1) Sections 158 to 161 apply to the exercise of any power under section 350 but as if, in section 158, the applicable criteria included the impact of the infringement on retail investors' interests.

(2) Where the GFSC has taken any sanctioning action under section 350, the following provisions of this section apply instead of sections 616 to 618.

(3) The GFSC must publish on its website only details of any sanctioning action taken in respect of a person without undue delay after that person is informed of that action.

(4) The information published must be limited to–

(a) the identity of the person against whom the action has been taken;

(b) the type and nature of the contravention; and

(c) the details of the sanctioning action taken.

(5) The GFSC must take one of the steps in subsection (6) where–

(a) following an obligatory prior assessment, it considers that it would be disproportionate to publish in accordance with subsection (3)–

(i) the identity of the legal person involved; or

(ii) the personal data of the individual involved; or

(b) it considers that publication would jeopardise the stability of financial markets or an ongoing investigation.

(6) Those steps are–

(a) to defer publication until the reasons for non-publication cease to exist;

(b) to publish the decision on an anonymous basis if doing so ensures effective protection of the personal data concerned; or

(c) not to publish the decision if the steps in paragraphs (a) and (b) are considered to be insufficient to ensure–

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(i) that the stability of the financial markets would not be put in jeopardy; or

(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

(7) In the case of a decision to publish on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication will cease to exist.

(8) Where a decision to which this section applies is subject to an appeal, the GFSC must publish information to that effect on its website and, without undue delay, revise that information to reflect the status and outcome of any appeal or any decision annulling a previous decision to impose a sanction.

(9) The GFSC must ensure that any publication in accordance with this section is of proportionate duration and remains on its website for a minimum of five years, but that personal data is only retained on the website for so long as is necessary, in accordance with the data protection legislation.

Appeals

Appeals.

351A.(1) A person may appeal to the Supreme Court against–

(a) a decision taken by the GFSC under this Chapter or the Prospectus Regulation; or

(b) failure by the GFSC to–

(i) reach a decision in respect of the approval of a prospectus; or

(ii) request changes to, or supplementary information in respect of, a prospectus,

within the time limits specified in Articles 20.2, 20.3 or 20.6 of the Prospectus Regulation.

(2) An appeal must be brought within 28 days of–

(a) in the case of an appeal under subsection (1)(a), the date of the notice of the decision; or

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(b) in the case of an appeal under subsection (1)(b), the date on which the GFSC should have reached a decision.

352. *Omitted*.

353. *Omitted*.

354. *Omitted*.

CHAPTER 4
TRANSPARENCY REQUIREMENTS

Introduction

Scope.

355.(1) This Chapter establishes requirements in relation to the disclosure of periodic and ongoing information about issuers whose securities are already admitted to trading on a regulated market in Gibraltar.

(2) This Chapter does not apply to units issued by collective investment undertakings other than the closed-end type, or to units acquired or disposed of in such collective investment undertakings.

Interpretation of Chapter 4.

356. In this Chapter, unless the context otherwise requires–

"collective investment undertaking other than the closed-end type" means unit trusts and investment companies–

(a) the object of which is the collective investment of capital provided by the public, and which operate on the principle of risk spreading; and

(b) the units of which are, at the request of the holder of those units, repurchased or redeemed, directly or indirectly, out of the assets of those undertakings;

"controlled undertaking" means any undertaking–

(a) in which an individual or legal entity has a majority of the voting rights;

(b) of which an individual or legal entity has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question;

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(c) of which an individual or legal entity is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights under an agreement entered into with other shareholders or members of the undertaking in question; or

(d) over which an individual or legal entity has the power to exercise, or actually exercises, dominant influence or control,

and for the purposes of this definition, the holder's rights in relation to voting, appointment and removal include the rights of any other undertaking controlled by the shareholder and of any individual or legal entity acting in its own name but on behalf of the shareholder or of any other undertaking controlled by the shareholder.

"debt securities" means bonds or other forms of transferable securitised debts, other than securities which are equivalent to shares in companies or which, if converted or the rights conferred by them are exercised, give rise to a right to acquire shares or securities equivalent to shares;

"electronic means" are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means;

"issuer" means–

(a) an individual or legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market in Gibraltar; and

(b) in the case of depository receipts admitted to trading on a regulated market in Gibraltar, the issuer of the securities represented, whether or not those securities are admitted to trading on a regulated market in Gibraltar;

"legal entity" includes a trust or a registered business association without legal personality;

"management company" has the meaning given in section 289;

"market maker" has the meaning given in paragraph 44 of Schedule 2;

"Official Listing Rules" means Rules made under section 343;

"regulated information" means all information which the issuer, or any other person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, is required to disclose under–

(a) this Chapter;

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(b) Article 7 of the Market Abuse Regulation; or

(c) any requirement imposed by the GFSC under section 358(1);

"securities" means transferable securities within the meaning of paragraph 44 of Schedule 2 other than money market instruments within the meaning of that paragraph having a maturity of less than 12 months;

"securities issued in a continuous or repeated manner" means debt securities of the same issuer on tap or at least two separate issues of securities of a similar type or class;

"shareholder" means an individual or legal entity which holds, directly or indirectly–

(a) shares of the issuer in its own name and on its own account;

(b) shares of the issuer in its own name, but on behalf of another individual or legal entity;

(c) depository receipts, in which case the holder of the depository receipt is to be considered as the shareholder of the underlying shares represented by the depository receipts; and

"units of a collective investment undertaking" means securities issued by a collective investment undertaking and representing rights of the participants in the undertaking over its assets.

357. *Omitted*.

Periodic information

Integration of securities markets.

358.(1) The GFSC may–

(a) subject to subsections (2) and (3), make an issuer subject to requirements more stringent than those in this Chapter; or

(b) subject to subsection (4), make a holder of shares, or an individual or legal entity referred to in sections 364 or 368(1), subject to requirements more stringent than those in this Chapter.

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(2) Subsection (1)(a) may only be used to require an issuer to publish periodic financial information more frequently than the annual financial reports under section 359 and the half-yearly financial reports under section 360 where–

(a) the additional periodic financial information does not constitute a disproportionate financial burden in Gibraltar and, in particular, for the small and medium-sized issuers concerned; and

(b) the content of the additional periodic financial information required is proportionate to the factors that contribute to investment decisions by investors in Gibraltar.

(3) Before requiring issuers to publish additional periodic financial information, the GFSC must assess whether such additional requirements–

(a) may lead to an excessive focus on the issuers' short-term results and performance; and

(b) may impact negatively on the ability of small and medium- sized issuers to have access to the regulated markets.

(4) Subsection (1)(b) may only be used for the purpose of–

(a) setting lower or additional notification thresholds than those set out in section 363(1) and requiring equivalent notifications in relation to thresholds based on capital holdings;

(b) applying more stringent requirements than those in sections 366 and 368; or

(c) applying laws, regulations or administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies.

(5) Subsection (1)(a) does not restrict the ability of the GFSC to require the publication of additional periodic financial information by issuers which are institutions authorised to provide financial services.

Annual financial reports.

359.(1) An issuer must make public its annual financial report at the latest four months after the end of each financial year and must ensure that it remains publicly available for at least ten years.

(2) The annual financial report must comprise–

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(a) the audited financial statements;

(b) the management report; and

(c) statements made by the persons responsible within the issuer, whose names and functions must be clearly indicated, to the effect that, to the best of their knowledge–

(i) the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole;

(ii) the management report includes a fair review of the development and performance of the business; and

(iii) the position of the issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

(3) Where the issuer–

(a) is required to prepare consolidated accounts in accordance with the Companies Act 2014, the audited financial statements must comprise–

(i) the consolidated accounts drawn up in accordance with UK-adopted international accounting standards; and

(ii) the annual accounts of the parent company drawn up in accordance with the laws of the country or territory in which the parent company is incorporated; or

(b) is not required to prepare consolidated accounts, the audited financial statements must comprise the accounts prepared in accordance with the laws of the country or territory in which the company is incorporated.

(4) The financial statements must be–

(a) audited in accordance with section 258 of the Companies Act 2014 and, if the issuer is required to prepare consolidated accounts, in accordance with Chapter 3 of Part VII of that Act;

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(b) signed by the person or persons responsible for auditing the financial statements; and

(c) disclosed in full to the public together with the annual financial report.

(5) The management report must be drawn up in accordance with Schedule 19 to the Companies Act 2014 and, if the issuer is required to prepare consolidated accounts, in accordance with Chapter 3 of Part VII of that Act.

(6) From 1st January 2020 all annual financial reports must be prepared in a single electronic reporting format in accordance with Commission Delegated Regulation (EU) 2019/815.

Half-yearly financial reports.

360.(1) The issuer of shares or debt securities must–

(a) make public a half-yearly financial report covering the first six months of the financial year as soon as reasonably possible after the end of the relevant period, but at the latest three months after that period; and

(b) ensure that the half-yearly financial report remains available to the public for at least ten years.

(2) The half-yearly financial report must comprise–

(a) the condensed set of financial statements;

(b) an interim management report; and

(c) statements made by the persons responsible within the issuer, whose names and functions must be clearly indicated, to the effect that–

(i) to the best of their knowledge, the condensed set of financial statements which has been prepared in accordance with the applicable set of accounting standards gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer, or the undertakings included in the consolidation as a whole as required under subsection (3); and

(ii) the interim management report includes a fair review of the information required under subsection (4).

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(3) Where the issuer is required to prepare consolidated accounts, the condensed set of financial statements must be prepared in accordance with UK-adopted international accounting standards.

(4) Where the issuer is not required to prepare consolidated accounts–

(a) the condensed set of financial statements must at least contain a condensed balance sheet, a condensed profit and loss account and explanatory notes on these accounts;

(b) in preparing the condensed balance sheet and the condensed profit and loss account, the issuer must follow the same principles for recognising and measuring as when preparing annual financial reports; and

(c) the minimum content of the condensed set of half-yearly financial statements, where that set is not prepared in accordance with UK-adopted international accounting standards must be in accordance with subsections (5) and (6).

(5) The condensed balance sheet and the condensed profit and loss account must–

(a) contain each of the headings and subtotals included in the most recent annual financial statements of the issuer;

(b) include additional line items if, as a result of their omission, the half-yearly financial statements would give a misleading view of the assets, liabilities, financial position and profit or loss of the issuer; and

(c) include the following comparative information–

(i) balance sheet as at the end of the first six months of the current financial year and comparative balance sheet as at the end of the immediately preceding financial year; and

(ii) profit and loss account for the first six months of the current financial year with comparative information for the comparable period for the preceding financial year.

(6) The explanatory notes must include–

(a) sufficient information to ensure the comparability of the condensed half-yearly financial statements with the annual financial statements; and

(b) sufficient information and explanations to ensure a user's proper understanding of any material changes in amounts and of any developments in the half-year period concerned, which are reflected in the balance sheet and the profit and loss account.

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(7) The interim management report must include at least an indication of important events that have occurred during the first six months of the financial year, and their impact on the condensed set of financial statements, together with a description of the principal risks and uncertainties for the remaining six months of the financial year; and, for issuers of shares, the interim management report must also include major related parties' transactions.

(8) In the interim management reports, issuers of shares must disclose as major related parties' transactions–

(a) related parties' transactions that have taken place in the first six months of the current financial year and that have materially affected the financial position or the performance of the undertaking during that period; or

(b) any changes in the related parties' transactions described in the last annual report that could have a material effect on the financial position or performance of the undertaking in the first six months of the current financial year.

(9) Where the issuer of shares is not required to prepare consolidated accounts, it must disclose the related parties' transactions referred to in paragraph 1(j) of Schedule 16 to the Companies Act 2014.

(10) If the half-yearly financial report has been audited, the audit report and review must be reproduced in full; and where the half-yearly financial report has not been audited or reviewed by auditors, the issuer must make a statement to that effect in its report.

Report on payments to governments.

361.(1) An issuer active in the extractive or logging of primary forest industries must prepare on an annual basis, in accordance with the Companies (Reports by Extractive and Logging Industries) Regulations 2015, a report on payments made to governments.

(2) A report under subsection (1) must be made public at the latest six months after the end of each financial year and must remain publicly available for at least ten years.

(3) Payments to governments must be reported at consolidated level.

Exemptions.

362.(1) Sections 359 and 360 do not apply to any of the following issuers–

(a) the Government;

(b) the government of any country or territory;

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(c) a local or regional authority of any country or territory;

(d) a public international body of which any state is a member;

(e) the European Central Bank or the central bank of any state;

(f) an issuer exclusively of debt securities admitted to trading on a regulated market, the denomination per unit of which is at least EUR 100,000 (or an equivalent amount).

(2) Despite subsection (1)(f), sections 359 and 360 do not apply to issuers of exclusively debt securities the denomination per unit of which is at least EUR 50,000 (or an equivalent amount), which were admitted to trading on a regulated market in the EEA before 31 December 2010, for as long as those debt securities are outstanding.

(3) Section 360 does not apply to–

(a) a credit institution whose shares are not admitted to trading on a regulated market which–

(i) has, in a continuous or repeated manner, only issued debt securities of a total nominal amount of less than EUR 100,000,000 (or an equivalent amount); and

(ii) has not published a prospectus to which this Part applies; or

(b) an issuer which–

(i) existed on 1st July 2005; and

(ii) only issues debt securities that are unconditionally and irrevocably guaranteed by the Government on a regulated market.

Ongoing information

Notification of the acquisition or disposal of major holdings.

363.(1) A person must notify an issuer if, as a result of an event specified in subsection (2), the percentage of voting rights of the issuer held by the person reaches, exceeds or falls below one or more of the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%.

(2) The events are–

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(a) the acquisition or disposal by the person of shares in the issuer which are admitted to trading on a regulated market and to which voting rights are attached; or

(b) an event changing the breakdown of voting rights, on the basis of information disclosed by the issuer in accordance with section 371.

(3) A notification under subsection (1) must also be made to an issuer that is incorporated in a country or territory outside Gibraltar in circumstances where an event equivalent to one specified in subsection (2)(b) occurs on the basis of disclosed information equivalent to that mentioned in that subsection.

(4) Voting rights must be calculated on the basis of all the shares to which voting rights are attached even if the exercise of those rights is suspended, and this information must also be given in respect of all the shares which are in the same class and to which voting rights are attached.

(5) This section does not apply to shares–

(a) acquired for the sole purpose of clearing and settling within the usual short settlement cycle of not more than three trading days following the transaction; or

(b) held by a custodian in that capacity, where the custodian can only exercise the voting rights attached to those shares under instructions given in writing or by electronic means.

(6) This section does not apply to the acquisition or disposal of a major holding reaching or crossing the 5% threshold by a market maker acting in its capacity of a market maker where–

(a) it is authorised in accordance with the Financial Services (Investment Services) Regulations 2020; and

(b) it neither intervenes in the management of the issuer concerned nor exerts any influence on the issuer to buy such shares or back the share price.

(7) A market maker seeking to benefit from the exemption in subsection (6) must notify the GFSC, within the time limit laid down in section 366(2), that it conducts or intends to conduct market making activities on a particular issuer and, where the market maker ceases to conduct market making activities on the issuer concerned, it must notify the GFSC accordingly.

(8) Without limiting section 380, where a market maker seeking to benefit from the exemption in subsection (6) is required by the GFSC to identify the shares or financial instruments held for market making activity purposes, the market maker may make the identification by any verifiable means and may only be required to hold them in a separate

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account for the purposes of identification if the market maker is unable to identify the shares or financial instruments concerned.

(9) Where a market-making agreement is required by law between the market maker and the stock exchange or the issuer, the market maker must provide the agreement to the GFSC at its request.

(10) This section does not apply to voting rights held in the trading book (as defined in Article 4(1) of the Capital Requirements Regulation) of a credit institution or investment firm where–

(a) the voting rights held in the trading book do not exceed 5%; and

(b) the voting rights attached to shares held in the trading book are not exercised or otherwise used to intervene in the management of the issuer.

(11) This section does not apply to voting rights attached to shares acquired for stabilisation purposes in accordance with the Market Abuse Regulation as regards exemptions for buy-back programmes and stabilisation of financial instruments, where the voting rights attached to those shares are not exercised or otherwise used to intervene in the management of the issuer.

Acquisition or disposal of major proportions of voting rights.

364. The notification requirements in section 363(1) and (2) also apply to an individual or legal entity to the extent it is entitled to acquire, to dispose of, or to exercise voting rights in one or more of the following cases–

(a) voting rights held by a third party with whom that individual or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;

(b) voting rights held by a third party under an agreement concluded with that individual or entity providing for the temporary transfer for consideration of the voting rights in question;

(c) voting rights attaching to shares which are lodged as collateral with that individual or entity, where the individual or entity controls the voting rights and declares its intention of exercising them;

(d) voting rights attaching to shares in which that individual or entity has the life interest;

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(e) voting rights which are held, or may be exercised within the meaning of paragraphs (a) to (d), by an undertaking controlled by that individual or entity;

(f) voting rights attaching to shares deposited with that individual or entity which the individual or entity can exercise at its discretion in the absence of specific instructions from the shareholders;

(g) voting rights held by a third party in its own name on behalf of that individual or entity; or

(h) voting rights which that individual or entity may exercise as a proxy where the individual or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders.

365. *Omitted*.

Procedures for notification and disclosure of major holdings.

366.(1) The notification required under sections 363 and 364 must include the following information–

(a) the resulting situation in terms of voting rights;

(b) the chain of controlled undertakings through which voting rights are effectively held, if applicable;

(c) the date on which the threshold was reached or crossed; and

(d) the identity of the shareholder, even if that shareholder is not entitled to exercise voting rights under the conditions laid down in section 364, and of the individual or legal entity entitled to exercise voting rights on behalf of that shareholder.

(2) The notification to the issuer must be effected without delay, and not later than four trading days after the date on which the shareholder or the individual or legal entity referred to in section 364–

(a) learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect; or

(b) is informed about the event mentioned in section 363(2),

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and for the purposes of paragraph (a), the shareholder, individual or legal entity is to be treated as having knowledge of the acquisition, disposal or possibility to exercise voting rights no later than two trading days following the transaction.

(3) For the purposes of subsection (2), the notification obligation which arises as soon as the proportion of voting rights held reaches, exceeds or falls below the applicable thresholds following transactions of the type referred to in section 364 is an obligation on each shareholder or individual or legal entity referred to in that section, or both where the proportion of voting rights held by each party reaches, exceeds or falls below the applicable threshold.

(4) In the circumstances referred to in–

(a) section 364(a), the notification obligation is a collective obligation shared by all parties to the agreement; and

(b) section 364(h)–

(i) if a shareholder gives the proxy in relation to one shareholder meeting, notification may be made by means of a single notification at the moment of giving the proxy; and

(ii) if the proxy holder receives one or several proxies in relation to one shareholder meeting, notification may be made by means of a single notification at the moment of receiving the proxies,

if it is made clear in the notifications what the resulting situation in terms of voting rights will be when the proxy may no longer exercise the voting rights at its discretion.

(5) Where more than one individual or legal entity has a duty to make a notification, it may be made by means of a single common notification, but the use of a single common notification does not release any of the individuals or legal entities concerned from their responsibility in relation to notification.

(6) An undertaking is exempt from making a notification under subsection (1) if the notification is made by the parent undertaking or, where the parent undertaking is itself a controlled undertaking, by its own parent undertaking.

(7) Subject to section 367, a management company and its parent undertaking are not required to aggregate their holdings under sections 363 and 364 where the management company and the parent undertaking each exercises its voting rights independently from each other.

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(8) But the requirement to aggregate holdings does apply where the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by the management company and the management company–

(a) has no discretion to exercise the voting rights attached to those holdings; and

(b) may only exercise those voting rights under direct or indirect instructions from the parent undertaking or another controlled undertaking of the parent undertaking.

(9) Subject to section 367, the parent undertaking of an investment firm which is authorised in accordance with the Financial Services (Investment Services) Regulations 2020 is not required to aggregate its holdings under sections 363 and 364 with the holdings which the investment firm manages on a client-by-client basis where–

(a) the investment firm is authorised to provide portfolio management;

(b) the investment firm exercises its voting rights independently from the parent undertaking; and

(c) it may only exercise the voting rights under instructions given in writing or by electronic means or has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of any other services.

(10) But the requirement to aggregate holdings does apply where the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by the investment firm and the investment firm–

(a) has no discretion to exercise the voting rights attached to those holdings; and

(b) may only exercise those voting rights under direct or indirect instructions from the parent undertaking or another controlled undertaking of the parent undertaking.

(11) An issuer must make public all of the information contained in a notification under subsection (1) when it is received and, in any event, by later than three trading days after it is received.

(12) The GFSC may exempt an issuer from the requirement in subsection (11) if the information contained in the notification is made public by the GFSC in accordance with section 377 when it is received and, in any event, by later than three trading days after it is received.

(13) The calendar of trading days in Gibraltar applies to all issuers.

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(14) The GFSC must publish on its website the calendar of trading days of the different markets in or operating from Gibraltar.

Conditions of independence to be complied with by management companies and investment firms involved in individual portfolio management.

367.(1) For the purposes of the exemption from the aggregation of holdings in section 366(7) and (9), a parent undertaking of a management company or investment firm must comply with the following conditions–

(a) it must not interfere in the exercise of the voting rights held by the management company or investment firm, whether by giving direct or indirect instructions or in any other way; and

(b) the management company or investment firm must be free to exercise the voting rights attached to the assets it manages, independently of the parent undertaking.

(2) Where an issuer's voting rights are attached to holdings managed by a management company or investment firm, a parent undertaking that wishes to use the exemption must, without delay, provide to the GFSC (and update on an ongoing basis)–

(a) a list of the names of each management company and investment firm, indicating the authorities that supervise them or that no authority supervises them, but with no reference to the issuer concerned; and

(b) a statement that, in respect of each such management company or investment firm, the parent undertaking complies with the conditions set out in subsection (1).

(3) Subsection (2)(b) does not apply where the parent undertaking intends to benefit from the exemptions only in relation to financial instruments referred to in section 368.

(4) Without limiting section 380, the parent undertaking of a management company or investment firm must be able to demonstrate to the GFSC, on request, that–

(a) the organisational structures of the parent undertaking and the management company or investment firm are such that the voting rights are exercised independently of the parent undertaking;

(b) the persons who decide how the voting rights are to be exercised act independently; and

(c) if the parent undertaking is a client of its management company or investment firm or has holdings in the assets managed by the management company or investment

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firm, there is a clear written mandate for an arms-length customer relationship between the parent undertaking and the management company or investment firm.

(5) For the purposes of subsection (4)(a) the parent undertaking and the management company or investment firm must establish written policies and procedures reasonably designed to prevent the distribution of information between the parent undertaking and the management company or investment firm in relation to the exercise of voting rights.

(6) In subsection (1)(a)–

"direct instruction" means any instruction given by the parent undertaking, or another controlled undertaking of the parent undertaking, specifying how the voting rights are to be exercised by the management company or investment firm in particular cases; and

"indirect instruction" means any general or particular instruction, regardless of its form, given by the parent undertaking, or another controlled undertaking of the parent undertaking, that limits the discretion of the management company or investment firm in relation to the exercise of the voting rights in order to serve specific business interests of the parent undertaking or another controlled undertaking of the parent undertaking.

Voting rights arising from certain financial instruments.

368.(1) The notification requirements in section 363 also apply to an individual or legal entity who holds, directly or indirectly–

(a) financial instruments that, on maturity, give the holder, under a formal agreement that is binding under the applicable law, the right to acquire (either unconditionally or on the holder's initiative alone), shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market; or

(b) financial instruments which are not included in paragraph (a) but which are referenced to shares referred to in that paragraph and with economic effect similar to that of the financial instruments referred to in that paragraph, whether or not they confer a right to a physical settlement.

(2) The notification required must include the breakdown by type of financial instruments held in accordance with subsection (1)(a) or (b), distinguishing between financial instruments which confer a right to a physical settlement and those which confer a right to a cash settlement.

(3) The notification under subsection (1) must include–

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(a) the resulting situation in terms of voting rights;

(b) the chain of controlled undertakings through which financial instruments are effectively held (if applicable);

(c) the date on which the threshold was reached or crossed;

(d) for instruments with an exercise period, an indication of the date or time period where shares will or can be acquired (if applicable);

(e) date of maturity or expiration of the instrument;

(f) identity of the holder; and

(g) name of the underlying issuer.

(4) For the purposes of subsection (3)(a), the percentage of voting rights must be calculated by reference to the total number of voting rights and capital as last disclosed by the issuer under section 371.

(5) The notification must be made, within the period that applies under section 366(2), to–

(a) the issuer of the underlying share; and

(b) the GFSC,

and, if a financial instrument relates to more than one underlying share, a separate notification must be made to each issuer of the underlying shares.

(6) The number of voting rights must be calculated–

(a) by reference to the full notional amount of shares underlying the financial instrument; or

(b) where the financial instrument provides exclusively for a cash settlement, on a delta-adjusted basis, by multiplying the notional amount of underlying shares by the delta of the instrument.

(7) For the purpose of subsection (6)–

(a) the holder must aggregate and notify all financial instruments relating to the same underlying issuer but only long positions must be taken into account for the

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calculation of voting rights and long positions must not be netted with short positions relating to the same underlying issuer; and

(b) any calculation must be undertaken subject to any technical standards specifying–

(i) the method for calculating the number of voting rights in the case of financial instruments referenced to a basket of shares or an index; and

(ii) the methods for determining delta for the purposes of calculating voting rights relating to financial instruments which provide exclusively for a cash settlement.

(8) For the purpose of subsection (1) the following, if they satisfy any of the conditions in paragraph (a) or (b) of that subsection, must be considered to be financial instruments–

(a) transferable securities;

(b) options;

(c) futures;

(d) swaps;

(e) forward rate agreements;

(f) contracts for differences;

(g) any other contracts or agreements with similar economic effects which may be settled physically or in cash; and

(h) any other financial instruments which are included in any indicative list of financial instruments set out in technical standards.

(9) The exemptions in section 363(5) to (10) and in section 366(6) to (10) apply to the notification requirements under this section.

Aggregation.

369.(1) The notification requirements in sections 363, 364 and 368(1) to (5) also apply to an individual or legal entity when the number of voting rights held directly or indirectly by that individual or entity under sections 363 and 364 aggregated with the number of voting rights relating to financial instruments held directly or indirectly under section 368(1) to (5) reaches, exceeds or falls below the thresholds in section 363(1).

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(2) The notification required under subsection (1) must include a breakdown of the number of voting rights attached to shares held in accordance with sections 363 and 364 and voting rights relating to financial instruments within the meaning of section 368(1) to (5).

(3) Voting rights relating to financial instruments that have already been notified in accordance with section 368(1) to (5) must be notified again when the individual or legal entity has acquired the underlying shares and the acquisition results in the total number of voting rights attached to shares issued by the same issuer reaching or exceeding the thresholds in section 363(1).

Repurchase of shares.

370.(1) Where an issuer of shares admitted to trading on a regulated market in Gibraltar acquires or disposes of its own shares, either itself or through a person acting in that person's own name but on the issuer's behalf, the issuer must make public the proportion of its own shares as soon as reasonably possible, and not later than four trading days following the acquisition or disposal, where that proportion reaches, exceeds or falls below the thresholds of 5% or 10% of the voting rights.

(2) For the purposes of subsection (1)–

(a) the proportion of voting rights is to be calculated on the basis of the total number of shares to which voting rights are attached; and

(b) the calendar of trading days in Gibraltar referred to in section 366(13) and (14) applies.

Threshold calculations.

371. For the purpose of calculating the thresholds provided for in section 363, an issuer must disclose to the public, at the end of each calendar month during which an increase or decrease of the total number has occurred, the total number of voting rights and capital in respect of each class of share that it issues.

Additional information.

372.(1) The issuer of shares admitted to trading on a regulated market must make public without delay any change in the rights attaching to the various classes of shares, including changes in the rights attaching to derivative securities issued by the issuer itself and giving access to the shares of that issuer.

(2) The issuer of securities, other than shares admitted to trading on a regulated market, must make public without delay any changes in the rights of holders of securities other than shares,

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including changes in the terms and conditions of these securities which could indirectly affect those rights, resulting in particular from a change in loan terms or in interest rates.

Information for holders of securities traded on a regulated market

Information requirements for issuers whose shares are admitted to trading on a regulated market.

373.(1) The issuer of shares admitted to trading on a regulated market must ensure equal treatment for all holders of shares who are in the same position.

(2) The issuer must ensure that all the facilities and information necessary to enable holders of shares to exercise their rights are available in Gibraltar and that the integrity of data is preserved, and shareholders must not be prevented from exercising their rights by proxy, subject to the law of Gibraltar where the issuer is incorporated in Gibraltar.

(3) The issuer must, in particular–

(a) provide information on the place, time and agenda of meetings, the total number of shares and voting rights and the rights of holders to participate in meetings;

(b) make available a proxy form, on paper or, where applicable, by electronic means, to each person entitled to vote at a shareholders' meeting, either–

(i) together with the notice concerning the meeting; or

(ii) on request, after the announcement of the meeting;

(c) designate as its agent an institution which is authorised to provide financial services and through which shareholders may exercise their financial rights; and

(d) publish notices or distribute circulars concerning the allocation and payment of dividends and the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion.

(4) An issuer may use electronic means to convey information to shareholders, where the decision to do so is taken in a general meeting and the following conditions are met–

(a) the use of electronic means must not depend on the location of the seat or residence of the shareholder or, in the cases referred to in section 364(a) to (h), on whether they are individuals or legal entities;

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(b) identification arrangements must be put in place so that the shareholders, or the individuals or legal entities entitled to exercise or to direct the exercise of voting rights, are effectively informed;

(c) shareholders, or in the cases referred to in section 364(a) to (e) the individuals or legal entities entitled to acquire, dispose of or exercise voting rights, must be–

(i) contacted in writing to request their consent for the use of electronic means for conveying information and, if they do not object within a reasonable period of time, their consent may be considered to have been given; and

(ii) able to request, at any time in the future, that information be conveyed in writing; and

(d) any apportionment of the costs entailed in the conveyance of such information by electronic means must be determined by the issuer in compliance with the principle of equal treatment in subsection (1).

(5) This section applies subject to any technical standards which–

(a) supplement subsections (1) to (4); or

(b) specify the types of financial institution through which shareholders may exercise their financial rights under subsection (3)(c).

Information requirements for issuers whose debt securities are admitted to trading on a regulated market.

374.(1) The issuer of debt securities admitted to trading on a regulated market must ensure that all holders of debt securities ranking equally are given equal treatment in respect of all the rights attaching to those debt securities.

(2) The issuer must ensure that–

(a) all the facilities and information necessary to enable debt securities holders to exercise their rights are publicly available in Gibraltar;

(b) the integrity of data is preserved;

(c) debt securities holders are not prevented from exercising their rights by proxy, subject to the law of Gibraltar where the issuer is incorporated in Gibraltar and, in particular, the issuer must–

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(i) publish notices, or distribute circulars, concerning the place, time and agenda of meetings of debt securities holders, the payment of interest, the exercise of any conversion, exchange, subscription or cancellation rights and repayment, and of the holders' rights to participate;

(ii) make available a proxy form on paper or, where applicable, by electronic means, to each person entitled to vote at a meeting of debt securities holders, together with the notice concerning the meeting or, on request, after the announcement of the meeting; and

(iii) designate as its agent an institution which is authorised to provide financial services and through which debt securities holders may exercise their financial rights.

(3) Where only holders of debt securities whose denomination per unit amounts to at least EUR 100,000 (or an equivalent amount), are to be invited to a meeting, the issuer may choose as the venue Gibraltar or any other reasonable location, if all the facilities and information necessary to enable the holders to exercise their rights are made available there.

(4) The choice of venue under subsection (3) also applies with regard to holders of debt securities whose denomination per unit amounts to at least EUR 50,000 (or an equivalent amount), which were admitted to trading on a regulated market in the EEA before 31st December 2010, for as long as those debt securities are outstanding, if all the facilities and information necessary to enable the holders to exercise their rights are made available in the chosen venue.

(5) An issuer may use electronic means to convey information to debt securities holders, where the decision to do so is taken in a general meeting and the following conditions are met–

(a) the use of electronic means must not depend on the location of the seat or residence of the of the debt security holder shareholder or a proxy representing that holder;

(b) identification arrangements must be put in place so that the that debt securities holders are effectively informed;

(c) debt securities holders must be–

(i) contacted in writing to request their consent for the use of electronic means for conveying information and, if they do not object within a reasonable period of time, their consent may be considered to have been given; and

(ii) able to request, at any time in the future, that information be conveyed in writing; and

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(d) any apportionment of the costs entailed in the conveyance of such information by electronic means must be determined by the issuer in compliance with the principle of equal treatment in subsection (1).

(6) This section applies subject to any technical standards which–

(a) supplement subsections (1) to (5); or

(b) specify the types of financial institution through which debt security holders may exercise their financial rights under subsection (2)(c)(iii).

Control by the GFSC.

375.(1) This section applies to–

(a) an issuer whose securities are admitted to trading on a regulated market in Gibraltar;

(b) a person who has requested, without the issuer's consent, the admission of its securities to trading on a regulated market in Gibraltar.

(2) An issuer or person in subsection (1) that discloses regulated information must, at the same time, provide that information to the GFSC (which may publish it on its website).

(3) The GFSC may exempt an issuer from the requirement in subsection (2) in respect of information disclosed in accordance with section 366(11) or Article 17 of the Market Abuse Regulation.

(4) Information to be notified to an issuer in accordance with section 363, 364, 366 or 368 must, at the same time, be provided to the GFSC.

(5) This section applies subject to any technical standards which–

(a) supplement subsections (1) to (4); or

(b) specify procedures by which information required under this section may be provided to the GFSC by electronic means.

Languages.

376(1) Where securities are admitted to trading on a regulated market in Gibraltar, regulated information must be disclosed in English.

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(2) Where securities are admitted to trading on a regulated market in Gibraltar and in another country or territory, regulated information must be disclosed–

(a) in English; and

(b) at the issuer's choice, in a language which is either–

(i) accepted by the authorities of that country or territory; or

(ii) customary in the sphere of international finance.

(3) Where securities are admitted to trading on a regulated market without the issuer's consent, the obligations under subsections (1) and (2) apply to the person who requested the admission to trading of those securities.

(4) Shareholders and persons referred to in sections 363, 364 and 368(1) may provide information to an issuer under this Chapter in a language customary in the sphere of international finance and, where an issuer receives information in that form, the GFSC cannot require the issuer to provide a translation.

(5) Where an action concerning the content of regulated information is brought before a court or tribunal, responsibility for the costs incurred in the translation of that information for the purposes of the proceedings is to be decided in accordance with the law applicable to that action.

Access to regulated information.

377.(1) The GFSC must ensure that there is at least one officially appointed mechanism for the central storage of regulated information, which is aligned with the procedure under section 375 and complies with the requirements set by the GFSC in relation to minimum quality standards of security, certainty as to the information source, time recording and easy access by end users.

(2) The GFSC must ensure that an issuer, or a person who has applied for admission to trading on a regulated market without the issuer's consent, discloses regulated information in a manner that ensures fast access to such information on a non- discriminatory basis and makes it available to the officially appointed mechanism referred to in subsection (1).

(3) For the purposes of subsection (2), the GFSC may require the issuer or person to use any media that may reasonably be relied on for the effective dissemination of information to the public in Gibraltar.

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(4) The issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, must not charge investors any specific cost for providing the information referred to in subsection (2).

(5) This section applies subject to any technical standards which specify–

(a) minimum standards for the dissemination of regulated information or the mechanism for the central storage of that information; or

(b) the media which may be used for the dissemination of information to the public.

Minimum Standards

378.(1) For the purposes of section 377, the dissemination of regulated information must be carried out in accordance with the minimum standards set out in subsections (2) to (7).

(2) Regulated information must be disseminated in a manner which ensures that it is capable of being disseminated to as wide a public as possible.

(3) Regulated information must be communicated to the media as full and unedited text but, in the case of the reports and statements referred to in sections 359 to 361, this requirement is to be treated as fulfilled if the announcement relating to the regulated information is communicated to the media and indicates on which website the relevant documents are available (in addition to the officially appointed mechanism for the central storage of regulated information referred to in section 377).

(4) Regulated information must be communicated to the media in a manner which–

(a) ensures the security of the communication;

(b) minimises the risk of data corruption and unauthorised access; and

(c) provides certainty as to the source of the regulated information,

and security of receipt must be ensured by remedying as soon as possible any failure or disruption in the communication of regulated information.

(5) The issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent is not responsible for systemic errors or shortcomings in the media to which the regulated information has been communicated.

(6) Regulated information must be communicated to the media in a way which makes clear that the information is regulated information, identifies clearly the issuer concerned, the subject matter of the regulated information and the time and date of the communication of the

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information by the issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent.

(7) On request, the issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent must be able to communicate to the GFSC, in relation to any disclosure of regulated information–

(a) the name of the person who communicated the information to the media;

(b) the security validation details;

(c) the time and date on which the information was communicated to the media;

(d) the medium in which the information was communicated; and

(e) details of any embargo placed by the issuer on the regulated information.

Third countries.

379.(1) Where an issuer's registered office is in a third country, the GFSC may exempt the issuer from requirements under sections 359 to 361, 366(11) and 370 to 374 if–

(a) the law of the third country in question sets equivalent requirements; or

(b) the issuer complies with requirements of the law of the third country that the GFSC considers to be equivalent.

(2) *Omitted*.

(3) Any information covered by third country requirements to which subsection (1) applies must be–

(a) filed by the issuer in accordance with section 375; and

(b) disclosed by the issuer in accordance with sections 376 and 377.

(4) The GFSC must ensure that information disclosed in a third country by an issuer which may be of importance for the public in Gibraltar is disclosed in accordance with sections 376 and 377, even if the information is not regulated information.

(5) An undertaking whose registered office is in a third country but which would require authorisation in accordance with the Financial Services (UCITS) Regulations 2020 or, with regard to portfolio management, in accordance with the Financial Services (Investment Services) Regulations 2020 if it had its registered office or, in the case of an investment firm,

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its head office in Gibraltar, is exempt under section 366(7) and (9) from aggregating holdings with those of its parent undertaking if it complies with conditions of independence equivalent to those which apply under that section to management companies or investment firms.

(6) Schedule 25 makes further provision about equivalence under this section for the purposes of this Part.

(7) In this section "third country" means a country or territory outside Gibraltar.

Supervision, sanctions and other measures

The GFSC's powers.

380.(1) Without limiting any other powers of the GFSC under this Act, for the purpose of performing its functions under this Chapter the GFSC may–

(a) require auditors, issuers, holders of shares or other financial instruments, or persons or entities referred to in section 364 or 368(1), and the persons that control or are controlled by them, to provide information and documents;

(b) in respect of any information required under paragraph (a)–

(i) require an issuer to disclose it to the public by the means, and within the time limits, the GFSC considers appropriate; or

(ii) having considered any representation made by the issuer, or any person that controls or is controlled by it, publish the information if the issuer or other person has failed to do so;

(c) require managers of issuers, or of holders of shares or other financial instruments, or of persons or entities referred to in section 364 or 368(1), to notify any information required under this Chapter, and, if necessary, to provide further information and documents;

(d) suspend, or request the relevant regulated market to suspend, trading in securities for a maximum of ten days at a time if it has reasonable grounds for suspecting that an issuer has contravened the provisions of this Chapter;

(e) prohibit trading on a regulated market if it finds that the provisions of this Chapter have been contravened or has reasonable grounds for suspecting that they have been contravened;

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(f) monitor an issuer's disclosure of information with the objective of ensuring timely, effective and equal access to the public in all those places where the securities are traded and take appropriate action if that is not the case;

(g) make public any failure to comply with its obligations under this Chapter by an issuer, a holder of shares or other financial instruments, or a person or entity referred to in section 364 or 368(1);

(h) examine information prepared for the purposes of this Chapter to determine whether it accords with the relevant reporting framework and take appropriate action if that is not the case; and

(i) apply to a magistrate for a warrant to enter premises in order to carry out on-site inspections to verify compliance with the provisions of this Chapter.

(2) Disclosure to the GFSC by an auditor of any fact or decision related to a request made by the GFSC under subsection (1)(a) does not constitute a breach of any restriction on disclosure of information imposed by contract or by any enactment or involve the auditor in liability of any kind.

Sanctions for contraventions.

381.(1) The GFSC may take any of the actions specified–

(a) in subsection (2) if it is satisfied that–

(i) an issuer has failed to make public, within the required time limit, information required under section 359, 360, 361 or 372; or

(ii) a person has failed to notify, within the required time limit, the acquisition or disposal of a major holding in accordance with section 363, 364, 366, 368 or 369; or

(b) in subsection (6) if it is satisfied that a person is responsible for an act or omission contrary to any provision of this Chapter other than one specified in paragraph (a).

(2) Where a person is responsible for a contravention to which subsection (1)(a) applies, the GFSC may take any of the following steps–

(a) issue a public statement in relation to the person in accordance with section 153;

(b) issue a cease and desist order against the person in accordance with section 154;

(c) impose an administrative penalty on the person under subsection (3); or

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(d) in the case of a contravention under subsection (1)(a)(ii), where it is satisfied that the default is of a serious nature, by order suspend the voting rights of the shareholder responsible.

(3) An administrative penalty under subsection (2)(c) must be imposed in accordance with section 152 but must be of an amount which does not exceed the higher of the following–

(a) where the profit gained or loss avoided because of the contravention can be determined, twice the amount of the profit or avoided loss;

(b) in the case of a legal entity–

(i) EUR 10,000,000 (or the Sterling equivalent); or

(ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body; or

(c) in the case of an individual, EUR 2,000,000 (or the Sterling equivalent).

(4) In subsection (3) the "Sterling equivalent" means an equivalent amount in Sterling based on the exchange rate on 26 November 2013.

(5) Where a legal entity is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Part 7 of the Companies Act 2014, the relevant total turnover for the purpose of subsection (3)(b)(ii) is the total annual turnover (or the corresponding type of income) according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

(6) Where a person is responsible for a contravention to which subsection (1)(b) applies, the GFSC may take any of the following steps–

(a) issue a public statement in relation to the person in accordance with section 153;

(b) issue a cease and desist order against the person in accordance with section 154;

(c) impose an administrative penalty on the person under subsection (7);

(d) suspend any permission under Part 7 to which the contravention relates; or

(e) where the person is an individual–

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(i) prohibit the person from carrying out specified functions in relation to the management of a legal entity for a specified period (not exceeding 12 months); or

(ii) declare that the person is not a fit and proper person for a specified purpose in connection with this Act.

(7) An administrative penalty under subsection (6)(c) must be imposed in accordance with section 152 but must be of an amount which does not exceed the higher of the following–

(a) where the profit gained or loss avoided because of the contravention can be determined, twice the amount of the profit or avoided loss;

(b) in the case of a legal entity–

(i) £250,000; or

(ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body; or

(c) in the case of an individual, £125,000.

Exercise of powers.

382.(1) Sections 158 to 161 apply to the exercise of any power under section 381.

(2) Where the GFSC has taken any sanctioning action under section 381, the following provisions of this section apply instead of sections 616 to 618.

(3) The GFSC must publish on its website only details of any sanctioning action taken in respect of a person without undue delay after that person is informed of that action.

(4) The information published must be limited to–

(a) the identity of the person against whom the action has been taken;

(b) the type and nature of the contravention; and

(c) the details of the sanctioning action taken.

(5) The GFSC must take one of the steps in subsection (6) where–

(a) following an obligatory prior assessment, it considers that it would be disproportionate to publish in accordance with subsection (3)–

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(i) the identity of the legal person involved; or

(ii) the personal data of the individual involved; or

(b) it considers that publication would jeopardise the stability of the financial system or an ongoing investigation.

(6) Those steps are–

(a) to defer publication until the reasons for non-publication cease to exist; or

(b) to publish the decision on an anonymous basis if doing so ensures effective protection of the personal data concerned.

(7) In the case of a decision to publish on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication will cease to exist.

(8) Where a decision to which this section applies is subject to an appeal, the GFSC must publish information to that effect on its website and, without undue delay, revise that information to reflect the status and outcome of any appeal or any decision annulling a previous decision to impose a sanction.

(9) The GFSC must ensure that any publication is of proportionate duration and remains on its website for not more than two years or, if longer, the period during which any sanction imposed applies (and, for the purposes of publication, a sanction which is imposed without a specific duration is to be regarded as having a duration of three years).

(10) The GFSC must ensure that personal data is only retained on the website for so long as is necessary, in accordance with the data protection legislation.

383. *Omitted*.

384. *Omitted*.

PART 20
ACQUISITIONS

Introduction

Overview.

385. This Part makes provision in respect of takeover bids.

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Scope.

386.(1) This Part applies to takeover bids for the securities of companies governed by the law of Gibraltar, where all or some of those securities are admitted to trading on a regulated market in Gibraltar.

(2) This Part does not apply to takeover bids for securities issued by companies, the object of which is the collective investment of capital provided by the public–

(a) operating on the principle of risk-spreading; and

(b) the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of those companies.

(3) Action taken by a company referred to in subsection (2) to ensure that the stock exchange value of its units does not vary significantly from their net asset value is to be regarded as equivalent to a repurchase or redemption.

Interpretation of Part 20.

387.(1) In this Part–

"multiple-vote securities" means securities included in a distinct and separate class and carrying more than one vote each;

"offer document" is to be construed in accordance with section 393;

"offeree company" means a company, the securities of which are the subject of a bid;

"offeror" means any person making a bid;

"parties to a bid" means the offeror, the members of the offeror's board (if the offeror is a company), the offeree company, holders of the offeree company's securities and the members of the offeree company's board, and persons acting in concert with any of those parties;

"securities" means transferable securities carrying voting rights in a company; and

"takeover bid" or "bid" means a public offer (other than by the offeree company itself) made to the holders of a company's securities to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree company.

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(2) In this Part "persons acting in concert" means a person who cooperates with the offeror or the offeree company on the basis of an agreement or understanding (whether formal or informal) either to acquire control of the offeree company or frustrate the successful outcome of a bid.

(3) For the purposes of subsection (2) a person and each of that person's controlled undertakings are all deemed to be persons acting in concert with each other.

(4) In subsection (3) a "controlled undertaking" means any undertaking in which a person ("P")–

(a) has a majority of the shareholders' or members' voting rights;

(b) is a shareholder or member and at the same time has the right to appoint or remove a majority of the members of the administrative management or supervisory body; or

(c) is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights under an agreement entered into with other shareholders or members,

and for these purposes, P's rights as regards voting, appointment or removal include the rights of any other controlled undertaking and those of any person or entity acting in their own name but on behalf of P or any other controlled undertaking.

Competent authority.

388.(1) The GFSC is designated as the competent authority for the purposes of this Part.

(2) The GFSC is responsible for supervising bids where the offeree company has its registered office in Gibraltar and its securities are admitted to trading on a regulated market in Gibraltar.

(3) *Omitted*.

(4) *Omitted*.

(5) The Minister may, by regulations–

(a) confer such powers on the GFSC as the Minister considers to be appropriate for the purpose of carrying out its functions under this Part, including ensuring that the parties to a bid comply with any provision made by or under this Part; and

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(b) make further provision as to the manner in which bids are to be dealt with under this Part.

(6) Without limiting subsection (5), regulations made under subsection (5)(b) may, in particular, provide for matters relating to–

(a) the consideration offered in the case of a bid and, in particular, the price;

(b) the bid procedure and, in particular, the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the bid;

(c) the information to be provided to the employees of an offeree company with a registered office in Gibraltar;

(d) the law governing companies and, in particular, the percentage of voting rights which confers control;

(e) any derogation from the obligation to launch a bid; and

(f) the conditions under which the offeree company's board may undertake any action which might frustrate the bid.

(7) Subject to the general principles in section 390, regulations made under subsection (5) may–

(a) provide for such exceptions as the Minister considers to be appropriate in order to take account of circumstances in Gibraltar; and

(b) authorise the GFSC to waive any requirement–

(i) as provided for in any exception under paragraph (a); or

(ii) in other specified circumstances and subject to the GFSC providing reasons for its decision.

389. *Omitted*.

Conduct of bids, etc.

General principles.

390.(1) A takeover bid or other transaction to which this Part applies must comply with the following general principles–

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(a) all holders of the same class of securities of an offeree company must be afforded equivalent treatment and, if a person acquires control of a company, other holders of securities must be protected;

(b) the holders of the securities of an offeree company must be afforded sufficient time and information to enable them to reach a properly informed decision on the bid and, where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the location of the company's places of business;

(c) the board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

(d) false markets must not be created in the securities of the offeree company, of the offeror company or of any other company involved in the bid in such a way that the rise or fall of the price of the securities becomes artificial and the normal functioning of the markets is distorted;

(e) an offeror must announce a bid only after ensuring that the offeror can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and

(f) an offeree company must not be hindered in the conduct of its affairs by a bid for its securities for longer than is reasonable.

(2) The GFSC must ensure that the general principles are observed and for that purpose may–

(a) give any direction that appears to be necessary in order to–

(i) restrain a person from acting or continuing to act in contravention of this Part;

(ii) restrain a person from doing or continuing to do a particular thing, pending determination of whether it or any other conduct by that person constitutes a contravention of this Part; or

(iii) otherwise secure compliance with this Part; and

(b) issue guidance on the interpretation, application or effect of the general principles.

Protection of minority shareholders, the mandatory bid and the equitable price.

391.(1) Subsection (2) applies where a person ("P")–

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(a) acquires securities to which section 386(1) applies which, when taken together with securities in which persons acting in concert with P are interested, carry 30% or more of the voting rights of a company; or

(b) together with any person acting in concert with P–

(i) is interested in securities to which section 386(1) applies which in the aggregate carry not less than 30% of the voting rights of a company but does not hold shares carrying more than 50% of those voting rights; and

(ii) acquires an interest in any other securities which increases the percentage of securities carrying voting rights in which P is interested.

(2) The GFSC must direct P–

(a) to make a bid as a means of protecting the minority shareholders of that company; and

(b) to address the bid at the earliest opportunity to all holders of securities for all their holdings at an equitable price.

(3) Subsection (2) does not apply where P has acquired control of the company following a voluntary bid made to all the holders of securities for all their holdings in accordance with this Part.

(4) Subsections (1) and (2) do not apply to any change of control of a company to which section 386(1) applies that arises from the use of the resolution tools, powers and mechanisms provided for in Part 4 of the Financial Services (Recovery and Resolution) Regulations 2020.

(5) In subsection (2) an "equitable price" means–

(a) the highest price paid for the same securities by P, or by persons acting in concert with P, during the period, prescribed in regulations made by the Minister, of not less than six months and not more than 12 months before the bid is made ("the offer price"); or

(b) where, after the bid has been made public and before the offer closes for acceptance, P or any person acting in concert with P purchases securities at a price higher than the offer price, the highest price paid for the securities so acquired,

and where paragraph (b) applies, P must increase the offer to the highest price.

(6) Subject to the general principles in section 390, the Minister may by regulations–

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(a) authorise the GFSC to adjust the equitable price in circumstances and in accordance with criteria that are clearly defined;

(b) specify the circumstances in which the highest price may be increased or reduced, for example–

(i) where the highest price was set by agreement between the purchaser and a seller;

(ii) where the market prices of the securities in question have been manipulated;

(iii) where market prices in general or certain market prices in particular have been affected by exceptional occurrences; or

(iv) in order to enable a company in difficulty to be rescued; or

(c) specify the criteria to be applied in such cases, for example–

(i) the average market value over a particular period;

(ii) the break-up value of the company; or

(iii) other objective valuation criteria generally used in financial analysis.

(7) Any decision by the GFSC to adjust the equitable price in accordance with regulations made under subsection (6) must be substantiated and made public.

(8) P may offer securities, cash or a combination of both as consideration for a bid but must offer a cash alternative where–

(a) the consideration offered does not consist of liquid securities admitted to trading on a regulated market; or

(b) P or persons acting in concert with P have purchased for cash securities carrying 5% or more of the voting rights in the company during the period–

(i) beginning at the same time as the period determined in accordance with subsection (5)(a); and

(ii) ending when the offer closes for acceptance.

(9) A cash consideration must be offered, at least as an alternative, in all cases.

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(10) Without limiting any other provision of this section, the Minister may by regulations provide for further measures to protect the interests of the holders of securities as the Minister considers appropriate, but those measures must not hinder the normal course of a bid.

Bids to be made public.

392.(1) Subject to subsection (2), a decision by any person to make a bid must be made public without delay and the person must inform the GFSC of the bid at the first reasonable opportunity.

(2) The Minister may, by regulations, require that the GFSC must be informed before a decision by any person to make a bid is made public.

(3) Where a bid has been made public, the boards of the offeree and offeror companies must inform the representatives of their respective employees or, where there are no such representatives, the employees themselves of the fact.

Offer documents.

393.(1) Subject to section 400, an offeror must prepare and make public in good time an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the bid.

(2) An offer document–

(a) must be communicated by the offeror to the GFSC before it is made public; and

(b) when it is made public, must be communicated by the boards of the offeree and offeror companies to the representatives of their respective employees or, where there are no such representatives, to the employees themselves.

(3) Subject to subsection (4), the Minister may, by regulations, provide that an offer document communicated to the GFSC under subsection (2) is not to be made public or issued to the holders of the offeree company's securities until the GFSC certifies that the document complies with the provisions of this Part.

Content of offer documents.

394.(1) An offer document must include the following information–

(a) the terms of the bid;

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(b) the identity of the offeror and, where the offeror is a company, the type, name and registered office of the company;

(c) the securities or, where appropriate, the class or classes of securities for which the bid is made;

(d) the consideration offered for each security or class of securities and, in the case of a mandatory bid, the method employed in determining it, with particulars of the way in which that consideration is to be paid;

(e) the compensation offered for the rights which might be removed as a result of the operation of section 399(5) with particulars of the way in which that compensation is to be paid and the method employed in determining it;

(f) the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire;

(g) details of any existing holdings of the offeror, and of persons acting in concert with the offeror, in the offeree company;

(h) all the conditions to which the bid is subject;

(i) the offeror's intentions with regard to–

(i) the future business of the offeree company and, in so far as it is affected by the bid, the offeror company; and

(ii) the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment; and

(iii) the offeror's strategic plans for the two companies; and

(iv) the likely repercussions on employment and the locations of the companies' places of business;

(j) the time allowed for acceptance of the bid;

(k) where the consideration offered by the offeror includes securities of any kind, information concerning those securities;

(l) information concerning the financing for the bid;

(m) the identity of persons acting in concert with the offeror or with the offeree company and, in the case of companies, their types of company, and the names,

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registered offices and relationships with the offeror and, where possible, with the offeree company; and

(n) the law and the competent courts which will govern contracts concluded between the offeror and the holders of the offeree company's securities as a result of the bid.

(2) Without limiting subsection (1)–

(a) the GFSC may at any time request a party to a bid for securities admitted to trading in a regulated market in Gibraltar to provide any information in that party's possession or control and which is relevant to the GFSC's discharge of its functions under this Part; and

(b) a party to a bid who has received a request for information under paragraph (a) must provide the information to the GFSC without delay.

(3) References in this section to an offer document being made public are to the offer document being made public in accordance with section 396.

Time allowed for acceptance.

395.(1) The time allowed by an offeror for acceptance of a bid must be not be less than two weeks nor more than ten weeks from the date of publication of the offer document.

(2) An offeror may extend the period during which a bid will remain open for acceptance but only if–

(a) the offeror gives at least two weeks' notice of the offeror's intention of closing the bid; and

(b) doing so will not be contrary to the general principle in section 390(1)(f).

(3) The GFSC may grant a derogation from the period referred to in subsection (1) to allow the offeree company to call a general meeting of shareholders to consider the bid.

(4) The Minister may by regulations provide for the periods specified in subsection (1) to be varied in specified cases.

Disclosure.

396.(1) A bid must be made public in a way which–

(a) ensures the transparency and integrity of the market for the securities of–

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(i) the offeree company;

(ii) the offeror; and

(iii) any other company affected by the bid; and

(b) prevents the publication or dissemination of false or misleading information.

(2) The information and documents required by sections 392 to 394 must be disclosed in a manner which ensures that without delay they are readily available to–

(a) holders of the offeree company's securities which are admitted to trading; and

(b) the representatives of the offeree company's and offeror's employees or, where there are no such representatives, to the employees themselves.

(3) The Minister may, by regulations, make further provision to give effect to subsections (1) and (2) and any regulations under this subsection may provide for consequential matters, including fees, offences and penalties as the Minister considers appropriate.

Obligations of the board of an offeree company.

397.(1) During the relevant bid period, the board of an offeree company must obtain the prior authorisation of the general meeting of shareholders–

(a) before taking any action (other than seeking alternative bids) which may result in the frustration of a bid; and

(b) in particular, before issuing any new shares which may result in a lasting impediment to the offeror acquiring control of the offeree company.

(2) In this section the "relevant bid period" means the period from the time the board of the offeree company receives the information in section 392 concerning the bid until the result of the bid is made public or the bid lapses.

(3) The Minister may, by regulations, amend subsection (2) so that the relevant bid period begins at an earlier stage, for example, once the board of the offeree company becomes aware that the bid is imminent.

(4) A decision taken by an offeree company before the beginning of the relevant bid period but not partly or fully implemented before then must be approved or confirmed by a general meeting of shareholders if the decision–

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(a) does not form part of the normal course of the company's business; and

(b) its implementation may result in the frustration of the bid.

(5) The Minister may by regulations allow a general meeting of shareholders to be called at short notice (of not less than two weeks) for the purpose of obtaining the prior authorisation, approval or confirmation required under subsection (1) or (4).

(6) On receipt of a bid, the board of the offeree company–

(a) must prepare and make public a document setting out its opinion of the bid and the reasons on which it is based, including its views on–

(i) the effects of implementation of the bid on all the company's interests and specifically employment; and

(ii) the offeror's strategic plans for the offeree company and their likely repercussions on employment and the location of the company's places of business, as set out in the offer document in accordance with section 394(1)(i); and

(b) must at the same time communicate the opinion to the representatives of its employees or, where there are no such representatives, to the employees themselves.

(7) Where the board of the offeree company receives in good time a separate opinion from the representatives of its employees on the effects of the bid on employment, that opinion must be appended to the document referred to in subsection (6).

(8) For the purposes of this section, where a company has a two-tier board structure, "board" means both the management board and the supervisory board.

Information on in-scope companies.

398.(1) A company to which section 386(1) applies must publish detailed information on the following matters–

(a) the structure of their capital, including securities which are not admitted to trading on a regulated market, where appropriate with an indication of the different classes of shares and, for each class of shares, the rights and obligations attaching to it and the percentage of total share capital that it represents;

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(b) any restrictions on the transfer of securities, such as limitations on the holding of securities or the need to obtain the approval of the company or other holders of securities;

(c) significant direct and indirect shareholdings (including indirect shareholdings through pyramid structures and cross-shareholdings) in companies the shares of which are officially listed on a stock exchange or exchanges situated or operating in Gibraltar;

(d) the holders of any securities with special control rights and a description of those rights;

(e) the system of control of any employee share scheme where the control rights are not exercised directly by the employees;

(f) any restrictions on voting rights, such as limitations of the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems by which, with the company's cooperation, the financial rights attaching to securities are separated from the holding of securities;

(g) any agreements between shareholders which are known to the company and may result in restrictions on the transfer of securities or voting rights;

(h) the rules governing the appointment and replacement of board members and the amendment of the articles of association;

(i) the powers of board members, and in particular the power to issue or buy back shares;

(j) any agreements of significance to which the company is a party and which take effect, alter or terminate on a change of control of the company following a takeover bid and their effects, where–

(i) the disclosure of which would not be seriously prejudicial to the company; or

(ii) the company is specifically obliged to disclose the information by operation of law even if the disclosure would be seriously prejudicial to the company; and

(k) any agreements between the company and its board members or employees providing for compensation if they resign or are made redundant without valid reason or if their employment ceases because of a takeover bid.

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(2) The information referred to in subsection (1) must be published in the company's annual report in accordance with the Companies Act 2014.

(3) In the case of companies, the securities of which are admitted to trading on a regulated market, the board must present an explanatory report to the annual general meeting of shareholders on the matters in subsection (1).

Breakthrough.

399.(1) Subject to section 400, this section applies when a bid has been made public.

(2) Any restrictions on the transfer of securities provided for in–

(a) the articles of association of the offeree company; or

(b) contractual agreements between–

(i) the offeree company and holders of its securities; or

(ii) holders of the offeree company's securities entered into after 20th May 2006;

do not apply in relation to the offeror during the time allowed for acceptance of the bid set out in section 395.

(3) Any restrictions on voting rights provided for in–

(a) the articles of association of the offeree company; or

(b) contractual agreements between–

(i) the offeree company and holders of its securities; or

(ii) holders of the offeree company's securities entered into after 20th May 2006;

do not have effect at the general meeting of shareholders which decides on any defensive measures under section 397.

(4) Multiple-vote securities must carry only one vote each at a general meeting of shareholders deciding on any defensive measures in accordance with section 397.

(5) Where, following a bid, the offeror holds 75% or more of the capital carrying voting rights–

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(a) the following do not apply–

(i) any restrictions on the transfer of securities or voting rights under subsections (2) or (4); and

(ii) any extraordinary rights of shareholders regarding the appointment or removal of board members provided for in the offeree company's articles of association;

(b) multiple-vote securities must carry only one vote each at the first general meeting of shareholders following closure of the bid and called by the directors at the request of the offeror in order to amend the articles of association or to remove or appoint board members; and

(c) the offeror has the right to request that the directors convene a general meeting of shareholders at short notice (of not less than two weeks).

(6) Where rights are removed on the basis of subsections (2) to (5) or section 400–

(a) equitable compensation must be provided for any loss suffered by the holders of those rights; and

(b) the Minister may, by regulations, set the terms for determining that compensation and the arrangements for payment.

(7) Subsections (3) to (5) do not apply to securities where restrictions on voting rights are compensated for by specific pecuniary advantages.

(8) This section does not apply–

(a) to securities held by the Crown in an offeree company conferring special rights on the Crown, or special rights provided for under the law of Gibraltar; or

(b) to a cooperative society within the meaning of the Cooperative Societies Act.

Optional arrangements.

400.(1) A company to which section 386(1) applies and which has its registered office in Gibraltar need not apply section 393(1) to (3) or 399 but may opt to do so.

(2) A decision by a company to apply section 393(1) to (3) or 399 (an "opting-in decision") may be revoked by a further decision of the company (an "opting-out decision").

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(3) An opting-in decision or an opting-out decision–

(a) must be taken by a general meeting of shareholders, in accordance with the Companies Act 2014; and

(b) must be communicated by the company without delay to the GFSC.

(4) The Minister may, by order published in the Gazette, exempt a company from applying section 393(1) to (3) or 399 where the company is the subject of an offer launched by another company–

(a) which does not apply section 393(1) to (3) or 399;

(b) which is controlled, directly or indirectly, by a company which does not apply the provisions in paragraph (a);

(c) which is registered in a country or territory outside Gibraltar and is not required to comply with–

(i) the provisions in paragraph (a); or

(ii) any provisions which appear to the Minister to correspond to those provisions; or

(d) which is controlled, directly or indirectly, by a company which is registered in a country or territory outside Gibraltar and is not required to comply with the provisions in paragraph (c)(i) or (ii).

(5) An exemption under subsection (4) may be subject to any conditions that the Minister considers to be appropriate.

(6) The application by a company of an exemption under subsection (4) must be authorised by a general meeting of shareholders no earlier than 18 months before the bid was made public in accordance with section 392.

Regulations

Regulations applicable to the conduct of bids.

401.(1) The Minister may make regulations governing the conduct of bids.

(2) Without limiting subsection (1), any regulations made under that subsection must provide for the following matters–

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(a) the lapsing and revision of bids;

(b) competing bids;

(d) the disclosure of the results of bids; and

(e) the irrevocability of bids and the conditions permitted.

Squeeze-out and sell-out

Squeeze-out.

402.(1) This section and section 403 apply following a bid made to all the holders of an offeree company's securities for all of their securities.

(2) An offeror may require holders of remaining securities to sell their securities to the offeror at a fair price where, following acceptance of the bid, the offeror has acquired or has firmly contracted to acquire securities representing not less than 90% of the offeree company's capital carrying voting rights and 90% of the voting rights comprised in the bid.

(3) The Minister, by regulations–

(a) must provide for a means of determining when the thresholds in subsection (2) are reached;

(b) may provide that the right of an offeror to require all holders of remaining securities to sell their securities to the offeror at a fair price can be exercised only in respect of the class of securities in which the thresholds in subsection (2) have been reached, where the offeree company has issued more than one class of securities; and

(c) may prescribe the form and manner in which an offeror must give notice of the exercise the right to require all holders of remaining securities to sell their securities to the offeror in accordance with this section.

(4) An offeror who wishes to exercise the right to require all holders of remaining securities to sell their securities to the offeror in accordance with this section, must do so in the prescribed form and manner within three months of the end of the time allowed for acceptance of the bid under section 395.

(5) For the purposes of subsection (2) the price at which an offeror may require all holders of remaining securities to sell their securities to the offeror must take the same form as the consideration offered in the bid or, alternatively, cash.

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(6) Cash must be offered at least as an alternative for all purposes connected with the operation of subsection (5).

(7) For the purposes of subsection (2), the consideration offered–

(a) in a mandatory bid must be presumed to be fair; and

(b) in a voluntary bid, must be presumed to be fair where, through acceptance of the bid, the offeror has acquired securities representing not less than 90% of the capital carrying voting rights comprised in the bid.

Sell-out.

403.(1) The holders of remaining securities may require the offeror to purchase their securities at a fair price where, following acceptance of the bid, the offeror has acquired or has firmly contracted to acquire securities representing not less than 90% of the offeree company's capital carrying voting rights and 90% of the voting rights comprised in the bid.

(2) The Minister, by regulations–

(a) must provide for a means of determining when the thresholds in subsection (1) are reached;

(b) may provide that a person's right to require an offeror to purchase their securities in accordance with this section can be exercised only in respect of the class of securities in which the thresholds in subsection (1) have been reached, where the offeree company has issued more than one class of securities;

(c) may provide that the right of an offeror to require all holders of remaining securities to sell their securities to the offeror at a fair price can be exercised only in the class of securities in which the thresholds in subsection (1) have been reached, where the offeree company has issued more than one class of securities; and

(d) may prescribe the form and manner in which a person must give notice of the exercise the right to require an offeror to purchase their securities in accordance with this section.

(3) A person who wishes to exercise the right to require an offeror to purchase their securities in accordance with this section must do so in the prescribed form and manner within three months of the end of the time allowed for acceptance of the bid under section 395.

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(4) For the purposes of subsection (1) the price at which an offeror may be required to purchase securities must take the same form as the consideration offered in the bid or, alternatively, cash.

(5) Cash must be offered at least as an alternative for all purposes connected with the operation of subsection (4).

(6) For the purposes of subsection (1), the consideration offered–

(a) in a mandatory bid must be presumed to be fair; and

(b) in a voluntary bid, must be presumed to be fair where, through acceptance of the bid, the offeror has acquired securities representing not less than 90% of the capital carrying voting rights comprised in the bid.

Offence of contravening Part 20

Offences.

404. A person who contravenes any provision of this Part commits an offence and is liable, on summary conviction, to a fine at level 5 on the standard scale.

PART 21
MARKET ABUSE

Introduction

Overview.

405. This Part makes provision concerning market abuse (insider dealing, the unlawful disclosure of inside information and market manipulation) and supplements the Market Abuse Regulation.

Interpretation of Part 21.

406.(1) In this Part (and in Schedules 26 and 27)–

"inside information" has the meaning given in Article 7 of the Market Abuse Regulation; and

"market abuse offence" has the meaning given in section 413(1).

(2) In this Part and in Schedule 26 the following expressions have the same meaning as they have in Article 3 of the Market Abuse Regulation –

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"accepted market practice";

"benchmark";

"buy-back programme";

"emission allowance";

"issuer";

"spot commodity contract"; and

"stabilisation".

(3) Other expressions used in this Part or Schedule 26 or 27 that are also used in the Market Abuse Regulation have the same meaning in this Part or that Schedule as they have in the Market Abuse Regulation.

Financial instruments to which Part 21 applies.

407.(1) This Part applies to the following financial instruments–

(a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;

(b) financial instruments admitted to trading or traded on an MTF or for which a request for admission to trading on an MTF has been made;

(c) financial instruments traded on an OTF; and

(d) financial instruments not within paragraphs (a) to (c) (including credit default swaps and contracts for difference) but the price or value of which depends or has an effect on the price or value of a financial instrument referred to in any of those paragraphs.

(2) This Part also applies to behaviour or transactions, including bids, relating to the auctioning of emission allowances or other auctioned products (including when auctioned products are not financial instruments) and, without limiting any specific provision to the contrary, any provision in this Part relating to orders to trade applies to bids submitted in the context of an auction.

(3) For the purpose of section 412, this Part also applies to–

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(a) spot commodity contracts where the transaction, order or behaviour has an effect on the price or value of a financial instrument in subsection (1);

(b) financial instruments (including derivative contracts and derivative instruments for the transfer of credit risk) where the transaction, order, bid or behaviour has an effect on the price or value of a spot commodity contract, the price or value of which depends on the price or value of those financial instruments; and

(c) behaviour in relation to benchmarks.

(4) In subsection (3), a reference to a spot commodity contract does not include a spot commodity contract which is a wholesale energy product as defined in Article 2.4 of the REMIT Regulation.

(5) This Part applies to a transaction, order or behaviour concerning any financial instrument referred to in this section, irrespective of whether the transaction, order or behaviour takes place on a trading venue.

Exceptions.

408.(1) This Part does not apply to–

(a) trading in own shares in buy-back programmes, which is carried out in accordance with Article 5.1, 5.2 and 5.3 of the Market Abuse Regulation;

(b) trading in securities or associated instruments as referred to in Article 3.2(a) and (b) of the Market Abuse Regulation for the stabilisation of securities, which is carried out in accordance with Article 5.4 and 5.5 of that Regulation; or

(c) activities carried out in pursuit of monetary, exchange rate or public debt management policy in accordance with Article 6.1 or 6.2 of the Market Abuse Regulation.

(2) The Minister may by regulations extend the exception in subsection (1) to activities carried out in pursuit of–

(a) the European Union's climate policy referred to in Article 6.3 of the Market Abuse Regulation; or

(b) the European Union's Common Agricultural Policy or Common Fisheries Policy referred to in Article 6.4 of that Regulation.

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Insiders.

409.(1) A person is an "insider" if the person possesses inside information as a result of–

(a) being a member of the administrative, management or supervisory body of–

(i) an issuer; or

(ii) an emission allowance market participant;

(b) having a holding in the capital of–

(i) an issuer; or

(ii) an emission allowance market participant;

(c) having access to the information through the exercise of any employment, profession or duties; or

(d) being involved in criminal activities.

(2) A person is also an "insider" if the person–

(a) possesses inside information which was obtained in circumstances other than those in subsection (1); and

(b) knows that it is inside information.

Insider dealing.

410.(1) A person who engages in insider dealing commits an offence.

(2) A person ("P") engages in insider dealing if P possesses inside information which P obtained as an insider; and P–

(a) uses that information, whether directly or indirectly and whether for P's own account or for the account of another person, in–

(i) acquiring or disposing of a financial instrument to which the information relates;

(ii) amending or cancelling an order concerning a financial instrument to which the information relates, where the order was placed before P possessed the inside information; or

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(iii) submitting, modifying or withdrawing a bid in relation to an auction of emission allowances or other auctioned products; or

(b) recommends or induces another person, based on that information–

(i) to acquire or dispose of a financial instrument to which the information relates; or

(ii) to cancel or amend an order concerning a financial instrument to which the information relates.

(3) A person also engages in insider dealing if the person–

(a) acts on a recommendation or inducement of the kind referred to in subsection (2)(b); and

(b) knows that the recommendation or inducement is based on inside information.

(4) A person is not to be regarded as having engaged in insider dealing merely because the person–

(a) is or has been in possession of inside information; and

(b) has used that information to acquire or dispose of a financial instrument,

if the person's behaviour constitutes legitimate behaviour within the meaning of Article 9 of the Market Abuse Regulation.

Disclosing inside information.

411.(1) A person who unlawfully discloses inside information commits an offence.

(2) A person ("P") unlawfully discloses inside information if P–

(a) possesses inside information which P obtained as an insider and–

(i) discloses it to another person; and

(ii) the disclosure is made other than in the normal course of P's employment, profession or duties; or

(b) receives a recommendation or inducement of the kind referred to in section 410(2)(b); and–

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(i) discloses that recommendation or inducement to another person; and

(ii) knows that the recommendation or inducement was based on inside information.

(3) For the purposes of subsection (2)(a)(ii), a disclosure will be within the normal course of a person's employment, profession or duties if it qualifies as a market sounding made in compliance with Article 11.1 to 11.8 of the Market Abuse Regulation.

(4) It is a defence for a person charged with an offence under this section to prove that the disclosure was made for the purpose of journalism or some other form of media expression and that–

(a) the disclosure was not made with the intention of misleading the market as to the supply of, demand for, or price of any financial instrument; and

(b) the person or any person closely associated with that person did not derive, directly or indirectly, any advantage or profit from the disclosure.

Market manipulation.

412.(1) A person who engages in market manipulation commits an offence.

(2) A person ("P") engages in market manipulation if P–

(a) enters into a transaction, places an order to trade or engages in any other behaviour which–

(i) gives false or misleading signals as to the supply or price of, or demand for, a financial instrument or related spot commodity contract; or

(ii) secures the price of a financial instrument or related spot commodity contract at an abnormal or artificial level;

(b) enters into a transaction, places an order to trade or engages in any other behaviour which uses a fictitious device or any other form of deception or contrivance which affects or is likely to affect the price of a financial instrument or related spot commodity contract;

(c) disseminates information through the media, including the internet, or by any other means, which–

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(i) gives false or misleading signals as to the supply or price of, or demand for, a financial instrument or related spot commodity contract; or

(ii) secures the price of a financial instrument or related spot commodity contract at an abnormal or artificial level;

and from which P derives an advantage or profit (whether for P or another person); or

(d) transmits false or misleading information, provides false or misleading inputs or engages in any other behaviour that manipulates the calculation of a benchmark.

(3) Subsection (2)(a) does not apply to a transaction, order or other behaviour which is shown to have been entered into for a legitimate purpose and to conform with accepted market practices on the trading venue concerned.

Market abuse investigations

Market abuse investigations.

413.(1) Where the GFSC has reasonable grounds for suspecting that an offence under section 410, 411 or 412 (a "market abuse offence") or a contravention of the Market Abuse Regulation is being or has been committed, the GFSC–

(a) may take any steps that it considers appropriate to establish whether a market abuse offence or contravention of the Market Abuse Regulation is being or has been committed; and–

(b) where it concludes–

(i) that a market abuse offence is being or has been committed, must report the results of its investigation to the Attorney General; and

(ii) that a contravention of the Market Abuse Regulation is being or has been committed, may take any action that it considers appropriate under Schedule 26 or the Market Abuse Regulation.

(2) A person who is or may be able to give information to the GFSC in respect of an investigation under subsection (1) must–

(a) produce to the GFSC any document in the person's possession or control which appears to be relevant to the GFSC's investigation;

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(b) produce to the GFSC, at a time and place it may specify, any document it may specify which appears to the GFSC to be relevant to its investigation; and

(c) give the GFSC all assistance in connection with the investigation which that person is reasonably able to give.

(4) The GFSC may take copies of or extracts from any document produced under this section.

(5) A statement made by a person in compliance with a requirement imposed under this section may only be used in evidence in criminal proceedings against that person if–

(a) the person has introduced the statement in evidence; or

(b) the proceedings concern the prosecution of the person for–

(i) failing or refusing to produce documents or give assistance in accordance with subsection (2);

(ii) omitting to disclose information which should have been disclosed; or

(iii) providing an untruthful statement.

(6) A person is not required to produce a document or disclose information under this section if the person–

(a) would be entitled to refuse to produce or disclose it on grounds of legal professional privilege in proceedings in the Supreme Court; or

(b) owes an obligation of confidence in respect of that document or information by virtue of carrying on the business of banking, except where–

(i) the person to whom the obligation of confidence is owed consents in writing to the production or disclosure; or

(ii) the making of the requirement was authorised by the Minister.

(7) A person ("P") commits an offence if P–

(a) without reasonable excuse–

(i) fails or refuses to comply with a requirement imposed under subsection (2); or

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(ii) omits to disclose material which P should have disclosed in accordance with this section; or

(b) in purported compliance with a requirement imposed under subsection (2)–

(i) gives information which P knows to be false or misleading; or

(ii) recklessly gives information which is false or misleading.

(8) This section and section 414 apply without limiting the GFSC's powers under paragraph 3 of Schedule 26.

Entry of premises under warrant.

414.(1) A magistrate may issue a warrant authorising a person to enter and search premises if the magistrate is satisfied, on information on oath, that there are reasonable grounds for suspecting that–

(a) a market abuse offence is being, has been or is about to be committed on the premises; or

(b) evidence is to be found on the premises of the commission of–

(i) a market abuse offence; or

(ii) a contravention of Article 14 or 15 of the Market Abuse Regulation.

(2) An application for a warrant under this section–

(a) may be made by–

(i) a person acting under the authority of the GFSC; or

(ii) a constable; and

(b) must specify the premises to which it relates.

(3) A warrant issued under this section–

(a) continues in force for one month beginning with the date on which it was issued; and

(b) authorises a person acting under the authority of the GFSC or a constable to–

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(i) enter the premises specified in the warrant, using such force as may be reasonably necessary;

(ii) search the premises and inspect any relevant information found on the premises;

(iii) take copies of or seize and remove any relevant information found on the premises or take any other steps which may appear to be necessary for preserving or preventing interference with any relevant information; and

(iv) require any person on the premises to provide an explanation of any relevant information or to state where it may be found.

(4) Any relevant information of which possession is taken under this section may be retained–

(a) for up to three months; or

(b) if within that time–

(i) proceedings against a person for a market abuse offence are commenced, until those proceedings have concluded; or

(ii) the GFSC undertakes any regulatory activity which may lead to the GFSC imposing a sanction for contravention of Article 14 or 15 of the Market Abuse Regulation, until that regulatory activity has concluded.

(5) In this section "relevant information" means any document or information which a person acting under a warrant issued under this section reasonably believes may be required as evidence for the purposes of any proceedings or regulatory activity of the kind in subsection (4)(b)(i) or (ii).

(6) A person who wilfully obstructs another person in the exercise of any power under this section commits an offence.

Proceedings and penalties

Consent to prosecution.

415. Proceedings for an offence under this Part may only be instituted by or with the consent of the Attorney General.

Mode of trial and penalties.

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416.(1) An individual who commits an offence–

(a) under section 410(1), 411(1), 412(1) or 413(7)(b) is liable–

(i) on summary conviction, to imprisonment for six months, or the statutory maximum fine, or both; or

(ii) on conviction on indictment, to imprisonment for seven years, or a fine, or both;

(b) under section 413(7)(a) is liable on summary conviction, to imprisonment for six months, or the statutory maximum fine, or both;

(c) under section 414(6) is liable–

(i) on summary conviction, to the statutory maximum fine; or

(ii) on conviction on indictment, to a fine.

(2) A body corporate, partnership or unincorporated body that commits an offence under this Part is liable–

(a) on summary conviction, to the statutory maximum fine; or

(b) on conviction on indictment, to a fine.

(3) A person who is convicted of an offence in proceedings instituted as a result of an investigation under section 413 may, at the discretion of the court, in the same proceedings be ordered to pay all or part of the expenses incurred by the GFSC in conducting the investigation.

Territorial application of Part 21.

417. An offence is committed under this Part if any act or omission which forms part of an offence takes place in Gibraltar.

Civil proceedings for loss.

418.(1) A breach of section 410(1), 411(1) or 412(1) is actionable at the suit of a person who suffers loss as a result of that breach, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) In any proceedings under this section, a certificate issued by or on behalf of a court of competent jurisdiction certifying that a person has been convicted of an offence under this Part is admissible as conclusive evidence of the matters certified.

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The Market Abuse Regulation

Market Abuse Regulation.

419.(1) The Market Abuse Regulation has effect subject to Schedule 26.

(2) Schedule 27 makes further provision in respect of the reporting of contraventions of the Market Abuse Regulation and related matters.

PART 22
SUSPENSION AND REMOVAL OF FINANCIAL INSTRUMENTS FROM TRADING

Introduction

Overview.

420. This Part enables–

(a) the GFSC to require financial instruments to be suspended or removed from trading on regulated markets and other trading venues for the purpose of–

(i) protecting investors interests and the orderly functioning of financial markets; or

(ii) exercising the regulatory powers conferred on it by or under this Act; and

(b) trading venue operators to suspend or remove from trading a financial instrument which no longer complies with the venue's rules.

Interpretation of Part 22.

421. In this Part–

"derivative" means a derivative in paragraph 46(4) to (10) of Schedule 2;

"institution" means–

(a) a regulated market;

(b) an investment firm; or

(c) a credit institution when carrying on investment services and activities.

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"issuer", in relation to a financial instrument, means the person who issued the instrument;

"market abuse" means a contravention of Article 14 or 15 of the Market Abuse Regulation;

"market operator" has the meaning given in in paragraph 1 of Schedule 2;

"non-disclosure of inside information" means a failure to disclose inside information in contravention of Article 17 of the Market Abuse Regulation;

"regulated information" has the meaning given in section 356(1);

"regulatory information service" means a service for the dissemination of regulated information which is approved by the GFSC under section 377;

"systematic internaliser" has the meaning given in paragraph 81 of Schedule 2; and

"trading venue operator" means any of the following when operating a trading venue–

(a) a regulated market or market operator;

(b) an investment firm operating an MTF or OTF; or

(c) a credit institution when carrying on investment services and activities.

Power to require suspension or removal

Power to require suspension or removal from trading.

422.(1) The GFSC may require an institution or a class of institutions to suspend or remove a financial instrument from trading–

(a) for the purpose of protecting–

(i) the interests of investors; or

(ii) the orderly functioning of the financial markets; or

(b) in the exercise of the regulatory powers conferred on it by or under this Act.

(2) In this section "trading" includes trading otherwise than on a trading venue.

Procedure

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Procedure for suspension or removal from trading.

423.(1) A requirement imposed on an institution under section 422 (a "relevant requirement") takes effect–

(a) immediately, if the notice given under subsection (2) so provides; or

(b) in any other case, on the date specified in the notice.

(2) If the GFSC proposes to impose a relevant requirement on an institution, or a class of institutions, or imposes such a requirement with immediate effect, it must give notice–

(a) by written notice to–

(i) the institution or, as the case may be, each institution in the class; and

(ii) the issuer of the financial instrument in question (if any); or

(b) by publishing a notice by means of a regulatory information service.

(3) A notice given under subsection (2)(a) must–

(a) give details of the relevant requirement;

(b) specify the date on which it took effect or takes effect;

(c) give the GFSC's reasons for imposing the requirement;

(d) specify a reasonable period (which must not be less than seven days) within which the recipient may make representations to the GFSC; and

(e) inform the recipient of the right of appeal under section 615.

(4) A notice published under subsection (2)(b) must–

(a) give details of the relevant requirement;

(b) specify the date on which it took effect or takes effect;

(c) specify the institution, or the class of institutions, to which it applies;

(d) state the GFSC's reasons for imposing the requirement;

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(e) state that any institution to which the requirement applies or the issuer of the financial instrument in question may make representations to the GFSC within the period specified by the notice (which must not be less than seven days); and

(f) inform them of the right of appeal under section 615.

(5) The GFSC may extend the period within which representations may be made to it.

Procedure following consideration of representations.

424.(1) This section applies where, within the period specified under section 423(3), (4) or (5), representations are made to the GFSC in relation to a requirement that it has proposed to impose or has imposed under section 422.

(2) The GFSC must decide whether to impose the requirement or (in the case of a requirement that has been imposed) whether to revoke it.

(3) In the case of a requirement that the GFSC has proposed to impose on a class of institutions, the GFSC may decide to impose the requirement–

(a) on the class;

(b) on the class apart from one or more specified members of it; or

(c) only on one or more specified members of the class.

(4) In the case of a requirement that the GFSC has imposed on a class of institutions, the GFSC may decide to revoke it in relation to–

(a) the class;

(b) the class apart from one or more specified members of it; or

(c) one or more specified members of the class only.

(5) The GFSC must give notice of its decision to–

(a) any institution which has made representations; and

(b) the issuer of the financial instrument in question (if any).

(6) In the case of a requirement that the GFSC has proposed to impose or has imposed on a class, the GFSC must also give notice of its decision by publishing it by means of a regulatory information service unless the decision is–

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(a) to impose the requirement on the class; or

(b) not to revoke the requirement in relation to the class or any member of it.

(7) An institution to which notice is required to be given under subsection (5) may appeal if the GFSC's decision is that the requirement will be imposed on, or will continue to apply to, the institution.

(8) An issuer to whom notice is required to be given under subsection (5) may appeal if the GFSC's decision is that the requirement will be imposed on, or will continue to apply to, the institution or (in the case of a requirement relating to a class) any of the institutions in the class.

(9) A notice given under subsection (5) must inform the recipient that a person aggrieved by a decision to which subsection (7) or (8) applies may appeal to the Supreme Court in accordance with section 615.

Revocation of requirements: applications by institutions.

425.(1) This section applies where the GFSC has imposed a requirement on an institution or a class of institutions under section 422.

(2) The institution or any of the institutions in the class may apply to the GFSC for the revocation of the requirement.

(3) The GFSC must decide whether to revoke the requirement.

(4) In the case of a requirement imposed on a class of institutions, the GFSC may decide to revoke it in relation to–

(a) the class;

(b) the class apart from one or more specified members of it; or

(c) one or more specified members of the class only.

(5) The GFSC must give a warning notice if–

(a) in the case of a requirement imposed on an institution, the GFSC proposes not to revoke the requirement; or

(b) in the case of a requirement imposed on a class, the GFSC proposes to make a decision which would have the effect that the requirement continues to apply to

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the applicant (whether or not it would have the effect that it continues to apply to other members of the class).

(6) The warning notice must be given to–

(a) the applicant; and

(b) the issuer of the financial instrument in question (if any).

Decisions on applications for revocation by institutions.

426.(1) This section applies where, having considered any representations made in response to a warning notice, the GFSC has decided whether to grant an application for revocation made under section 425.

(2) The GFSC must give notice in accordance with subsection (3) if–

(a) in the case of a requirement imposed on an institution, the GFSC decides to revoke the requirement; or

(b) in the case of a requirement imposed on a class, the GFSC makes a decision which has the effect that the requirement will no longer apply to the applicant (whether or not it will continue to apply to other members of the class).

(3) The notice must be given to–

(a) the applicant; and

(b) the issuer of the financial instrument in question (if any).

(4) If the GFSC is required to give notice under subsection (2) in relation to a requirement imposed on a class, the GFSC must also give notice of its decision by publishing it by means of a regulatory information service.

(5) The GFSC must give a decision notice in accordance with subsection (6) if–

(a) in the case of a requirement imposed on an institution, the GFSC decides not to revoke the requirement; or

(b) in the case of a requirement imposed on a class, the GFSC makes a decision which has the effect that the requirement will continue to apply to the applicant (whether or not it will continue to apply to other members of the class).

(6) The decision notice must be given to–

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(a) the applicant; and

(b) the issuer of the financial instrument in question (if any).

(7) If the GFSC is required to give a decision notice in relation to a requirement imposed on a class, the GFSC must also give notice of its decision by publishing it by means of a regulatory information service.

Revocation of requirements: applications by issuers.

427.(1) This section applies where the GFSC has imposed a requirement on an institution or a class of institutions under section 422.

(2) The issuer of the financial instrument may apply to the GFSC for the revocation of the requirement.

(3) The GFSC must decide whether to revoke the requirement.

(4) In the case of a requirement imposed on a class of institutions, the GFSC may decide to revoke it in relation to–

(a) the class;

(b) the class apart from one or more specified members of it; or

(c) one or more specified members of the class only.

(5) The GFSC must give the issuer a warning notice if–

(a) in the case of a requirement imposed on an institution, the GFSC proposes not to revoke the requirement; or

(b) in the case of a requirement imposed on a class, the GFSC proposes not to revoke the requirement or to revoke it in relation to–

(i) the class apart from one or more specified members of it; or

(ii) one or more specified members of the class only.

Decisions on applications for revocation by issuers.

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428.(1) This section applies where, having considered any representations made in response to a warning notice, the GFSC has decided whether to grant an application for revocation made under section 427.

(2) The GFSC must give notice to the issuer if the GFSC decides to revoke the requirement.

(3) If the GFSC is required to give notice under subsection (2) in relation to a requirement imposed on a class, the GFSC must also give notice of its decision by publishing it by means of a regulatory information service.

(4) The GFSC must give the issuer a decision notice if–

(a) in the case of a requirement imposed on an institution, the GFSC decides not to revoke the requirement; or

(b) in the case of a requirement imposed on a class, the GFSC decides not to revoke the requirement or makes a decision to revoke the requirement in relation to–

(i) the class apart from one or more specified members of it; or

(ii) one or more specified members of the class only.

(5) If the GFSC is required to give a decision notice under subsection (4)(b), it must also give notice of its decision by publishing it by means of a regulatory information service.

Suspension or removal from trading: notification and trading on other venues.

429.(1) The GFSC must take the steps in subsections (2) and (3) if it imposes a relevant requirement on an institution to–

(a) suspend or remove a financial instrument from trading; or

(b) suspend or remove a derivative from trading–

(i) which relates, or is referenced, to a financial instrument which is suspended or removed from trading under paragraph (a); and

(ii) which is suspended or removed from trading to support the objectives of suspending or removing that financial instrument from trading.

(2) The GFSC must require any trading venue or systematic internaliser which trades the same instrument or derivative to suspend or remove it from trading if the suspension or removal under subsection (1) was due to–

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(a) suspected market abuse;

(b) a take-over bid; or

(c) the non-disclosure of inside information about the issuer or the instrument,

unless such a step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.

(3) The GFSC must as soon as reasonably possible publish its decision in the manner it considers appropriate unless the decision has already been published under section 423(2)(b) or 428(5).

Suspension or removal by trading venue

Suspension or removal from trading by trading venue operators.

430.(1) A trading venue operator may suspend or remove from trading on the trading venue a financial instrument which no longer complies with the venue's rules, except where suspension or removal would be likely to cause significant damage to the interests of investors or the orderly functioning of the market.

(2) Where a trading venue operator suspends or removes a financial instrument from trading, it must also suspend or remove from trading any derivative that relates or is referenced to that financial instrument, where doing so is necessary to support the objectives of the suspension or removal from trading of that financial instrument.

(3) A trading venue operator that suspends or removes a financial instrument (including any related derivative) from trading must–

(a) inform the GFSC; and

(b) make its decision public.

(4) Subsection (3) also applies (with any necessary modifications) when a trading venue operator ends the suspension from trading of a financial instrument or related derivative.

(5) This section applies without affecting any power of the GFSC to require the suspension or removal of a financial instrument from trading.

(6) This section applies subject to any technical standards that further specify the cases in which the connection between–

(a) a financial instrument suspended or removed from trading; and

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(b) a derivative relating or referenced to the financial instrument,

implies that the derivative is also to be suspended or removed from trading in order to achieve the objective of the suspension or removal of the underlying financial instrument.

GFSC's obligations when trading venues suspend or remove financial instrument from trading.

431.(1) The GFSC must take the steps in subsections (2) to (4) if it receives notice from a trading venue operator that it has–

(a) suspended or removed a financial instrument from trading on the trading venue because it no longer complies with the venue's rules; or

(b) suspended or removed a derivative from trading on the trading venue–

(i) which relates, or is referenced, to a financial instrument which it has suspended or removed from trading under paragraph (a); and

(ii) which is suspended or removed from trading to support the objectives of suspending or removing that financial instrument from trading.

(2) The GFSC must require any trading venue or systematic internaliser which trades the same instrument or derivative to suspend or remove it from trading if the suspension or removal under subsection (1) was due to–

(a) suspected market abuse;

(b) a take-over bid; or

(c) the non-disclosure of inside information about the issuer or the instrument,

unless such a step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.

(3) The GFSC must revoke a requirement imposed under subsection (2) if the trading venue operator informs the GFSC that it has lifted the suspension or removal imposed under subsection (1).

(4) The GFSC must publish its decision in the manner it considers appropriate.

432. *Omitted*.

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PART 23
CONTROL OF INSURANCE BUSINESS TRANSFERS

CHAPTER 1
PRELIMINARY

Interpretation of Part 23.

433. In this Part–

"commitment" means a commitment represented by contracts of long term business;

"establishment" means, in relation to a person, the person's head office or a branch of the person;

"insurance" includes reinsurance, unless the context otherwise requires;

"margin of solvency" means the excess of the value of the assets of the transferee over the amount of its liabilities;

"necessary margin of solvency" means the margin of solvency required in relation to the transferee, taking the proposed transfer into account, under the law of Gibraltar or other applicable law;

"State of the commitment", in relation to a commitment entered into at any date, means–

(a) if the policy holder is an individual, the country or territory in which the policy holder has habitual residence at that date; or

(b) if the policy holder is not an individual, the country or territory in which the establishment of the policy holder to which the commitment relates was situated at that date;

"Swiss general insurer" means a body–

(a) whose head office is in Switzerland;

(b) which has permission in Gibraltar to carry on general business (within the meaning of Chapter 2); and

(c) whose permission is not restricted to reinsurance business.

References to place where risk situated.

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434. References in this Part to the place where the risk is situated (whether Gibraltar or another country or territory) are–

(a) if the insurance relates to a building or to a building and its contents (so far as the contents are covered by the same policy), to Gibraltar or the country or territory in which the building is situated;

(b) if the insurance relates to a vehicle of any type, to the place of registration (whether Gibraltar or another country or territory);

(c) in the case of policies of a duration of four months or less covering travel or holiday risks (whatever the class concerned), to Gibraltar or the country or territory in which the policyholder took out the policy;

(d) in a case not covered by paragraphs (a) to (c)–

(i) where the policy holder is an individual, to Gibraltar or the country or territory, as the case may be, where the policy holder has habitual residence at the date when the contract is entered into; or

(ii) otherwise, to Gibraltar or the country or territory, as the case may be, where the establishment of the policy holder to which the policy relates is situated at that date.

CHAPTER 2
TRANSFER OF GENERAL BUSINESS

Application of Chapter 2.

435.(1) This Chapter makes provision where it is proposed to execute an instrument to transfer general business–

(a) from an authorised person who is an insurance undertaking or reinsurance undertaking, or a Swiss general insurer ("the transferor"); and

(b) to another person ("the transferee").

(2) This Chapter applies if the execution of the instrument–

(a) satisfies one of the conditions set out in subsection (3); and

(b) results in the business transferred being carried on by the transferee in Gibraltar.

(3) The conditions are that–

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(a) the whole or part of the business carried on in Gibraltar by a regulated firm who has permission to effect or carry out contracts of insurance is to be transferred to the transferee; or

(b) the whole or part of the business carried on in Gibraltar by a person who is not a regulated firm but who has permission to effect or carry out contracts of insurance is to be transferred to the transferee.

(4) In this Chapter–

(a) general business means contracts of non-life insurance, within the meaning of Part 5 of Schedule 2;

(b) the transfer of general business means the transfer of all rights and obligations under general policies, or specified general policies; and

(c) general policy means a policy evidencing a contract the effecting of which constitutes the carrying on of general business.

Disapplication of certain provisions: reinsurance undertakings.

436. The following provisions do not apply in respect of reinsurance undertakings–

(a) section 438;

(b) section 439;

(c) section 441;

(d) section 443(1)(a) and (c); and

(e) section 445.

GFSC approval required.

437.(1) No transfer is to have effect unless the GFSC approves it.

(2) An application for approval may be made by the transferor.

Notice of proposed transfer.

438.(1) A notice of the proposed transfer must be–

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(a) approved by the GFSC; and

(b) published–

(i) in the Gazette; and

(ii) if the GFSC considers it appropriate, in two newspapers circulating in Gibraltar approved by the GFSC for that purpose.

(2) Where any policy included in the proposed transfer evidences a contract of direct insurance or reinsurance in respect of a risk which is situated in a country or territory outside Gibraltar, then if the GFSC considers it appropriate, the notice must be published in two newspapers circulating in that country or territory.

(3) Unless the GFSC directs otherwise, the notice must be sent to–

(a) every affected policy holder; and

(b) every other person who claims an interest in a policy included in the proposed transfer and who has given written notice of this claim to the transferor.

(4) The notice must state that written representations concerning the proposed transfer may be sent to the GFSC before a specified day, which must not be earlier than 60 days after the date of the first publication of the notice in accordance with subsections (1) and (2).

(5) For the purposes of this section, a policy holder is an affected policy holder in relation to a proposed transfer if–

(a) the policy is included in the transfer; or

(b) the policy is with the transferor and the GFSC has certified, after consulting with the transferor, that in the opinion of the GFSC, the policy holder's rights and obligations under the policy will or may be materially affected by the transfer.

Statement of particulars of proposed transfer.

439.(1) A statement setting out particulars of the transfer must be–

(a) approved by the GFSC; and

(b) made available for inspection at one or more places in Gibraltar.

(2) In addition, where any policy included in the proposed transfer evidences a contract of direct insurance or reinsurance in respect of a risk which is situated in a country or territory

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outside Gibraltar, the statement must be made available for inspection at one or more places in that country or territory.

(3) The statements must be available for inspection for a period of not less than 30 days beginning with the date of the first publication of the notice in accordance with section 438(1).

Grant of approval: general.

440. The GFSC must not approve a transfer–

(a) unless it is satisfied that sections 438 and 439 have been complied with; and

(b) until it has considered all representations made in accordance with section 438(4).

Grant of approval.

(1) The GFSC must not approve the transfer unless it is satisfied that–

(a) the transferee is, or immediately after approval will be–

(i) an authorised person with permission to carry on general business of the type to be transferred by the instrument; or

(ii) Swiss general insurer authorised to carry on business of that type;

(b) every policy included in the transfer evidences a contract which was entered into before the effective date of transfer; and

(c) the transferee possesses the necessary margin of solvency after taking the proposed transfer into account.

(2) The GFSC must not approve the transfer unless it considers that the circumstances of the case justify the giving of the approval.

442. *Omitted*.

Publication of decision.

443.(1) Where the GFSC determines an application, it must–

(a) publish a notice of its decision in the Gazette and in any other manner it considers appropriate;

(b) send a copy of that notice to the transferor and the transferee; and

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(c) send a copy of that notice to every person who made representations made in accordance with section 438(6).

(2) If the GFSC refuses the application, it must inform the transferor and the transferee of the reasons for the refusal.

Effect of approval.

444.(1) Where the GFSC grants approval, an instrument giving effect to the transfer is effectual in law–

(a) to transfer to the transferee all the transferor's rights and obligations under the policies included in the instrument; and

(b) if the instrument so provides, to secure the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights or obligations.

(2) Subsection (1) applies despite the absence of any agreements or consents which would otherwise be necessary for it to be effectual in law and, subject to subsection (3), irrespective of whether the law applicable to any of the contracts of direct insurance or reinsurance included in the transfer is that of a country or territory outside Gibraltar.

(3) Where any policy included in the transfer evidences a contract of direct insurance or reinsurance to which the law of a country or territory outside Gibraltar applies, nothing in this section affects the rights of a policy holder under that law.

Notice of transfer.

445.(1) This section applies if–

(a) the GFSC has approved the application; and

(b) as regards any policy included in the transfer which evidences–

(i) a contract of insurance (other than a contract of reinsurance), the risk is situated in a country or territory outside Gibraltar; or

(ii) a contract of reinsurance, the policyholder's establishment is situated in a country or territory outside Gibraltar and was so situated at the date when the contract was entered into.

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(2) The GFSC may direct that notice of its decision, and of the execution of any instrument giving effect to the transfer, is to be published in the country or territory concerned.

446. *Omitted*.

Service of notices under this Chapter.

447.(1) Any notice or other document authorised or required to be given or served under this Chapter may, without limiting any other method of service, be served by post.

(2) A letter containing the notice or other document is properly addressed if it is addressed to a person at the person's last known residence or last known place of business in Gibraltar.

CHAPTER 3
TRANSFER OF LONG TERM BUSINESS

Application of Chapter 3.

448.(1) This Chapter makes provision where it is proposed to carry out a scheme under which long term business is transferred from an authorised person who is an insurance undertaking or reinsurance undertaking ("the transferor") to another person ("the transferee").

(2) This Chapter applies if the scheme–

(a) satisfies one of the conditions set out in subsection (3); and

(b) results in the business transferred being carried on by the transferee in Gibraltar.

(3) The conditions are that–

(a) the whole or part of the business carried on in Gibraltar by a regulated firm who has permission to effect or carry out contracts of insurance is to be transferred to the transferee; or

(b) the whole or part of the business carried on in Gibraltar by a person who is not a regulated firm but who has permission to effect or carry out contracts of insurance is to be transferred to the transferee.

(4) If the scheme involves a compromise or arrangement falling within section 302 of the Companies Act 2014 (merger and division of public companies), Part 8 of that Act (arrangements and reconstructions) applies accordingly, but this does not affect the operation of this Part in relation to the scheme.

(5) In this Chapter–

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(a) long term business means contracts of life insurance, within the meaning of Part 5 of Schedule 2;

(b) the transfer of long term business means the transfer of all rights and obligations under long term policies, or specified long term policies; and

(c) long term policy means a policy evidencing a contract the effecting of which constitutes the carrying on of long term business.

Disapplication of certain provisions: reinsurance undertakings.

449. The following provisions do not apply in respect of reinsurance undertakings–

(a) section 451;

(b) section 452;

(c) all of section 456, other than subsection (1)(a); and

(d) section 463.

Sanction of court required.

450.(1) No scheme is to have effect unless an order by the Supreme Court has been made in relation to it.

(2) An application for an order may be made by the following persons ("the applicant") –

(a) the transferor;

(b) the transferee; or

(c) both.

Notice of proposed transfer.

451.(1) A notice that the application has been made must be published–

(a) in the Gazette;

(b) in two newspapers circulating in Gibraltar; and

(c) in a newspaper circulating in any country or territory outside Gibraltar; which–

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(i) as regards any policy (other than a policy which evidences a contract of reinsurance) included in the proposed transfer, is the State of the commitment; or

(ii) as regards any policy included in the proposed transfer which evidences a contract of reinsurance, is where the policy holder's establishment to which the policy relates is situated and was so situated when the contract was entered into.

(2) The notice must be sent to every policy holder of the transferor and transferee.

(3) The notice must be sent to every member of the insurers concerned.

(4) The notice must be sent–

(a) to every reinsurer of the transferor any of whose contracts of reinsurance (in whole or part) are to be transferred by the scheme;

(b) in a case where such a contract has been placed with or through a person authorised to act on behalf of the reinsurer, then to that person; or

(c) in a case where such a contract has been placed with more than one reinsurer, then to the person or persons authorised to act on behalf of those reinsurers or groups of reinsurers.

(5) The notices must–

(a) be approved by the GFSC prior to publication (or, as the case may be, being sent);

(b) contain the address from which the documents mentioned in subsection (6) may be obtained; and

(c) state the period within which the documents may be obtained, which must not be less than 21 days from the date of publication of the notice.

(6) A copy of the scheme report (see section 453) and a statement setting out the terms of the scheme and containing a summary of the scheme report must be given free of charge to any person who requests them within the period referred to in subsection (5)(c).

(7) A copy of the application, the scheme report and the statement mentioned in subsection (6) must be given free of charge to the GFSC.

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(8) A copy of the documents mentioned in subsection (6) must be open to inspection at the offices in Gibraltar of the insurers concerned for the period referred to in subsection (5)(c).

(9) In this section "summary of the scheme report" means a summary of the scheme report sufficient to indicate the opinion of the person making the scheme report of the likely effects of the transfer on the policy holders of the transferor and transferee.

Obligation to comply with notice requirements.

452.(1) Subject to subsections (2) and (3), the court may not determine an application–

(a) where the applicant has failed to comply with the requirements in section 451(1) to (5) or (8); and

(b) until a period of not less than twenty-one days has elapsed since the GFSC was given the documents mentioned in section 451(7).

(2) The requirements in section 451(1)(b), (c), (d) and (2) to (4) may be waived by the court in such circumstances and subject to such conditions as the court considers appropriate.

(3) The requirement in section 451(1)(d) may be waived where an applicant demonstrates that the applicant has notified all policy holders of contracts of reinsurance.

Scheme reports.

453.(1) An application must be accompanied by a report on the terms of the scheme ("a scheme report").

(2) A scheme report may be made only by a person–

(a) appearing to the GFSC to have the skills necessary to enable the person to make a proper report; and

(b) nominated or approved for the purpose by the GFSC.

Right to participate in proceedings.

454. On an application, the following are also entitled to be heard–

(a) the GFSC; and

(b) any person (including an employee of the transferor or of the transferee) who alleges that they would be adversely affected by the carrying out of the transfer.

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Conditions for sanction of the court.

455.(1) This section sets out the conditions which must be satisfied before the court may make an order sanctioning a transfer.

(2) The court must be satisfied that the GFSC has confirmed the transferee–

(a) is an authorised person with permission to carry on the business, or part which is to be transferred or will be before the transfer takes effect; and

(b) taking the proposed transfer into account, the transferee possesses the necessary margin of solvency or will possess it before the transfer takes effect.

(3) The court must consider that, in all the circumstances of the case, it is appropriate to sanction the scheme.

456. *Omitted*.

457. *Omitted*.

458. *Omitted*.

459. *Omitted*.

Effect of order sanctioning transfer.

460.(1) If the court makes an order under section 455(1), it may by that or any subsequent order make such provision (if any) as it thinks fit–

(a) for the transfer to the transferee of the whole or any part of the undertaking concerned and of any property or liabilities of the transferor;

(b) for the allotment or appropriation by the transferee of any shares, debentures, policies or other similar interests in the transferee which under the scheme are to be allotted or appropriated to or for any other person;

(c) for the continuation by (or against) the transferee of any pending legal proceedings by (or against) the transferor; or

(d) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the scheme is fully and effectively carried out.

(2) An order under subsection (1)(a) may–

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(a) transfer property or liabilities whether or not the transferor otherwise has the capacity to effect the transfer in question;

(b) make provision in relation to property which was held by the transferor as trustee;

(c) make provision as to future or contingent rights or liabilities of the transferor, including provision as to the construction of instruments (including wills) under which such rights or liabilities may arise; or

(d) make provision as to the consequences of the transfer in relation to any occupational pension scheme within the meaning of Part 26 operated by or on behalf of the transferor.

(3) Subsection (2)(a) is to be taken to include power to make provision in an order–

(a) for the transfer of property or liabilities which would not otherwise be capable of being transferred or assigned; or

(b) for a transfer of property or liabilities to take effect as if there were–

(i) no such requirement to obtain a person's consent or concurrence; and

(ii) no such contravention, liability or interference with any interest or right,

as there would otherwise be (in the case of a transfer apart from this section) by reason of any provision falling within subsection (4).

(4) A provision falls within this subsection to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled to the property or subject to the liabilities in question.

(5) Nothing in subsection (3) or (4) is to be read as limiting the scope of subsection (1).

(6) If an order under subsection (1) provides for the transfer of property or liabilities, as a result of the order–

(a) the property is transferred to and vests in the transferee; and

(b) the liabilities are transferred to and become liabilities of the transferee.

(7) But if any property or liability included in the order is governed by the law of any country or territory outside Gibraltar, the order may require the transferor, if the transferee so requires, to take all necessary steps for securing that the transfer to the transferee of the property or liability is fully effective under the law of that country or territory.

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(8) Property transferred as the result of an order under subsection (1) may, if the court so directs, vest in the transferee free from any charge which is (as a result of the scheme) to cease to have effect.

(9) An order under subsection (1) which makes provision for the transfer of property is to be treated as an instrument of transfer for the purposes of section 152(1) of the Companies Act 2014 and any other enactment requiring the delivery of an instrument of transfer for the registration of property.

(10) If the court makes an order under section 455(1), it may by that or any subsequent order make such provision (if any) as it thinks fit–

(a) for dealing with the interests of any person who, within such time and in such manner as the court may direct, objects to the scheme;

(b) for the dissolution, without winding up, of the transferor; or

(c) for the reduction, on such terms and subject to such conditions (if any) as it thinks fit, of the benefits payable under–

(i) any description of policy, or

(ii) policies generally,

entered into by the transferor and transferred as a result of the scheme.

(11) For the purposes of subsections (1)(a), (c) and (d) and subsection (2), (3), (6) and (7), it is immaterial that the law applicable to any of the contracts of insurance included in the transfer is the law of a country or territory outside Gibraltar.

(12) The transferee must, if the transfer is sanctioned by the court, deposit two office copies of the order made under subsection (1) with the GFSC within ten days of the making of the order.

(13) But the GFSC may extend that period.

(14) In this section–

"charge" includes a mortgage;

"liabilities" includes duties;

"property" includes property, rights and powers of any description; and

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"shares" and "debentures" have the same meaning as in the Companies Act 2014.

Limitation on rights to terminate etc.

461.(1) Subsection (2) applies where (apart from that subsection) a person would be entitled, in consequence of anything done or likely to be done by or under this Chapter in connection with a transfer–

(a) to terminate, modify, acquire or claim an interest or right; or

(b) to treat an interest or right as terminated or modified.

(2) The entitlement–

(a) is not enforceable in relation to that interest or right until after an order has been made under section 460(1) in relation to the transfer; and

(b) is then enforceable in relation to that interest or right only so far as the order contains provision to that effect.

(3) Nothing in subsection (1) or (2) is to be read as limiting the scope of section 460(1).

Appointment of actuary in relation to reduction of benefits.

462.(1) This section applies if an order has been made under section 455.

(2) The court making the order may, on the application of the GFSC, appoint an independent actuary–

(a) to investigate the business transferred under the transfer; and

(b) to report to the GFSC on any reduction in the benefits payable under policies entered into by the transferor that, in the opinion of the actuary, ought to be made.

Notice of transfer.

463.(1) This section applies if–

(a) the court has sanctioned the transfer; and

(b) as regards any policy included in the transfer which evidences–

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(i) a contract of insurance (other than a contract of reinsurance), the risk is situated in a country or territory outside Gibraltar; or

(ii) a contract of reinsurance, the policyholder's establishment is situated in a country or territory outside Gibraltar and was so situated at the date when the contract was entered into.

(2) The court may direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the country or territory concerned.

464. *Omitted*.

CHAPTER 4
Omitted

465. to 466. *Omitted*.

CHAPTER 5
Omitted

467. to 472. *Omitted*

PART 24
REGULATION OF AUDITORS

Interpretation

Interpretation of Part 24.

473. In this Part–

"affiliated firm" means an undertaking, regardless of its legal form, which is connected to an audit firm by means of common ownership, control or management;

"audit firm" means an entity, regardless of its legal form, approved under this Part to carry out statutory audits;

"audit report" means the report signed and dated from the statutory auditors having the following characteristics–

(a) an introduction which identifies the annual accounts that are the subject of the statutory audit, together with the financial reporting framework that has been applied in their preparation;

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(b) a description of the scope of the statutory audit which identifies the auditing standards in accordance with which the statutory audit was conducted;

(c) an audit opinion which clearly states the opinion of the statutory auditors as to whether the annual accounts give a true and fair view in accordance with the relevant financial reporting framework and, where appropriate, whether the annual accounts comply with statutory requirements; the audit opinion is either unqualified, qualified, an adverse opinion or, if the statutory auditors are unable to express an audit opinion, a disclaimer of opinion;

(d) a reference to any matters to which the statutory auditors draw attention by way of emphasis without qualifying the audit opinion;

(e) an opinion concerning the consistency or otherwise of the annual report with the annual accounts for the same financial year;

"competent authority" means–

(a) in relation to Gibraltar, the GFSC; or

(b) in relation to another country or territory –

(i) the authority designated by law in that country or territory as being responsible for the regulation or oversight of statutory auditors and audit firms; or

(ii) where different authorities are responsible for different aspects of that regulation or oversight, the authority responsible for the aspect referred to in a specific provision of this Part;

"the GFSC" means–

(a) the Gibraltar Financial Services Commission; or

(b) where, in accordance with section 25 it arranges for its functions under this Part to be exercised by the Auditors Regulatory Committee, that committee;

"group auditor" means the statutory auditor or audit firm carrying out the statutory audit of consolidated accounts;

"key audit partner" means–

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(a) the statutory auditor designated by an audit firm for a particular audit engagement as being primarily responsible for carrying out the statutory audit on behalf of the audit firm;

(b) in the case of a group audit, the statutory auditor designated by an audit firm as being primarily responsible for carrying out the statutory audit at the level of the group and the statutory auditor designated as being primarily responsible at the level of material subsidiaries; or

(c) the statutory auditor who signs the audit report;

"medium-sized undertakings" means an undertaking which is, or if it were a company would be, a medium-sized company within the meaning of Schedule 9 to the Companies Act 2014;

"network" means the larger structure–

(a) which is aimed at cooperation and to which a statutory auditor or an audit firm belongs; and

(b) which is clearly aimed at profit or cost-sharing or shares common ownership, control or management, common quality control policies and procedures, a common business strategy, the use of a common brand-name or a significant part of professional resources;

"public-interest entity" means—

(a) an entity whose transferable securities are admitted to trading on a regulated market in Gibraltar;

(b) a credit institution within the meaning of Article 4(1) of the Capital Requirements Regulation, other than an exempt person listed in regulation 5 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;

(c) a person who would be an insurance undertaking within the meaning of Article 2.1 of the Insurance Accounts Directive, as that Article applied immediately before IP completion day, if Gibraltar were a Member State; or

(d) an entity designated as a public-interest entity by the Minister;

"small undertakings" means an undertaking which is, or if it were a company would be, a small company within the meaning of Schedule 9 to the Companies Act 2014;

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"statutory audit" means an audit of annual financial statements or consolidated financial statements required by–

(a) the Audit Regulation in respect of a public-interest entity;

(b) Part VII of the Companies Act 2014;

(c) any enactment which applies Part VII of the Companies Act 2014 to entities other than companies; or

(d) a prescribed enactment;

"statutory auditor" means an individual who is approved in accordance with this Part to carry out statutory audits.

"third country audit entity" means an entity, other than an audit firm, which carries out audits of the annual or consolidated financial statements of a company incorporated in a country or territory outside Gibraltar;"

"third country auditor" means an individual, other than a statutory auditor, who carries out audits of the annual or consolidated financial statements of a company incorporated in a country or territory outside Gibraltar.

Approval and mutual recognition

Approval of statutory auditors and audit firms.

474.(1) A statutory audit may only be carried out by a statutory auditor or audit firm approved by the GFSC.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to imprisonment for 12 months, to a fine at twice level 5 on the standard scale, or both.

(2A) The GFSC may approve as a statutory auditor an individual who satisfies the conditions laid down in sections 476 and 479 to 483.

(3) The GFSC may approve as an audit firm an entity which satisfies the following conditions–

(a) the individuals responsible for carrying out statutory audits on behalf of the entity–

(i) are approved as statutory auditors; and

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(ii) satisfy the conditions imposed by sections 476 and 479 to 483;

(b) a majority of the voting rights in the entity are held by–

(i) statutory auditors or audit firms approved under this Part; or

(ii) individuals or firms who are approved as statutory auditors in the United Kingdom;

(c) a majority of the members of the administrative or management body of the entity are–

(i) statutory auditors or audit firms approved under this Part; or

(ii) individuals or firms who are approved as statutory auditors in the United Kingdom; and

(d) the firm satisfies the condition imposed by section 476.

(4) Where the administrative or management body of an entity has not more than two members, the condition in subsection (3)(c) is met if one of those members satisfies the requirements of that subsection.

(5) *Omitted*.

(6) Where the GFSC–

(a) proposes to refuse an application for approval under this section, it must give the applicant a warning notice; or

(b) decides to refuse such an application, it must give the applicant a decision notice.

475. *Omitted*.

Good repute.

476. The GFSC may grant approval under this Part only to individuals or firms of good repute.

Withdrawal of approval.

477.(1) Subject to subsections (2) and (3), the GFSC must withdraw approval of–

(a) a statutory auditor or audit firm where the good repute of that individual or firm has been seriously compromised; or

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(b) an audit firm where it no longer fulfils any of the conditions in section 474(3)(b) or (c).

(2) The GFSC must allow a statutory auditor or audit firm a period of up to 30 days in which, in order to avoid the withdrawal of approval under subsection (1)–

(a) the statutory auditor or audit firm must meet the good repute requirement; or

(b) the audit firm must fulfil the conditions in section 474(3)(b) or (c).

(3) The period of up to 30 days in subsection (2) does not apply in any case where the Minister certifies that the public interest of Gibraltar requires the GFSC–

(a) to allow a statutory auditor or audit firm a period of less than 30 days specified in the certificate; or

(b) immediately to withdraw a statutory auditor's or audit firm's approval.

(4) *Omitted*.

(5) The procedures in sections 159 and 160 apply to any withdrawal of approval under this section.

478. *Omitted*.

Education, training and experience requirements

Educational qualifications.

479. The GFSC may approve an individual to carry out a statutory audit only after the individual has attained university entrance or equivalent level, completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence of university final or equivalent examination level, organised or recognised by the GFSC in accordance with the provisions of this Part.

Examination of professional competence.

480. Where the GFSC organises an examination of professional competence under section 479(1), it must guarantee the necessary level of theoretical knowledge of subjects relevant to statutory audit and the ability to apply that knowledge in practice, and must ensure that part of that examination is in writing.

Test of theoretical knowledge.

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481. Where the GFSC organises a test of theoretical knowledge as part of any examination referred to in section 479, it must ensure that–

(a) the following subjects in particular are covered–

(i) general accounting theory and principles;

(ii) legal requirements and standards relating to the preparation of annual and consolidated accounts;

(iii) UK-adopted international accounting standards;

(iv) financial analysis;

(v) cost and management accounting;

(vi) risk management and internal control;

(vii) auditing and professional skills;

(viii) legal requirements and professional standards relating to statutory audit and statutory auditors;

(ix) international auditing standards as referred to in section 503; and

(x) professional ethics and independence; and

(b) the following subjects are covered so far as they are relevant to auditing–

(i) company law and corporate governance;

(ii) the law of insolvency and similar procedures;

(iii) tax law;

(iv) civil and commercial law;

(v) social security law and employment law;

(vi) information technology and computer systems;

(vii) business, general and financial economics;

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(viii) mathematics and statistics; and

(ix) basic principles of the financial management of undertakings.

Exemptions.

482. Despite sections 480 and 481, the Minister may, by regulations, provide that a person who–

(a) has passed a university or equivalent examination or holds a university degree or equivalent qualification in one or more of the subjects referred to in section 481 may be exempted from the test of theoretical knowledge in the subjects covered by that examination or degree; or

(b) holds a university degree or equivalent qualification in one or more of the subjects referred to in section 481 may be exempted from the test of the ability to apply in practice his or her theoretical knowledge of those subjects if he or she has received practical training in those subjects attested by an examination or diploma of the kind set out in the regulations.

Practical training.

483.(1) In order to ensure the ability to apply theoretical knowledge in practice, a test of which is included in the examination, the GFSC must ensure that–

(a) a trainee completes a minimum of three years' practical training which includes the auditing of annual financial statements, consolidated financial statements or similar financial statements; and

(b) at least two thirds of that practical training is completed with a statutory auditor or audit firm.

(2) The GFSC must ensure that all training is carried out by persons providing adequate guarantees regarding their ability to provide practical training.

Qualification through long-term practical experience.

484. Despite section 479, the GFSC may approve an individual who does not satisfy the conditions in that section as a statutory auditor, if the individual can show either that he or she has–

(a) for 15 years, engaged in professional activities which have enabled the individual to acquire sufficient experience in the fields of finance, law and accountancy, and

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has passed the examination referred to in section 480 or an equivalent examination approved by the GFSC; or

(b) for seven years, engaged in professional activities in those fields and has, in addition, undergone the practical training referred to in section 483 and passed the examination referred to in section 480 or an equivalent examination approved by the GFSC.

Combination of practical training and theoretical instruction.

485.(1) The Minister may, by regulations, provide that periods of theoretical instruction of not less than one year in the fields referred to in section 481 are to count towards the periods of professional activity referred to in section 484, where that instruction is attested by an examination of a kind set out in the regulations.

(2) Regulations under subsection (1) may not reduce the periods of professional activity referred to in section 484(a) and (b) by more than four years.

(3) The GFSC must ensure that the period of professional activity and practical training is not shorter than the course of theoretical instruction together with the practical training required under section 483.

Continuing education

Continuing education.

486.(1) Statutory auditors must take part in appropriate programmes of continuing education in order to maintain their theoretical knowledge, professional skills and values at a sufficiently high level.

(2) The GFSC may impose a sanction under this Part on a statutory auditor who fails to comply with subsection (1).

Registration

Public registration.

487.(1) The GFSC–

(a) must ensure that statutory auditors and audit firms are entered in the register maintained under section 44 ("the register") in accordance with sections 488 and 489;

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(b) may, in exceptional circumstances and with the prior consent of the Minister, disapply the requirements of this section and section 488 regarding disclosure, to the extent necessary to mitigate an imminent and significant threat to the personal security of any person.

(2) The GFSC must ensure that–

(a) each statutory auditor and audit firm is identified in the register by an individual number; and

(b) registration information in respect of statutory auditors and audit firms is stored in the register in electronic form and is electronically accessible to the public.

Registration of statutory auditors and third country auditors.

488.(1) The register must contain the following information on statutory auditors–

(a) the name, address and registration number of the statutory auditor;

(b) if applicable, the name, address, website address and registration number of the audit firm by which the statutory auditor is employed, or with whom the statutory auditor is associated as a partner or otherwise; and

(c) any other registration as an auditor in another country or territory, including the name of the registration authority and any registration number.

(2) The registration status of third country auditors registered in accordance with section 533 must be clearly indicated in the register.

Registration of audit firms and third country audit entities.

489.(1) The register must contain the following information relating to audit firms–

(a) the name, address and registration number of the firm;

(b) its legal form;

(c) contact information, the primary contact person and any website address;

(d) the address of each office in Gibraltar;

(e) the name and registration number of all statutory auditors employed by or associated as partners or otherwise with the audit firm;

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(f) the names and business addresses of all–

(i) owners and shareholders; and

(ii) members of the administrative or management body;

(g) membership of any network and a list of the names and addresses of member firms and affiliated firms or an indication of the place where the information is publicly available;

(h) any other registration as an audit entity in another country or territory, including the name of the registration authority and any registration number.

(2) The registration status of third country audit entities registered in accordance with section 533 must be clearly indicated in the register.

Updating of registration information.

490.(1) A statutory auditor or audit firm must notify the GFSC without undue delay of any change to the information in respect of that statutory auditor or audit firm which appears in the register.

(2) The GFSC must update the register without undue delay after receiving a notification under subsection (1).

Responsibility for registration information.

491.(1) Any information provided to the GFSC in accordance with sections 488 to 490 must be signed by the statutory auditor or audit firm.

(2) Where the GFSC permits the information in subsection (1) to be provided electronically, it may require the statutory auditor or audit firm to provide an electronic signature.

(3) For the purposes of subsection (2), "electronic signature" means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.

Language.

492. The information entered in the register in respect of statutory auditors and audit firms must be recorded by the GFSC in English.

Professional ethics, independence and objectivity

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Professional ethics and scepticism.

493.(1) Statutory auditors and audit firms must comply with the Code of Ethics for Professional Accountants, published by the International Ethics Standards Board for Accountants, as amended from time to time.

(2) When carrying out a statutory audit, a statutory auditor or audit firm must maintain professional scepticism throughout the audit, recognising the possibility of a material misstatement due to facts or behaviour indicating irregularities, including fraud or error, despite the statutory auditor's or the audit firm's past experience of the honesty and integrity of the audited entity's management and of the persons charged with its governance.

(3) The statutory auditor or audit firm must maintain professional scepticism in particular when reviewing management estimates relating to fair values, the impairment of assets, provisions, and future cash flow relevant to the entity's ability to continue as a going concern.

(4) For the purposes of this section "professional scepticism" means an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud, and a critical assessment of audit evidence.

(5) The Minister may, by regulations, amend subsection (1) and make further provision concerning the duties of statutory auditors and audit firms, their public-interest function, their integrity and objectivity and their professional competence and due care.

Independence and objectivity.

494.(1) When carrying out a statutory audit, a statutory auditor or audit firm and any individual in a position to directly or indirectly influence the outcome of the statutory audit, must be independent of the audited entity and not involved in the decision-making of the audited entity.

(2) That independence must be required at least during both–

(a) the period covered by the financial statements to be audited; and

(b) the period during which the statutory audit is carried out.

(3) A statutory auditor or audit firm must take all reasonable steps to ensure that, when carrying out a statutory audit, the statutory auditor's or audit firm's independence is not affected by any existing or potential conflict of interest or business or other direct or indirect relationship involving–

(a) the statutory auditor or audit firm; and

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(b) where appropriate–

(i) its network, managers, auditors or employees;

(ii) any other individual whose services are placed at the disposal or under the control of the statutory auditor or audit firm; or

(iii) any person directly or indirectly linked to the statutory auditor or audit firm by control.

(4) Statutory auditors and audit firms must record in the audit working papers all significant threats to the statutory auditor's or audit firm's independence as well as the safeguards applied to mitigate those threats.

(5) A statutory auditor or audit firm must not carry out a statutory audit if there is any threat of self-review, self-interest, advocacy, familiarity or intimidation created by financial, personal, business, employment or other relationships between–

(a) the statutory auditor, the audit firm, its network and any individual in a position to influence the outcome of the statutory audit; and

(b) the audited entity,

as a result of which an objective, reasonable and informed third party, taking into account the safeguards applied, would conclude that the statutory auditor's or audit firm's independence is compromised.

(6) Statutory auditors and audit firms, their key audit partners, employees, other individuals whose services are placed at the disposal or under the control of a statutory auditor or audit firm and who are directly involved in statutory audit activities, and any closely associated persons (within the meaning of Article 3.1(26) of the Market Abuse Regulation) must not, within their area of statutory audit activities–

(a) hold or have a material and direct beneficial interest in an audited entity; or

(b) engage in any transaction in any financial instrument issued, guaranteed, or otherwise supported by an audited entity,

other than interests owned indirectly through diversified collective investment schemes, including managed funds such as pension funds or life insurance.

(7) A person or firm referred to in subsection (6) must not participate in or otherwise influence the outcome of a statutory audit of an audited entity if that person or firm–

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(a) owns financial instruments of the audited entity, other than interests owned indirectly through diversified collective investment schemes;

(b) owns financial instruments of any entity related to the audited entity, the ownership of which may cause, or may be generally perceived as causing, a conflict of interest, other than interests owned indirectly through diversified collective investment schemes; or

(c) has had an employment, business or other relationship with the audited entity within the period specified in subsection (2) that may cause, or may be generally perceived as causing, a conflict of interest.

(8) A person or firm referred to in subsection (6) must not solicit or accept pecuniary and non-pecuniary gifts or favours from an audited entity or any entity related to an audited entity unless an objective, reasonable and informed third party would consider the value of any gift or favour as being trivial or inconsequential.

(9) If, during the period covered by its financial statements, an audited entity is acquired by, merges with, or acquires another entity, the statutory auditor or audit firm must–

(a) identify and evaluate any current or recent interests or relationships (including any non-audit services provided to that entity) which, taking into account available safeguards, could compromise the auditor's independence and ability to continue with the statutory audit after the effective date of the merger or acquisition; and

(b) as soon as reasonably possible, and in any event within three months–

(i) take the steps that may be necessary to terminate any current interest or relationship that would compromise its independence; and

(ii) where possible, adopt safeguards to minimise any threat to its independence arising from a prior or current interest or relationship.

Employment by audited entities of former audit personnel.

495.(1) A statutory auditor or a key audit partner who carries out a statutory audit on behalf of an audit firm must not take up a relevant role in relation to the audited entity before–

(a) at least one year has elapsed since he or she ceased to act as a statutory auditor or key audit partner in connection with the audit engagement; or

(b) in the case of the statutory audit of a public-interest entity, at least two years have elapsed since he or she ceased to do so.

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(2) An individual who is personally approved as a statutory auditor and–

(a) who is an employee or partner (other than key audit partner) of a statutory auditor or audit firm carrying out a statutory audit; or

(b) whose services are placed at the disposal or under the control of a statutory auditor or audit firm carrying out a statutory audit,

must not take up a relevant role in relation to the audited entity before at least one year has elapsed since he or she was directly involved in the statutory audit engagement.

(3) In this section a "relevant role" means–

(a) a key management position in the audited entity;

(b) being a member of the audited entity's audit committee or the body performing equivalent functions to an audit committee; or

(c) being a non-executive member of the administrative body or a member of the supervisory body of the audited entity.

Preparation for the statutory audit and assessment of threats to independence.

496. A statutory auditor or audit firm, before accepting or continuing a statutory audit engagement, must assess and record whether–

(a) the statutory auditor or audit firm complies with the requirements of section 494;

(b) there are threats to the statutory auditor's or audit firm's independence and the safeguards applied to mitigate those threats;

(c) the statutory auditor or audit firm has the competent employees, time and resources needed in order to carry out the statutory audit in an appropriate manner; and

(d) in the case of an audit firm, the key audit partner is approved as a statutory auditor.

Independence and objectivity of the statutory auditors carrying out the statutory audit on behalf of audit firms.

497. Owners, shareholders and members of the administrative, management and supervisory bodies of an audit firm or affiliated firm must not intervene in the execution of a statutory audit in any way which jeopardises the independence and objectivity of the statutory auditor who carries out the statutory audit on behalf of the audit firm.

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Confidentiality and professional secrecy

Duty of confidentiality and professional secrecy.

498.(1) All information and documents to which a statutory auditor or audit firm has access when carrying out a statutory audit are protected by a duty of confidentiality and professional secrecy.

(2) The duty of confidentiality and professional secrecy in subsection (1) is not to apply so as to impede the enforcement of the provisions of this Part or the Audit Regulation.

(3) Where a statutory auditor or audit firm is replaced by another statutory auditor or audit firm, the former statutory auditor or audit firm must provide the incoming statutory auditor or audit firm with access to all relevant information concerning the audited entity and the most recent audit of that entity.

(4) A statutory auditor or audit firm that has ceased to be engaged in a particular audit assignment and a former statutory auditor or audit firm remain subject to the provisions of subsections (1) and (2) with respect to that audit assignment.

(5) Where a statutory auditor or audit firm carries out a statutory audit of an undertaking which is part of a group whose parent undertaking is situated outside Gibraltar, the duty of confidentiality and professional secrecy referred to in subsection (1) must not impede the transfer by the statutory auditor or audit firm of relevant documents concerning the audit work it has performed to the group auditor situated outside Gibraltar, if those documents are necessary for the performance of the audit of consolidated financial statements of the parent undertaking.

(6) A statutory auditor or audit firm that carries out the statutory audit of an undertaking which has issued securities outside Gibraltar or which forms part of a group issuing statutory consolidated financial statements outside Gibraltar, may only transfer the audit working papers or other documents relating to the audit of that entity which the statutory auditor or audit firm holds to the competent authorities in the relevant jurisdiction under the conditions set out in section 535.

(7) The transfer of information to a group auditor situated outside Gibraltar must comply with the data protection legislation.

Organisational requirements

Internal organisation of statutory auditors and audit firms.

499.(1) A statutory auditor or audit firm must comply with the following organisational requirements–

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(a) an audit firm must establish appropriate policies and procedures to ensure that its owners, shareholders and members of the administrative, management and supervisory bodies of the firm or an affiliated firm do not intervene in the carrying-out of a statutory audit in any way which jeopardises the independence and objectivity of the statutory auditor who carries out the statutory audit on behalf of the audit firm;

(b) a statutory auditor or audit firm must have sound administrative and accounting procedures, internal quality control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems and those internal quality control mechanisms must be designed to secure compliance with decisions and procedures at all levels of the audit firm or of the working structure of the statutory auditor;

(c) a statutory auditor or audit firm must establish appropriate policies and procedures to ensure that–

(i) the statutory auditor's or audit firm's employees; and

(ii) any other individuals whose services are placed at the disposal or are under the control of the statutory auditor or audit firm,

and who are directly involved in the statutory audit activities, have appropriate knowledge and experience for the duties assigned;

(d) a statutory auditor or audit firm must establish appropriate policies and procedures to ensure that outsourcing of important audit functions is not undertaken in a way that impairs the quality of the statutory auditor's or audit firm's internal quality control and the ability of the competent authorities to supervise the statutory auditor's or audit firm's compliance with the obligations laid down in this Part and, where applicable, the Audit Regulation;

(e) a statutory auditor or audit firm must establish appropriate and effective organisational and administrative arrangements to prevent, identify, eliminate or manage and disclose any threats to their independence as referred to in sections 494, 495 and 496;

(f) a statutory auditor or audit firm must establish appropriate policies and procedures for carrying out statutory audits, coaching, supervising and reviewing employees' activities and organising the structure of the audit file referred to in section 500(6) to (8);

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(g) a statutory auditor or audit firm must establish an internal quality control system to ensure the quality of the statutory audit and–

(i) the quality control system must at least cover the policies and procedures described in paragraph (f); and

(ii) in the case of an audit firm, responsibility for the internal quality control system must lie with a person who is qualified as a statutory auditor;

(h) a statutory auditor or audit firm must use appropriate systems, resources and procedures to ensure continuity and regularity in the carrying out of statutory audit activities;

(i) a statutory auditor or audit firm must establish appropriate and effective organisational and administrative arrangements for dealing with and recording incidents which have, or may have, serious consequences for the integrity of statutory audit activities;

(j) a statutory auditor or audit firm must have in place adequate remuneration policies, including profit-sharing policies, providing sufficient performance incentives to secure audit quality and, in particular, the amount of revenue that the statutory auditor or the audit firm derives from providing non-audit services to the audited entity must not form part of the performance evaluation and remuneration of any person involved in, or able to influence the carrying out of, the audit; and

(k) a statutory auditor or audit firm must–

(i) monitor and evaluate the adequacy and effectiveness of the systems, internal quality control mechanisms and arrangements established in accordance with this Part and, where applicable, the Audit Regulation and take appropriate measures to address any deficiencies; and

(ii) in particular, carry out an annual evaluation of the internal quality control system referred to in paragraph (g) and keep a record of the findings of that evaluation and any proposed measure to modify the internal quality control system.

(2) Statutory auditors and audit firms must record the policies and procedures they establish in accordance with subsection (1)(a) and communicate them to their employees.

(3) In complying with subsection (1), a statutory auditor or audit firm must–

(a) consider the scale and complexity of the statutory auditor or audit firm activities; and

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(b) be able to demonstrate to the GFSC that the policies and procedures designed to achieve that compliance are appropriate given that scale and complexity.

(4) Any outsourcing of audit functions as provided for in subsection (1)(d) does not affect the responsibility of the statutory auditor or audit firm towards the audited entity.

Organisation of the work.

500.(1) When an audit firm carries out a statutory audit, it must–

(a) designate at least one key audit partner–

(i) who has been selected on the basis of the main criteria of securing audit quality, independence and competence; and

(ii) who must be actively involved in carrying out the statutory audit; and

(b) provide the key audit partner–

(i) with sufficient resources to carry out the key audit partner's duties appropriately; and

(ii) with personnel that have the necessary competence and capabilities to assist the key audit partner to do so.

(2) When carrying out a statutory audit, a statutory auditor must devote sufficient time to the engagement and assign sufficient resources to enable the statutory auditor's duties to be carried out appropriately.

(3) A statutory auditor or audit firm must–

(a) keep records of–

(i) any contravention of this Part and, where applicable, the Audit Regulation; and

(ii) the consequence of any contravention including any measures taken to address it and to modify their internal quality control system; and

(b) prepare an annual report containing an overview of any measures taken and must communicate that report internally.

(4) A statutory auditor or audit firm must keep records of–

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(a) any request for advice made to an external expert; and

(b) the advice received in response to the request.

(5) A statutory auditor or audit firm must maintain a client account record, which must include the following data for each audit client–

(a) the name, the address and the place of business;

(b) in the case of an audit firm, the name of the key audit partner; and

(c) the fees charged for the statutory audit and the fees charged for other services in any financial year.

(6) A statutory auditor or audit firm must create an audit file for each statutory audit.

(7) A statutory auditor or audit firm must–

(a) record at least the information required by section 496 and, where applicable, Articles 6 to 8 of the Audit Regulation; and

(b) retain any other data and documents that are of importance–

(i) in support of the report referred to in section 505 and, where applicable, Articles 10 and 11 of the Audit Regulation; and

(ii) for monitoring compliance with this Part and other applicable legal requirements.

(8) An audit file must be closed no later than 60 days after the date of signature of the audit report referred to section 505 and, where applicable, Article 10 of the Audit Regulation.

(9) A statutory auditor or audit firm must keep records of any complaints made in writing about the performance of any statutory audits carried out by the statutory auditor or audit firm.

Fees and scope of audit

Audit fees.

501. Fees for statutory audits–

(a) must not be influenced or determined by the provision of additional services to the audited entity; and

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(b) must not be based on any form of contingency.

Scope of the statutory audit.

502.(1) The scope of a statutory audit must not include assurance on the future viability of the audited entity or on the efficiency or effectiveness with which the management or administrative body has conducted or will conduct the affairs of the entity.

(2) Subsection (1) applies without limiting–

(a) the reporting requirements referred to in section 505; and

(b) where applicable, Articles 10 and 11 of the Audit Regulation.

Auditing standards and audit reporting

Auditing standards.

503.(1) Statutory auditors and audit firms must carry out statutory audits in compliance with international auditing standards.

(2) In this section "international auditing standards" means International Standards on Auditing (ISAs), International Standard on Quality Control (ISQC-1) and other related Standards issued by the International Federation of Accountants (IFAC) through the International Auditing and Assurance Standards Board (IAASB), in so far as they are relevant to the statutory audit.

Statutory audits of consolidated financial statements.

504.(1) Where a statutory audit of the consolidated financial statements of a group of undertakings is carried out–

(a) in relation to the consolidated financial statements, the group auditor bears the full responsibility for the audit report referred to in section 505 and, where applicable, Article 10 of the Audit Regulation and for any additional report to the audit committee referred to in Article 11 of that Regulation;

(b) the group auditor must evaluate the audit work performed by any other auditor for the purpose of the group audit, and record the nature, timing and extent of the work performed by that auditor, including, where applicable, the group auditor's review of relevant parts of that auditor's audit documentation; and

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(c) the group auditor must review the audit work performed by any other auditor for the purpose of the group audit and make a record of that review.

(2) The documents retained by the group auditor must be sufficient to enable the GFSC to review the work of the group auditor.

(3) For the purposes of subsection (1)(c), the group auditor must request the agreement of any other auditor to the transfer of relevant documentation during the conduct of the audit of consolidated financial statements, as a condition of the reliance by the group auditor on the work of that auditor.

(4) Where the group auditor is unable to comply with subsection (1)(c), the group auditor must–

(a) take appropriate measures, including carrying out additional statutory audit work (directly or by means of outsourcing) in the relevant subsidiary; and

(b) inform the GFSC.

(5) Where the group auditor is subject to a quality assurance review or an investigation concerning the statutory audit of the consolidated financial statements of a group of undertakings, the group auditor must make available to the GFSC on request the relevant documentation which the group auditor retains concerning the audit work performed by any other auditor for the purpose of the group audit, including any working papers relevant to the group audit.

(6) *Omitted*.

(7) Where a parent undertaking or subsidiary undertaking of a group of undertakings is audited by a third country auditor or third country audit entity, the GFSC may request additional documentation on the audit work performed by that auditor or audit entity from the relevant competent authority through the working arrangements referred to in section 535.

(8) Where a parent undertaking or subsidiary undertaking of a group of undertakings is audited by a third country auditor or third country audit entity that has no working arrangements of the kind referred to in section 535, the group auditor must, when requested, also be responsible for ensuring proper delivery of the additional documentation of the audit work performed by that third country auditor or third country audit entity, including the working papers relevant to the group audit.

(9) In order to ensure delivery, the group auditor must–

(a) retain a copy of the documentation;

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(b) agree with the auditor or audit entity that the group auditor is to be given unrestricted access to the documentation on request; or

(c) take other appropriate action.

(10) Where audit working papers cannot, for legal or other reasons, be passed from a third country to the group auditor, the documentation retained by the group auditor must include–

(a) evidence that the group auditor has undertaken the appropriate procedures in order to gain access to the audit documentation; and

(b) in the case of impediments other than legal ones arising from the legislation of the third country concerned, evidence supporting the existence of the impediments.

Audit reporting

505.(1) Statutory auditors and audit firms must present the results of a statutory audit in an audit report, which must be prepared in accordance with the requirements of auditing standards adopted in accordance with section 503.

(2) An audit report must be in writing and must–

(a) identify the entity whose annual or consolidated financial statements are the subject of the statutory audit, specify the annual or consolidated financial statements and the date and period they cover and identify the financial reporting framework that has been applied in their preparation;

(b) include a description of the scope of the statutory audit which must, as a minimum, identify the auditing standards in accordance with which the statutory audit was conducted;

(c) include an audit opinion, which must be unqualified, qualified or an adverse opinion and must state clearly the opinion of the statutory auditor or audit firm as to–

(i) whether the annual financial statements give a true and fair view in accordance with the relevant financial reporting framework; and

(ii) where appropriate, whether the annual financial statements comply with statutory requirements,

or a disclaimer of opinion, if the statutory auditor or audit firm is unable to express an audit opinion;

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(d) refer to any other matters to which the statutory auditor or audit firm draws attention by way of emphasis without qualifying the audit opinion;

(e) include an opinion and statement, both of which must be based on the work undertaken in the course of the audit, referred to in Section 258(2) and (2A) of the Companies Act 2014;

(f) provide a statement on any material uncertainty relating to events or conditions that may cast significant doubt about the entity's ability to continue as a going concern; and

(g) identify the place of establishment of the statutory auditor or audit firm.

(3) Where a statutory audit is carried out by more than one statutory auditor or audit firm, the statutory auditors or audit firms must–

(a) agree on the results of the audit and submit a joint report and opinion; or

(b) in the case of disagreement, each submit an opinion as a separate paragraph of the audit report and state the reason for the disagreement.

(4) An audit report must be signed and dated by the statutory auditor and, where the audit was carried out by an audit firm, must at least be signed by the statutory auditor who carried it out on behalf of the firm.

(5) Where more than one statutory auditor or audit firm has been engaged simultaneously, any audit report must be signed by all of the statutory auditors or at least by the statutory auditors who carried out the statutory audit on behalf of each of the audit firms.

(6) Exceptionally, the GFSC may permit an audit report not to include the signatures required by subsection (4) or (5) where–

(a) the names of the persons involved are known to the GFSC; and

(b) the GFSC is satisfied that public disclosure could lead to an imminent and significant threat to the personal security of any person.

(7) The report of the statutory auditor or audit firm on the consolidated financial statements must comply with the requirements in subsections (1) to (5) and, in reporting on the consistency of the management report and financial statements as required by subsection (2)(e), the statutory auditor or audit firm must consider the consolidated financial statements and the consolidated management report.

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(8) Where the annual financial statements of the parent undertaking are attached to the consolidated financial statements, the reports of the statutory auditors or audit firms required by this section may be combined.

Quality assurance

Quality assurance systems.

506.(1) Subject to subsection (5), the GFSC must ensure that statutory auditors and audit firms are subject to a system of quality assurance controls which meets the following criteria–

(a) the quality assurance controls must be carried out independently of the reviewed statutory auditors and audit firms and be subject to public oversight;

(b) the funding for the quality assurance controls must be secure and free from any possible undue influence by statutory auditors or audit firms;

(c) the quality assurance controls must have adequate resources;

(d) the persons engaged by the GFSC to carry out quality assurance controls must have appropriate professional education and relevant experience in statutory audit and financial reporting combined with specific training on quality assurance controls;

(e) the selection by the GFSC of reviewers for specific quality assurance control assignments must be effected in accordance with an objective procedure designed to ensure that there are no conflicts of interest between the reviewers and the statutory auditor or audit firm under review;

(f) the scope of the quality assurance control, supported by adequate testing of selected audit files, must include an assessment of compliance with applicable auditing standards and independence requirements, of the quantity and quality of resources spent, of the audit fees charged and of the internal quality control system of the audit firm;

(g) the quality assurance control must be the subject of a report which must contain the main conclusions of the quality assurance control;

(h) quality assurance controls must take place based on an analysis of risk and at least every six years;

(i) the overall results of the quality assurance control system must be published annually;

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(j) recommendations of quality control reviews must be followed up by the statutory auditor or audit firm within a reasonable period; and

(k) quality assurance controls must be appropriate and proportionate to the scale and complexity of the activity of the reviewed statutory auditor or audit firm.

(2) The GFSC may impose a sanction under this Part on a statutory auditor or audit firm that fails to follow up on a recommendation made under subsection (1)(j).

(3) For the purpose of subsection (1)(e) at least the following criteria must apply to the selection of reviewers–

(a) reviewers must have appropriate professional education and relevant experience in statutory audit and financial reporting combined with specific training on quality assurance reviews;

(b) a person must not be allowed to act as a reviewer in a quality assurance control assignment in respect of a statutory auditor or audit firm until at least three years have elapsed since that person ceased to be a partner or an employee of, or otherwise associated with, that statutory auditor or audit firm; and

(c) reviewers must declare that there are no conflicts of interest between them and the statutory auditor and audit firm to be reviewed.

(4) For the purpose of subsection (1)(k) the GFSC, when undertaking quality assurance controls in respect of the statutory audits of annual or consolidated financial statements of medium-sized and small undertakings, must take account of the fact that the auditing standards adopted in accordance with section 503 are designed to be applied in a manner that is proportionate to the scale and complexity of the business of the audited entity.

(5) This section applies to the statutory audit of annual and consolidated financial statements of public-interest entities only to the extent required by the Audit Regulation.

Investigations

Investigative capability.

507.(1) The GFSC must establish and maintain effective systems for the detection, correction and prevention of the inadequate execution of statutory audits.

(2) For the purpose of discharging its functions under this Part or the Audit Regulation, the GFSC may appoint inspectors to exercise the powers in sections 508 to 513 and in those sections an "inspector" means an individual (who may but need not be a GFSC employee) authorised by the GFSC to exercise those powers.

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(3) In sections 508 to 516 a "registered person" means a person entered in the register maintained under section 44 in accordance with section 487.

Power to obtain information and documents.

508.(1) An inspector may, by notice, require a registered person to–

(a) provide specified information, or information of a specified description;

(b) produce specified documents, or documents of a specified description; or

(c) attend before the inspector at a time and place specified in the notice and answer questions.

(2) An inspector may, by written notice, require a person ("P") who is or is to be a director, controller or manager of a registered person to provide the inspector with any information or documents which the inspector may reasonably require for determining whether P is a fit and proper person to hold the position which P holds or is to hold.

(3) An inspector may, by notice, require any person to produce a document which that person appears to possess and which an inspector may require a registered person to produce under subsection (1)(b).

(4) The production of a document under subsection (3) does not affect any lien which a person has on the document.

Report by skilled person.

509.(1) An inspector may, by notice, require a registered person to provide the inspector with a report on any matter about which the inspector may require the registered person to provide information under section 508(1)(a).

(2) An inspector may require the report to be in the form and provided by the date specified in the notice.

(3) The person appointed to make a report under subsection (1) (the "skilled person") must be a person nominated or approved by the GFSC and who appears to the GFSC to have the skills necessary to make a report on the matter concerned.

(4) The registered person must–

(a) require the skilled person to prepare a report in accordance with the notice;

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(b) permit the skilled person to disclose information to the GFSC in accordance with subsection (5)(b); and

(c) give the skilled person any assistance that the skilled person may reasonably require.

(5) The skilled person must–

(a) give the GFSC any assistance in connection with the report as it may reasonably require; and

(b) disclose to the GFSC any information which–

(i) the skilled person receives in that capacity; and

(ii) might reasonably suggest that the registered person has not complied with a requirement under this Part or the Audit Regulation.

Related entities.

510. If it appears to an inspector to be required for the purposes of supervising a registered person, an inspector may exercise the powers under section 508 or 509 in relation to–

(a) a body corporate which is or has at any time been–

(i) a holding company, subsidiary or related company of the registered person;

(ii) a subsidiary of a holding company of the registered person;

(iii) a holding company of a subsidiary of the registered person; or

(iv) an undertaking which is closely linked with the registered person; or

(b) a partnership of which the registered person is or has at any time been a member.

Inspections.

511. An inspector may for the purposes of supervising a registered person–

(a) inspect the premises and the business of the registered person;

(b) require any person appearing to the inspector to be or have been a director, controller, manager or agent of the registered person–

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(i) to produce any documents, accounts, and other records that are in that person's possession or control and relate to the business of the registered person; or

(ii) to explain to the inspector any matter within the person's knowledge or belief relating to the business of the registered person; or

(c) examine, copy or retain any documents, accounts or other records produced under paragraph (b)(i).

512. *Omitted*.

Investigations.

513.(1) Where it appears to the GFSC desirable to do so in the interests of any client of a registered person or in order to safeguard the reputation of Gibraltar, the GFSC may appoint an inspector to investigate and report to it on–

(a) the nature, conduct or state of the registered person's business or any particular aspect of it; or

(b) the ownership or control of the registered person (if the registered person is not an individual).

(2) The GFSC must give notice of an appointment under subsection (1) to the registered person concerned.

(3) Where it considers it to be appropriate, the GFSC may authorise an inspector appointed under subsection (1) to investigate–

(a) any holding company, subsidiary or related company of the registered person under investigation; or

(b) any further holding company, subsidiary or related company of that person.

(4) An inspector may exercise any of the powers under sections 508 to 512 for the purposes of an investigation under this section.

Production and retention of documents.

514.(1) Any power under sections 508 to 512 to require a person to produce a document includes the power–

(a) to copy or take extracts from the document;

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(b) to require the person to provide an explanation of the document; or

(c) if the document is not produced, to require the person to disclose where the document is, to the best of the person's knowledge and belief.

(2) The GFSC may retain any document which is produced under sections 508 to 512 for so long as it is necessary to retain it in connection with the exercise of its functions under this Part or the Audit Regulation.

(3) Where the GFSC reasonably suspects that–

(a) a document or other material may need to be produced for the purposes of legal proceedings; and

(b) it might otherwise be unavailable for those purposes,

the GFSC may retain the document or material until the proceedings are concluded.

(4) The powers in section 508 to 513 may not be used to require the production, disclosure or inspection of information which a person would be entitled to refuse to produce or disclose on grounds of legal professional privilege in proceedings in the Supreme Court.

Admissibility of statements.

515. A statement made by a person in response to a requirement imposed under sections 508 to 513 may only be used in evidence in criminal proceedings against that person if–

(a) the person has introduced the statement in evidence; or

(b) the proceedings concern the prosecution of the person for–

(i) failing or refusing to produce documents which should have been produced;

(ii) omitting to disclose information which should have been disclosed; or

(iii) providing an untruthful statement.

Directions.

516.(1) The GFSC may give a direction under subsection (2) to a registered person where–

(a) the GFSC reasonably suspects that the person–

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(i) is unable or likely to be unable to meet a liability or obligation to any person;

(ii) has suspended or is about to suspend a payment due to any person;

(iii) has contravened a provision of this Part or a condition of its approval or registration; or

(iv) is carrying on business in a manner which is detrimental to the interests of its clients or creditors or any class of clients or creditors; or

(b) the GFSC considers that it is in the public interest to do so.

(2) The GFSC may, by notice, direct a registered person at its own expense to take or refrain from taking any course of action in relation to the conduct of its business specified in the notice.

(3) Without limiting subsection (2), the GFSC may, in particular, direct a registered person to–

(a) appoint an auditor nominated or approved by the GFSC to audit the accounts of the registered person and to submit those audited accounts and the auditor's report on those accounts to the GFSC; or

(b) appoint a person nominated or approved by the GFSC to advise the registered person on its business or specified aspects of its business.

(4) The GFSC may from time to time vary or revoke a direction given under this section.

(5) Where a registered person fails to comply with a direction under subsection (3) the GFSC, acting as the agent of the registered person, may make an appointment on the terms and conditions it considers appropriate, and that appointment is binding on the registered person on those terms and conditions.

(6) In the winding up of a registered person, the fees payable by that person to any person appointed under subsection (3) or (5) are to rank as a preferential debt equally with any other debts that are first charges on the registered person's assets.

(7) A person aggrieved by a direction of the GFSC under this section may appeal to the Supreme Court in accordance with section 615.

Sanctions

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Sanctioning powers.

517.(1) The GFSC may take any of the steps in sections 153, 154 or 518 to 521 where it is satisfied that a person has contravened a provision of this Part or of the Audit Regulation.

(2) Sections 158 to 162 apply to the exercise of any sanctioning power under this Part.

Non-compliance declaration.

518. The GFSC may declare that an audit report does not meet the requirements of section 505 or, where applicable, Article 10 of the Audit Regulation.

Audit prohibition order.

519.(1) The GFSC may by order ("an audit prohibition order") prohibit–

(a) a specified statutory auditor, audit firm or key audit partner from carrying out statutory audits or signing audit reports; or

(b) a specified member of an audit firm or of the administrative or management body of a public-interest entity from exercising functions in audit firms or public-interest entities.

(2) An audit prohibition order must specify–

(a) the period during which it applies (which must not exceed three years); and

(b) the functions which it prohibits.

(3) Section 162 (revocation or variation of prohibition order) applies to an order imposed under subsection (1) as if the references in that section to a prohibition order were references to an audit prohibition order.

Suspension or withdrawal, etc. of approval or registration.

520.(1) The GFSC may–

(a) suspend or withdraw an approval granted to a statutory auditor or audit firm under section 474 or 532; or

(b) suspend or revoke registration granted to a third country auditor or non-EEA audit entity under section 533.

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(2) A suspension under subsection (1)(a) or (b) must specify the period during which it applies, which must not exceed 18 months.

(3) This section applies without limiting section 477 and notice of a withdrawal of approval under subsection (1)(a) must be given to any relevant competent authority.

Administrative penalties.

521.(1) The GFSC may impose an administrative penalty of an amount which does not exceed the higher of the following–

(a) where the profit gained or loss avoided because of the contravention can be determined, twice the amount of the profit or avoided loss;

(b) in the case of a legal person–

(i) £250,000; or

(ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body; or

(c) in the case of an individual, £125,000.

(2) Sections 152 and 161 apply to an administrative penalty imposed under this section.

Restoration.

522.(1) A person whose–

(a) approval under section 474 or 532 as a statutory auditor or audit firm has been suspended or withdrawn; or

(b) registration under section 533 as a third country auditor or third country audit entity has been suspended or revoked,

may apply to the GFSC for the suspension, withdrawal or revocation to be rescinded and, in consequence, for the person's name to be restored to the register.

(2) The GFSC must, before the end of the period for consideration–

(a) grant the application; or

(b) give a warning notice stating why it proposes not to grant the application.

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(3) The "period for consideration" means the period of three months beginning with the date on which the GFSC receives the application.

(4) A warning notice–

(a) must give the recipient not less than 28 days to make representations; and

(b) must specify a period within which the recipient may decide whether to make oral representations.

(5) The period for making representations may be extended by the GFSC.

(6) After considering any representations made the GFSC must issue–

(a) a decision notice stating that the GFSC will refuse the application; or

(b) an acceptance notice stating that the GFSC will accept the application.

(7) An application under subsection (1) has no effect if it is made within one year of the GFSC giving a warning notice in relation to a previous application in respect of the same person.

(8) A decision notice under this section takes effect immediately.

Reporting of contraventions.

523.(1) The GFSC must establish appropriate arrangements for the reporting of contraventions of this Part or the Audit Regulation to the GFSC by any person.

(2) The arrangements established under subsection (1) must include–

(a) specific procedures for the receipt and investigation of reported contraventions;

(b) arrangements which accord with the data protection legislation for the protection of the personal data of–

(i) the person who reports a contravention; and

(ii) any individual who is allegedly responsible for a contravention; and

(c) appropriate procedures to ensure that a person who is accused of a contravention–

(i) has the right to present a defence and be heard before any decision is reached concerning that alleged contravention; and

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(ii) is informed of the right to appeal under section 615 in the event that the person is found to have committed a contravention.

(3) Audit firms must establish appropriate procedures for their employees to report potential or actual contraventions of this Part or the Audit Regulation internally through a specific channel.

524. *Omitted*.

Public oversight and regulatory arrangements between EEA States

Principles of public oversight.

525.(1) All statutory auditors and audit firms are subject to public oversight, and the GFSC is responsible for the effective public oversight of statutory auditors and audit firms based on the principles set out in this section.

(2) Subject to subsection (3), in respect of its functions under subsection (1) the GFSC must–

(a) be governed by non-practitioners who are knowledgeable in the areas relevant to statutory audit, appointed following selection in accordance with an independent and transparent nomination procedure; and

(b) be organised in a manner that avoids conflicts of interests and must carry out its duties in a transparent manner, including by the publication of annual work programmes and activity reports.

(3) Where, in accordance with section 25, the GFSC arranges for its functions as the competent authority to be exercised by the Auditors Regulatory Committee, subsection (2) applies to that committee rather than the GFSC as a whole.

(4) The GFSC may engage practitioners to carry out specific tasks and may also be assisted by experts when this is essential for the proper fulfilment of its tasks, but those practitioners and experts must not be involved in any decision-making of the GFSC.

(5) Without limiting subsection (1), the GFSC has ultimate responsibility for the oversight of–

(a) the approval and registration of statutory auditors and audit firms;

(b) the adoption of standards on professional ethics, internal quality control of audit firms and auditing;

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(c) continuing education;

(d) quality assurance systems; and

(e) investigative and administrative disciplinary systems.

(6) The GFSC may initiate and conduct investigations in relation to statutory auditors and audit firms and take any appropriate action.

(7) Where the GFSC engages an expert to carry out a specific assignment, it must ensure that–

(a) there is no conflict of interest between the expert and the statutory auditor or audit firm in question; and

(b) the expert meets the requirements of section 506(3)(a).

(8) The Minister must ensure that the GFSC is adequately funded and has adequate resources to initiate and conduct investigations in accordance with subsection (6) and that those funding arrangements are secure and free from any undue influence by statutory auditors or audit firms.

(9) In this section "non-practitioner" means an individual who, during his or her involvement in the governance of the public oversight system and the three years immediately preceding that involvement, has not–

(a) carried out statutory audits;

(b) held voting rights in an audit firm;

(c) been a member of the administrative, management or supervisory body of an audit firm; or

(d) been employed by, or otherwise associated with, an audit firm.

526. *Omitted*.

527. *Omitted*.

528. *Omitted*.

Appointment and dismissal of auditors

Appointment of statutory auditors or audit firms.

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529.(1) Statutory auditors or audit firms must be appointed by a general meeting of shareholders or members of the audited entity.

(2) The Minister may, by regulations, permit statutory auditors or audit firms, to be appointed by a different method which is designed to ensure the independence of the statutory auditor or audit firm from the board of directors or other managerial body of the audited entity.

(3) Any term in a contract which restricts the choice of auditor under subsection (1) by a general meeting of shareholders or members of an audited entity to certain categories or lists of statutory auditors or audit firms is of no effect.

Dismissal and resignation of statutory auditors or audit firms.

530.(1) Statutory auditors or audit firms may be dismissed by an audited entity only where there are proper grounds for doing so, but divergence of opinions on accounting treatments or audit procedures are not proper grounds for doing so.

(2) Audited entities and the statutory auditor or audit firm must inform the GFSC of the dismissal or resignation of a statutory auditor or audit firm during its term of appointment and give the GFSC an adequate explanation of the reasons for that dismissal or resignation.

(3) In the case of a statutory audit of a public-interest entity, where there are proper grounds for doing so, a petition for the dismissal of the statutory auditor or audit firm may be presented to the Supreme Court by–

(a) shareholders representing 5% or more of the voting rights or share capital;

(b) persons representing 5% or more of the equivalent rights in an entity without shareholders; or

(c) the GFSC.

(4) Nothing in the Companies Act 2014 limits the operation of this section or section 529.

Audit Committees

Audit committee.

531.(1) A public-interest entity must have an audit committee which–

(a) must be either–

(i) a stand-alone committee; or

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(ii) a committee of its administrative body or supervisory body;

(b) comprises any of the following–

(i) non-executive members of the administrative body;

(ii) members of the supervisory body; and

(iii) members appointed by a general meeting of its shareholders or an equivalent body for entities without shareholders.

(2) The members of an audit committee as a whole must have competence relevant to the sector in which the public-interest entity is operating and–

(a) at least one member must have competence in accounting or auditing;

(b) a majority of the members must be independent of the audited entity; and

(c) the committee chair must be independent of the audited entity and appointed–

(i) from among its members by the committee; or

(ii) by the audited entity's supervisory body.

(3) In the case of a public-interest entity which meets the criteria set out in Article 2.1(f) of the Prospectus Regulation, the functions assigned to the audit committee may be performed by its administrative or supervisory body as a whole, but if the chair of that body is an executive member, that person must not act as chair whilst the body is performing the functions of the audit committee.

(4) Where an audit committee forms part of the administrative body or supervisory body of an audited entity in accordance with subsection (1)(a)(ii), that administrative body or supervisory body may perform the functions of the audit committee for the purposes of this Part and the Audit Regulation.

(5) Where all of the members of an audit committee are members of the administrative or supervisory body of an audited entity, the committee is exempt from the requirements of subsection (2)(b) and (c)(i).

(6) The following public-interest entities are not required to have an audit committee–

(a) a public-interest entity which is a subsidiary undertaking, if the entity complies at group level with subsections (1) to (5) and Articles 11.1, 11.2 and 16.5 of the Audit Regulation;

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(b) a public-interest entity which is–

(i) a UCITS within the meaning of Part 18; or

(ii) an AIF;

(c) a public-interest entity the sole business of which is to act as an issuer of asset backed securities;

(d) a credit institution–

(i) whose shares are not admitted to trading on a regulated market in Gibraltar;

(ii) which has, in a continuous or repeated manner, issued only debt securities admitted to trading on a regulated market;

(iii) where the total nominal amount of those debt securities is less than EUR 100,000,000; and

(iv) which has not published a prospectus under Chapter 3 of Part 19; or

(e) a public-interest entity which has a body performing equivalent functions to an audit committee, established and functioning in accordance with the law under which the entity is registered.

(6A) In subsection (6)(c), "asset-backed securities" means non-equity securities which either–

(a) represent an interest in assets, including any rights intended to ensure the servicing of those assets, the receipt or the timely receipt by holders of those assets of the amounts payable under those assets; or

(b) are secured by assets and the terms of the securities provide for payments calculated by reference to those assets;

(7) A public-interest entity to which–

(a) subsection (6)(c) applies must explain to the public why it considers that it is not appropriate for the entity to have an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee; and

(b) subsection (6)(e) applies must disclose which body within the entity performs the equivalent functions to an audit committee and how that body is composed.

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(8) The audit committee of a public-interest entity must, among other things–

(a) inform the administrative or supervisory body of the audited entity of the outcome of the statutory audit and explain how the statutory audit contributed to the integrity of financial reporting and what the role of the audit committee was in that process;

(b) monitor the financial reporting process and submit recommendations or proposals to ensure its integrity;

(c) monitor the effectiveness of the audited entity's internal quality control and risk management systems and, where applicable, its internal audit, regarding the financial reporting of the audited entity, without breaching its independence;

(d) monitor the statutory audit of the annual and consolidated financial statements, in particular, its performance, taking into account any findings and conclusions by the GFSC under Article 26.6 of the Audit Regulation;

(e) review and monitor the independence of the statutory auditor or audit firm in accordance with section 494, 495, 496, 499 and 500 and with Article 6 of the Audit Regulation and, in particular, the appropriateness of the provision of any non-audit services to the audited entity in accordance with Article 5 of that Regulation; and

(f) be responsible for the procedure for selecting the statutory auditor or audit firm and recommend the statutory auditor or audit firm to be appointed in accordance with Article 16 of the Audit Regulation, except when paragraph 8 of that Article applies.

(9) Subsection (8) applies without limiting the responsibility of the members of the administrative, management or supervisory body, or other members appointed by the general meeting of shareholders of the audited entity.

International aspects

Approval of auditors from third countries as statutory auditors.

532.(1) Subject to reciprocity, the GFSC may approve an auditor from a third country as a statutory auditor if that person has provided proof that he or she complies with requirements equivalent to those in sections 476, 479 to 485 and 486.

(2) For the purpose of subsection (1), the Minister may issue equivalence criteria which the GFSC must take into account in making any decision under that subsection.

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Registration and oversight of third country auditors and audit entities.

533.(1) The GFSC must, in accordance with sections 487 to 489, register a third country auditor or audit entity that provides an audit report concerning the annual or consolidated financial statements of an undertaking incorporated outside Gibraltar whose transferable securities are admitted to trading on a regulated market in Gibraltar.

(2) Subsection (1) does not apply where the undertaking in question is an issuer exclusively of outstanding debt securities admitted to trading on a regulated market in Gibraltar and which were admitted to trading–

(a) prior to 31 December 2010 and the denomination per unit of which is, at the date of issue, at least EUR 50,000 or if denominated in another currency, equivalent at that date, to at least EUR 50,000; or

(b) on or after 31 December 2010 and the denomination per unit of which is, at the date of issue, at least EUR 100,000 or, if denominated in another currency, equivalent at that date, to at least EUR 100,000.

(3) Sections 490 and 491 (which concern the updating and responsibility for registration information) apply in the context of this section.

(4) Registered third country auditors and audit entities are subject to the system of controls, the quality assurance systems and the systems of investigation and sanctions which apply under this Part.

(5) A registered third country auditor or audit entity is exempt from the quality assurance system set out in this Part where–

(a) the system of quality assurance in the third country has been assessed as equivalent in accordance with section 534; and

(b) a quality review of the third country auditor or audit entity concerned has been conducted in the previous three years.

(6) Without limiting section 534, audit reports concerning annual accounts or consolidated accounts referred to in this section issued by third country auditors or audit entities that are not registered in Gibraltar are of no legal effect in Gibraltar.

(7) The GFSC may register a third country audit entity under this section only if–

(a) the majority of the members of its administrative or management body meet requirements which are equivalent to those in sections 476 to 483;

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(b) the third country auditor carrying out the audit on behalf of the third country audit entity meets requirements which are equivalent to those laid down in sections 476 to 483;

(c) the audits of the annual or consolidated accounts referred to in subsection (1) are carried out in accordance with–

(i) international auditing standards under section 503 and the requirements of sections 494, 496 and 501; or

(ii) equivalent standards and requirements; and

(d) it publishes on its website an annual transparency report which includes the information referred to in Article 13 of the Audit Regulation or complies with equivalent disclosure requirements.

(8) The GFSC may register a third country auditor only if that auditor meets the requirements set out in subsections (7)(b), (c) and (d).

(9) For the purpose of subsection (7)(c), the Minister may issue equivalence criteria which the GFSC must take into account in making any equivalence assessment under that subsection.

Derogation in the case of equivalence.

534.(1) The GFSC may modify or disapply the requirements in section 533(1) and (4) on the basis of reciprocity, but only if the third country auditor or audit entity is subject to systems of public oversight, quality assurance and investigations and sanctions in its home state that meet requirements equivalent to those in sections 506, 507, 517 and 525.

(2) For the purpose of subsection (1), the Minister may issue equivalence criteria which the GFSC must take into account in making any equivalence assessment under that subsection.

Cooperation with competent authorities outside Gibraltar.

535.(1) The GFSC may allow the transfer to the competent authority of a country or territory outside Gibraltar (a "relevant authority") of audit working papers or other documents held by a statutory auditor or audit firm approved by the relevant authority, and of inspection or investigation reports relating to the audit in question, where–

(a) those audit working papers or other documents relate to the audit of a company which has issued securities in that country or territory or which forms part of a group issuing statutory consolidated financial statements in that jurisdiction;

(b) the transfer takes place via the GFSC to the relevant authority and at its request;

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(c) the relevant authority meets requirements which have been declared adequate by the GFSC in accordance with subsection (3);

(d) there are working arrangements on the basis of reciprocity agreed between the GFSC and the relevant authority; and

(e) the transfer of personal data to that country or territory is not contrary to the provisions of the data protection legislation.

(2) The working arrangements referred to in subsection (1)(d) must ensure that–

(a) justification as to the purpose of the request for audit working papers and other documents is provided by the relevant authority;

(b) the persons employed or formerly employed by the relevant authority are subject to obligations of professional secrecy;

(c) the protection of the commercial interests of the audited entity, including its industrial and intellectual property, is not undermined;

(d) the relevant authority uses audit working papers and other documents only for the exercise of their functions of public oversight, quality assurance and investigations that meet requirements equivalent to those of sections 506, 507 and 525; and

(e) the request from a relevant authority for audit working papers or other documents held by a statutory auditor or audit firm is refused–

(i) where the provision of those working papers or documents would adversely affect the sovereignty, security or public order of Gibraltar; or

(ii) where judicial proceedings have already been initiated in Gibraltar in respect of the same actions and against the same persons; or

(iii) where final judgment has already been passed in Gibraltar in respect of the same actions and on the same statutory auditors or audit firms.

(3) The Minister may issue criteria for assessing the adequacy of third country competent authorities, in relation to their ability to co-operate with the GFSC on the exchange of audit working papers and investigation reports, which the GFSC must take into account in making any decision under subsection (1)(c).

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(4) Despite subsection (1), in exceptional cases the GFSC may allow statutory auditors and audit firms to transfer audit working papers and other documents directly to a relevant authority where–

(a) investigations have been initiated in that country or territory by the relevant authority;

(b) the transfer does not conflict with the obligations with which statutory auditors and audit firms are required to comply in relation to the transfer of audit working papers and other documents to their home competent authority;

(c) there are working arrangements with the relevant authority that allow the GFSC reciprocal direct access to audit working papers and other documents of that jurisdiction's audit entities;

(d) the relevant authority informs the GFSC in advance of the statutory basis of, and an indication of the reasons for, each direct request for information; and

(e) the conditions referred to in subsection (2) are respected.

536. *Omitted*.

PART 25
REGULATION OF INSOLVENCY PRACTITIONERS

Introduction

Overview.

537.(1) This Part provides for the licensing of insolvency practitioners.

(2) The Insolvency Act 2011 defines what constitutes acting as an insolvency practitioner and makes it an offence for an unlicensed person to do so (see section 474 of that Act).

(3) Under the Companies Act 2014 only a licensed insolvency practitioner is eligible to act as the voluntary liquidator of a company (see section 360(1) of that Act).

Interpretation of Part 25.

538. In this Part "licensed insolvency practitioner" means the holder of a licence granted under this Part to act as an insolvency practitioner and "licence" is to be construed accordingly.

Licensing

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Application for insolvency practitioner's licence.

539.(1) An application for a licence must be made to the GFSC–

(a) in the form and containing the information specified by the GFSC; and

(b) accompanied by–

(i) the documents specified by the GFSC; and

(ii) the prescribed fee.

(2) The GFSC may require an applicant to provide it with any other documents or information that the GFSC considers necessary to determine the application.

(3) If any matter stated in an application or other information supplied by an applicant changes after it is provided to the GFSC but before the GFSC has determined the application, the applicant must without delay inform the GFSC in writing of the change.

Licensing criteria.

540.(1) The GFSC must publish the criteria that it uses in determining licence applications.

(2) Any licensing criteria must include criteria for determining whether a person is fit and proper to act as an insolvency practitioner, including the applicant's–

(a) integrity and reputation;

(b) competence and capability;

(c) financial, staff and other resources; and

(d) organisation and systems.

Issue or refusal of licence.

541.(1) The GFSC may issue a licence if the GFSC is satisfied–

(a) that the applicant–

(i) is an individual resident in Gibraltar;

(ii) is fit and proper to act as an insolvency practitioner;

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(iii) holds an appropriate professional qualification;

(iv) has sufficient, and sufficiently high level, insolvency experience;

(v) is not disqualified under section 542 from holding a licence; and

(vi) if a licence is issued, will comply with the requirements of this Part, the Insolvency Act 2011 and any Insolvency Practitioners Regulations made under section 554; and

(b) that issuing the licence is not against the public interest.

(2) In assessing an applicant's insolvency experience the GFSC may take account of–

(a) the nature and scope of the insolvency practice which the applicant intends to undertake; and

(b) any licence conditions that the GFSC intends to impose under section 543.

(3) In this section "insolvency experience" means experience, whether gained in or outside Gibraltar–

(a) in undertaking work of a type that is reserved to licensed insolvency practitioners under the Insolvency Act 2011 or the Companies Act 2014;

(b) in the case of a legal professional, in providing legal advice to persons–

(i) engaged in work of a type specified in paragraph (a); or

(ii) who are parties to or whose interests are affected by insolvency proceedings;

(c) in providing advice or undertaking work at the request of potentially insolvent persons, which may lead to insolvency proceedings or their avoidance; or

(d) in the regulation of insolvency practitioners.

(4) The GFSC must give notice of its decision to the applicant and, where the GFSC–

(a) proposes to refuse to issue a licence, it must give the applicant a warning notice; or

(b) decides to refuse to issue a licence, it must give the applicant a decision notice.

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Disqualification from holding a licence.

542. A person is disqualified from holding a licence if the person is–

(a) bankrupt;

(b) a disqualified person within the meaning of section 267 of the Insolvency Act 2011; or

(c) a restricted person within the meaning of section 442 of that Act.

Licence conditions or restrictions.

543.(1) A licence may be issued subject to any conditions or restrictions that the GFSC considers appropriate.

(2) The GFSC may, at any time–

(a) vary or cancel any conditions or restrictions imposed under subsection (1); or

(b) impose new conditions or restrictions on a licence.

Determination of applications: notice procedure.

544.(1) The GFSC must give an applicant a warning notice if the GFSC proposes–

(a) to give the applicant a licence but to exercise its power under section 543(1);

(b) to vary any conditions or restrictions in accordance with section 543(2)(a);

(c) to impose new conditions or restrictions on a licence in accordance with section 543(2)(b); or

(d) to refuse an application under this Part.

(2) The GFSC must give the applicant a decision notice if the GFSC decides to take any of the steps in subsection (1)(a) to (d).

(3) A person aggrieved by a decision notice in respect of a decision under subsection (1)(a) to (c) may appeal to the Supreme Court.

(4) Subsections (1) to (3) do not apply where the GFSC exercises its powers under section 543(2) to impose a condition or restriction at the request or with the consent of the applicant or insolvency practitioner.

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(5) In a case to which subsection (4) applies, the GFSC must give the applicant or insolvency practitioner notice of the condition or restriction and the date from which it has effect.

Control of licensees and enforcement

Production of accounts and records.

545.(1) The GFSC may require a licensed insolvency practitioner, at any time during or after the completion of an insolvency proceeding, to produce for inspection, at any place that it may specify–

(a) the practitioner's accounts and records in respect of the proceeding; and

(b) any reports that the practitioner has prepared in respect of the proceeding.

(2) The GFSC may arrange for any accounts and records produced under subsection (1) to be audited.

(3) A licensed insolvency practitioner must provide the GFSC with any further information, explanation and assistance that it may require in relation to records, accounts and reports produced under subsection (1).

Suspension and revocation of licence.

546.(1) The GFSC may revoke a licence if the licence holder–

(a) is no longer resident in Gibraltar;

(b) is disqualified from holding a licence; or

(c) has asked the GFSC to revoke the licence.

(2) The GFSC may suspend or revoke a licence if the licence holder–

(a) in the opinion of the GFSC, is no longer a fit and proper person to hold a licence;

(b) is in breach of a licence condition;

(c) has failed to comply with an obligation imposed by or under–

(i) this Act or any regulations made under it;

(ii) the Insolvency Act 2011; or

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(iii) the Companies Act 2014;

(d) has provided the GFSC with false, inaccurate or misleading information;

(e) has committed an offence under this Act, the Insolvency Act 2011 or the Companies Act 2014; or

(f) has failed to comply with a direction under section 548.

(3) For the purposes of assessing whether a licence holder is fit and proper the GFSC may have regard, among other things, to the matters in section 94(1A).

(4) Subject to subsection (5), the period of suspension of a licence under subsection (1) must not exceed 30 days.

(5) The Supreme Court, on the application of the GFSC, may extend the suspension of a licence under this section for one or more further periods not exceeding 30 days each if it is satisfied that doing so is in the public interest.

Other sanctions.

547.(1) Without limiting section 546(2), the GFSC may impose a sanction under section 152, 153 or 154 on a licensee for any contravention to which section 546(2)(b), (c), (d) or (f) applies.

(2) Any administrative penalty imposed on a licensee in accordance with section 152 must not exceed an amount which the higher of the following–

(a) where the profits gained or losses avoided by the contravention can be determined, twice the amount of those profits or avoided losses; or

(b) £125,000.

(3) Sections 158 to 162 apply to the exercise of any sanctioning power under this Part.

Directions.

548. The GFSC may direct a licensed insolvency practitioner who is contravening or has contravened an enactment mentioned in section 546(2)(c) to take one or more of the following steps–

(a) to take all necessary steps to resign as an insolvency practitioner in respect of a specified insolvency matter or insolvency matters of specified type or description;

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(b) not to accept any new appointment as an insolvency practitioner or any new appointments of a specified type or description; or

(c) to take any other steps that the GFSC considers appropriate to ensure that the insolvency practitioner's duties are properly fulfilled, either generally or in respect of a specified insolvency matter.

Procedure.

549.(1) If the GFSC–

(a) proposes to suspend or revoke a licence under section 546 or give a direction under section 548, it must give the licensee a warning notice; or

(b) decides to suspend or revoke a licence under section 546 or give a direction under section 548, it must give the licensee a decision notice.

(2) Subsection (1)(a) does not apply if the GFSC is satisfied that–

(a) there is an immediate risk of substantial damage to–

(i) the interests of consumers;

(ii) the public interest; or

(iii) the reputation of Gibraltar; and

(b) the exercise of a power under section 546 or 548 is–

(i) to a material extent, likely to avoid the occurrence or reduce the extent of that damage; and

(ii) proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the person concerned that may result from that direction.

(3) A decision notice in respect of any decision to which subsection (2) applies has immediate effect.

Eligibility to act as insolvency practitioner

Eligible insolvency practitioner.

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550.(1) A licensed insolvency practitioner is eligible to act in an insolvency proceeding in relation to a company or an individual if the licensed insolvency practitioner–

(a) has consented to do so, in the form specified by the GFSC; and

(b) is not disqualified under subsection (2).

(2) A licensed insolvency practitioner is disqualified from acting in relation to a company or an individual if–

(a) in the case of a company, the licensed insolvency practitioner is, or at any time in the previous three years has been–

(i) the auditor of the company or an employee of its auditor; or

(ii) a director of the company; or

(b) in the case of an individual, if the licensed insolvency practitioner is a connected person to that individual within the meaning of the Insolvency Act 2011.

(3) In this section "insolvency proceeding" means–

(a) a company or individual voluntary arrangement under the Insolvency Act 2011;

(b) administrative receivership within the meaning of that Act;

(c) administration proceedings under Part 3 of that Act;

(d) liquidation proceedings under Part 6 of that Act;

(e) bankruptcy proceedings under Part 13 of that Act; or

(f) corresponding proceedings–

(i) under any former Gibraltar legislation; or

(ii) in any jurisdiction outside Gibraltar.

Foreign insolvency practitioners

Appointment of foreign insolvency practitioner.

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551.(1) An individual who is not a licensed insolvency practitioner and who is resident outside Gibraltar may be appointed to act as an insolvency practitioner jointly with a licensed insolvency practitioner or the Official Receiver if–

(a) the appointment would enable the company's or individual's business, affairs, assets or liabilities outside Gibraltar to be dealt with more conveniently or efficiently;

(b) the person making the appointment is satisfied that the individual–

(i) has sufficient qualifications and experience to act in the insolvency proceeding in respect of which the appointment is made;

(ii) has consented to act in the prescribed form;

(iii) complies, or on appointment will comply, with any prescribed security or indemnity requirements;

(iv) would not be disqualified from holding a licence under this Part; and

(v) is not disqualified from acting under section 550; and

(c) prior notice has been given to the GFSC of–

(i) the individual's appointment; or

(ii) any application made to the Supreme Court for the individual's appointment.

(2) Where the GFSC receives notice that a person proposes to appoint a foreign insolvency practitioner, the GFSC may give the appointor notice of its intention to apply to the Supreme Court for an order that the foreign insolvency practitioner should not be appointed.

(3) A person who receives a notice under subsection (2) must not appoint the foreign insolvency practitioner unless–

(a) the GFSC withdraws the notice and approves the appointment; or

(b) the Supreme Court at the hearing of the GFSC's application approves the appointment.

(4) Where an application is made to the Supreme Court for the appointment of a foreign insolvency practitioner, the GFSC is entitled to appear and be heard at the hearing of the application for the purpose of objecting to the appointment.

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Foreign insolvency practitioner not to act in Gibraltar.

552. A foreign insolvency practitioner must not carry out in Gibraltar any function in relation to the insolvency proceeding in which that practitioner is appointed.

Foreign insolvency practitioner as sole appointee.

553.(1) Where a licensed insolvency practitioner ceases to act in an insolvency proceeding leaving a jointly-appointed foreign insolvency practitioner as the only practitioner appointed in the proceeding, the foreign insolvency practitioner, within three days of becoming aware of that change of circumstances, must inform–

(a) the Supreme Court or other person who made the joint appointment;

(b) the Official Receiver; and

(c) the GFSC.

(2) A foreign insolvency practitioner does not contravene section 552 by continuing to act as an insolvency practitioner–

(a) where, having given notice in accordance with subsection (1), at any time from the date on which the foreign insolvency practitioner became the only person acting as insolvency practitioner in the insolvency proceeding and ending on the later of–

(i) 14 days after the date on which the foreign insolvency practitioner became the only practitioner acting in the insolvency proceeding; or

(ii) seven days after the date on which the foreign insolvency practitioner became aware that no other practitioner was acting in the insolvency proceeding; or

(b) at any time when the foreign insolvency practitioner does not know and could not be expected to have known that no other practitioner is acting in the insolvency proceeding.

Insolvency Practitioners Regulations

Insolvency Practitioners Regulations.

554.(1) The Minister may make regulations ("Insolvency Practitioners Regulations") to give effect to this Part and specifically to provide for any of the following–

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(a) the conduct expected of and the procedures to be followed by licensed insolvency practitioners;

(b) the minimum security, including insurance cover, to be maintained by licensed insolvency practitioners;

(c) the arrangements which licensed insolvency practitioners must put in place for the safeguarding and management of clients' monies;

(d) the records to be kept by licensed insolvency practitioners and the length of time those records must be kept;

(e) the policies, systems and controls, including internal controls, to be maintained by licensed insolvency practitioners;

(f) the documents and returns to be submitted to the GFSC by licensed insolvency practitioners;

(g) the inspection by the GFSC of the records of licensed insolvency practitioners;

(h) the submission to the GFSC of complaints against licensed insolvency practitioners and the procedures for dealing with them;

(i) the continuing professional development to be undertaken by licensed insolvency practitioners; and

(j) any other matter required or permitted by this Part to be specified in regulations.

(2) Insolvency Practitioners Regulations–

(a) may make different provision in relation to different persons, circumstances or cases; and

(b) may provide for offences and penalties for failing to comply with the Insolvency Practitioners Regulations.

PART 26
OCCUPATIONAL PENSIONS INSTITUTIONS

Introduction

Overview.

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555. This Part regulates the taking-up and pursuit of activities carried on by institutions for occupational retirement provision (IORPs).

Interpretation of Part 26.

556. In this Part–

"beneficiary" means a person receiving retirement benefits;

"institution for occupational retirement provision" or "IORP" means an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed–

(a) individually or collectively between the employers and employees or their respective representatives; or

(b) with self-employed persons, individually or collectively,

and which carries out activities directly arising therefrom;

"key function", within a system of governance, means a capacity to undertake practical tasks comprising the risk management function, the internal audit function and the actuarial function;

"member" means a person, other than a beneficiary or a prospective member, whose past or current occupational activities entitle or will entitle the person to retirement benefits in accordance with the provisions of a pension scheme;

"pension scheme" means a contract, agreement, trust deed or rules stipulating which retirement benefits are granted and under which conditions;

"prospective member" means a person who is eligible to join a pension scheme;

"retirement benefits" means–

(a) benefits paid by reference to reaching, or the expectation of reaching, retirement; or

(b) where they are supplementary to those benefits and provided on an ancillary basis, benefits in the form of–

(i) payments on death, disability or cessation of employment; or

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(ii) support payments or services in case of sickness, indigence or death,

whether in the form of payments for life, for a temporary period, as a lump sum or any combination of those forms;

"small institution" has the meaning given in section 558(1); and

"sponsoring undertaking" means any undertaking or other body, regardless of whether it includes or consists of one or more legal persons or individuals, which acts as an employer, in a self-employed capacity or a combination of those capacities and which offers a pension scheme or pays contributions to an IORP.

Requirement for IORPs to be authorised or registered

Requirement for authorisation of IORPs.

557.(1) An IORP, the main administration of which is located in Gibraltar, must not operate in or from Gibraltar without an authorisation granted by the GFSC under this Part.

(2) For the purposes of subsection (1) the location of the main administration of an IORP means the place where the main strategic decisions of the IORP are made.

(3) Subsection (1) does not apply to any of the following–

(a) social security or assistance provided by the Government;

(b) any pension scheme provided, administered or guaranteed by the Government;

(c) any regulated firm with permission under Part 7 to carry on any of the following regulated activities–

(i) accepting deposits;

(ii) effecting and carrying out contracts of insurance;

(iii) reception and transmission of orders;

(iv) execution of orders on behalf of clients;

(v) dealing on own account;

(vi) portfolio management;

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(vii) investment advice;

(viii) underwriting or placing on a firm commitment basis;

(ix) placing without a firm commitment basis;

(x) operation of an MTF;

(xi) operation of an OTF

(x) managing a UCITS;

(xi) acting as depositary of a UCITS;

(xii) managing AIFs (in-scope AIFM); or

(xiii) acting as depositary of an AIF managed by an in-scope AIFM;

(d) institutions which operate on a pay-as-you-go basis;

(e) institutions where employees of the sponsoring undertaking have no legal rights to benefits and where the sponsoring undertaking can redeem the assets at any time and not necessarily meet its obligations for payment of retirement benefits;

(f) companies using book-reserve schemes with a view to paying out retirement benefits to their employees; or

(g) except to the extent stated in section 558(2) or (5), a small institution.

(4) A person who contravenes subsection (1) commits an offence and is liable–

(a) on summary conviction, to imprisonment for six months or the statutory maximum fine, or both; or

(b) on conviction on indictment, to imprisonment for two years or a fine, or both.

(5) It is a defence for a person charged with an offence under subsection (1) to prove that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Small institutions.

558.(1) In this Part, "small institution" means an IORP that operates pension schemes which together have fewer than 100 members in total.

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(2) A small institution that operates pension schemes which together have more than 15 members in total must comply with specified provisions of regulations made under section 585.

(3) "Specified" means specified by regulations made under section 585(3).

(4) A small institution to which subsection (2) applies must be registered under section 560.

(5) A small institution may opt to be subject to all of the provisions contained in or made under this Part by making an application to the GFSC in the form and manner it may require.

(6) The GFSC, on receiving an application under subsection (5), must give the small institution a notice which states that–

(a) the small institution has voluntarily opted to be subject to this Part; and

(b) with effect from the date specified in the notice, provisions contained in or made under this Act apply to the small institution as those provisions apply to any other IORP which is subject to this Part.

Revocation of opt-in by small institution.

559.(1) A small institution to which this Act applies by virtue of section 558(6) may apply to the GFSC for its opt-in under that section to be revoked.

(2) An application under subsection (1) must be made in the form and manner the GFSC may require.

(3) If the GFSC considers that it is necessary or desirable to refuse the application for the protection of members or beneficiaries or otherwise in the public interest, the GFSC must give the small institution a notice, informing the institution of the decision and the reasons for refusal.

(4) If the GFSC decides to grant the application, it must give the small institution a notice which states that–

(a) the small institution has applied for the revocation of its option to be subject to the provisions contained in or made under this Part; and

(b) subject to section 558(2) and (4), the provisions contained in or made under this Part are to cease to apply to the small institution with effect from the date specified in the notice.

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Registration.

560. The GFSC must enter in the register maintained under section 44 IORPs which are–

(a) authorised under section 562; and

(b) small institutions to which section 558(4) applies.

Authorisation

Application for authorisation of an IORP.

561.(1) An application for the authorisation of an IORP must–

(a) be made in such manner as the GFSC may direct; and

(b) contain or be accompanied by such information as the GFSC may reasonably require for the purpose of determining the application.

(2) At any time after the application is received and before it is determined, the GFSC may require the applicant to provide the GFSC with such further information as it reasonably considers necessary to enable it to determine the application.

(3) Different directions may be given, and different requirements imposed, in relation to different applications or different categories of application.

(4) The GFSC may require applicants to provide information which the applicant is required to provide under this section in such form, to verify it in such a way, as the GFSC may direct.

Authorisation of an IORP.

562.(1) The GFSC may grant an authorisation to an IORP only if the GFSC is satisfied–

(a) that the scheme meets, and will continue to meet, the requirements of subsections (2) and (3); or

(b) that those requirements will be met if the authorisation is subject to conditions imposed under section 563.

(2) The following persons must be fit and proper to hold the position specified in relation to them and to carry out their tasks–

(a) any person who is a manager, trustee or effectively runs the IORP;

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(b) any person who carries out key functions; and

(c) any person to which a key function has been outsourced.

(3) It is a condition of every authorisation that an IORP must at all times comply with–

(a) any conditions imposed by the GFSC under section 563; and

(b) any requirements imposed by or under this Act.

(4) The applicant may withdraw an application by giving the GFSC notice at any time before the GFSC determines it.

(5) The GFSC must give the applicant notice if it grants an application for authorisation.

Power to impose conditions on authorised IORPs.

563.(1) This section applies–

(a) where the GFSC grants authorisation to an IORP; and

(b) at any time after that authorisation has been granted.

(2) The GFSC may by notice served on the IORP–

(a) impose any conditions that the GFSC considers appropriate for the protection of members or beneficiaries;

(b) vary any conditions imposed; or

(c) revoke any conditions imposed.

(3) A condition imposed under this section may, in particular–

(a) prohibit an IORP from–

(i) entering into transactions of a specified description, in specified circumstances, to a specified extent or with persons of a specified description;

(ii) soliciting pensions business in a specified place, from persons of a specified description or otherwise than from persons of a specified description; or

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(iii) carrying on pensions business in a specified manner or otherwise than in a specified manner; or

(b) require an IORP to maintain in Gibraltar property or assets of a value and description that appears to the GFSC to be desirable with a view to ensuring that the IORP will be able to meet its liabilities in respect of the pensions business carried on.

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

(5) If the GFSC proposes to revoke a condition imposed on the authorisation of an IORP, the GFSC must give the IORP notice.

Authorisation and conditions: procedure.

564.(1) In relation to an application for the authorisation of an IORP under this Part, the GFSC must give an applicant a warning notice if the GFSC proposes–

(a) to authorise the IORP but to exercise the GFSC's power under section 563(2)(a); or

(b) to refuse the application.

(2) In relation to an IORP which has been authorised, the GFSC must give the IORP a warning notice if the GFSC proposes–

(a) to impose a condition under section 563(2)(a); or

(b) to vary a condition under section 563(2)(b).

(3) The GFSC must give a decision notice if the GFSC decides–

(a) in relation to an application for the authorisation of an IORP under this Part–

(i) to authorise the IORP but to exercise its power under section 563(2)(a); or

(ii) to refuse the application;

(b) to impose a condition on an IORP in exercise of its power under section 563(2)(a); or

(c) to vary a condition on an IORP in exercise of its power under section 563(2)(b).

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Supervision

Prudential supervision.

565.(1) The main objective of prudential supervision is to protect the rights of members and beneficiaries and to ensure the stability and soundness of the IORPs.

(2) Supervision must be–

(a) based on a forward-looking and risk-based approach; and

(b) comprise an appropriate combination of off-site activities and on-site inspections;

(3) The GFSC, in exercising its supervisory powers, must duly consider the potential impact of its actions on the stability of the financial system in Gibraltar, in particular, in emergency situations.

Requirements as to procedures and mechanisms for IORPs.

566. The GFSC must require an IORP to have sound administrative and accounting procedures and adequate internal control mechanisms and an IORP must comply with that requirement.

Supervisory review process.

567.(1) The GFSC must review the strategies, processes and reporting procedures which are established by IORPs to comply with any provision contained in or made under this Part.

(2) A review under this section must take account of–

(a) the size, nature, scale and complexity of the IORP's activities;

(b) the circumstances in which the IORP is operating; and

(c) where relevant, the parties carrying out outsourced key functions or any other activities for the IORP.

(3) A review must comprise the following elements–

(a) an assessment of the qualitative requirements relating to the system of governance;

(b) an assessment of the risks the IORP faces; and

(c) an assessment of the IORP's ability to assess and manage those risks.

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(4) The GFSC must develop and apply monitoring tools, including stress tests, that enable it to–

(a) identify deteriorating financial conditions in an IORP; and

(b) monitor how any deteriorating financial conditions are remedied.

(5) The GFSC may direct an IORP to remedy any weaknesses or deficiencies identified by the supervisory review process.

(6) The GFSC must establish the scope and minimum frequency of a review, having regard to the size, nature, scale and complexity of the activities of the IORP concerned.

Transparency and accountability.

568.(1) The GFSC must discharge its functions under this Part in a transparent, independent and accountable manner with due respect for the protection of confidential information.

(2) The GFSC must ensure that the following information is publicly disclosed–

(a) the texts of laws, regulations, administrative rules and general guidance in the field of occupational pension schemes;

(b) information regarding the supervisory review process as set out in section 567;

(c) aggregate statistical data on key aspects of the application of the prudential framework;

(d) the main objective of prudential supervision and information on the GFSC's main functions and activities; and

(e) the administrative sanctions and other measures applicable to breaches of requirements imposed by or under this Part.

Intervention

Application to the Supreme Court.

569.(1) The GFSC may apply to the Supreme Court for an order under this section in connection with an IORP.

(2) The power in subsection (1) may be exercised if it appears to the GFSC–

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(a) that any ground specified in section 570(1)(a) to (c) applies or is likely to apply; or

(b) that it is necessary for an order to be made under this section for the protection of consumers or the public.

(3) On an application under this section, the court may make such order as it considers necessary–

(a) to protect or preserve the assets of the IORP or its pension schemes; or

(b) to protect the interests of consumers or the public.

(4) An order under subsection (3) may, in particular–

(a) prohibit the disposal of, or other dealing with, specified assets, in a specified manner or otherwise than in a specified manner;

(b) restrict such disposals or dealings; or

(c) require that assets or any part of them be transferred to and held by a trustee appointed by the court.

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

(6) An application under subsection (1) may not be made unless the GFSC has either–

(a) given the IORP, and any other person whom the GFSC considers is likely to be subject to an order under subsection (1), at least two working days' notice of its intention to make the application; or

(b) certified to the court that the circumstances of the case are such that the GFSC considers that the purpose of the application would be likely to be frustrated or seriously prejudiced by the giving of notice under paragraph (a).

(7) The court may rescind or vary an order under subsection (1) on its own motion or on the application of the GFSC, the IORP or any other person subject to the order.

Intervention powers.

570.(1) The GFSC may impose conditions on, suspend or revoke an IORP's authorisation if the IORP–

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(a) fails to protect adequately the interests of scheme members and beneficiaries;

(b) contravenes any requirement imposed by or under this Act;

(c) contravenes any conditions of its authorisation;

(d) no longer fulfils the conditions of operation;

(2) The steps which the GFSC may take under subsection (1) include restricting or prohibiting the free disposal of an IORP's assets, in particular, when the IORP–

(a) has failed to establish sufficient technical provisions in respect of the entire business or has insufficient assets to cover the technical provisions; or

(b) has failed to hold the regulatory own funds.

(3) The GFSC may suspend or revoke an IORP's authorisation if the prescribed fee is not paid.

(4) The GFSC may transfer the powers which persons running an IORP hold to another person who is fit to exercise those powers (a "special representative"), where the GFSC considers that doing so is necessary in order to safeguard the interests of members and beneficiaries.

(5) In the case of small institutions to which section 558(2) applies, the GFSC may suspend or revoke a small institution's registration if it–

(a) fails to protect adequately the interests of scheme members and beneficiaries; or

(b) fails to comply with any requirement imposed by or under this Act.

Intervention: procedure.

571.(1) The GFSC must give the person concerned–

(a) a warning notice, if the GFSC proposes to exercise any power under section 570; or

(b) a decision notice, if the GFSC decides to exercise any of those powers.

(2) Subsection (1)(a) does not apply if the GFSC is satisfied that–

(a) there is an immediate risk of substantial damage to–

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(i) the interests of consumers;

(ii) the public interest; or

(iii) the reputation of Gibraltar; and

(b) the exercise of a power under section 570 is–

(i) to a material extent, likely to avoid the occurrence or reduce the extent of that damage; and

(ii) proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the person concerned that may result from that direction.

(3) A decision notice in respect of any decision to which subsection (2) applies has immediate effect.

Sanctions

Sanctions: general.

572.(1) In this section and sections 573 to 577–

"P" means–

(a) an IORP; or

(b) a person who has exercised a relevant function in relation to an IORP;

"regulatory requirement" means an obligation imposed on P–

(a) as a condition of being an IORP authorised under this Part;

(b) under this Act or under any regulations made under this Act; or

(c) by the GFSC under this Act or under any regulations made under this Act;

"relevant function", in relation to an IORP, means–

(a) acting as a manager or trustee or effectively running the IORP; or

(b) carrying out key functions.

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(2) The GFSC may exercise a sanctioning power against P if–

(a) P has contravened a regulatory requirement; and

(b) at the time of the contravention, P was–

(i) an IORP; or

(ii) a person exercising a relevant function in relation to an IORP.

(3) The GFSC may also exercise a sanctioning power against a person referred to in subsection (2)(b)(ii) in respect of a contravention of a regulatory requirement by an IORP if–

(a) the person was knowingly concerned in that contravention; and

(b) at the time of the contravention, the person was exercising a relevant function in relation to that IORP.

(4) The sanctioning powers are–

(a) to impose an administrative penalty under section 573;

(b) to publish a statement under section 574;

(c) to issue a cease and desist order under section 575; or

(d) to issue a prohibition order under section 576.

(5) More than one sanctioning power may be exercised against P in respect of the same contravention.

(6) The GFSC's sanctioning powers under this section apply in addition to its intervention powers under section 570.

Administrative penalties.

573.(1) The GFSC may impose an administrative penalty on P.

(2) An administrative penalty is an amount of money that P is liable to pay.

(3) The amount is to be determined by the GFSC and must not exceed the higher of the following–

(a) twice the amount of profits gained or losses avoided by the contravention;

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(b) in the case of an IORP, £250,000 or 5% of the total annual turnover according to the most recent approved set of accounts; or

(c) in the case of a person exercising a relevant function in relation to an IORP, £125,000.

(4) The penalty must be paid within 28 days of the date on which the notice imposing it takes effect.

(5) The GFSC may extend the period within which the penalty must be paid.

(6) Section 161 applies to the enforcement of an administrative penalty imposed under this section.

Public statement.

574.(1) The GFSC may publish a statement limited to specifying–

(a) the identity of an IORP or a person who has contravened a regulatory requirement; and

(b) the type and nature of the contravention.

(2) The public statement may be in whatever form the GFSC thinks fit.

Cease and desist order.

575.(1) The GFSC may issue a cease and desist order against P.

(2) A cease and desist order obliges P to–

(a) cease any conduct which constitutes a contravention; and

(b) desist from any repetition of that conduct.

Prohibition order.

576.(1) The GFSC may issue a prohibition order against a person referred to in section 572(2)(b)(ii) or (3).

(2) A prohibition order prohibits the person from–

(a) exercising relevant functions in relation to IORPs;

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(b) undertaking any function in relation to a collective investment scheme authorised or recognised under Chapters 3 to 5 of Part 18; or

(c) if the person is an individual–

(i) exercising relevant functions (within the meaning of Part 27) in relation to approved personal pension schemes; or

(ii) exercising regulated functions (within the meaning of Part 8) at an authorised person.

(3) The prohibition order must specify the period during which it has effect.

(4) The prohibition order must specify–

(a) the descriptions of functions to which it applies; or

(b) that it applies in respect of all of the functions listed in subsection (2).

(5) If the prohibition order is in response to repeated contraventions, it may have effect for an indefinite period.

Sanctioning actions: procedure etc.

577.(1) The provisions of sections 158 to 162 apply to any sanctioning action taken against P by the GFSC in exercise of a sanctioning power listed in section 572(4) as those provisions apply to a sanctioning action taken in exercise of the sanctioning powers listed in section 157.

(2) In the application of those provisions for the purposes of subsection (1)–

(a) any reference to "the person" or "the person concerned" is to be understood as a reference to P; and

(b) in section 616(1), the reference to "any sanctioning action taken under this Part" is to be understood as a reference to any decision taken under Part 26.

Professional secrecy and exchange of information

Professional secrecy.

578.(1) Any person who works or has worked for the GFSC, as well as any auditor or expert acting on its behalf, is bound by the professional secrecy obligation imposed by section 46(1) and (2).

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(2) A person to whom subsection (1) applies must not divulge confidential information received by them in the course of their duties to any person or authority, except in summary or aggregate form which ensures that individual IORPs cannot be identified.

(3) Nothing in this section prohibits the disclosure of information for the purpose of–

(a) any criminal investigation or prosecution; or

(b) any civil or commercial proceedings in respect of the winding up of a pension scheme.

Use of confidential information.

579. Where the GFSC receives confidential information under this Part, it must only use it in the course of its functions and for the following purposes–

(a) to check that the conditions for taking up occupational retirement provision business are met by IORPs before commencing their activities;

(b) to facilitate the monitoring of the activities of IORPs, including the monitoring of the technical provisions, the solvency, the system of governance, and the information provided to members and beneficiaries;

(c) to impose corrective measures or administrative sanctions;

(d) to publish key performance indicators for all individual IORPs, which may assist members and beneficiaries in taking financial decisions regarding their pension; or

(e) in court proceedings regarding the provisions of this Part, including appeals against its decisions under this Part.

580. *Omitted*.

Exchange of information between authorities.

581.(1) Nothing in section 578 or 579 precludes any of the following–

(a) the exchange of information between the GFSC and authorities in countries or territories outside Gibraltar in connection with the discharge of their supervisory or related functions;

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(b) the exchange of information, in the discharge of their supervisory functions, between the GFSC and any of the following authorities or bodies in Gibraltar–

(i) authorities responsible for the supervision of financial sector entities and other financial organisations and the authorities responsible for the supervision of financial markets;

(ii) authorities or bodies charged with responsibility for maintaining the stability of the financial system through the use of macro-prudential rules;

(iii) bodies involved in the winding up of a pension scheme and in other similar procedures;

(iv) reorganisation bodies or authorities aiming at protecting the stability of the financial system; or

(v) persons responsible for carrying out statutory audits of the accounts of IORPs, insurance undertakings and other financial institutions; or

(c) the disclosure to bodies which administer the winding up of a pension scheme, of information necessary for the performance of their duties.

(2) Any information received by the authorities, bodies and persons in subsection (1) is subject to the professional secrecy obligation in section 46.

(3) Nothing in section 578 or 579 precludes the exchange of information between the GFSC and any of the following–

(a) the authorities responsible for overseeing the bodies involved in the winding up of pension schemes and other similar procedures;

(b) the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of IORPs, insurance undertakings and other financial institutions; or

(c) independent actuaries of IORPs carrying out supervision of those IORPs and the bodies responsible for overseeing such actuaries.

Transmission of information to central banks, monetary authorities and others.

582. Nothing in section 578 or 579 prevents the GFSC from transmitting information to the following entities for the purposes of the exercise of their respective tasks–

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(a) central banks and other bodies with a similar function in their capacity as monetary authorities; or

(b) other public authorities responsible for overseeing payment systems.

Conditions for the exchange of information.

583. The following conditions apply to any exchange of information under section 581 or 582–

(a) the information must be exchanged, transmitted or disclosed for the purpose of carrying out oversight or supervision; and

(b) the information received must be subject to the obligation of professional secrecy set out in section 578.

584. *Omitted*.

Miscellaneous

Regulations applying to IORPS.

585.(1) The Minister may make such regulations applying to IORPs, and persons exercising functions in relation to IORPS, as appear to the Minister to be necessary or expedient for the purposes of advancing one or more of the regulatory objectives of the GFSC.

(2) Regulations under subsection (1) may, in particular–

(a) make provision as to–

(i) conditions of operation;

(ii) technical provisions;

(iii) funding of technical provisions;

(iv) regulatory own funds;

(v) available solvency margin;

(vi) required solvency margin;

(vii) arrangements for the safekeeping of the assets of a pension scheme, including provision requiring the appointment of a depositary;

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(viii) investment rules;

(ix) investment management;

(x) system of governance; and

(xi) information to be provided to members, prospective members or beneficiaries;

(b) confer rights of appeal in connection with–

(i) any refusal by the GFSC to give any approval or consent; or

(ii) any direction, determination, prohibition or restriction issued by the GFSC; and

(c) confer functions on the GFSC.

(3) The regulations made under subsection (1) must specify any provisions of those regulations with which a small institution must comply by virtue of section 558(2).

586. *Omitted*.

587. *Omitted*.

Appeals.

588. A person aggrieved by–

(a) a decision of the GFSC–

(i) to vary or revoke an authorisation;

(ii) to revoke registration;

(iii) to exercise the power conferred by section 563(2)(a) or (b);

(iv) to exercise the power conferred by section 567(5);

(v) to take any action under section 570; or

(vi) to take any action under sections 572 to 576; or

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(b) any decision which is specified in regulations made under section 585 as being subject to a right of appeal under section 615,

may appeal to the Supreme Court in accordance with section 615.

589. *Omitted*.

Processing of personal data.

590. The GFSC and IORPs must process personal data for the purposes of this Part in accordance with the data protection legislation.

PART 27
PERSONAL PENSION SCHEMES

Interpretation

Interpretation of Part 27.

592.(1) In this Part–

"applicant" means–

(a) in relation to an application under section 594, an applicant for the approval of a personal pension scheme under this Part; or

(b) in relation to an application under section 598(3), an applicant for revocation of such approval;

"beneficiary", in relation to a personal pension scheme, means a person, other than a member of the scheme, who is entitled to a payment of benefits under the scheme;

"consumer" means–

(a) persons who use, have used or are or may be contemplating using any of the services provided by a regulated firm in carrying on the regulated activity of establishing etc. a personal pension scheme;

(b) persons who have rights or interests which are derived from, or otherwise attributable to, the use of such services by other persons; or

(c) persons who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them,

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and, if a regulated firm is providing any service referred to in paragraph (a) as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service;

"occupational pension scheme" means a pension scheme established for or by an employer or a number of employers or an association representing employers, jointly or separately, for the benefit of employees;

"pension scheme" means a scheme or arrangement established under a contract or other agreement, a trust deed or rules with the principal purpose of providing retirement benefits;

"personal pension scheme" means a pension scheme other than an occupational pension scheme;

"operator", in relation to a personal pension scheme, means a regulated firm which–

(a) has permission under Part 7 to carry on the regulated activity of establishing etc. a personal pension scheme; and

(b) is operating the scheme;

"relevant function", in relation to an approved personal pension scheme, means–

(a) in the case of a scheme which is a body corporate, acting as a director;

(b) in the case of a scheme which is constituted as a trust, acting as a trustee;

"retirement benefits" has the meaning given in Part 26; and

"tax approval" means the approval of a pension scheme by the Commissioner for Income Tax of Gibraltar under the income tax rules.

(2) For the purposes of the definition of tax approval in subsection (1)–

(a) "income tax rules"–

(i) means the Income Tax Act 2010 and the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 as amended, varied, supplemented or substituted from time to time and any rules or regulations made under the income tax rules; and

(ii) includes the income tax guidance notes; and

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(b) "income tax guidance notes" means the guidance notes issued by the Commissioner or the Ministry of Finance from time to time.

Requirement for personal pension schemes to be approved

Requirement for approval of personal pension schemes.

593.(1) No member may be accepted into a personal pension scheme unless the scheme has been approved by the GFSC under section 595.

(2) It is an offence for a personal pension scheme or any other person to accept a member into the scheme in contravention of subsection (1).

(3) A person who commits an offence under subsection (2) is liable–

(a) on summary conviction, to imprisonment for six months or the statutory maximum fine, or both; or

(b) on conviction on indictment, to imprisonment for two years or a fine, or both.

(4) It is a defence for a person charged with an offence under subsection (2) to prove that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Approval

Application for scheme approval.

594. An application to the GFSC for its approval of a personal pension scheme may only be made by a regulated firm with permission under Part 7 to carry on the regulated activity of establishing etc. a personal pension scheme.

Approval of a personal pension scheme.

595.(1) The GFSC may approve a personal pension scheme only if the GFSC is satisfied–

(a) that the scheme meets, and will continue to meet, the requirements of subsections (2) to (7); or

(b) that those requirements will be met if the approval is subject to conditions imposed under section 597.

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(2) The applicant must have permission under Part 7 to carry on the regulated activity of establishing etc. a personal pension scheme.

(3) The applicant must obtain tax approval in relation to the scheme.

(4) The proposed name of the scheme–

(a) must not conflict with the name of any other scheme; and

(b) must not be misleading as to the person who has established the scheme or the person who will be the scheme operator.

(5) The person operating the scheme must have permission under Part 7 to carry on the regulated activity of establishing etc. a personal pension scheme.

(6) Each person exercising a relevant function in relation to the scheme must be an individual who is fit and proper to exercise that function.

(7) It is a condition of every approval that a scheme must at all times comply with–

(a) any conditions imposed by the GFSC under section 597; and

(b) any requirements imposed by or under this Act.

Determination of application for approval.

596.(1) An application for the approval of a personal pension scheme must be determined by the GFSC before the end of the period of two months beginning with the date on which the GFSC receives the completed application.

(2) The GFSC may allow more time for an application to be determined if the GFSC considers that it is necessary to do so in order to allow–

(a) further information, documents or evidence to be obtained from the applicant under section 599(3);

(b) the applicant to make representations in response to a warning notice under section 600(1);

(c) any right of appeal to be exercised under section 602(a) or (b) in relation to the application; or

(d) due consideration otherwise to be given to the application.

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(3) The GFSC must give the applicant a notice if the GFSC decides under subsection (2) to allow more time for the determination of an application.

(4) A notice under subsection (3) must be given before the end of the period referred to in subsection (1).

(5) The applicant may withdraw an application by giving the GFSC notice at any time before the GFSC determines it.

(6) The GFSC must give the applicant notice if it grants an application for approval.

Power to impose conditions on approved schemes.

597.(1) This section applies–

(a) where the GFSC approves a personal pension scheme; and

(b) at any time after the scheme has been approved.

(2) The GFSC may–

(a) impose any conditions on the scheme's approval which the GFSC considers necessary for the protection of consumers;

(b) vary any condition imposed; or

(c) revoke any condition imposed.

(3) If the GFSC proposes to revoke a condition imposed on the approval of a personal pension scheme, the GFSC must give the scheme operator notice.

Revocation or suspension of approval.

598.(1) The GFSC may–

(a) revoke the approval of a personal pension scheme under this Part; or

(b) suspend a personal pension scheme's approval.

(2) The power in subsection (1) may be exercised–

(a) if the scheme or the scheme operator contravenes any requirement imposed by or under this Act;

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(b) if the scheme contravenes any conditions to which its approval is subject;

(c) if the GFSC considers that revocation or suspension of the scheme's approval is necessary for the protection of consumers;

(d) if the scheme loses tax approval;

(e) if the prescribed fee is not paid;

(f) on an application made to the GFSC under subsection (3): or

(g) on any other ground specified in regulations made by the Minister.

(3) An application for revocation of the approval of a personal pension scheme under this Part may only be made by the scheme operator.

(4) The GFSC may refuse an application under subsection (3) if it considers that revocation of the scheme's approval would not be in the interests of consumers.

(5) The GFSC must give the applicant notice if it grants an application under subsection (3).

Procedure

Applications in connection with approvals.

599.(1) This section applies to–

(a) an application under section 594 for the approval of a personal pension scheme under this Part; and

(b) an application under section 598(3) for revocation of such approval.

(2) The application must–

(a) be made in such manner as the GFSC may direct; and

(b) contain or be accompanied by such information as the GFSC may reasonably require for the purpose of determining the application.

(3) At any time after the application is received and before it is determined, the GFSC may require the applicant to provide the GFSC with such further information as it reasonably considers necessary to enable it to determine the application.

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(4) Different directions may be given, and different requirements imposed, in relation to different applications or different categories of application.

(5) The GFSC may require an applicant to provide information which the applicant is required to provide under this section in such form, or to verify it in such a way, as the GFSC may direct.

Notice procedure.

600.(1) In relation to an application for the approval of a personal pension scheme under this Part, the GFSC must give an applicant a warning notice if the GFSC proposes–

(a) to approve the scheme but to exercise the GFSC's power under section 597(2)(a); or

(b) to refuse the application.

(2) In relation to an approved personal pension scheme, the GFSC must give the scheme operator a warning notice if the GFSC proposes–

(a) to impose a condition under section 597(2)(a);

(b) to vary a condition under section 597(2)(b);

(c) to revoke the approval of a personal pension scheme under section 598(1), otherwise than on an application for revocation under section 598(3); or

(d) to refuse an application made under section 598(3) for revocation of the scheme's approval.

(3) The GFSC must give a decision notice if the GFSC decides–

(a) in relation to an application for the approval of a personal pension scheme under this Part–

(i) to approve the scheme but to exercise its power under section 597(2)(a); or

(ii) to refuse the application;

(b) to impose a condition on an approved scheme in exercise of its power under section 597(2)(a);

(c) to vary a condition on an approved scheme in exercise of its power under section 597(2)(b);

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(d) to revoke the approval of a personal pension scheme under section 598(1), otherwise than on an application for revocation under section 598(3); or

(e) to refuse an application under section 598(3) for revocation of the scheme's approval.

Procedure on suspension of a scheme's approval.

601.(1) The GFSC must give the person concerned–

(a) a warning notice, if the GFSC proposes to suspend a scheme's approval on the ground specified in section 598(2)(a); and

(b) a decision notice, if the GFSC decides to suspend a scheme's approval on that ground.

(2) Subsection (1)(a) does not apply if the GFSC is satisfied that–

(a) there is an immediate risk of substantial damage to–

(i) the interests of consumers;

(ii) the public interest; or

(iii) the reputation of Gibraltar; and

(b) the exercise of the power to suspend the scheme's approval with immediate effect is–

(i) to a material extent, likely to avoid the occurrence or reduce the extent of that damage; and

(ii) proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the person concerned that may result from that direction.

(3) A decision notice suspending a scheme's approval on the ground specified in section 598(2)(a) takes effect immediately.

Appeals.

602. A person aggrieved by any of the following decisions may appeal to the Supreme Court in accordance with section 615–

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(a) a decision by the GFSC to exercise the power conferred by section 597(2)(a) or (b);

(b) a decision by the GFSC to revoke or suspend the approval of a personal pension scheme under section 598; or

(c) a decision by the GFSC to refuse an application made under section 598(3) for revocation of the scheme's approval.

Intervention

Application to the Supreme Court.

603.(1) The GFSC may apply to the Supreme Court for an order under this section in connection with an approved personal pension scheme.

(2) The power in subsection (1) may be exercised if it appears to the GFSC–

(a) that any ground specified in section 598(2)(a) or (b) applies or is likely to apply; or

(b) that it is necessary for an order to be made under this section for the protection of consumers or the public.

(3) On an application under this section, the court may make such order as it considers necessary–

(a) to protect or preserve the members' funds or the business of the scheme; or

(b) to protect the interests of consumers or the public.

(4) An order under subsection (3) may, in particular–

(a) prohibit the disposal of, or other dealing with, members' funds or any part of them;

(b) restrict such disposals or dealings;

(c) require that members' funds or any part of them be transferred to and held by a trustee appointed by the court;

(d) remove and replace the scheme operator with another regulated firm nominated by the GFSC; or

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(e) if no appropriate firm is available to operate the scheme, remove the scheme operator and appoint another regulated firm to wind up the scheme.

(5) A prohibition or requirement under subsection (4) may relate to property or assets outside Gibraltar.

(6) An application under subsection (1) may not be made unless the GFSC has either–

(a) given the scheme operator at least two working days' notice of its intention to make the application; or

(b) certified to the court that the case is one in which the GFSC considers that the purpose of the application would be frustrated or seriously prejudiced by the giving of such notice.

(7) The court may rescind an order within subsection (4)(e) and substitute an order within subsection (4)(d).

(8) The court may rescind or vary an order under subsection (1) on its own motion or on the application of the GFSC, the scheme operator or any other person subject to the order.

(9) In this section, "members' funds", in relation to a personal pension scheme, means the assets held under that scheme for the purposes of paying retirement benefits to the member or the member's beneficiaries under that scheme.

Sanctions

Sanctions: general.

604.(1) In this section and sections 605 to 608–

"P" means–

(a) a personal pension scheme which has been approved under this Part; or

(b) an individual who has exercised a relevant function in relation to any such scheme; and

"regulatory requirement" means an obligation imposed on P–

(a) as a condition of being an approved personal pension scheme;

(b) under this Act or under any regulations made under this Act; or

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(c) by the GFSC under this Act or under any regulations made under this Act.

(2) The GFSC may exercise a sanctioning power against P if–

(a) P has contravened a regulatory requirement; and

(b) at the time of the contravention, P was–

(i) an approved personal pension scheme; or

(ii) an individual exercising a relevant function in relation to an approved personal pension scheme.

(3) The GFSC may also exercise a sanctioning power against an individual referred to in subsection (2)(b)(ii) in respect of a contravention of a regulatory requirement by an approved personal pension scheme if–

(a) the individual was knowingly concerned in that contravention; and

(b) at the time of the contravention, the individual was exercising a relevant function in relation to that scheme.

(4) The sanctioning powers are–

(a) to impose an administrative penalty under section 605;

(b) to publish a statement under section 606;

(c) to issue a cease and desist order under section 607; or

(d) to issue a prohibition order under section 608.

(5) More than one sanctioning power may be exercised against P in respect of the same contravention.

(6) The GFSC's sanctioning powers under this section apply in addition to its powers under section 598.

Administrative penalties.

605.(1) The GFSC may impose an administrative penalty on P.

(2) An administrative penalty is an amount of money that P is liable to pay.

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(3) The amount is to be determined by the GFSC and must not exceed the higher of the following–

(a) twice the amount of profits gained or losses avoided by the contravention;

(b) in the case of an approved personal pension scheme, 250,000;

(c) in the case of an individual exercising a relevant function in relation to an approved personal pension scheme, £125,000.

(4) The penalty must be paid within 28 days of the date on which the notice imposing it takes effect.

(5) The GFSC may extend the period within which the penalty must be paid.

(6) Section 161 applies to the enforcement of an administrative penalty imposed under this section.

Public statement.

606.(1) The GFSC may publish a statement limited to specifying–

(a) the identity of an approved personal pension scheme or an individual who has contravened a regulatory requirement; and

(b) the type and nature of the contravention.

(2) The public statement may be in whatever form the GFSC thinks fit.

Cease and desist order.

607.(1) The GFSC may issue a cease and desist order against P.

(2) A cease and desist order obliges P to–

(a) cease any conduct which constitutes a contravention; and

(b) desist from any repetition of that conduct.

Prohibition order.

608.(1) The GFSC may issue a prohibition order against an individual referred to in section 604(2)(b)(ii) or (3).

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(2) A prohibition order prohibits the individual from–

(a) exercising relevant functions in relation to approved personal pension schemes;

(b) undertaking any functions in relation to a collective investment scheme authorised or recognised under Chapters 3 to 5 of Part 18;

(c) exercising key functions (within the meaning of Part 26) in relation to institutions for occupational retirement provision; or

(d) exercising regulated functions (within the meaning of Part 8) at an authorised person.

(3) The prohibition order must specify the period during which it has effect.

(4) The prohibition order must specify–

(a) the descriptions of functions to which it applies; or

(b) that it applies in respect of all of the functions listed in subsection (2).

(5) If the prohibition order is in response to repeated contraventions, it may have effect for an indefinite period.

Sanctioning actions.

609.(1) The provisions of sections 158 to 162 apply to any sanctioning action taken against P in exercise of a sanctioning power listed in section 604(4)(b) to (e) as those provisions apply to a sanctioning action taken in exercise of the sanctioning powers listed in section 157.

(2) In the application of those provisions for the purposes of subsection (1)–

(a) any reference to "the person" or "the person concerned" is to be understood as a reference to P; and

(b) in section 616(1), the reference to "any sanctioning action taken under this Part" is to be understood as a reference to any decision taken under Part 27.

Miscellaneous

Regulations relating to schemes approved under this Part.

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610.(1) The Minister may make such regulations relating to personal pension schemes approved under this Part as appear to the Minister to be necessary or expedient for the purposes of advancing one or more of the regulatory objectives of the GFSC.

(2) Regulations under subsection (1) may apply to–

(a) approved personal pension schemes; or

(b) individuals exercising relevant functions in relation to an approved personal pension scheme.

Transitional provisions.

611.(1) In this section–

"the 2017 Regulations" means the Financial Services (Pensions) Regulations 2017;

"commencement" means the beginning of the day on which this Part comes into operation;

"pre-existing scheme" means a personal pension scheme which, immediately before commencement, is approved under Part 3 of the 2017 Regulations; and

"relevant proceedings"–

(a) means proceedings brought by the GFSC in respect of a contravention of any provision of the 2017 Regulations; and

(b) includes proceedings brought by the GFSC under the Financial Services (Investment and Fiduciary Services) Act 1989, as that Act applies to personal pension schemes by virtue of regulation 28 of the 2017 Regulations.

(2) On and after commencement–

(a) any pre-existing scheme is to be treated as if it had been approved under this Part; and

(b) if a pre-existing scheme's approval was subject to any conditions imposed under regulation 13(8) of the 2017 Regulations, those conditions are to continue to have effect as if they have been imposed under section 597.

(3) Any relevant proceedings in respect of a contravention which are in progress immediately before commencement are to continue according to the procedure set out in the 2017 Regulations.

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(4) If the GFSC has not commenced any proceedings in respect of a contravention of any provision of the 2017 Regulation which occurred before commencement, the procedure to be used for any such contravention is as set out in sections 159 to 162.

(5) Anything else done in accordance with any provision of Part 3 or 5 of the 2017 Regulations, if effective immediately before commencement, has effect on and after commencement as if done under or for the purposes of the corresponding provision of this Part.

PART 28
NOTICE PROCEDURE, APPEALS AND PUBLICATION

Notices

Warning notice.

612.(1) A warning notice must–

(a) be in writing;

(b) contain any information that the provision under which it is given requires to be included in a warning notice;

(c) state the action which the GFSC proposes to take; and

(d) give reasons for proposing to take it.

(2) A warning notice–

(a) must give the recipient not less than 28 days to make representations to the GFSC; and

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

(3) The GFSC must also disclose to the person concerned–

(a) the evidence on which the GFSC's decision to give the warning notice was based; and

(b) all evidence presented or to be presented to the DMC or other decision-maker for the purposes of enabling it to determine the steps to be taken by the GFSC under section 613.

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(4) Subsection (3) does not require the GFSC to disclose to the person concerned ("P") any material–

(a) which P submitted to the GFSC in relation to the decision in question;

(b) which is subject to legal privilege;

(c) in respect of which the GFSC has a statutory obligation of confidentiality;

(d) which relates to a case involving a person other than P and was taken into account by the GFSC in P's case only for purposes of comparison with other cases; or

(e) the disclosure of which, in the opinion of the GFSC–

(i) would not be in the public interest; or

(ii) would not be fair, having regard to the likely significance of the material to P (in respect of the matter under consideration) and the potential prejudice to the commercial interests of any other person that would be caused by disclosing the material.

(4A) If the GFSC has relied on any material in taking its decision in P's case but withholds its disclosure in accordance with subsection (4)(e)(i) or (ii), the GFSC must give P written notice setting out a description of the material and its reasons for not disclosing it.

(5) The GFSC may extend the period specified in the notice for making representations.

(6) A person to whom a warning notice is given or copied may not publish the notice or any details concerning it unless the GFSC has published the notice or those details.

Decision notices.

613.(1) This section applies where the GFSC has issued a warning notice.

(2) After considering any representations made in accordance with section 612, the GFSC must within a reasonable period issue–

(a) a decision notice stating that the GFSC will take the proposed action;

(b) a discontinuance notice stating that the GFSC will not take the proposed action; or

(c) a notice comprising a combination of–

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(i) a decision notice stating that the GFSC will take certain proposed action; and

(ii) a discontinuance notice in respect of the remaining proposed action.

(3) A decision notice or discontinuance notice must–

(a) be in writing;

(b) contain any information that the provision under which it is given requires to be included in such a notice;

(c) state the proposed action and the reasons for taking or not taking it, as the case may be; and

(d) inform the recipient of any right of appeal under section 615.

(4) There is no right of appeal against a decision notice refusing an application under–

(a) section 78(2)(e);

(b) section 303(2), 312(2) or 320(2);

(c) section 474(6)(b);

(d) section 544(2) (in repect of a decision under section 544(1)(d));

(e) section 564(3)(a)(ii); or

(f) section 600(3)(a)(ii),

or any decision notice to which section 24(4) applies.

(5) The GFSC need not issue a discontinuance notice if–

(a) the proposed action was to refuse an application made to the GFSC; and

(b) the GFSC has decided to grant that application and has informed the applicant of that decision.

(6) A decision notice takes effect–

(a) immediately or on the date stated in it, if the provision under which it is given so provides or permits or it is a decision notice to which subsection (4) applies; or

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(b) in any other case, at the end of the period specified in section 615(2) within which an appeal may be made or, if an appeal is made, when the appeal and any further appeal is finally determined or withdrawn.

(7) A person to whom a decision notice or discontinuance notice is given or copied may not publish the notice or any details concerning it unless the GFSC has published the notice or those details.

Interim orders

Interim orders.

614.(1) Where a decision notice has been issued but has not yet taken effect, the GFSC may apply to the Supreme Court for an order–

(a) giving immediate effect to the notice; or

(b) giving effect to the notice or a specified part of it, on a specified date or for specified purposes.

(2) No order may be made under subsection (1) unless the GFSC has–

(a) given reasonable notice of the application to the recipient of the notice; or

(b) if the matter is urgent, given at least two days' notice of the application to the recipient of the notice.

(3) The Court may not make an order under subsection (1) in relation to the sanctioning action of publishing a statement, whether under section 153 or any other provision of this Act.

(4) The Court must not make an order under subsection (1) unless the Court considers that–

(a) having regard to the ground on which the GFSC made the decision in question, there is an immediate risk of substantial damage to–

(i) the interests of consumers;

(ii) the public interest; or

(iii) the reputation of Gibraltar;

(b) not making an interim order would, to a material degree, be likely to increase the substantial damage or the extent of that damage; and

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(c) making an interim order would be proportionate having regard, in particular, to the adverse consequences that may result from the decision in question for the regulated firm or regulated individual or other person against whom the decision has been made.

Appeals

Appeals.

615.(1) A person aggrieved by a decision notice other than one to which section 613(4) applies may appeal to the Supreme Court.

(2) An appeal must be made within 28 days of the date on which the decision notice is served on the recipient by the GFSC.

(3) The court may allow an appeal to be made outside the time set out in subsection (2) in exceptional circumstances, if the court considers that it would be unjust not to do so.

(4) The court may–

(a) dismiss the appeal;

(b) allow the appeal and quash the decision appealed against; or

(c) remit the matter to the GFSC for further consideration, in accordance with any directions of the court.

(5) The court may make any order as to the costs of an appeal as it considers appropriate.

(6) An appeal does not have the effect of staying a decision notice which under the provisions of this Act takes effect immediately, but the court may in its discretion grant a stay or other relief in respect of such a notice until the appeal has been determined.

Publication of sanctions, supervisory action and other statements

Publication of sanctioning action.

616.(1) Subject to section 617, the GFSC must publish on its website such details as it considers appropriate of any sanctioning action taken under this Act in respect of a contravention of a regulatory requirement.

(2) Publication must be made without undue delay after the person concerned has been informed of the decision.

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(3) The information published must be limited to–

(a) the identity of the person against whom the action has been taken;

(b) the type and nature of the contravention; and

(c) the details of the sanctioning action taken.

(4) The GFSC must ensure that any publication is maintained on its website for a proportionate period of not more than five years.

(5) The GFSC must ensure that personal data is only retained on its website for so long as is necessary, in accordance with the data protection legislation.

Publication of supervisory action.

616A.(1) Subject to section 617, where the GFSC has issued a decision notice in respect of any supervisory action, it may publish such information about the matters to which the notice relates as it considers appropriate.

(2) In this subsection (1) "supervisory action" means any action provided for by or under this Act other than the imposition of a sanction for contravention of a regulatory requirement.

(3) The GFSC must ensure that any publication on its website is for a proportionate period of not more than five years and that personal data is only retained on its website for so long as is necessary, in accordance with the data protection legislation.

Restrictions on publication.

617.(1) The GFSC must take one of the steps in subsection (2) where–

(a) following an obligatory prior assessment, it considers that it would be disproportionately unfair or prejudicial (taking into account both the GFSC's regulatory objectives and the effect on the person or persons concerned) to publish the identity of the person, or personal data of an individual or details of any sanctioning or supervisory action from which such person could be directly, indirectly or through related common knowledge in Gibraltar identified;

(b) it considers that publication would jeopardise the stability of financial markets , an ongoing investigation or a regulatory objective of the GFSC; or

(c) it considers that the public interest does not require publication or that it should not publish for any other good reason.

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(2) Those steps are–

(a) to defer publication until the reasons for non-publication cease to exist;

(b) to publish on an anonymous basis; or

(c) not to publish.

(3) The GFSC may not publish the fact or details of a sanctioning action during the period specified in section 615(2) during which an appeal may be made or, if an appeal is made, until the appeal and any further appeal is finally determined or withdrawn.

Publication of statements.

617A.(1) The GFSC may not issue or publish any statement which is critical of or adverse or prejudicial to an authorised firm, a regulated individual (within the meaning of Part 8), a connected person or any other person unless and until –

(a) a decision notice has been issued in respect of the matter to which the proposed statement relates; and

(b) the period specified in section 615(2) during which an appeal may be made has expired or, if an appeal is made, until the appeal and any further appeal is determined or withdrawn.

(1A) In deciding whether to issue or publish a statement to which subsection (1) applies the GFSC must have regard, among other things, to the matters in section 617(1)(a) to (c).

(2) Subsection (1) does not apply if–

(a) the Minister has given prior consent to the publication of the statement (including its content);

(b) the person concerned has admitted a contravention and entered into an agreement with the GFSC as to the sanctioning action to be taken by the GFSC in respect of that contravention;

(c) the statement relates only to the fact that the GFSC is conducting an investigation, the circumstances are exceptional and the GFSC considers that an announcement is desirable–

(i) to maintain public confidence in the financial system or the market;

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(ii) to protect consumers or investors;

(iii) to prevent widespread malpractice;

(iv) to assist the investigation, for example, by bringing forward witnesses; or

(v) to maintain the smooth operation of the markets;

(d) the statement is limited to the fact that an authorised firm is insolvent; or

(e) the statement is a warning to consumers about a person carrying on without authorisation an activity regulated by or under this Act.

(3) In a case to which subsection (2)(b) applies, the GFSC may publish only the information that it may publish under section 616(3).

(4) In a case to which subsection (2)(c) applies–

(a) in deciding whether to make a statement, the GFSC must consider the potential prejudice that it believes may be caused to any person who is likely to be a subject of the investigation; and

(b) any statement which the GFSC decides to make must be limited to–

(i) the fact that the GFSC is conducting an investigation;

(ii) the name of the authorised firm to which the investigation relates;

(iii) brief and uncontroversial particulars of the events to which the investigation relates, without judgement or comment, that are sufficient to identify the subject matter of the investigation,

and must contain a statement to the effect that the fact that the GFSC is conducting an investigation does not imply any wrongdoing by any person.

(5) Subsection (1) does not apply to any information which is provided (whether orally or in writing) by the GFSC in the ordinary course of discharging its regulatory functions to the person who is the subject of that information, a connected person, a witness or any other interested party.

(6) The provision of any information by the GFSC to a domestic authority, foreign authority or foreign regulator (each within the meaning of Part 5) under any statutory provision which requires or permits the GFSC to do so does not constitute the publication of a statement for the

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purposes of this section, but the GFSC must provide that information on terms that the recipient is not at liberty to publish it or any part of it.

Limited publication while appeal is pending.

618.(1) Section 616 does not apply while an appeal could be brought or is pending.

(2) But the GFSC may apply to the Supreme Court for permission to publish a decision which is or may be subject to an appeal, if–

(a) under the provisions of this Act the decision takes effect prior to the expiry of the period for bringing an appeal against it and the final determination of that appeal; and

(b) the publication of the decision is necessary to protect the interests of consumers.

(3) An application under subsection (2) must not be made without the written consent of the Minister as to both the making of the application and the text of the proposed publication.

(4) The GFSC must give every person who is referred to in a decision which is the subject of an application under subsection (2) at least two working days notice of the application.

(5) The Court may not give permission under subsection (2) unless the Court is satisfied that the criteria in that subsection are met.

(6) Any information published–

(a) must be limited to–

(i) the identity of the person against whom the action has been taken;

(ii) the type and nature of the contravention; and

(iii) the details of the sanctioning action taken.

(b) must include a statement which–

(i) states that the decision may be the subject of an appeal and the time in which any appeal must be made; or

(ii) confirms whether it is the subject of an appeal.

(7) The GFSC must amend any information published–

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(a) if an appeal is submitted after its initial publication; or

(b) to reflect the outcome of any appeal.

Service

Service of notices and documents.

619.(1) Any notice or other document to be served by or on behalf of the GFSC under or in connection with this Act is validly served on the recipient if–

(a) in the case of an individual, it is delivered to the individual, or left or sent by recorded delivery service addressed to the individual, at the individual's usual or last known business or home address;

(b) in the case of an unincorporated body, it is delivered to any partner, manager or other similar officer of that body, or is left at, or sent by recorded delivery service to the last known place of business of that body;

(c) in the case of a body corporate, it is left at, or sent by recorded delivery service to its registered office in Gibraltar or, if its registered office is not in Gibraltar, its last known place of business in Gibraltar; or

(d) in the case of any other person, it is left at or sent by recorded delivery service to the address in Gibraltar notified by the person to the GFSC for the service of notices or other documents.

(2) Subsection (1) applies without limiting any other method of service adopted by the GFSC.

PART 29

ADDITIONAL REGULATION-MAKING POWERS.

General powers: regulated activities, audits and insolvency

General regulations.

620.(1) The Minister may make such regulations for the purposes of this Act as appear to the Minister to be necessary or expedient for the purposes of advancing one or more of the regulatory objectives of the GFSC.

(2) Regulations made under subsection (1) may, in particular, apply to–

(a) authorised persons with respect to the carrying on by them of–

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(i) regulated activities; or

(ii) with respect to the carrying on by them of activities which are not regulated activities;

(b) audit firms or statutory auditors (within the meaning of Part 24) with respect to the carrying on by them of statutory audits;

(c) licensed insolvency practitioners (within the meaning of Part 25) with respect to the carrying on by them of insolvency proceedings; or

(d) persons applying for any form of authorisation, permission, licence, approval or registration under any provision made by or under this Act.

(3) Regulations made under subsection (1) are referred to in this Act as "general regulations".

(4) General regulations may make provision applying to any person even though there is no relationship between the person to whom the regulations will apply and the persons whose interests will be protected by the regulations.

(5) General regulations may contain requirements which take into account, in the case of any person who is a member of a group, any activity of another member of the group.

General regulations: supplementary.

621.(1) General regulations may, in particular, make provision as to–

(a) prudential standards;

(b) systems and controls;

(c) business standards; and

(d) regulatory processes.

(2) Regulations under subsection (1) which apply to any person within section 620(2)(a) to (c) may include provision–

(a) for the purposes of implementing technical standards to be met by the person;

(b) imposing requirements on the person to report to the GFSC about matters of a specified description or in specified circumstances; and

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(c) about the disclosure and use of information held by the person ("control of information regulations").

(3) Regulations under subsection (1) which apply to authorised persons may also include provision–

(a) in connection with money held by authorised persons in specified circumstances ("clients' money regulations");

(b) conferring rights on persons to rescind agreements with, or withdraw offers to, authorised persons within a specified period;

(c) in respect of authorised persons and persons exercising rights referred to in paragraph (b), for the restitution of property and the making or recovery of payments where those rights are exercised; and

(d) in connection with advertising, unsolicited communications or other promotions made by or on behalf of authorised persons.

(4) Control of information regulations may–

(a) require the withholding of information which a person ("A") would otherwise be required to disclose to a person ("B") for or with whom A does business in the course of carrying on any activity;

(b) specify circumstances in which A may withhold information which A would otherwise be required to disclose to B;

(c) require A not to use for the benefit of B information–

(i) which is held by A; and

(ii) which A would otherwise be required to use for the benefit of B;

(d) specify circumstances in which A may decide not to use for the benefit of B information within paragraph (c).

(5) Clients' money regulations may–

(a) make provision which results in clients' money being held on trust in accordance with the regulations;

(b) treat two or more accounts as a single account for specified purposes (which may include the distribution of money held in the accounts);

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(c) authorise the retention by authorised persons of interest accruing on the clients' money; and

(d) make provision as to the distribution of such interest which is not to be retained by the authorised person.

(6) An institution with which an account is kept in pursuance of regulations relating to the handling of clients' money does not incur any liability as constructive trustee if the money is wrongfully paid from the account, unless the institution permits the payment–

(a) with knowledge that it is wrongful; or

(b) having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have one so.

(7) "Specified" means specified in general regulations.

Miscellaneous other powers

Consumer credit regulations.

622.(1) The Minister may make regulations applying to persons who, by way of business–

(a) grant or promise to grant credit to consumers; or

(b) act as intermediaries in connection with agreements granting credit which are made between a creditor and consumer.

(2) Regulations under subsection (1) may, in particular–

(a) specify the kinds of credit agreement to which the regulations apply;

(b) impose restrictions as to the duration of a credit agreement or charges payable by a consumer;

(c) require the provision of specified information to a consumer before and after a credit agreement is entered into;

(d) require an assessment to be made in relation to each consumer to determine whether credit should be granted to them;

(e) make provision as to the information to be contained in any credit agreement;

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(f) confer rights on consumers (including rights of termination or withdrawal, for making early repayment and in relation to liked credit agreements);

(g) make provision in connection with advertising, unsolicited communications or other promotions relating to credit agreements;

(h) apply to persons within subsection (1)(a) or (b) (with or without modifications) any provision of, or made under, this Act; or

(i) confer functions on the GFSC.

(3) "Specified" means specified in regulations made under subsection (1).

Regulated markets regulations.

623. The Minister may by regulations make provision as to the organisational systems, arrangements and regimes required for a market to operate as a regulated market.

Fees regulations.

624.(1) The Minister may make regulations providing for the payment to the GFSC of such fees as may be specified in the regulations in connection with the exercise of any of the GFSC's functions under or as a result of this Act or any other enactment.

(2) Regulations under subsection (1) may, in particular–

(a) provide for the determination of any fee in accordance with a specified scale or other specified factors;

(b) make provision as to the persons by whom, and the time or intervals at which any fee is to be payable; or

(c) provide for the fee not to be charged, or to be waived in whole or in part, in prescribed cases or circumstances.

(3) Anything made or done in respect of which a fee is payable by virtue of regulations made under subsection (1) is not to be regarded as duly made or done if the fee is not paid as required by the regulations.

(4) Any fee which is owed to the GFSC under any provision made payable under this section may be enforced as a civil debt owed to the GFSC.

Penalty regulations.

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625.(1) The Minister may by regulations provide for penalties of a fixed amount to be payable in respect of contraventions of such provision of or made under this Act as are specified in the regulations.

(2) Regulations under subsection (1)–

(a) must identify each provision of or made this Act in relation to a contravention of which a penalty is to be payable;

(b) must specify the amount of each penalty;

(c) may specify a fixed amount, an amount calculated by reference to a rate that depends on the period during which the contravention continues or a combination of a fixed amount and an amount calculated by reference to a periodic rate; and

(d) may specify the maximum amount of any penalty calculated by reference to a periodic rate that may be imposed.

(3) The limitation in section 23(b) of the Interpretation and General Clauses Act does not apply to a penalty provided for in regulations made under this section.

Complaints regulations.

625A.(1) The Minister may by regulations ("Complaints Regulations") make provision about the handling and consideration of complaints made under the regulations concerning the GFSC's exercise of its functions.

(2) Complaints Regulations may provide for a complaint to be considered by one or more of the following–

(a) the Minister;

(b) an independent person or body appointed by the Minister; or

(c) the GFSC.

(3) Without limiting subsection (1), Complaints Regulations may make provision about–

(a) the persons who may make complaints;

(b) the complaints which may be made;

(c) the persons to whom complaints may be made;

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(d) the period within which complaints must be made;

(e) the procedures to be followed in making, handling and considering a complaint;

(f) the information to be made available to the public about those procedures;

(g) the making of a report about, or recommendations or a determination in respect of, a complaint; or

(h) the powers of the person to whom complaints may be made in relation to the subject-matter of the complaint; or

(i) the action to be taken as a result of a complaint.

EU withdrawal regulations.

626.(1) The Minister may by regulations make such provision as the Minister considers appropriate for the purposes of dealing with any effect on–

(a) any provision made by or under this Act; or

(b) the regulation of financial services or any other activity regulated by or under this Act,

that arises as a consequence of Gibraltar's withdrawal from the European Union.

(2) Regulations made under subsection (1) may, in particular–

(a) amend any retained EU law; or

(b) give effect (with any appropriate modification) to any provision of EU law which is made or comes into operation after IP completion day.

Technical standards regulations.

626A.(1) The Minister may make technical standards where–

(a) regulations made under–

(i) section 11 of the European Union (Withdrawal) Act 2019; or

(ii) section 4 of the European Union Laws (Voluntary Implementation) Act 2019,

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substitute for a requirement to the effect that a provision is to be applied subject to EU tertiary legislation a requirement to the effect that is to be applied subject to technical standards;

(b) a provision of EU-derived domestic legislation was, before IP completion day, required by or under the EU Directive it transposed to be applied subject to EU tertiary legislation and the Minister considers that it would be more appropriate for it to be applied subject to technical standards; or

(c) a provision of retained direct EU legislation was, before IP completion day, required to be applied subject to EU tertiary legislation and the Minister considers that it would be more appropriate for it to be included in or applied subject to technical standards.

(2) In this Act, "technical standards" means technical standards set out in regulations made by the Minister under this section.

(3) The Minister's power to make technical standards–

(a) may only be exercised by making regulations under this section; and

(b) includes power to modify, amend or revoke–

(i) any technical standards made by the Minister under that power; or

(ii) any retained direct EU legislation or EU tertiary legislation that the technical standards replace which forms part of domestic law.

(4) In this section "retained direct EU legislation", "EU-derived domestic legislation" and "EU tertiary legislation" have the same meaning as in section 3 of the European Union (Withdrawal) Act 2019.

(5) Nothing in this section prevents technical standards from containing provisions made under other regulation-making powers where the Minister considers that it is appropriate to do so.

Provision for international agreements.

626B.(1) The Minister may by regulations make such provision as the Minister considers appropriate for the purposes of, or in connection with, applying an international agreement which concerns financial services or related matters.

(2) An "international agreement" means–

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(a) a convention, treaty or other agreement which applies to Gibraltar; or

(b) an agreement of arrangement between the members of an international organisation which applies to Gibraltar, whether by virtue of membership of the organisation or otherwise.

(3) Regulations under this section may, in particular–

(a) make different provision for different purposes;

(b) amend, repeal, revoke or otherwise modify an enactment; or

(c) make consequential, incidental, supplementary, transitional, transitory or saving provisions.

General power to make further provision by regulations.

627.(1) The Minister may by regulations make any supplementary, incidental, consequential, transitory, transitional or saving provision which the Minister considers necessary or expedient for the purposes of, or in consequence of, or for giving full effect to any provision made by or under this Act.

(2) Regulations under this section may, in particular–

(a) make different provision for different purposes; and

(b) amend, repeal, revoke or otherwise modify an enactment.

(3) Where the functions of a body governed by or under this Act (the "old body") are transferred to another body governed by or under this Act (the "new body"), regulations under this section may, in particular, provide–

(a) for the transfer of property, rights or liabilities from the old body to the new body;

(b) for legal proceedings commenced by or against the old body to be continued by or against the new body; or

(c) for the new body to be treated for some or all purposes as the same person in law as the old body.

Supplementary

Effects on other regulation-making powers in this Act.

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628. The powers to make regulations which are conferred by this Part are in addition to the regulation-making powers which are set out in any other Parts.

PART 30
OFFENCES

General provisions relating to all offences

Offences by bodies corporate, etc.

629.(1) Where an offence under this Act–

(a) is committed by or for the benefit of–

(i) a body corporate;

(ii) a partnership; or

(iii) an unincorporated body (other than a partnership); and

(b) is proved–

(i) to have been committed with the consent or connivance of an officer; or

(ii) to be attributable to any neglect on the part of an officer,

the officer, as well as the body corporate; partnership, or unincorporated body (as the case may be), commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1) "officer" means–

(a) in respect of a body corporate–

(i) a director, manager, secretary or other officer; or

(ii) where the affairs of the body are managed by its members, a member;

(b) in respect of a partnership, a partner;

(c) in respect of an unincorporated body–

(i) an officer of that body; or

(ii) a member of its governing body; or

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(d) any person purporting to act in a capacity within any of paragraphs (a) to (c).

Proceedings against unincorporated bodies.

630.(1) Proceedings against an unincorporated body for an offence under this Act must be brought in the name of the unincorporated body and in any proceedings–

(a) the following provisions of the Criminal Procedure and Evidence Act 2011 apply as if an unincorporated body was a corporation–

(i) section 178 (representatives of corporations);

(ii) section 179 (sending for trial of a corporation);

(iii) section 197(5)(a) (sending for trial of corporations);

(iv) section 217(5) (which concerns the committal for sentence of a corporation convicted of an offence triable either way);

(v) section 296 (pleas by corporations);

(vi) section 702 (service of documents); and

(b) any rules of court related to the service of documents apply as if an unincorporated body was a corporation.

(2) A fine imposed on an unincorporated body is to be paid out of the funds of that unincorporated body.

631. *Omitted.*

Offences involving misleading statements or misleading the GFSC

632. *Omitted.*

Misleading the GFSC.

633.(1) A person who, in purported compliance with any requirement imposed by or under this Act or any applicable retained EU law, knowingly or recklessly gives the GFSC information which is false or misleading in a material particular commits an offence.

(2) Subsection (1) only applies to a requirement in relation to which no other provision of this Act creates an offence in connection with the giving of information.

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(3) In this section "applicable retained EU law" means retained EU law which confers regulatory or supervisory powers on the GFSC or is otherwise concerned with or related to the regulation of financial services.

Penalties.

634. A person who commits an offence under this Part is liable–

(a) on summary conviction, to imprisonment for six months or a fine at level 5 on the standard scale, or both; or

(b) on conviction on indictment, to imprisonment for two years or a fine, or both.

Proceedings for offences.

635. Proceedings for an offence under sections 632 or 633 may only be instituted by or with the consent of the Attorney General.

PART 31
FINAL PROVISIONS

Data protection.

636.(1) The processing of personal data for any purpose under this Act must be undertaken in accordance with the data protection legislation.

(2) Subsection (1) applies without affecting any provision of this Act which imposes specific requirements in respect of the processing of personal data for specific purposes to the extent that those requirements are consistent with the data protection legislation.

Continuity of the law.

637.(1) The substitution of this Act for a repealed enactment does not affect the continuity of the law.

(2) A reference (whether express or implied) in this Act, another enactment, an instrument or document to a provision of this Act is, subject to its context, to be read as being or including a reference to the corresponding provision of a repealed enactment, in relation to times, circumstances or purposes to which the repealed provision had effect.

(3) A reference (whether express or implied) in any enactment, instrument or document to a provision of a repealed enactment is, subject to its context, to be read as being or including a

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reference to the corresponding provision of this Act, in relation to times, circumstances or purposes to which that provision has effect.

(4) Anything done, or having effect as if done, under (or for the purposes of or in reliance on) a provision of a repealed enactment, and in operation or effective immediately before the coming into operation of this Act, has effect after that date as if done under (or for the purposes of or in reliance on) the corresponding provision of this Act.

(5) Subsection (4) does not apply to the making of any subsidiary legislation to the extent that it is reproduced in this Act.

(6) Any reference to a provision of a repealed enactment which is contained in a document made, served or issued after the repeal comes into operation is, subject to its context, to be read as being or including a reference to the corresponding provision of this Act.

(7) This section has effect subject to any express amendment or specific transitional provision or saving made by or under this Act.

Transitional provisions.

638. Schedule 28, which contains transitional provisions, has effect.

Repeals and revocations.

639. The enactments in Schedule 29 are repealed or revoked to the extent specified in that Schedule.

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SCHEDULE 1

Section 2

DEFINED EXPRESSIONS AND EU INSTRUMENTS

Part 1
Index of Defined Expressions

1. In this Act, the expressions listed in the first column are defined or otherwise explained by the provisions listed in the second column–

Expression	*Provision*
affiliated firm (in Part 24):	section 473
Article 162 branch (in Part 23):	section 467
audit firm:	
(in Part 8):	section 85
(in Part 24):	section 473
audit report (in Part 24):	section 473
available financial means:	
(in Chapter 3 of Part 15):	section 204
(in Chapter 4 of Part 15):	section 227
branch:	
(in Chapter 3 of Part 15):	section 204
(in Chapter 4 of Part 15):	section 227
candidate (in Part 8):	section 85
compensation date (in Chapter 3 of Part 15):	section 204
consumer:	
(in Part 14):	section 179
(in Part 27):	section 592
controlled undertaking:	
(in Part 20):	section 387
(in Chapter 4 of Part 19):	section 356
covered deposit (in Part 15):	section 196

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debt securities (in Chapter 4 of Part 19): section 356

deposit (in Chapter 3 of Part 15): section 204

deposit guarantee scheme (in Part 15): section 196

depositor:
(in Part 2): section 17
(in Chapter 3 of Part 15): section 204

derivative (in Part 22): section 421

eligible deposit (in Part 15): section 196

financial service dispute (in Part 14): section 179

financing arrangements (in Part 15): section 196

group auditor (in Part 24): section 473

inside information (in Part 21): section 406(2)

institution (in Part 22): section 421

issuer:
(in Chapter 3 of Part 19): section 344
(in Chapter 4 of Part 19): section 356
(in Part 21): section 406(2)
(in Part 22): section 421

joint account (in Chapter 3 of Part 15): section 204

licensed insolvency practitioner (in Part 25): section 538

low-risk assets (in Part 15): section 196

key audit partner (in Part 24): section 473

market abuse (in Part 22): section 423

market abuse offence (in Part 21): section 406(2)

market operator (in Part 22): section 423

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medium-sized undertakings (in Part 24): section 473

micro, small or medium-sized enterprise (in Part 15): section 196

multiple-vote securities (in Part 20): section 387

network (in Part 24): section 473

non-disclosure of inside information (in Part 22): section 423

offer document (in Part 20): section 387

offeree company (in Part 20): section 387

offeror:
(in Chapter 3 of Part 19): section 344
(in Part 20): section 387

Ombudsman (in Part 14): section 179

parties to a bid (in Part 20): section 387

persons acting in concert (in Part 20): section 387

public-interest entity (in Part 24): section 473

regulated information:
(in Chapter 4 of Part 19): section 356
(in Part 22): section 421

regulatory information service (in Part 22): section 423

relevant requirement:
(in Part 13): section 176
(in Part 22): section 423

resolution procedure (in Part 14): section 179

RI firm (in Part 8): section 85

the Scheme (in Part 15): section 196

Scheme participant (in Part 15): section 196

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Scheme target level (in Chapter 3 of Part 15):	section 204
securities:	
(in Chapter 3 of Part 19):	section 344
(in Chapter 4 of Part 19):	section 356
(in Part 20):	section 387
small undertakings (in Part 24):	section 473
statutory audit (in Part 24):	section 473
statutory auditor (in Part 24):	section 473
systematic internaliser (in Part 22):	section 423
takeover bid (in Part 20):	section 387
trading venue operator (in Part 22):	section 423
unavailable deposit (in Chapter 3 of Part 15):	section 204

Part 2
References to EU Regulations

2. Subject to any provision to the contrary or where the context otherwise requires, a reference in this Act to an EU Regulation defined in paragraph 3 is a reference to that Regulation as it forms part of the law of Gibraltar by virtue of section 6 of the European Union (Withdrawal) Act 2019.

3. In this Act–

"the Audit Regulation" means Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC;

"the Benchmarks Regulation" means Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds;

"the CSD Regulation" means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European

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Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012;

"the ELTIF Regulation" means Regulation (EU) No 760/2015 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds;

"EMIR" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

"the EUSEF Regulation" means Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds;

"the EuVECA Regulation" means Regulation (EU) 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds;

"the Interchange Fees Regulation" means Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions;

"the Market Abuse Regulation" means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC;

"MiFIR" means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012;

"the ODR Regulation" means Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC;

"the PRIIP Regulation" means Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)

"the Prospectus Regulation" means Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC;

"Regulation (EU) No 231/2013" means Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the

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European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision;

"Regulation (EU) No 1031/2010" means Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community;

"the REMIT Regulation" means Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency; and

"the SFTR Regulation" means Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on the transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.

Part 3
References to EU Directives

4. Subject to any provision to the contrary or where the context otherwise requires, a reference in this Act to an EU Directive defined in paragraph 5 is a reference to that Directive as it applied immediately before IP completion day.

5. In this Act–

"the Accounting Directive" means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;

"the ADR Directive" means Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC;

"the AIFM Directive" means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers;

"the Audit Directive" means Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC;

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"the Bank Accounts Directive" means Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions;

"the Capital Requirements Directive" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending directive 2002/87/EC and repealing directives 2006/48/EC and 2006/49/EC;

"the Consumer Credit Directive" means Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers;

"the DGS Directive" means Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes;

"Directive 2007/14/EC" means Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market;

"Directive (EU) 2015/1535" means Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification);

"Directive (EU) 2015/2392" means Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation;

"the Distance Marketing Directive" means Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services;

"the Electronic Commerce Directive" means Directive 2000/31/EC of the European Parliament and the Council of the 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

"the E-Money Directive" means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision

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of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC;

"the Financial Conglomerates Directive" means Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council;

"the Insurance Accounts Directive" means Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings;

"the Insurance Distribution Directive" means Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution;

"the Investor Compensation Scheme Directive" means Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor compensation schemes;

"the IORP 2 Directive" means Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs);

"the Listing Directive" means Directive 2001/34/EC of the European Parliament and the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities;

"the MiFID 2 Directive" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

"the Money Laundering Directive" means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC;

"the Mortgage Credit Directive" means Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010;

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"the Occupational Pensions Scheme Directive" means Directive 2003/41/EC of the European Parliament and the Council on the activities and supervision of institutions for occupational retirement provision;

"the Payment Accounts Directive" means Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features;

"the Payment Services Directive" means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC;

"the Professional Qualifications Directive" means Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications;

"the Recovery and Resolution Directive" means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council;

"the Solvency 2 Directive" means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);

"the Takeover Bids Directive" means Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;

"the Transparency Directive" means Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC; and

"the UCITS Directive" means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

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SCHEDULE 2

Section 5(1)

REGULATED ACTIVITIES

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PART 1
GENERAL

1. Interpretation of this Schedule.

PART 2
DEPOSITS

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REGULATED ACTIVITIES

PART 1

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GENERAL

Interpretation of Schedule 2.

1.(1) In this Schedule–

"electronic money" has the meaning given in Part 3 of this Schedule;

"foundation" has the same meaning as in the Private Foundations Act 2017;

"investment services and activities" has the meaning given in Chapter 2 of Part 6 of this Schedule;

"market operator" means a person or persons who manages and/or operates the business of a regulated market and may be the regulated market itself;

"money-market instruments" has the meaning given in Chapter 2 of Part 6 of this Schedule;

"multilateral system" means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system;

"multilateral trading facility" or "MTF" means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way that results in a contract and–

(a) in Gibraltar, complies with provisions contained in or made under the Financial Services Act 2019 (a "Gibraltar MTF");

(b) in the United Kingdom, complies with the requirements of Article 2.1(14A)(b) of Regulation (EU) No 600/2014 as it applies in the United Kingdom after IP completion day (a "UK MTF"); or

(c) in an EU State, complies with Title III of Directive 2014/65/EU (an "EU MTF");

"organised trading facility" or "OTF" means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that that results in a contract and–

(a) in Gibraltar, complies with provisions contained in or made under the Financial Services Act 2019 (a "Gibraltar OTF");

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(b) in the United Kingdom, complies with the requirements of Article 2.1(15A)(b) of Regulation (EU) No 600/2014 as it applies in the United Kingdom after IP completion day (a "UK OTF"); or

(c) in an EU State, complies with the requirements of Title III of Directive 2014/65/EU (an "EU OTF");

"regulated market" means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments (in the system and in accordance with its non-discretionary rules) in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which

(a) in Gibraltar, is authorised and functions regularly in accordance with provisions contained in or made under this Act (a "Gibraltar regulated market");

(b) in the United Kingdom, is a UK regulated market within the meaning of Article 2.1(13A) of Regulation (EU) No 600/2014 as it applies in the United Kingdom after IP completion day (a "UK regulated market"); and

(c) in an EU State, is authorised and functions regularly in accordance with Title III of Directive 2014/65/EU (an "EU regulated market");;

"trading venue" means a regulated market, an MTF or an OTF; and

(a) "Gibraltar trading venue" means a Gibraltar regulated market, Gibraltar MTF or Gibraltar OTF;

(b) "UK trading venue" means a UK regulated market, UK MTF or UK OTF; and

(c) "EU trading venue" means an EU regulated market, EU MTF or EU OTF;

"UCITS" has the meaning given in Part 18.

(2) For the purposes of the definition of organised trading facility in sub-paragraph (1), "structured finance products" means those securities created to securitise and transfer credit risk that depend on the cash flow from the from the underlying assets.

(3) In this Schedule, unless the context otherwise requires, references to–

(a) an MTF (without more) are to a Gibraltar MTF;

(b) an OTF (without more) are to a Gibraltar OTF;

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(c) a regulated market (without more) are to a Gibraltar regulated market;

(d) a trading venue (without more) are to a Gibraltar trading venue; and

(e) an EU MTF, EU OTF or EU regulated market, include MTFs, OTFs and regulated markets in EEA countries.

(4) In this Schedule, unless the context otherwise requires, references to a "third country" are references to a country or territory other than Gibraltar.

PART 2
DEPOSITS

General

Application and interpretation of Part 2 of this Schedule.

2.(1) This Part of this Schedule–

(a) has effect in relation to the item listed in section 5(2)(a) (deposits); and

(b) specifies the kind of activity carried on in relation to deposits which is to be a regulated activity.

(2) In this Part "deposit" means a sum of money, other than one excluded by any of paragraphs 4 to 10, paid on terms under which it will be repaid, with or without interest or premium, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it.

The regulated activity

Accepting deposits.

3. Accepting deposits is a specified kind of activity if–

(a) money received by way of deposit is lent to others; or

(b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on money received by way of deposit.

Exclusions

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Sums paid by the Gibraltar Savings Bank, central banks etc.

4. A sum is not a deposit for the purposes of paragraph 3 if it is paid by–

(a) the Gibraltar Savings Bank;

(b) the European Central Bank or the central bank of any state;

(c) a public authority of Gibraltar; or

(d) a public international body of which Gibraltar or any state is a member.

Sums referable to property or services or the giving of security.

5. A sum is not a deposit for the purposes of paragraph 3 if it is paid–

(a) by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;

(b) by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or

(c) by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

Sums paid by certain persons.

6.(1) A sum is not a deposit for the purposes of paragraph 3 if it is–

(a) paid by a person in the course of carrying on a business consisting wholly or to a significant extent of lending money;

(b) paid by one company to another at a time when both are members of the same group or when the same individual is a majority shareholder controller of both of them; or

(c) paid by a person who, at the time when it is paid, is a close relative of the person receiving it or who is, or is a close relative of, a director or manager of that person or who is, or is a close relative of, a controller of that person.

(2) For the purposes of sub-paragraph (1)(b), an individual is a majority shareholder controller of a company if–

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(a) the individual is a controller of the company by virtue of section 131(4)(a) or (b); and

(b) the individual's holding of the shares or voting power described in either of those provisions is 50% or more.

(3) In the application of sub-paragraph (1)(c) to a sum paid by a partnership, that sub-paragraph has effect as if, for the reference the person paying the sum, there were substituted a reference to each of the partners.

(4) In sub-paragraph (1)(c), "close relative", in relation to a person ("P"), means–

(a) P's spouse or civil partner;

(b) P's children and step children, P's parents and step-parents, P's sisters and brothers and P's step-sisters and step-brothers; and

(c) the spouse or civil partner of any person within paragraph (b).

Sums received by practising lawyers.

7.(1) A sum is not a deposit for the purposes of paragraph 3 if it is received by a practising lawyer acting in the course of his or her profession.

(2) In sub-paragraph (1), "practising lawyer" means a person admitted or entitled to practise as a barrister or solicitor under section 28 or 29 of the Supreme Court Act.

Sums received by persons authorised to deal etc.

8.(1) For the purposes of sub-paragraph (2), "relevant persons" are–

(a) an authorised person with permission under Part 7 of this Act to carry on an activity of a kind specified by–

(i) Chapter 2 of Part 6;

(ii) Chapter 2 of Part 11; or

(iii) Chapter 3 of Part 11; or

(b) an exempt person in relation to any such activity.

(2) A sum is not a deposit for the purposes of paragraph 3 if it is received by a relevant person in the course of, or for the purpose of, carrying on the activity in question (or any activity

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which would be such an activity but for any exclusion made by this Part) with or on behalf of the person by or on behalf of whom the sum is paid.

Sums received in exchange for electronic money.

9. A sum is not a deposit for the purposes of paragraph 3 if it is immediately exchanged for electronic money.

Funds received for payment services.

10.(1) A sum is not a deposit for the purposes of paragraph 3 if it is received by a person listed in sub-paragraph (2) from a payment service user with a view to the provision of payment services.

(2) The listed persons are–

(a) a payment institution within meaning of the Payment Services Regulations;

(b) a small payment institution within the meaning of those Regulations;

(c) *Omitted*

(d) an authorised electronic money institution within the meaning of the Electronic Money Regulations;

(e) a small electronic money institution within the meaning of the Electronic Money Regulations;

(3) In this paragraph–

"the Electronic Money Regulations" means the the Financial Services (Electronic Money) Regulations 2020;

"the Payment Services Regulations" means the Financial Services (Payment Services) Regulations 2020;

"payment services" has the meaning given in Part 4 of this Schedule; and

"payment service user" has the same meaning as in the Payment Services Regulations.

PART 3
ELECTRONIC MONEY

General

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Application of Part 3 of this Schedule.

11. This Part of this Schedule–

(a) has effect in relation to the item listed in section 5(2)(b) (electronic money); and

(b) specifies the kind of activity carried on relation to electronic money which is to be a regulated activity.

Interpretation of Part 3 of this Schedule.

12.(1) In this Part "electronic money" means electronically (including magnetically) stored monetary value as represented by a claim on the electronic money issuer which–

(a) is issued on receipt of funds for the purpose of making payment transactions within the meaning of paragraph 15;

(b) is accepted by a person other than the electronic money issuer; and

(c) is not excluded by sub-paragraph (2).

(2) The following are not electronic money for the purposes of this Part–

(a) monetary value stored on instruments that can be used to acquire goods or services only–

(i) in or on the electronic money issuer's premises; or

(ii) under a commercial agreement with the electronic money issuer, either within a limited network of service providers or for a limited range of goods or services; or

(b) monetary value that is used to make payment transactions executed by means of any telecommunication, digital or information technology ("IT") device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

(3) "Payment service user" has the meaning given in Part 4 of this Schedule.

The regulated activity

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Issuing electronic money.

13. Issuing electronic money is a specified kind activity.

PART 4
PAYMENT SERVICES

General

Application of Part 4 of this Schedule.

14.(1) This Part of this Schedule–

(a) has effect in relation to the item listed in section 5(2)(c) (payment services);

(b) specifies the kinds of payment services to which this Part applies; and

(c) specifies the kind of activity carried on in relation to such payment services which is to be a regulated activity.

Interpretation of Part 4.

15. In this Part–

"branch" means a place of business, other than the head office, of–

(a) a registered firm with permission under Part 7 of this Act to carry on an activity of a kind specified by paragraph 19;

(b) a small payment institution which, in accordance with regulations made under section 61, is an exempt person in respect of that activity;

(c) an account information service provider which, in accordance with regulations made under section 61, is an exempt person in respect of that activity;

"credit transfer" means a payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider which holds the payer's payment account, based on an instruction given by the payer;

"direct debit" means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of consent given by the payer to the payee, to the payee's payment service provider or to the payer's own payment service provider;

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"funds" means banknotes, coins, scriptural money or electronic money;

"payee" means a person who is the intended recipient of funds which have been the subject of a payment transaction;

"payer" means a person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, who gives a payment order;

"payment account" means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

"payment instrument" means a personalised device or procedure agreed between a payment service user and a payment service provider and used in order to initiate a payment order;

"payment order" means an instruction by a payer or payee to its payment service provider requesting the execution of a payment transaction;

"payment service provider" means any of the following persons when carrying out payment services–

(a) a registered firm with permission under Part 7 of this Act to carry on an activity of a kind specified by paragraph 19;

(b) a small payment institution which, in accordance with regulations made under section 61, is an exempt person in respect of that activity;

(c) an account information service provider which, in accordance with regulations made under section 61, is an exempt person in respect of that activity;

(d) credit institutions, including any branches in Gibraltar;

(e) electronic money institutions, including branches in Gibraltar of electronic money institutions with head offices outside Gibraltar, so far as the payment services provided by those branches are linked to the issuance of electronic money; and

(f) post office giro institutions entitled under Gibraltar law to provide payment services;

"payment services" is to be understood in accordance with paragraph 16;

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"payment service user" means a person making use of a payment service in the capacity of payer, payee, or both; and

"payment transaction" means an act, initiated by or on behalf of the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee.

Payment services to which Part 4 applies.

16. The payment services referred to in section 5(2)(c) to which this Part applies–

(a) are any of the activities specified in paragraph 17; but

(b) do not include any activity specified in paragraph 18.

Activities which are payment services.

17. The activities which are payment services are–

(1) Services enabling cash to be placed on a payment account and all of the operations required for operating a payment account.

(2) Services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account.

(3) Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider–

(a) execution of direct debits, including one-off direct debits;

(b) execution of payment transactions through a payment card or a similar device;

(c) execution of credit transfers, including standing orders.

(4) Execution of payment transactions where the funds are covered by a credit line for a payment service user–

(a) execution of direct debits, including one-off direct debits;

(b) execution of payment transactions through a payment card or a similar device;

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(c) execution of credit transfers, including standing orders.

(5) Issuing of payment instruments and/or acquiring of payment transactions.

In point (5)–

(a) "issuing of payment instruments" means a payment service by a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer's payment transactions; and

(b) "acquiring of payment transactions" means a payment service provided by a payment service provider contracting with a payee to accept and process payment transactions, which results in a transfer of funds to the payee.

(6) Money remittance.

In point (6) "money remittance" means a payment service where funds are received from a payer, without any payment account being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee, to another payment service provider acting on the payee's behalf or where the funds are received on behalf of and made available to the payee.

(7) Payment initiation services.

In point (7)–

(a) "payment initiation service" means a service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider; and

(b) "payment order" means an instruction by a payer or payee to its payment service provider requesting the execution of a payment transaction.

(8) Account information services.

In point (8) "account information services" means an online service to provide consolidated information on one or more payment accounts held by a payment service user with either another payment service provider or with more than one payment service provider.

Activities which are not payment services.

18. The activities which do not constitute payment services are–

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(a) Payment transactions executed wholly in cash and directly between the payer and the payee, without any intermediary intervention.

(b) Payment transactions between the payer and the payee through a commercial agent authorised in an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of either the payer or the payee but not both the payer and the payee.

(c) The professional physical transport of banknotes and coins, including their collection, processing and delivery.

(d) Payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity.

(e) Services where cash is provided by the payee to the payer as part of a payment transaction for the purchase of goods or services following an explicit request by the payer immediately before the execution of the payment transaction.

(f) Cash-to-cash currency exchange operations where the funds are not held on a payment account.

(g) Payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee–

(i) paper cheques governed by the Geneva Convention of 19 March 1931 providing a uniform law for cheques or similar paper cheques governed by the law of any State which is not party to that Convention;

(ii) paper-based drafts governed by the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes or similar paper-based drafts governed by the law of any State which is not party to that Convention;

(iii) paper-based vouchers;

(iv) paper-based traveller's cheques;

(v) paper-based postal money orders as defined by the Universal Postal Union.

(h) Payment transactions carried out within a payment system or securities settlement system between payment service providers and settlement agents, central counterparties, clearing houses, central banks or other participants in the system.

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In point (h) "payment system" means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and settlement of payment transactions.

(i) Payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by the persons referred to in point (h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services or by any other entities allowed to have the custody of financial instruments.

(j) Services provided by technical service providers, which support the provision of payment services, without the provider entering at any time into possession of the funds to be transferred–

(i) including–

- the processing and storage of data;
- trust and privacy protection services;
- data and entity authentication;
- information technology (IT) and communication network provision; and
- the provision and maintenance of terminals and devices used for payment services; but

(ii) excluding payment initiation services or account information services.

(k) Services based on specific payment instruments that can be used only in a limited way and meet one of the following conditions–

(i) instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer;

(ii) instruments which can be used only to acquire a very limited range of goods or services;

(iii) instruments valid only in Gibraltar, provided at the request of an undertaking or public sector entity and regulated by a public authority for

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specific social or tax purposes, to acquire specific goods or services from suppliers having a commercial agreement with the issuer;

(l) Payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service–

(i) for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or

(ii) performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets;

where the value of any single payment transaction does not exceed the sterling equivalent of €50 and either the cumulative value of payment transactions for an individual subscriber does not exceed the sterling equivalent of €300 per month or, where a subscriber pre-funds its account with the provider of the electronic communications network or service, the cumulative value of payment transactions does not exceed the sterling equivalent of €300 per month.

In point (l), "electronic communications network" and "electronic communications service" have the meaning given in section 2 of the Communications Act 2006.

(m) transactions carried out between payment service providers, or their agents or branches, for their own account.

(n) Payment transactions and related services between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group.

(o) Cash withdrawal services provided through automatic teller machines, where–

(i) the provider–

- is acting on behalf of one or more card issuers;

- is not party to the framework contract with the customer withdrawing money from a payment account; and

- does not conduct any other payment service specified in paragraph 17 of this Schedule; and

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(ii) the customer using such services is provided, both before carrying out the withdrawal and on receipt of the cash, with such information as may be specified for the purposes of this provision by the Financial Services (Payment Services) Regulations 2020.

The regulated activity

Providing payment services.

19. Providing payment services is a specified kind of activity.

PART 5
CONTRACTS OF INSURANCE

Chapter 1
General

Application and interpretation of Part 5 of this Schedule.

20.(1) This Part of this Schedule–

(a) has effect in relation to the item listed in section 5(2)(d) (contracts of insurance);

(b) specifies the kinds of contracts of insurance to which Chapters 2, 3 and 4 of this Part apply; and

(c) specifies the kinds of activity carried on relation to such contracts of insurance which are to be regulated activities.

(2) In this Part–

(a) "contract of non-life insurance" has the meaning given in paragraph 21(a);

(b) "contract of life insurance" has the meaning given in paragraph 21(b); and

(c) "contract of insurance" (without more) means any contract of insurance within either paragraph (a) or (b).

Contracts of insurance to which Chapters 2, 3 and 4 apply.

21. The contracts of insurance referred to in section 5(2)(d) to which Chapters 2, 3 and 4 of this Part apply are–

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(a) any contract of insurance falling within a class listed in paragraph 22(1) ("contract of non-life insurance"); or

(b) any contract of insurance falling within a class listed in paragraph 23 ("contract of life insurance").

Classes of non-life insurance and classification of multiple classes.

22.(1) The following are the classes of non-life insurance.

1. Accident (including industrial injury and occupational diseases)

– fixed pecuniary benefits;

– benefits in the nature of indemnity;

– combinations of the two;

– injury to passengers.

2. Sickness

– fixed pecuniary benefits;

– benefits in the nature of indemnity;

– combinations of the two.

3. Land vehicles (other than railway rolling stock)

All damage to or loss of:

– land motor vehicles;

– land vehicles other than motor vehicles.

4. Railway rolling stock

All damage to or loss of railway rolling stock.

5. Aircraft

All damage to or loss of aircraft.

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6. Ships (sea, lake and river and canal vessels)

All damage to or loss of:

– river and canal vessels;

– lake vessels;

– sea vessels.

7. Goods in transit (including merchandise, baggage, and all other goods)

All damage to or loss of goods in transit or baggage, irrespective of the form of transport.

8. Fire and natural forces

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to:

– fire;

– explosion;

– storm;

– natural forces other than storm;

– nuclear energy;

– land subsidence.

9. Other damage to property

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than that included in class 8.

10. Motor vehicle liability

All liability arising out of the use of motor vehicles operating on the land (including carrier's liability).

11. Aircraft liability

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All liability arising out of the use of aircraft (including carrier's liability).

12. Liability of ships (sea, lake and river and canal vessels)

All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability).

13. General liability

All liability other than those referred to in classes 10, 11 and 12.

14. Credit

– insolvency (general);

– export credit;

– instalment credit;

– mortgages;

– agricultural credit.

15. Suretyship

– suretyship (direct);

– suretyship (indirect).

16. Miscellaneous financial loss

– employment risks;

– insufficiency of income (general);

– bad weather;

– loss of benefits;

– continuing general expenses;

– unforeseen trading expenses;

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– loss of market value;

– loss of rent or revenue;

– other indirect trading loss;

– other non-trading financial loss;

– other forms of financial loss.

17. Legal expenses

Legal expenses and costs of litigation.

18. Assistance

Assistance for persons who get into difficulties while travelling, while away from their home or their habitual residence.

(2) Combinations of the classes of non-life insurance listed sub-paragraph (1) which are referred to in an entry in column 2 of the following Table are to be given the classification specified in column 3 of the same entry.

Table: Classification of multiple classes of non-life insurance

Column 1	*Column 2*	*Column 3*
Entry	***Classes of non-life insurance***	***Classification***
(a)	Classes 1 and 2	Accident and Health Insurance
(b)	Classes 1 (fourth indent), 3, 7 and 10	Motor Insurance
(c)	Classes 1 (fourth indent), 4, 6, 7 and 12	Marine and Transport Insurance
(d)	Classes 1 (fourth indent), 5, 7 and 11	Aviation Insurance
(e)	Classes 8 and 9	Insurance against Fire and other Damage to Property
(f)	Classes 10, 11, 12 and 13	Liability Insurance
(g)	Classes 14 and 15	Credit and Suretyship Insurance
(h)	All classes.	General

Classes of life insurance.

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23. The following are the classes of life insurance.

I. Life and annuity

(i) Life insurance which comprises assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums.

(ii) Annuities.

(iii) Supplementary insurance underwritten in addition to life insurance, in particular, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness.

There is excluded from this Class any life insurance within Class III.

II. Marriage and birth

Marriage assurance, birth assurance.

III. Linked long term

The insurance referred to in paragraphs (i) or (ii) of Class I which are linked to investment funds.

IV. Permanent health

Types of permanent health insurance not subject to cancellation currently existing in Ireland and the United Kingdom.

V. Tontines

Tontines, namely operations by which associations of subscribers are set up with a view to capitalising their contributions jointly and subsequently distributing the assets thus accumulated among the survivors or among beneficiaries of the deceased.

VI. Capital redemption operations

Capital redemption operations based on actuarial calculation by which, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken.

VII. Pension fund management

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(i) Management of group pension funds comprising the management of investments, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity.

(ii) The operations referred to in paragraph (i) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest.

VIII. Collective insurance etc.

Operations carried out by life insurance undertakings such as those referred to in Chapter 1, Title 4 of Book IV of the French 'Code des assurances'.

IX. Social insurance

Operations relating to the length of human life which are regulated by or under any enactment relating to social security, in so far as they are effected or carried out at their own risk by insurance undertakings with permission to effect or carry out contracts of long-term insurance as principals.

Chapter 2
Direct insurance and reinsurance

The regulated activities

Effecting and carrying out contracts of insurance.

24.(1) Effecting a contract of insurance as principal is a specified kind of activity.

(2) Carrying out a contract of insurance as principal is a specified kind of activity.

(3) A person with permission under Part 7 of this Act to carry on an activity of a kind specified by sub-paragraph (1) or (2) may also, in connection with or for the purposes of carrying on that activity, carry on activities of a kind specified by paragraphs 48 to 54B as if those activities were included in the activity specified by sub-paragraph (1) or (2).

(4) For the purposes of sub-paragraph (3), paragraphs 48 to 54B are to apply as if contracts of insurance were included in the kinds of financial instruments specified by paragraph 46.

Exclusions

Exclusions from paragraph 24.

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25. The kinds of activity specified by paragraph 24(1) and (2) are subject to the exclusions specified by paragraphs 26 and 27.

26. *Omitted*.

Breakdown insurance.

27.(1) There is excluded from paragraph 24(1) and (2) the effecting or carrying out, by a person who does not otherwise carry on an activity of the kind specified by that paragraph, of a contract of insurance which–

(a) is a contract under which the benefits provided by that person ("the provider") are exclusively or primarily benefits in kind in the event of accident to or breakdown of a road vehicle; and

(b) limits the liability for the assistance to the following operations–

(i) an on-the-spot-breakdown service for which the provider uses, in most circumstances, its own staff and equipment; or

(ii) the conveyance of the vehicle to the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers of the vehicle to the nearest location from which they may continue their journey by other means; and

(iii) the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination.

(2) A contract does not fail to meet the condition in sub-paragraph (1)(a) solely because the provider may reimburse the person entitled to the assistance ("P") for all or part of any sums paid by P in respect of assistance either because P failed to identify that P was entitled to the assistance or because P was unable to get in touch with the provider in order to claim the assistance.

(3) In this paragraph "breakdown" means an event–

(a) which causes the driver of the relevant vehicle to be unable to start a journey in the vehicle or involuntarily to bring the vehicle to a halt on a journey because of some malfunction of the vehicle or failure of it to function, and

(b) after which the journey cannot reasonably be commenced or continued in the relevant vehicle.

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Supplemental

Prohibited contracts of insurance.

27A. The Minister may by notice in the Gazette prohibit authorised persons with permission to carry on an activity of the kind specified by paragraph 24(1) or (2) from effecting or carrying out contracts of insurance–

(a) of a particular class; or

(b) in respect of risks–

(i) of a particular kind; or

(ii) located in a particular country or territory.

Chapter 3
Insurance management

Interpretation of Chapter 3 of Part 5.

28. In this Chapter–

"direct insurance or reinsurance firm" means a regulated firm which carries on an activity of a kind specified by paragraph 24(1) or (2); and

"intermediary" means an insurance intermediary, reinsurance intermediary or ancillary insurance intermediary, within the meaning of Chapter 4.

The regulated activity

Insurance management.

29.(1) Insurance management is a specified kind of activity.

(2) "Insurance management" means exercising managerial functions in relation to the business of–

(a) a direct insurance or reinsurance firm; or

(b) an intermediary.

Exclusions

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Exclusions from paragraph 29.

30. The kind of activity specified by paragraph 29 is subject to the exclusions specified by paragraphs 31 and 32.

Employees of firms or intermediaries.

31. There is excluded from paragraph 29 any managerial functions exercised in relation to the business of–

(a) a direct insurance or reinsurance firm by a person who is an employee of that firm; or

(b) an intermediary by a person who is an employee of that intermediary.

Firms carrying on other regulated activities.

32. There is excluded from paragraph 29 any activity which is carried on by a regulated firm with permission under Part 7 of this Act to carry on an activity of a kind specified by–

(a) Chapter 4 of this Part;

(b) Chapter 2 of Part 6;

(c) Part 13.

Chapter 4
Insurance distribution and reinsurance distribution

Interpretation of Chapter 4 of Part 5.

33. In this Chapter–

"ancillary insurance intermediary" means any natural or legal person ("P"), other than a credit institution or investment firm (within the meaning of the Capital Requirements Regulation), which carries on the activity specified by paragraph 34 on an ancillary basis where–

(a) the principal professional activity which P carries on does not otherwise consist of the carrying on of insurance distribution;

(b) P distributes certain insurance products that are complementary to a good or service; and

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(c) the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which P provides as its principal professional activity;

"insurance distribution"–

(a) means the activities of–

(i) advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance;

(ii) concluding such contracts; or

(iii) assisting the parties to such contracts in the administration and performance of those contracts, in particular in the event of a claim, including (without limiting this paragraph)–

(aa) assisting the parties to comply with obligations under such contracts, such as the obligations of policyholders to notify insurers of claims or other matters;

(bb) assisting the parties in negotiating the settlement of claims under such contracts;

(cc) arranging, on behalf of the parties to group contracts of insurance, for persons to be added to and acquire rights under, or be removed from, such a group contract; or

(dd) assisting the parties to unit-linked contracts of life insurance with the purchase or redemption of units under such contracts; and

(iv) advising policyholders and other persons having rights under or interests in concluded contracts of insurance and assisting the parties to them with–

(aa) the sale, assignment, surrender or switching of rights or interests under such concluded contracts, or

(bb) the purchase or acquisition of further rights under or interests in such concluded contracts; and

(b) includes the provision of information concerning one or more contracts of insurance in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of a contract of insurance,

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

"insurance intermediary" means any natural or legal person, other than an insurance undertaking or reinsurance undertaking or their employees and other than an ancillary insurance intermediary, who carries on the activity specified by paragraph 34;

"insurance undertaking" means an undertaking with permission to effect or carry out contracts of insurance;

"reinsurance" means the activity consisting in accepting risks ceded by a person carrying on an activity of a kind specified in Chapter 2 of this Part;

"reinsurance distribution" means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of reinsurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including when carried out by a reinsurance undertaking without the intervention of a reinsurance intermediary;

"reinsurance intermediary" means any natural or legal person, other than a reinsurance undertaking or its employees who carries on the activity specified by paragraph 35; and

"reinsurance undertaking" means an undertaking with permission to effect or carry out contracts of reinsurance.

The regulated activities

Insurance distribution.

34. Taking up or pursuing insurance distribution Gibraltar is a specified kind of activity.

Reinsurance distribution.

35. Taking up or pursuing reinsurance distribution in Gibraltar is a specified kind of activity.

Exclusions

Exclusions from paragraphs 34 and 35.

36. The kinds of activity specified by paragraphs 34 and 35 are subject to the exclusions specified by paragraphs 37 to 41.

Activities complementary to supply of certain goods or services.

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37. There is excluded from paragraph 34 any activity carried out by an ancillary insurance intermediary in relation to an insurance product which–

(a) is complementary to the good or service supplied by a provider;

(b) covers the risk of–

(i) breakdown, loss of, or damage to, goods supplied by that provider;

(ii) the non-use of services supplied by that provider; or

(iii) damage to, or loss of, baggage and other risks linked to travel booked with that provider; and

(c) has a premium of–

(i) 600 euro or less (calculated on a pro rata annual basis); or

(ii) where the insurance is complementary to a service referred to in sub-paragraph (a) and the duration of that service is equal to or less than 3 months, 200 euro or less.

Provision of information in course of another professional activity.

38. There is excluded from paragraphs 34 and 35 any activity consisting in the provision of information on an incidental basis in the context of another professional activity where–

(a) the provider does not take any additional steps to assist in concluding or performing a contract of insurance; or

(b) the purpose of that activity is not to assist the customer in concluding or performing a contract of reinsurance.

Claims management.

39. There is excluded from paragraphs 34 and 35 any activity consisting in the management of claims of an insurance undertaking or of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims.

Mere provision of information about potential policyholders.

40. There is excluded from paragraphs 34 and 35 any activity consisting in the mere provision of data and information on potential policyholders to insurance intermediaries, reinsurance

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intermediaries, insurance undertakings or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of a contract of insurance or a contract of reinsurance.

Mere provision of information to potential policyholders.

41. There is excluded from paragraphs 34 and 35 any activity consisting in the mere provision of information about insurance or reinsurance products, an insurance intermediary, a reinsurance intermediary, an insurance undertaking or a reinsurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of a contract of insurance or a contract of reinsurance.

42. *Omitted*.

PART 6
FINANCIAL INSTRUMENTS

Chapter 1
General

Application of Part 6 of this Schedule.

43.(1) This Part of this Schedule has effect in relation to the item listed in section 5(2)(e) (financial instruments).

(2) Chapter 2 of this Part–

(a) specifies the kinds of financial instruments to which Chapter 2 applies; and

(b) specifies the kinds of activity carried on relation to such financial instruments which are to be regulated activities (investment services and investment activities).

(3) Chapter 3 of this Part–

(a) specifies the kinds of financial instruments to which Chapter 3 applies; and

(b) specifies the kinds of activity carried on relation to such financial instruments which are to be regulated activities (sending dematerialised instructions).

Chapter 2
Investment services and investment activities

Interpretation of Chapter 2 of Part 6. of this Schedule

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44.(1) In this Chapter–

"algorithmic trading"–

(a) means trading in financial instruments where a computer algorithm, with limited or no human intervention, automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission; but

(b) does not include any system that is only used for–

(i) routing orders to one or more trading venues;

(ii) processing orders without determining any trading parameters;

(iii) confirming orders; or

(iv) the post-trade processing of executed transactions;

"ancillary services" means the services listed in paragraph 45(2);

"client" means any natural or legal person to whom an investment firm provides investment or ancillary services;

"commodity" means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity;

"commodity derivatives" means those financial instruments defined in paragraph (c) of the definition below of "transferable securities" which relate to a commodity or an underlying referred to in–

(a) point (10) of paragraph 46; or

(b) points (5), (6), (7) and (10) of that paragraph;

"derivatives" means those financial instruments defined in paragraph (c) of the definition below of "transferable securities" and referred to in points (4) to (10) of paragraph 46;

"financial instrument" means a financial instrument of a kind specified by paragraph 46;

"high-frequency algorithmic trading technique" means an algorithmic trading technique characterised by–

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(a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry–

(i) co-location;

(ii) proximity hosting; or

(iii) high-speed direct electronic access;

(b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and

(c) high message intraday rates which constitute orders, quotes or cancellations;

"investment services and activities" means–

(a) any service in relation to financial instruments which is provided to third parties which is specified by any of paragraphs 48 to 56; or

(b) any activity in relation to financial instruments which is specified by any such paragraph;

"market-maker" means a person who holds out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against that person's proprietary capital at prices defined by that person;

"money-market instruments"–

(a) means those classes of instruments which are normally dealt in on the money market such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment; and

(b) includes the instruments specified in sub-paragraph (2); and

"transferable securities" means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as–

(a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;

(b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities; or

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(c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

(2) Money-market instruments includes treasury bills, certificates of deposits, commercial papers and other instruments with substantively equivalent features where they have the following characteristics–

(a) they have a value that can be determined at any time;

(b) they are not derivatives; and

(c) they have a maturity at issuance of 397 days or less.

Ancillary services.

45.(1) If a person carries on a regulated activity of a kind specified in any of paragraphs 48 to 56, and also carries on one or more ancillary services, those ancillary services are included in the regulated activity in question.

(2) The following are "ancillary services".

1. *Omitted*.

2. Granting credits or loans to an investor to allow the investor to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction.

3. Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings.

4. Foreign exchange services where these are connected to the provision of investment services.

5. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.

6. Services related to underwriting.

7. Investment services and activities specified by paragraphs 48 to 56, as well as ancillary services of the type listed in paragraph 45(2), related to the underlying of the derivatives listed in points (5), (6), (7) and (10) of paragraph 46 where these are connected to the provision of investment or ancillary services.

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Financial instruments to which Chapter 2 applies.

46. The financial instruments referred to in section 5(2)(e) to which this Chapter applies are–

(1) Transferable securities;

(2) Money-market instruments;

(3) Units in collective investment undertakings;

(4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

(5) Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;

(6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, an MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled;

(7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point (6) and not being for commercial purposes, which have the characteristics of other derivative financial instruments;

(8) Derivative instruments for the transfer of credit risk;

(9) Financial contracts for differences;

(10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in paragraph 46 of this Schedule, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, an OTF, or an MTF;

(11) Emission allowances consisting of any units recognised for compliance with the requirements of the UK Emissions Trading Scheme or the EU Emissions Trading System.

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Terminology used in paragraph 46.

47. The provisions of paragraph 46 of this Schedule are to be read with extracts A to E , which are derived from Commission Delegated Regulation (EU) 2017/565 (the "Commission Regulation").

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EXTRACT A

Wholesale energy products that must be physically settled
(Derived from Article 5 of the Commission Regulation)

(1) For the purposes of point (6) of paragraph 46, a wholesale energy product must be physically settled where all the following conditions are satisfied:

(a) it contains provisions which ensure that parties to the contract have proportionate arrangements in place to be able to make or take delivery of the underlying commodity; a balancing agreement with the Transmission System Operator in the area of electricity and gas shall be considered a proportionate arrangement where the parties to the agreement have to ensure physical delivery of electricity or gas;

(b) it establishes unconditional, unrestricted and enforceable obligations of the parties to the contract to deliver and take delivery of the underlying commodity;

(c) it does not allow either party to replace physical delivery with cash settlement;

(d) the obligations under the contract cannot be offset against obligations from other contracts between the parties concerned, without prejudice to the rights of the parties to the contract, to net their cash payment obligations.

For the purposes of point (d), operational netting in power and gas markets shall not be considered as offsetting of obligations under a contract against obligations from other contracts.

(2) Operational netting shall be understood as any nomination of quantities of power and gas to be fed into a gridwork on being so required by the rules or requests of a Transmission System Operator as defined in Article 2(4) of Directive 2009/72/EC of the European Parliament and of the Council for an entity performing an equivalent function to a Transmission System Operator at the national level. Any nomination of quantities based on operational netting shall not be at the discretion of the parties to the contract.

(3) For the purposes of point (6) of paragraph 46, force majeure shall include any exceptional event or a set of circumstances which are outside the control of the parties to the contract, which the parties to the contract could not have reasonably foreseen or avoided by the exercise of appropriate and reasonable due diligence and which prevent one or both parties to the contract from fulfilling their contractual obligations.

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(4) For the purposes of point (6) of paragraph 46, bona fide inability to settle shall include any event or set of circumstances, not qualifying as force majeure as referred to in sub-paragraph (3), which are objectively and expressly defined in the contract terms, for one or both parties to the contract, acting in good faith, not to fulfil their contractual obligations.

(5) The existence of force majeure or bona fide inability to settle provisions shall not prevent a contract from being considered as 'physically settled' for the purposes of point (6) of paragraph 46.

(6) The existence of default clauses providing that a party is entitled to financial compensation in the case of non- or defective performance of the contract shall not prevent the contract from being considered as 'physically settled' within the meaning of point (6) of paragraph 46.

(7) The delivery methods for the contracts being considered as 'physically settled' within the meaning of point (6) of paragraph 46 shall include at least:

(a) physical delivery of the relevant commodities themselves;

(b) delivery of a document giving rights of an ownership nature to the relevant commodities or the relevant quantity of the commodities concerned;

(c) other methods of bringing about the transfer of rights of an ownership nature in relation to the relevant quantity of goods without physically delivering them including notification, scheduling or nomination to the operator of an energy supply network, that entitles the recipient to the relevant quantity of the goods.

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EXTRACT B

Energy derivative contracts relating to oil and coal and wholesale energy products
(Derived from Article 6 of the Commission Regulation)

(1) For the purposes of point (6) of paragraph 46, energy derivative contracts relating to oil shall be contracts with mineral oil, of any description and petroleum gases, whether in liquid or vapour form, including products, components and derivatives of oil and oil transport fuels, including those with biofuel additives, as an underlying.

(2) For the purposes of point (6) of paragraph 46, energy derivative contracts relating to coal shall be contracts with coal, defined as a black or dark- brown combustible mineral substance consisting of carbonised vegetable matter, used as a fuel, as an underlying.

(3) For the purposes of point (6) of paragraph 46, derivative contracts that have the characteristics of wholesale energy products as defined in Article 2(4) of the REMIT Regulation.

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EXTRACT C

Other derivative financial instruments
(Derived from Article 7 of the Commission Regulation)

(1) For the purposes of point (7) of paragraph 46, a contract which is not a spot contract in accordance with sub-paragraph (2) below and which is not for commercial purposes as laid down in sub-paragraph (4) below shall be considered as having the characteristics of other derivative financial instruments where it satisfies the following conditions:

(a) it meets one of the following criteria:

(i) it is traded on a third country trading venue that performs a similar function to a regulated market, an MTF or an OTF;

(ii) it is expressly stated to be traded on, or is subject to the rules of, a regulated market, an MTF, an OTF or such a third country trading venue;

(iii) it is equivalent to a contract traded on a regulated market, MTF, an OTF or such a third country trading venue, with regards to the price, the lot, the delivery date and other contractual terms;

(b) it is standardised so that the price, the lot, the delivery date and other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

(2) A spot contract for the purposes of sub-paragraph (1) shall be a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods:

(a) 2 trading days;

(b) the period generally accepted in the market for that commodity, asset or right as the standard delivery period.

A contract shall not be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed within the period referred to in sub-paragraph (2).

(3) For the purposes of point (10) of paragraph 46, a derivative contract relating to an underlying referred to in point (10) or in the text contained in Extract D below shall

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be considered to have the characteristics of other derivative financial instruments where one of the following conditions is satisfied:

(a) it is settled in cash or may be settled in cash at the option of one or more of the parties, otherwise than by reason of a default or other termination event;

(b) it is traded on a regulated market, an MTF, an OTF, or a third country trading venue that performs a similar function to a regulated market, MTF or an OTF;

(c) the conditions laid down in sub-paragraph (1) are satisfied in relation to that contract.

(4) A contract shall be considered to be for commercial purposes for the purposes of point (7) of paragraph 46, and as not having the characteristics of other derivative financial instruments for the purposes of points (7) and (10) of paragraph 46, where the following conditions are both met:

(a) it is entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network;

(b) it is necessary to keep in balance the supplies and uses of energy at a given time, including the case when the reserve capacity contracted by an electricity transmission system operator as defined in Article 2(4) of Directive 2009/72/EC is being transferred from one prequalified balancing service provider to another prequalified balancing service provider with the consent of the relevant transmission system operator.

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EXTRACT D

Derivatives under point (10) of paragraph 46
(derived from Article 8 of the Commission Regulation)

D. In addition to derivative contracts expressly referred to in point (10) of paragraph 46, a derivative contract shall be subject to the provisions in point (10) where it meets the criteria set out in point (10) and in the text contained in Extract C and it relates to any of the following:

(a) telecommunications bandwidth;

(b) commodity storage capacity;

(c) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means with the exception of transmission rights related to electricity transmission cross zonal capacities when they are, on the primary market, entered into with or by a transmission system operator or any persons acting as service providers on their behalf and in order to allocate the transmission capacity;

(d) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources, except if the contract is already with the scope of point (4) of paragraph 46;

(e) a geological, environmental or other physical variable, except if the contract is relating to any units recognised for compliance with the requirements of Directive 2003/87/EC of the European Parliament and of the Council;

(f) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;

(g) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;

(h) an index or measure based on actuarial statistics.

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EXTRACT E

Characteristics of other derivative contracts relating to currencies
(Derived from Article 10 of the Community Regulation)

(1) For the purposes of point (4) of paragraph 46, other derivative contracts relating to a currency shall not be a financial instrument where the contract is one of the following:

(a) a spot contract within the meaning of sub-paragraph (2) below;

(b) a means of payment that:

(i) must be settled physically otherwise than by reason of a default or other termination event;

(ii) is entered into by at least a person which is not a financial counterparty within the meaning of Article 2(8) of Regulation (EU) No. 648/2012 of the European Parliament and of the Council;

(iii) is entered into in order to facilitate payment for identifiable goods, services or direct investment; and

(iv) is not traded on a trading venue.

(2) A spot contract for the purposes of sub-paragraph (1) shall be a contract for the exchange of one currency against another currency, under the terms of which delivery is scheduled to be made within the longer of the following periods:

(a) 2 trading days in respect of any pair of the major currencies set out in sub-paragraph (3) below;

(b) for any pair of currencies where at least one currency is not a major currency, the longer of 2 trading days or the period generally accepted in the market for that currency pair as the standard delivery period;

(c) where the contract for the exchange of those currencies is used for the main purpose of the sale or purchase of a transferable security or a unit in a collective investment undertaking, the period generally accepted in the market for the settlement of that transferable security or a unit in a collective investment undertaking as the standard delivery period or 5 trading days, whichever is shorter.

A contract shall not be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the

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currency is to be postponed and not to be performed within the period set out in sub-paragraph (2)(a).

(3) The major currencies for the purposes of sub-paragraph (2) shall only include the US dollar, Euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Singapore dollar, Norwegian krone, Mexican peso, Croatian kuna, Bulgarian lev, Czech koruna, Danish krone, Hungarian forint, Polish złoty and Romanian leu.

(4) For the purposes of sub-paragraph (2), a trading day shall mean any day of normal trading in the jurisdiction of both the currencies that are exchanged under the contract for the exchange of those currencies and in the jurisdiction of a third currency where any of the following conditions are met:

(a) the exchange of those currencies involves converting them through that third currency for the purposes of liquidity;

(b) the standard delivery period for the exchange of those currencies references the jurisdiction of that third currency.

The regulated activities

Reception and transmission of orders.

48. Reception and transmission of orders in relation to one or more financial instruments is a specified kind of activity.

Execution of orders on behalf of clients.

49.(1) Execution of orders on behalf of clients is a specified kind of activity.

(2) "Execution of orders on behalf of clients"–

(a) means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients; and

(b) includes the conclusion of agreements to sell financial instruments issued by an investment firm or a credit institution at the moment of their issuance.

Dealing on own account.

50.(1) Dealing on own account is a specified kind of activity.

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(2) "Dealing on own account" means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments.

Portfolio management.

51.(1) Portfolio management is a specified kind of activity.

(2) "Portfolio management" means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments.

Investment advice.

52.(1) Investment advice is a specified kind of activity.

(2) Investment advice means the provision of personal recommendations to a client, either on the client's request or at the initiative of the person providing the advice, in respect of one or more transactions relating to financial instruments.

(3) A personal recommendation is–

(a) a recommendation made to a person in that person's capacity as an investor or potential investor or in that person's capacity as agent for an investor or a potential investor;

(b) a recommendation that that person does any of the following (whether as principal or agent)–

(i) buying, selling, subscribing for, exchanging, redeeming, holding or underwriting a particular financial instrument; or

(ii) exercising any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange or redeem a financial instrument; and

(c) a recommendation that is–

(i) presented as suitable for the person to whom it is made, or

(ii) based on a consideration of the circumstances of that person.

(4) A recommendation is not a personal recommendation if it is issued exclusively to the public.

Underwriting or placing on a firm commitment basis.

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53. Underwriting of financial instruments or placing of financial instruments on a firm commitment basis is a specified kind of activity.

Placing without a firm commitment basis.

54. Placing of financial instruments without a firm commitment basis is a specified kind of activity.

Arranging deals in investments.

54A.(1) Making arrangements with a view to a person who participates in them buying, selling, subscribing for or underwriting a financial instrument, structured deposit or contract of insurance is a specified kind of activity.

(2) In sub-paragraph (1)–

"contract of insurance" means a contract of insurance of any class in paragraph 22 or 23; and

"structured deposit" has the meaning given in paragraph 77(2).

(3) The exclusions in sub-paragraph (4)(b), (c) and (f) do not apply in respect of any arrangement relating to a contract of insurance.

(4) Subject to sub-paragraph (3), there are excluded from sub-paragraph (1)–

(a) the operation of a multilateral trading facility or an organised trading facility;

(b) arrangements which a person makes with a view to entering into transactions as principal or as agent for some other person;

(c) arrangements made by a person ("P") who is not an authorised person with a view to another person ("the client") entering into a transaction with or through an authorised person based on advice given to the client by the authorised person where–

(i) the client is not seeking and has not sought advice from P as to the merits of the transaction (or, if the client has done so, P has declined to give it but recommended that the client seek the advice from an authorised person); and

(ii) P does not receive from any person other than the client any pecuniary reward or other advantage for which P does not account to the client;

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(d) arrangements under which a person is to accept, as principal or agent, a debenture or similar instrument acknowledging indebtedness in respect of a loan or guarantee provided by that person or the person's principal;

(e) arrangements solely for the provision of finance to enable a person to buy, sell, subscribe for or underwrite financial instruments, structured deposits or contracts of insurance;

(f) arrangements under which a person ("the client") is to be introduced to an authorised person with a view to the authorised person giving independent advice to the client; or

(g) arrangements made by a person for the purposes of issuing its own shares, share warrants, debentures or debenture warrants.

Safeguarding and administering financial instruments etc.

54B.(1) The activity consisting of both–

(a) the safeguarding of relevant assets belonging to another; and

(b) the administration of those relevant assets,

or arranging for one or more other persons to carry on that activity, is a specified kind of activity if the condition in sub-paragraph (a) or (b) of paragraph (2) is met.

(2) The conditions are that–

(a) the assets consist of or include any investment which is a security or a contractually based investment; or

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

(3) In sub-paragraph (1), "relevant assets" means financial instruments or qualifying contracts of insurance.

(4) A "qualifying contract of insurance" means a contract of life insurance which is not–

(a) a reinsurance contract; nor

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(b) a contract in respect of which the following conditions are met–

(i) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;

(ii) the contract has no surrender value, or the consideration consists of a single premium and the surrender value does not exceed that premium; and

(iii) the contract makes no provision for its conversion or extension in a manner which would result in it ceasing to comply with sub-paragraph (i) or (ii).

(5) The activity specified in sub-paragraph (1) includes custodianship and related services such as cash and collateral management but does not include providing or maintaining securities accounts at the top tier level ("central maintenance service") referred to in point 2 of Section A of the Annex to the CSD Regulation.

Operation of an MTF.

55. Operating an MTF is a specified kind of activity.

Operation of an OTF.

56. Operating an OTF is a specified kind of activity.

Exclusions

Exclusions from paragraphs 48 to 56.

57. The kinds of activity specified by paragraphs 48 to 56 are subject to the exclusions specified by paragraphs 58 to 68.

Insurance etc. undertakings.

58. An insurance undertaking or reinsurance undertaking to which paragraph 24(1) or (2) applies may carry on an activity of a kind specified by paragraphs 48 to 54B in accordance with paragraph 24(3).

Intra-group investment services.

59. There is excluded from paragraphs 48 to 56 any investment service provided by a person exclusively for the person's parent undertaking, its subsidiaries or for other subsidiaries of its parent undertakings.

Investment services incidental to another professional activity.

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60.(1) There is excluded from paragraphs 48 to 56, any investment service provided by a person in an incidental manner in the course of a professional activity which is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service.

(2) For the purposes of sub-paragraph (1), an investment service is to be treated as being provided in an incidental manner in the course of a professional activity where the following conditions are satisfied–

(a) a close and factual connection exists between the professional activity and the provision of the investment service to the same client, such that the investment service can be regarded as accessory to the main professional activity;

(b) the provision of investment services to the clients of the main professional activity does not aim to provide a systematic source of income to the person providing the professional activity; and

(c) the person providing the professional activity does not market or otherwise promote the person's ability to provide investment services, except where these are disclosed to clients as being accessory to the main professional activity.

Own-account dealing in specified financial instruments.

61.(1) In this paragraph–

"direct electronic access"–

(a) means an arrangement where a member, participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue; and

(b) includes–

(i) arrangements which involve the use by a person of the infrastructure of the member, participant or client, or any connecting system provided by the member, participant or client, to transmit the orders (direct market access); and

(ii) arrangements where such an infrastructure is not used by a person (sponsored access);

"specified financial instruments" means financial instruments other than commodity derivatives or emission allowances or their derivatives.

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(2) There is excluded from paragraphs 48 to 56 any dealing on own account in specified financial instruments by a person who is not providing any other investment services or performing any other investment activities in specified financial instruments.

(3) Sub-paragraph (2) does not apply to dealing carried on by–

(a) a person who is a market maker;

(b) a person who is either–

(i) a member of or participant in a regulated market or an MTF; or

(ii) has direct electronic access to a trading venue;

apart from non-financial entities who execute transactions on a trading venue which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups;

(c) a person who applies a high-frequency algorithmic trading technique; or

(d) a person who deals on own account when executing client orders.

(4) Any person carrying on an activity that is excluded from paragraphs 48 to 56 by virtue of paragraph 58, 62 or 65 is not required to meet the conditions specified by this paragraph.

Own-account dealing in other financial instruments.

62.(1) There is excluded from paragraphs 48 to 56–

(a) any dealing on own account by a person (including by a market maker) in commodity derivatives or emission allowances or their derivatives; or

(b) any provision by a person of investment services, other than dealing on own account, in commodity derivatives or emission allowances or their derivatives to the customers or suppliers of their main business.

(2) Sub-paragraph (1)(a) does not apply to dealing on own account by a person when executing client orders.

(3) Sub-paragraph (1) applies only if the following conditions are met–

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(a) each of the activities in sub-paragraph (1)(a) and (b), when considered individually and in aggregate, is an ancillary activity to a person's main business, when considered on a group basis, and that main business is not the provision of–

(i) investment services within the meaning of this Chapter;

(ii) banking activities requiring permission under Part 7 (or which would require such permission if carried on in Gibraltar); or

(iii) acting as a market-maker in relation to commodity derivatives;

(b) the person does not apply a high-frequency algorithmic trading technique; and

(c) the person notifies annually the relevant competent authority that the person makes use of this exemption and on request reports to the competent authority the basis on which the person considers that the activity in sub-paragraph (1)(a) and (b) is ancillary to the person's main business.

63. *Omitted*.

Administration of employee-participation schemes.

64.(1) There is excluded from paragraphs 48 to 56 any provision by a person of investment services which consist exclusively in the administration of employee-participation schemes.

(2) There is excluded from paragraphs 48 to 56 any investment services provided by a person which only involve both the administration of employee-participation schemes and the provision of investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings.

Collective investment undertakings.

65. There is excluded from paragraphs 48 to 56 any activity which is carried on by–

(a) collective investment undertakings and pension funds; or

(b) the depositaries and managers of such undertakings.

Advice not specifically remunerated.

66. There is excluded from paragraphs 48 to 56 any investment advice provided by a person in the course of providing another professional activity not covered by this Chapter provided that the provision of such advice is not specifically remunerated.

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Central securities depositary.

67. There is excluded from paragraphs 48 to 56 any activity which is carried on by a central securities depositary (CSD) other than as provided by Article 73 of the CSD Regulation.

68. *Omitted.*

Chapter 3
Sending dematerialised instructions

General

Interpretation of Chapter 3 of Part 6.

69.(1) In this Chapter–

"dematerialised instruction" means an instruction sent or received by means of relevant system;

"relevant system" means a computer-based system (and procedures) which enable title to units of securities to be evidenced and transferred without a written instrument and, in respect of which, the operator is authorised by a regulator outside Gibraltar having functions equivalent to those of the GFSC or by a prescribed authority in another territory;

"sovereign debt" means a debt instrument issued by a sovereign issuer;

"sovereign issuer" means any of the following which issue debt instruments–

(a) Gibraltar, including a government department, agency or special purpose vehicle of Gibraltar;

(b) a State other than Gibraltar, including a government department, agency or special purpose vehicle of the State;

(c) in the case of a federal State, a member of the federation;

(d) a special purpose vehicle for several States;

(e) an international financial institution established by two or more States which has the purpose of mobilising funding and providing financial assistance for the benefit of those of its members that are experiencing or threatened by severe financing problems;

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(f) the European Union;

(g) the European Investment Bank;

(h) the International Finance Corporation;

(i) the International Monetary Fund;

"relevant financial instrument" means a financial instrument of a kind specified in paragraph 70;

"transferable securities" has the meaning given in Chapter 2 of this Part except that, in the application of that definition, "depositary receipts" is to be understood as referring to those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer.

Financial instruments to which Chapter applies.

70. The financial instruments referred to in section 5(2)(e) to which this Chapter applies are–

(a) transferable securities; and

(b) sovereign debt.

The regulated activities

Sending etc. dematerialised instructions.

71.(1) Sending, on behalf of another person, dematerialised instructions relating to–

(a) a relevant financial instrument; or

(b) rights or interests in a relevant financial instrument,

is a specified kind of activity where those instructions are sent by means of a relevant system.

(2) Causing dematerialised instructions relating to a relevant financial instrument, or to rights or interests in a relevant financial instrument, to be sent is a specified kind of activity where–

(a) those instructions are sent by means of a relevant system; and

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(b) the person causing them to be sent is responsible under an agreement with the GFSC for the operation of, and the maintenance of security over, a gateway.

(3) Agreeing to carry on an activity of the kind specified by sub-paragraph (1) or (2) is a specified kind of activity.

(4) "Gateway", in relation to a relevant system, means the computer hardware and software by means of which instructions are authenticated and encrypted for processing by the relevant system.

Exclusions

Exclusions from paragraph 71.

72. The kinds of activity specified by paragraph 71 are subject to the exclusions specified by paragraphs 73 to 76.

Instructions on behalf of participating issuers.

73.(1) There is excluded from paragraph 71 the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is a participating issuer.

(2) "Participating issuer" means a person who has issued a relevant financial instrument where title to units of that instrument is permitted by an operator to be transferred by means of a relevant system.

Instructions on behalf of settlement banks.

74.(1) There is excluded from paragraph 71 the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is a settlement bank acting in its capacity as such.

(2) "Settlement bank", in relation to a relevant system, means a person who has agreed to make payments in connection with transfers of title to uncertificated units of a relevant financial instrument by means of that system.

Instructions in connection with takeover offers.

75. There is excluded from paragraph 71 the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is an offeror making a takeover offer.

Instructions in the course of providing a network.

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76. There is excluded from paragraph 71 the act of sending, or causing to be sent, a dematerialised instruction as a necessary part of the provision of a network for the purposes of a relevant system by a network provider who is accredited for that purpose by the GFSC.

PART 7
STRUCTURED DEPOSITS

General

Application and interpretation of Part 7 of this Schedule.

77.(1) This Part of this Schedule–

(a) has effect in relation to the item listed in section 5(2)(f) (structured deposits); and

(b) specifies the kinds of activity carried on relation to structured deposits which are to be regulated activities.

(2) In this Part "structured deposit" means a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as–

(a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as Euribor or Libor;

(b) a financial instrument or combination of financial instruments;

(c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or

(d) a foreign exchange rate or combination of foreign exchange rates.

The regulated activities

Selling or advising in relation to structured deposits.

78.(1) Selling structured deposits is a specified kind of activity.

(2) Advising clients in relation to structured deposits is a specified kind of activity.

(3) "Client" has the meaning given in Chapter 2 of Part 6.

Exclusions

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Exclusions from paragraph 78.

79. The kinds of activity specified by paragraph 78 are subject to the exclusions specified by paragraphs 58 to 68.

PART 8
BENCHMARKS

General

Application of Part 8 of this Schedule.

80. This Part of this Schedule–

(a) has effect in relation to the item listed in section 5(2)(g) (benchmarks); and

(b) specifies the kind of activity carried on relation to benchmarks which are regulated activities.

Interpretation of Part 8.

81.(1) In this Part–

"benchmark" means any index which is used to–

(a) determine the amount payable under a financial instrument or a financial contract, or the value of a financial instrument; or

(b) measure the performance of an investment fund for the purpose of tracking the return of such index, defining the asset allocation of a portfolio or computing the performance fees;

"financial contract" means–

(a) a credit agreement within the meaning of section 3 of the Financial Services (Consumer Credit) Act 2011; or

(b) a mortgage credit agreement within the meaning of paragraph 117;

"financial instrument" means any financial instrument for which a request for admission to trading on a trading venue, has been made or which is traded on a trading venue or via a systematic internaliser;

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"index" means any figure–

(a) that is published or made available to the public;

(b) that is regularly determined–

(i) entirely or partially by the application of a formula or any other method of calculation, or by an assessment; and

(ii) on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates, quotes and committed quotes, or other values or surveys;

"investment fund" means an AIF or a UCITS;

"systematic internaliser" means an investment firm which, on an organised, frequent systematic and substantial basis, deals on own account when executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system.

(2) For the purposes of the definition of "systematic internaliser" in sub-paragraph (1)–

(a) the 'frequent and systematic basis' is to be measured by the number of over-the counter ("OTC") trades in the financial instrument carried out by the investment firm on own account when executing client orders;

(b) the 'substantial basis' is to be measured either–

(i) by the size of the OTC trading carried out by the investment firm in relation to the total trading of the investment firm in a specific financial instrument; or

(ii) by the size of the OTC trading carried out by the investment firm in relation to the total trading in the relevant area in a specific financial instrument; and

(c) the definition of systemic internaliser applies only where the pre-set limits for a frequent and systematic basis and for a substantial basis are both crossed or where an investment firm chooses to opt-in under the systematic internaliser regime.

(3) For the purposes of sub-paragraph (2)(b)(ii), "the relevant area" consists of Gibraltar and any country or region the GFSC may specify by written notice to the investment firm concerned.

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(4) The GFSC may only specify that a country or region is within the relevant area in relation to a specific financial instrument if the GFSC is able to obtain sufficient reliable trading data to enable it to assess total orders executed in the financial instrument concerned in that country or region.

The regulated activity

Administering a benchmark.

82.(1) Administering a benchmark is a specified kind of activity.

(2) In sub-paragraph (1) "administering a benchmark" means acting as an administrator of a benchmark.

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

"administrator" means a natural or legal person that has control over the provision of a benchmark;

"provision of a benchmark" means–

(a) administering the arrangements for determining a benchmark;

(b) collecting, analysing or processing input data for the purpose of determining a benchmark; and

(c) determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose.

PART 9
MARKETS IN FINANCIAL INSTRUMENTS

Application of Part 9 of this Schedule.

83. This Part of this Schedule–

(a) has effect in relation to the item listed in section 5(2)(h) (markets in connection with financial instruments);

(b) specifies the kind of markets in connection with financial instruments to which this Part applies; and

(c) specifies the kind of activity carried on relation to such markets which is to be a regulated activity.

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Markets to which Part 9 applies.

84. The markets referred to in section 5(2)(h) to which this Part applies are any multilateral system–

(a) operated and/or managed by a market operator (which may be the market itself);

(b) relating to the financial instruments admitted to trading under the rules or systems of the market;

(c) bringing together or facilitating the bringing together of multiple third-party buying and selling interests in financial instruments, in the system and in accordance with its non- discretionary rules, in a way that results in a contract; and

(d) functioning regularly in accordance with regulations made under section 623 of the Act (regulated markets regulations).

The regulated activity

Operating a regulated market.

85. Operating a market of a kind specified in paragraph 84 is a specified kind of activity.

PART 10
DATA REPORTING SERVICES

General

Application of Part 10 of this Schedule.

86. This Part of this Schedule–

(a) has effect in relation to the item listed in section 5(2)(i) (data reporting services); and

(b) specifies the kinds of activity carried on in relation to different kinds of data reporting services which are to be regulated activities.

The regulated activities

Operating an APA.

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87.(1) Providing the service of publishing trade reports on behalf of investment firms is a specified kind of activity.

(2) A regulated firm with permission under Part 7 of this Act to carry on the activity specified by sub-paragraph (1) is to be known as an "approved publication arrangement" (or "APA").

Operating a CTP.

88.(1) Providing the service of–

(a) collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12, 13, 20 and 21 of the Markets in Financial Instruments Regulation from regulated markets, MTFs, OTFs and APAs; and

(b) consolidating them into a continuous live data stream providing price and volume data;

is a specified kind of activity.

(2) A regulated firm with permission under Part 7 of this Act to carry on the activity specified by sub-paragraph (1) is to be known as an "consolidated tape provider" (or "CTP").

Operating an ARM.

89.(1) Providing the service of reporting details of transactions to competent authorities on behalf of investment firms is a specified kind of activity.

(2) A regulated firm with permission under Part 7 of this Act to carry on the activity specified by sub-paragraph (1) is to be known as an "approved reporting mechanism" (or "ARM").

Exclusions

Exclusions from paragraphs 87 to 89.

90. The kinds of activity specified by paragraphs 87 to 89 are subject to the exclusions specified by paragraphs 58 to 68.

PART 11
PROPERTY OF ANY KIND

Chapter 1
General

Application of Part 11 of this Schedule.

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91. This Part of this Schedule–

(a) has effect in relation to the item listed in section 5(2)(j) (property of any kind); and

(b) specifies the kinds of activity carried on relation to property of any kind which are to be regulated activities.

Chapter 2
Collective investment schemes

Interpretation of Chapter 2 of Part 11.

92. In this Chapter "AIFM" means a legal person whose regular business is managing one or more AIFs.

The regulated activities

Managing a UCITS.

93.(1) Managing a UCITS is a specified kind of activity.

(2) A person manages a UCITS when the person carries on collective portfolio management of the UCITS.

(3) "Collective portfolio management", in relation to a UCITS, includes the following functions–

- Investment management.

- Administration:

(a) legal and fund management accounting services;

(b) customer inquiries;

(c) valuation and pricing (including tax returns);

(d) regulatory compliance monitoring;

(e) maintenance of unit-holder register;

(f) distribution of income;

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(g) unit issues and redemptions;

(h) contract settlements (including certificate dispatch);

(i) record keeping.

- Marketing.

(4) If a person manages a UCITS and also carries on other activities in connection with or for the purposes of the management of that UCITS, those other activities are also included in the activity specified by paragraph (1).

Acting as depositary of a UCITS.

94.(1) Acting as the depositary of a UCITS which is authorised under Part 18 is a specified kind of activity.

(2) "Depositary" means a person to whom the assets of the UCITS are entrusted for safekeeping.

Acting as trustees of a UCITS.

94A.(1) Acting as the trustee of a UCITS that is a common fund authorised under Part 18 is a specified kind of activity.

(2) "Trustee", in relation to a common fund, means the person holding the property subject to the scheme on behalf of the participants.

Acting as sole director of a UCITS.

94B. Acting as the sole director of a UCITS that is an open-ended investment authorised under Part 18 is a specified kind of activity.

Managing an AIF (in-scope AIFM).

95.(1) Managing one or more AIFs is a specified kind of activity where–

(a) the value of assets under management is equal to, or more than, either of the limits specified in paragraph 97(1)(a) or (b); or

(b) those limits are not exceeded but the person managing the AIF or AIFs is a small AIFM to which regulation 8(4) of the Financial Services (Alternative Investment Fund Managers) Regulations 2020 applies.

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(2) A person manages an AIF when the person performs at least risk management or portfolio management for the AIF.

(3) A person ("P") does not manage an AIF if–

(a) the functions P performs for the AIF have been delegated to P by another person; and

(b) that other person is not an AIFM which has delegated its functions to the extent of that it becomes a letter-box entity.

(4) If a person manages an AIF and also carries on–

(a) one or more of the additional activities for that AIF which are referred to in sub-paragraph (5); or

(b) one or more other activities in connection with or for the purposes of the management of that AIF,

those activities are included in the activity specified by sub-paragraph (1).

(5) Other functions that an AIFM may additionally perform in the course of the collective management of an AIF are–

(a) Administration:

(i) legal and fund management accounting services;

(ii) customer inquiries;

(iii) valuation and pricing, including tax returns;

(iv) regulatory compliance monitoring;

(v) maintenance of unit-/shareholder register;

(vi) distribution of income;

(vii) unit/shares issues and redemptions;

(viii) contract settlements, including certificate dispatch;

(ix) record keeping;

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(b) Marketing;

(c) Activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

Acting as depositary of an AIF with an in-scope AIFM.

96.(1) Acting as the depositary of an AIF managed by an in-scope AIFM.

(2) "In-scope AIFM" means a person who has permission under Part 7 of this Act to carry on an activity of the kind specified by paragraph 95.

Managing an AIF (small scheme manager).

97.(1) Managing one or more AIFs is a specified kind of activity where–

(a) the value of assets under management (valued in accordance with sub-paragraph (2)) does not exceed–

(i) 500 million euros in total in cases where the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in each AIF; or

(ii) 100 million euros in total in other cases, including any assets acquired through the use of leverage; and

(b) management is by an external manager, which is the legal person appointed by the AIF or on behalf of the AIF and which through this appointment is responsible for managing the AIF.

(2) For the purposes of sub-paragraph (1), the value of a person's assets under management is to be calculated in accordance with Article 2 of Regulation (EU) No 231/2013.

Acting as depositary of an AIF with a small scheme manager.

98.(1) Acting as the depositary of an AIF managed by a small scheme manager.

(2) "Small scheme manager" means a person who has permission under Part 7 of this Act to carry on an activity of the kind specified by paragraph 97.

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Establishing etc. a collective investment scheme.

99. Establishing, operating or winding up a collective investment scheme is a specified kind of activity.

Acting as bank and/or broker of an experienced investor fund.

100.(1) Acting as a bank and/or broker under arrangements entered into with a relevant experienced investor fund is a specified kind of activity.

(2) "Relevant experienced investor fund" means an experienced investor fund (within the meaning of Part 18) which is internally managed.

Acting as depositary of a private scheme.

101.(1) Acting as the depositary of a private scheme.

(2) "Private scheme" has the meaning given in Part 18.

Acting as administrator of a collective investment scheme.

102. Acting as the administrator of a collective investment scheme is a specified kind of activity.

Exclusions

Exclusions from paragraph 99.

103. The kind of activity specified by paragraphs 99 is subject to the exclusions specified by paragraph 104.

Operating a collective investment scheme that is a UCITS or AIF.

104.(1) A person does not carry on an activity of the kind specified by paragraph 99 if–

(a) the person carries on the activity in relation to a UCITS; and

(b) at the time the person carries on the activity, the UCITS is managed by a regulated firm with permission under Part 7 of this Act to carry on an activity of the kind specified by paragraph 93.

(2) A person does not carry on an activity of the kind specified by paragraph 99 (operating a collective scheme) if–

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(a) the person carries on the activity in relation to an AIF; and

(b) at the time the person carries on the activity, the AIF is managed by a regulated firm with permission under Part 7 of this Act to carry on an activity of the kind specified by paragraph 95 or 97.

Chapter 3
Pensions

Interpretation of Chapter 3 of Part 11.

105. In this Chapter "personal pension scheme" has the meaning given in Part 27.

The regulated activities

Establishing etc. a personal pension scheme.

106. Establishing, operating or winding up a personal pension scheme is a specified kind of activity.

Advising on personal or occupational pension schemes.

107.(1) Advising another person on the following is a specified kind of activity–

(a) the merits of the person participating in, or being a member of, a personal pension scheme or an occupational pension scheme; or

(b) the acquisition or disposal of any interests, rights, benefits or other entitlements under a personal pension scheme or occupational pension scheme.

(2) Agreeing to carry on an activity of the kind specified by sub-paragraph (1) is a specified kind of activity.

Exclusions

Exclusions from paragraphs 106 and 107.

108. The kinds of activity specified by paragraphs 106 and 107 are subject to the exclusions specified by paragraphs 109 to 114.

Operating a pension scheme in relation to a UCITS or AIF.

109. A person does not carry an activity of the kind specified by paragraph 106 if the activity–

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(a) is carried on by a regulated firm with permission under Part 7 of this Act to carry on an activity of the kind specified by paragraph 93 and is carried on with or for the purposes of managing a UCITS; or

(b) is carried on by a regulated firm with permission under Part 7 of this Act to carry on an activity of the kind specified by paragraph 95 or 97 and is carried on with or for the purposes of managing an AIF.

Acting as a licensed insolvency practitioner.

110. A person does not carry an activity of the kind specified by paragraph 106 if the activity is carried on by a person acting as an insolvency practitioner who is licensed under Part 25.

Intra-group advice.

111.(1) There is excluded from paragraph 107 the giving of advice by a person ("P") exclusively for P's parent undertaking, P's subsidiaries or for other subsidiaries of P's parent undertaking.

(2) "Parent undertaking" and "subsidiary undertaking" have the same meaning as in Part VII of the Companies Act 2014.

Advice by trustees or personal representatives.

112. There is excluded from paragraph 107 the giving of advice by a person ("P") acting as trustee or personal representative–

(a) to a fellow trustee or personal representative for the purposes of the trust or estate; or

(b) to a beneficiary under the trust, will or intestacy concerning the beneficiary's interest in the trust fund or estate, unless P is remunerated for doing so in addition to any remuneration P receives for discharging P's duties as trustee or personal representative.

Advice incidental to another professional activity.

113. There is excluded from paragraph 107 the giving of advice in an incidental manner in the course of a professional activity that is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the giving of advice.

Advice in newspapers etc.

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114.(1) There is excluded from paragraph 107 the giving of advice in writing or other legible form if the advice is contained in a newspaper, journal, magazine or other periodical publication, or is given by way of a service comprising regularly updated news or information, if the principal purpose of the publication or service, taken as a whole and including any advertisements or other promotional material contained in it, is not that of leading or enabling persons to–

(a) participate in or become a member of a personal pension scheme or occupational pension scheme; or

(b) acquire or dispose of interests, rights, benefits or other entitlements under a personal pension scheme or occupational pension scheme.

(2) There is excluded from paragraph 107 the giving of advice in any service consisting in the broadcast or transmission of television or radio programmes, if the principal purpose of the service, taken as a whole and including any advertisements or other promotional material contained in it, is neither of those mentioned in sub-paragraph (1)(a) or (b).

PART 12
MORTGAGE CREDIT AGREEMENTS

General

Application of Part 12 of this Schedule.

115. This Part of this Schedule–

(a) has effect in relation to the item listed in section 5(2)(k) (credit agreements in connection with residential immovable property);

(b) specifies the kinds of credit agreements to which this Part applies; and

(c) specifies the kinds of activity carried on relation to such credit agreements which are to be regulated activities.

Interpretation of Part 12.

116. In this Part–

"annual percentage rate of charge" means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit which equates, on an annual basis, to the present value of all future or existing commitments (drawdowns, repayments and charges) agreed by the mortgage creditor and the consumer;

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"consumer" means an individual acting for purposes which are outside the individual's trade business or profession;

"credit agreement" means an agreement by which a person grants, or promises to grant, to a consumer a credit in the form of a deferred payment, loan or other similar financial accommodation;

"mortgage credit agreement" means a credit agreement specified in paragraph 117;

"mortgage credit intermediary" means a natural or legal person who carries on any activity specified by paragraph 119;

"mortgage creditor" means a natural or legal person who carries on the activity specified by paragraph 118;

"total amount of credit" means the ceiling or the total sums made available under a mortgage credit agreement;

"total cost of the credit to the consumer" means the total cost of the credit to the consumer as defined in section 3 of the Financial Services (Consumer Credit) Act 2011, including the cost of any property valuation which is necessary to obtain the credit but excluding–

(a) any registration fee for the transfer of ownership of the immovable property; and

(b) any charge payable by the consumer for non-compliance with the commitments laid down in the mortgage credit agreement.

(2) In the application of the definition of "annual percentage rate of charge" in sub-paragraph (1) to any case where the opening or maintaining of an account is obligatory in order to obtain the credit or to obtain it on the terms and conditions marketed, the reference to the "total cost of credit" is to be read as including–

(a) the costs of opening and maintaining a specific account;

(b) the costs of using a means of payment for both transactions and drawdowns on that account; and

(c) other costs relating to payment transactions.

Credit agreements to which this Part applies.

117.(1) The credit agreements in connection with residential immovable property which are referred to in section 5(2)(k) and to which this Part applies are–

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(a) a credit agreement which is secured by either–

(i) a mortgage (or other comparable security) on residential immovable property; or

(ii) a right related to residential immovable property; or

(b) a credit agreement which is for the purpose of acquiring or retaining property rights in land or in an existing or projected building.

(2) A credit agreement in connection with residential immovable property does not fall within sub-paragraph (1) if it is–

(a) an equity release credit agreement where the mortgage creditor–

(i) contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the future sale of a residential immovable property or a right relating to residential immovable property; and

(ii) will not seek repayment of the credit until the consumer dies or leaves the property to move into long-term care, unless the consumer breaches a contractual obligation which allows the mortgage creditor to terminate the credit agreement;

(b) a credit agreement where the credit is granted by an employer to its employees as a secondary activity where such a credit agreement is offered free of interest or at an annual percentage rate of charge lower than those prevailing on the market and not offered to the public generally;

(c) a credit agreement where the credit is granted free of interest and without any other charges except those that recover costs directly related to the securing of the credit;

(d) a credit agreement in the form of an overdraft facility and where the credit has to be repaid within one month;

(e) a credit agreement which is the outcome of a settlement reached in court or before another statutory authority;

(f) a credit agreement which relates to the deferred payment (free of charge) of an existing debt and does not fall within the scope of sub-paragraph (1)(a).

The regulated activities

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Granting credit by means of a mortgage credit agreement.

118.(1) Granting credit by means of a mortgage credit agreement is a specified kind of activity.

(2) Promising to carry on an activity of the kind specified in sub-paragraph (1) is a specified kind of activity.

Acting as a mortgage credit intermediary.

119.(1) Presenting or offering a mortgage credit agreement to a consumer is a specified kind of activity.

(2) Assisting a consumer by undertaking preparatory work or other pre-contractual administration in respect of a mortgage credit agreement (other than as referred to in sub-paragraph (1)) is a specified kind of activity.

(3) Concluding a mortgage credit agreement with a consumer on behalf of a mortgage creditor is a specified kind of activity.

Providing advisory services in connection with mortgage credit.

120. Providing personal recommendations to a consumer in respect of one or more transactions relating to a mortgage credit agreement is a specified kind of activity.

Exclusions

Exclusions from paragraphs 119 and 120.

121. The kinds of activity specified by paragraphs 119 and 120 are subject to the exclusions specified by paragraphs 122 to 124.

Mortgage creditors.

122. A person who acts as a mortgage creditor does not carry on any activity of a kind by specified paragraph 119.

Mere introducers.

123. A person who merely introduces, directly or indirectly, a consumer to a mortgage creditor or a mortgage credit intermediary does not carry on any activity of a kind by specified paragraph 119.

Recommendations relating to existing debt.

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124. There is excluded from paragraph 120 any recommendations provided in the context of the managing of existing debt (but only in Gibraltar)–

(a) by an insolvency practitioner who is licensed under Part 25; or

(b) as part of a public or voluntary debt advisory service which does not operate on a commercial basis.

PART 13
COMPANIES, FOUNDATIONS, PARTNERSHIPS AND UNINCORPORATED ASSOCIATIONS

General

Application and interpretation of Part 13 of this Schedule.

125.(1) This Part of this Schedule–

(a) has effect in relation to the item listed in section 5(2)(l) (companies, foundations, partnerships and unincorporated associations);

(b) specifies the kind of activity carried on relation to companies, foundations, partnerships and unincorporated associations which is to be a regulated activity.

(2) It is immaterial for the purposes of this Part whether the company, foundation, partnership or unincorporated association is formed in or under the laws of Gibraltar or elsewhere.

(3) In this Part "partnership", in relation to partnerships established in Gibraltar, means–

(a) a partnership within the meaning of the Partnership Act;

(b) a limited partnership formed under the Limited Partnerships Act;

(c) a limited liability partnership within the meaning of the Limited Liability Partnerships Act 2009.

The regulated activity

Company etc. management.

126. Undertaking the administration of companies, foundations, partnerships or unincorporated associations (including in particular one or more of the following) is a specified kind of activity–

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(a) forming, managing or administering a company, foundation, partnership or unincorporated association;

(b) providing it with corporate directors or individual directors;

(c) providing it with individuals or companies to act as company secretary;

(d) acting in any other capacity as an officer of it;

(e) providing it with nominee services including, in particular, acting as or providing nominee shareholders;

(f) providing it with a registered office;

(g) in the case of a company or unincorporated association, acting as a director;

(h) in the case of a partnership, acting as a partner.

Exclusions

Exclusions from paragraph 126.

127. The kind of activity specified by paragraph 126 is subject to the exclusions specified by paragraphs 128 and 129.

Companies or partnerships registered in Gibraltar.

128.(1) If all of the conditions specified by sub-paragraph (2) are met, the following activities are excluded from paragraph 126–

(a) being a director of not more than 12 companies; and

(b) acting as a partner in not more than 12 partnerships.

(2) The conditions are that–

(a) the person in question is resident in Gibraltar;

(b) each of the companies or partnerships is registered in Gibraltar; and

(c) the business of each of the companies or partnerships is carried on in Gibraltar.

Provision of mail services.

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129. A person does not carry on an activity of the kind specified by paragraph 126 by providing mail boxes or by forwarding mail.

PART 14
TRUSTS AND FOUNDATIONS

General

Application of Part 14 of this Schedule.

130.(1) This Part of this Schedule–

(a) has effect in relation to the item listed in section 5(2)(m) (trusts and foundations); and

(b) specifies the kinds of activities carried on relation to trusts and foundations which are to be regulated activities.

(2) References in this Part to a professional councillor of a foundation are to–

(a) a member of the council of a foundation registered under the Private Foundations Act 2017; or

(b) a person performing a corresponding role within a foundation (however described) established under the law of another jurisdiction.

The regulated activities

Acting as a professional trustee or foundation councillor.

131.(1) Acting as a professional trustee of a trust is a specified kind of activity.

(2) Acting as a professional trustee and a professional foundation councillor is a specified kind of activity.

(3) "Acting as a professional trustee" includes undertaking trust administration.

Exclusions

Exclusions from paragraph 131.

132. The kinds of activity specified by paragraph 131 are subject to the exclusions specified by paragraph 133.

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Miscellaneous exclusions.

133. A person does not carry on an activity of the kind specified in paragraph 131 if–

(a) the person is–

(a) a barrister or solicitor admitted and enrolled under the Supreme Court Act;

(b) a statutory auditor or audit firm who is approved under Part 24; or

(c) a trustee of one or more personal pension schemes (within the meaning of Part 27); and

(b) the person is performing duties within the ambit of the person's profession which are carried out other than in connection with any other regulated activity.

PART 15
CURRENCY, PRECIOUS METALS AND CHEQUES

General

Application of Part 15 of this Schedule.

134. This Part of this Schedule–

(a) has effect in relation to the items listed in section 5(2)(n) (foreign currency, precious metals and cheques); and

(b) specifies the kind of activity carried on relation to foreign currency, precious metals and cheques which is to be a regulated activity.

The regulated activity

Acting as a bureau de change.

135.(1) Acting as a bureau de change is a specified kind of activity.

(2) "Acting as a bureau de change" means carrying out one or more of the following activities–

(a) buying, selling or exchanging foreign currency;

(b) buying, selling or exchanging precious metals;

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(c) cashing cheques which are payable to customers or third parties.

Exclusions

Exclusions from paragraph 135.

136. The kind of activity specified by paragraph 135 is subject to the exclusions specified by paragraph 137.

Miscellaneous exclusions.

137. There is excluded from paragraph 135 any activity carried on in relation to foreign currency, precious metals or cheques by–

(a) a regulated firm with permission under Part 7 of this Act to carry on an activity of the kind specified by paragraph 3, 13 or 19; or

(b) an electronically based foreign exchange trading platform.

PART 16
VALUE STORED OR TRANSMITTED BY DATABASE AND VIRTUAL ASSET ARRANGEMENTS

General

Application of Part 16 of this Schedule.

138.(1) This Part of this Schedule–

(a) has effect in relation to the items listed in section 5(2)(o) (value belonging to another which is stored or transmitted by means of a database system and virtual asset arrangements);

(b) specifies the kind of activity carried on in relation to–

(i) value belonging to another which is stored or transmitted by means of a database system; or

(ii) the provision of virtual asset arrangements,

which is to be a regulated activity.

(2) In this Part–

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"DLT" (distributed ledger technology) means a database system in which–

(a) information is recorded and consensually shared and synchronised across a network of multiple nodes; and

(b) all copies of the database are regarded as equally authentic;

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

"virtual asset" has the meaning given in section 7(1) of the Proceeds of Crime Act 2015.

The regulated activities

Providing distributed ledger technology services.

139. Using DLT for storage or transmission of value belonging to another is a specified kind of activity.

Providing virtual asset arrangements.

139A.(1) Providing virtual asset arrangements is a specified kind of activity.

(2) For the purposes of sub-paragraph (1) a person provides virtual asset arrangements if the person, by way of business, exchanges or makes arrangements with a view to the exchange of–

(a) virtual assets for money;

(b) money for virtual assets; or

(c) one virtual asset for another virtual asset.

(3) In sub-paragraph (2), "money" means–

(a) money in sterling or any other fiat currency; or

(b) money in any other medium of exchange,

but does not include a virtual asset.

Exclusions from paragraph 139A.

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139B. There is excluded from paragraph 139A any dealing on own account which is carried on by–

(a) collective investment schemes within the meaning of Part 18 of this Act;

(b) pension funds; or

(c) the depositaries and managers of entities in paragraph (a) or (b).

Exclusions

Exclusions from paragraph 139.

140. The kind of activity specified by paragraph 139 is subject to the exclusions specified by paragraphs 141 and 142.

Activities incidental to carrying on other regulated activities.

141.(1) A person does not carry on an activity of the kind specified by paragraph 139 if both conditions A and B are met.

(2) Condition A is that the person is a regulated firm which has permission under Part 7 of this Act to carry on an activity of a kind specified by any other provision of this Schedule.

(3) Condition B is that the person uses DLT only in the course of carrying on that activity.

Activities of persons subject to other forms of statutory regulation.

142. A person does not carry on an activity of the kind specified by paragraph 139 if the person–

(a) is approved, licensed or otherwise authorised to carry on an activity under–

(i) Part 24 (regulation of auditors) or 25 (regulation of insolvency practitioners);

(ii) the Gambling Act 2005;

(iii) the Insolvency Act 2011; or

(iv) such other enactments as the Minister may by regulations prescribe; and

(b) uses DLT only in the course of carrying on that activity.

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PART 17
OTHER SPECIFIED ACTIVITIES

Agreeing to carry on specified kinds of activity.

143.(1) Subject to sub-paragraph (2), agreeing to carry on an activity of the kind specified by any other provision of this Schedule is a specified kind of activity.

(2) Sub-paragraph (1) does not apply in respect to the following provisions of this Schedule–

(a) the paragraph 3 (accepting deposits);

(b) paragraph 13 (issuing electronic money);

(c) paragraph 24 (effecting or carrying out contracts of insurance);

(d) paragraph 55 or 56 (operating a MTF or an OTF);

(e) paragraph 82 (administering a benchmark);

(f) paragraph 93 (managing a UCITS);

(g) paragraph 94, 94A or 94B (acting as depositary, trustee or sole director of a UCITS);

(h) paragraph 95 or 97 (managing an AIF);

(i) paragraph 96 or 98 (acting as depositary of an AIF);

(j) paragraph 99 (establishing, operating or winding up a collective investment scheme);

(k) paragraph 106 (establishing, operating or winding up a pension scheme).

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SCHEDULE 3

Section 7

INDEX OF REGULATED ACTIVITIES

Regulated activity	Item to which the activity relates (listed in section 5(2))	Provision of Schedule 2	General description for persons carrying on the activity
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Issuing electronic money	(b) electronic money	Part 3	Electronic money issuer
Providing payment services	(c) payment services	Part 4	Payment service provider
Effecting or carrying out contracts of insurance	(d) contracts of insurance	Chapter 2 of Part 5	Insurance undertaking
Insurance management	(d) contracts of insurance	Chapter 3 of Part 5	Insurance manager
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Operation of an OTF			Investment firm
Sending dematerialised instructions	(e) financial instruments	Chapter 3 of Part 6	Sender of dematerialised instructions

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Selling or advising in relation to structured deposits	(f) structured deposits	Part 7	Investment firm/ Credit institution
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Managing AIFs (in-scope AIFM)			In-scope AIFM
Managing AIFs (small scheme manager)			Small scheme manager
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Establishing etc. a personal pension scheme	(j) property of any kind	Chapter 3 of Part 11	Personal pension scheme operator
Advising on personal or occupational pension schemes			Pension scheme adviser
Granting credit by means of a mortgage credit agreement	(k) credit agreements in connection with residential immovable property	Part 12	Mortgage creditor
Acting as a mortgage credit intermediary			Mortgage credit intermediary

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Providing advisory services in connection with mortgage credit			Mortgage creditor / mortgage credit intermediary
Company etc. management	(l) companies, foundations, partnerships or unincorporated associations	Part 13	Company manager
Acting as professional trustee or foundation councillor	(m) trusts or foundations	Part 14	Professional trustee/ foundation councillor
Administering a trust			Trust administrator
Acting as a bureau de change	(n) currency, precious metals or cheques	Part 15	Bureau de change
Providing distributed ledger technology services	(o) value belonging to another which is stored by means of a database system	Part 16	DLT provider

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SCHEDULE 4

Section 21(14)

GIBRALTAR FINANCIAL SERVICES COMMISSION

Meetings and proceedings.

1.(1) The quorum at all meetings of the GFSC is five members.

(2) The Chair must preside at every meeting of the GFSC at which the Chair is present and, in the Chair's absence, the GFSC members must elect one of the members present to act as Chair for the duration of the meeting.

(3) A meeting of the GFSC must be convened by the Secretary to the GFSC at the request of–

(a) the Chair;

(b) the Chief Executive; or

(c) any three members,

and subject to sub-paragraph (7), all meetings must take place in Gibraltar.

(4) Any matters arising at a meeting of the GFSC are to be decided by a majority of the members present and voting on them at the meeting and in the case of an equality of votes, the Chair has a second or casting vote.

(5) All orders and directions of the GFSC must be given under the hand of the Chair or the Chief Executive.

(6) The GFSC must keep proper minutes of its proceedings.

(7) The GFSC may, if the Chair so approves, transact any business by the circulation of papers to all GFSC members, and a resolution circulated to all GFSC members and approved by a majority of them is as valid and effectual as if passed at a meeting of the GFSC.

Disclosure of interest.

2.(1) A member of the GFSC who has a pecuniary, personal or other interest in any matter before the GFSC–

(a) must declare that interest on the first occasion on which the matter is due to be considered by the GFSC; and

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(b) subject to sub-paragraph (2) must not participate in the GFSC's consideration of the matter.

(2) Where a member declares an interest under sub-paragraph (1))(a) but is of the opinion that the interest is of a nature that does not prevent the member from participating in the consideration of the matter–

(a) the member concerned, at the same time that the interest is declared, must inform the other members present of the reasons for that opinion; and

(b) the other members present must decide, by majority vote, whether or not the member concerned may participate in the consideration of the matter.

(3) For the purposes of this paragraph a person does not have a pecuniary, personal or other interest in a matter only by virtue of practising a profession in Gibraltar or having a position or ownership interest in an entity that may be affected by the matter, but only in the sense that the matter is or will be of application or interest to the person or entity in the same way as all other persons or entities which are or will be similarly affected or interested.

(4) Where a member is required to withdraw from participating in any matter under sub-paragraph (2)–

(a) the quorum for that meeting is reduced by the number of members withdrawing under that sub-paragraph; and

(b) the Chair may direct that the minutes of that portion of the meeting for which the member has withdrawn must be recorded separately and not disclosed to that member.

(5) A declaration, direction or withdrawal under this paragraph must be recorded in the minutes of the GFSC.

(6) A declaration must also be recorded in a conflicts register maintained by the GFSC.

Committees of the GFSC.

3.(1) The GFSC–

(a) must establish a standing committee for the purpose of reviewing the finances of the GFSC (the Audit Committee); and

(b) may establish other standing or special committees, (or sub-committees) and may refer any matter for consideration, enquiry or management to any committee.

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(2) A committee established under sub-paragraph (1) may not discharge any function of the ARC, DMC or FSRCC.

(3) The GFSC must establish terms of reference and rules of procedure for any committee it establishes and for the ARC.

(4) The GFSC may appoint as a member of any Committee any member or employee.

(5) Every appointment made under sub-paragraph (4) or to the ARC under section 25(2) may be revoked by the GFSC at any time.

(6) A committee may elect any of its members to be the committee Chair and must conduct its business in accordance with the rules of procedure referred to in sub-paragraph (3).

(7) Sub-paragraphs (3) to (6) do not apply to the DMC or FSRCC and sub-paragraph (4) does not apply to the ARC.

The Revenues of the GFSC.

4.(1) The revenues of the GFSC are–

(a) such fees and charges as may be payable to the GFSC under this Act;

(b) such funds as may from time to time be voted by Parliament;

(c) such funds as may properly accrue to the GFSC from any other source.

(2) The GFSC must, by notice in the Gazette publish the fees and charges levied under this Act.

(3) The GFSC may with the consent of the Minister increase or otherwise vary any fee or charge payable under this Act.

(4) The GFSC may invest any of its funds not required for immediate use by depositing the same in one or more banks or building societies in Gibraltar or otherwise as may be approved by the Minister.

Establishment and operation of general fund.

5.(1) The GFSC must continue to operate a general fund into which all monies received by the GFSC must be paid; and out of which all payments made by the GFSC must be made.

(2) The GFSC is responsible for the management of the general fund.

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(3) The GFSC may borrow on such terms as may be agreed from time to time from the Government such sums as it may require to enable it to discharge its functions and for the purposes of meeting expenditure of a capital nature.

Accounts and auditing.

6.(1) The GFSC must keep proper accounting records of its income and other receipts and expenditures during each financial year, and must also cause a statement of its accounts for each financial year to be prepared within three months after the end of that year.

(2) Any statement of accounts prepared under sub-paragraph (1) must include a separate account of the GFSC's income and expenditure in its capacity as the Gibraltar Resolution Authority.

(3) The financial statements of the GFSC for each financial year must be audited and certified by an auditor appointed by the GFSC, within four months of the end of the financial year.

(4) The GFSC must appoint the auditor annually and may only appoint the same auditor for more than five successive years with the consent of the Minister.

(5) The auditor must be auditor approved under Part 24.

(6) The auditor must, with reference to the accounts of the GFSC, report–

(a) whether the auditor has obtained all the information and explanations which to the best of the auditor's knowledge and belief were necessary for the purposes of the audit;

(b) whether, in the auditor's opinion, proper accounting records have been kept by the GFSC;

(c) whether the GFSC's balance sheet and accounts dealt with by the report are in agreement with the accounting records;

(d) whether in the auditor's opinion and to the best of the auditor's information and according to the explanations given to the auditor, the accounts give a true and fair view, in the case of the balance sheet of the GFSC's finances as at the end of the financial year and in the case of the income and expenditure account, of the surplus or deficit for that financial year; and

(e) whether in the auditor's opinion the GFSC has discharged with diligence its obligations in relation to the collection of its revenues.

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(7) Within seven months after the end of the financial year, the GFSC must prepare and submit to the Minister a written report of its operations for that year together with a copy of the audited accounts for that year and the Minister must lay a copy of such report and of the audited accounts before Parliament at the earliest possible opportunity.

Preparation of estimates and value for money.

7.(1) The GFSC must prepare and submit to the Minister annual estimates of income and expenditure, including capital expenditure, not later than three months prior to the commencement of each financial year and such additional information and explanations as the Minister may require.

(2) The Minister may at any time appoint a person to conduct a value for money review of the GFSC's expenditure budget and to report on that review to the Minister.

(3) The Minister must lay before Parliament a copy of the report within 30 days of having received it.

Financial year.

8. The financial year of the GFSC is to be determined by the GFSC but may not be changed without the consent of the Minister.

Common seal.

9.(1) The GFSC is to have a common seal which is to be officially and judicially noted.

(2) The seal may only be affixed to an instrument in the presence of the Chair or Chief Executive and one other GFSC member and–

(a) the instrument must be signed by the persons so present as witnesses to the sealing; and

(b) the sealing and witnessing of the instrument must be recorded in a register kept by the GFSC for the purpose.

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SCHEDULE 5

Section 23(2)

REGULATORY OBJECTIVES

For the purposes of this Schedule, "the financial system" means the financial system operating in Gibraltar and includes financial services business.

The regulatory objectives specified in section 23(2) are more particularly described in this Schedule:

1. Market Confidence.

The market confidence objective is maintaining confidence in the financial system.

2. Systemic Risk.

The systemic risk objective is reducing the impact of the failure of one institution on the financial system as a whole.

3. Public Awareness.

The public awareness objective is promoting public understanding of the financial system and includes, in particular–

(a) promoting awareness of the benefits and risks associated with different kinds of investment or other financial dealing; and

(b) the provision of appropriate information and advice.

4. The Protection of the Good Reputation of Gibraltar.

The protection of the good reputation of Gibraltar objective is protecting and enhancing the good reputation of Gibraltar as a financial centre.

In pursuit of this objective, the GFSC must take such action that–

(a) the GFSC considers necessary, having considered the impact on the financial sector; or

(b) the Government may require.

5. The Protection of Consumers.

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The protection of consumers objective is securing the appropriate degree of protection for consumers.

In considering what degree of protection may be appropriate, the GFSC must have regard to–

(a) the general principle that those providing financial services should provide consumers with a level of care that is appropriate, having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumer in question;

(b) the differing degrees of risk involved in different kinds of investment or other transaction;

(c) the differing expectations that consumers may have in relation to different kinds of investment or other transaction;

(d) the differing degrees of experience and expertise that different consumers may have in relation to different kinds of regulated activity;

(e) the needs that consumers may have for advice and accurate information; and

(f) the general principle that consumers should take responsibility for their decisions; and

(g) any information which the Financial Services Ombudsman has provided to the GFSC.

6. The Reduction of Financial Crime.

The reduction of financial crime objective is reducing the extent to which it is possible for a business carried on by–

(a) an authorised person; or

(b) a person carrying on financial services business without holding the necessary authorisation, permission, licence, approval and registration,

to be used for a purpose connected with financial crime.

In considering the reduction of financial crime objective, the GFSC must, in particular, have regard to the necessity of–

(a) authorised persons being aware of the risk of their businesses being used in connection with the commission of financial crime;

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(b) authorised persons taking appropriate measures (in relation to their administration and employment practices, the conduct of transactions by them and otherwise) to prevent financial crime, facilitate its detection and monitor its incidence;

(c) authorised persons devoting adequate resources to the matters mentioned in paragraph (b).

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SCHEDULE 6

Section 24(5)

DECISION MAKING COMMITTEE

Membership.

1.(1) The Decision Making Committee (the "DMC") is to comprise not more than six members who are appointed by the Minister in accordance with sub-paragraphs (2) to (5), of which–

(a) three must be lawyers, each of whom has not less than ten years professional standing and is a barrister or solicitor of the Supreme Court of Gibraltar ("the legally qualified members"); and

(b) three must have significant experience in one or more of the financial services or other business sectors regulated by the GFSC.

(2) The members of the DMC are to be appointed by the Minister after consulting the GFSC.

(3) Unless sub-paragraph (4) applies, the members must be ordinarily resident in or carrying on business in and from Gibraltar.

(4) This sub-paragraph applies where the Minister is satisfied that–

(a) appointing a person who does not meet the requirements of sub-paragraph (3) is required by the circumstances or is otherwise in the public interest; and

(b) the appointment is for the purpose of considering a particular case or an aspect of a particular case.

(5) When there is a vacancy among the members the Minister may appoint any appropriately qualified person.

(6) The Minister must appoint one of the legally qualified members as the DMC Chair.

(7) A member holds and vacates office in accordance with terms and conditions determined by the Minister (which may include arrangements for the payment of remuneration, allowances and expenses).

(8) A member may resign by notice to the Minister and the GFSC.

(9) The Minister, having consulted the GFSC, may re-appoint as a member a person who is (or has been) a member.

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(10) A GFSC member or employee is not eligible to be appointed as a member of the DMC.

Term of office of members

2.(1) The DMC Chair and members of the DMC are to be appointed for such term as the Minister may specify in the instrument of appointment.

(2) Instruments of appointment may specify different terms for the Chair and each member of the DMC.

Removal of members.

3. The Minister may, after consultation with the GFSC, remove a member of the DMC who–

(a) is incapacitated;

(b) is bankrupt or makes an arrangement with creditors;

(c) has been convicted of an indictable offence; or

(d) is otherwise unfit or unable to discharge the functions of a member.

Procedure and meetings.

4.(1) The DMC's functions in respect of each specified regulatory decision are to be exercised by a panel of three members which–

(a) is appointed by the DMC Chair; and

(b) includes at least one legally qualified member.

(2) The DMC Chair must preside at every meeting at which the DMC Chair is present but, if the DMC Chair is absent or unable to act, the members present must appoint one of the legally qualified members present to preside at the meeting.

(3) A decision of the DMC may be made by a majority vote of those present and casting a vote and, in the event of an equality of votes, the member presiding at the meeting has a second and casting vote.

(4) The DMC must record any decision, including the reasons for the decisions, in writing.

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(5) If at any time, as a result of members being unable to act due to conflicts of interest or otherwise unavailable, there are insufficient members available to discharge the DMC's functions (whether generally or in relation to a particular matter), the Minister may–

(a) after consulting with the DMC Chair, direct that the DMC's functions in respect of a particular matter are to be exercised by the DMC Chair or another legally qualified member, acting alone; or

(b) after consulting with the GFSC, appoint temporary members for a specified period or to make decisions in respect of a particular matter.

(6) If, after the Minister has taken any steps under sub-paragraph (5) that the Minister considers appropriate, there are insufficient members available who may decide a matter before the DMC, the Minister may make appointments under paragraph 1(4) or may direct that the decision is to be taken by the members of the GFSC.

(7) For the purpose of this Schedule, in respect of conflicts of interest, paragraph 2 of Schedule 4 applies to the DMC (with any necessary modifications) as it applies to the GFSC.

(8) The DMC must appoint a suitable person (in the opinion of the DMC Chair) to be its Secretary.

(9) The DMC may–

(a) direct any person to provide evidence in writing with respect to any matter it considers to be relevant to the specified regulatory decision before it;

(b) direct any person to attend at a specified time and place and answer questions appearing to the DMC to be relevant to the specified regulatory decision before it;

(c) direct any person to produce a specified document, or documents of a specified kind; and

(d) subject to the preceding provisions of this paragraph, otherwise determine its own procedures.

Urgent decisions.

5.(1) The DMC's functions in respect of a specified regulatory decision may be exercised by the DMC Chair acting alone in any case where the DMC Chair is satisfied that it is necessary for the protection of the interests of investors or customers or is otherwise in the public interest that the steps proposed by the GFSC be taken before it is practicable to convene a meeting of the DMC.

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(2) The DMC Chair may in writing authorise another legally qualified member to exercise the power in sub-paragraph (1) in the DMC Chair's absence or in any case where the DMC Chair is unable to act.

Exceptional cases.

5A.(1) If, due to the nature or circumstances of a particular matter before the DMC, the Minister considers that–

(a) it is not feasible to appoint a panel in accordance with paragraphs 1 and 4 to decide the matter; and

(b) it would be inappropriate to exercise the power in paragraph 4(6) to direct the members of the GFSC to decide the matter,

the Minister, after consulting the GFSC, may appoint a suitably qualified individual to act in place of the DMC and decide the matter.

(2) An individual is suitably qualified for appointment under sub-paragraph (1) if the Minister considers that the individual has the necessary expertise to decide the matter.

(3) The Minister must not appoint an individual under sub-paragraph (1) if it appears to the Minister that the individual has a direct interest in any matter to which the matter relates or a close association with an interested party.

(4) An individual appointed under sub-paragraph (1) is to be appointed on such terms as the Minister may specify in the instrument of appointment and, in respect of the particular matter for which the individual is appointed, is to be treated as–

(a) the DMC for the purposes of exercising any function conferred on the DMC by or under this Act (which the individual may do acting alone); and

(b) as a member of the DMC for all relevant purposes under this Act including, in particular, immunity under paragraph 7.

(5) The following provisions of this Schedule do not apply to an appointment under sub-paragraph (1)–

(a) paragraph 1(1) to (6) and (10);

(b) paragraph 4(1) to (3) and 5 to (7); and

(c) paragraph 5.

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General powers.

6. The DMC may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any function conferred on the DMC by or under this Act.

Immunity.

7.(1) The DMC is not liable in damages for anything done or omitted in the discharge or purported discharge of any of its functions.

(1A) Any person who is, or (when the act or omission occurred) was, a member, officer, employee or delegate of the DMC is not liable in damages for anything done or omitted in the discharge or purported discharge of any of the DMC's functions.

(2) Sub-paragraphs (1) and (1A) do not apply to an act or omission which is shown to have been in bad faith.

(3) The GFSC must (unless bad faith is definitively found to have existed) indemnify any person to whom sub-paragraph (1A) applies for all costs and damages incurred in defending any action brought by a third party in respect of anything the person is alleged to have done or omitted in the discharge or purported discharge of any of the DMC's functions.

(4) In this paragraph–

"delegate" means any person to whom the DMC has delegated any of its functions or who it has authorised to perform any functions on its behalf; and

"functions" means the powers or duties of the DMC conferred by or under this Act.

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SCHEDULE 7

Section 27(3)

FINANCIAL SERVICES RESOLUTION AND COMPENSATION COMMITTEE

Membership.

1.(1) The Financial Services Resolution and Compensation Committee (the "FSRCC") is to comprise–

(a) not more than seven members appointed by the GFSC with the consent of the Minister; and

(b) the Chief Executive (without further appointment).

(2) The GFSC is to appoint one of the appointed members as the Chair of the FSRCC.

(3) The GFSC must appoint as members only persons who the GFSC considers to have skills and expertise relevant to the functions of the FSRCC.

(4) A member holds and vacates office in accordance with terms and conditions determined by the GFSC with the approval of the Minister (which may include arrangements for the payment of remuneration, allowances and expenses).

(5) A member may resign by notice to the Minister and the GFSC.

(6) The GFSC may, with the consent of the Minister, reappoint as a member a person who is (or has been) a member.

Removal of members.

2. The GFSC may, with the consent of the Minister, remove a member of the FSRCC who–

(a) is incapacitated;

(b) is bankrupt or makes an arrangement with creditors;

(c) has been convicted of an indictable offence; or

(d) is otherwise unfit or unable to discharge the functions of a member.

Procedure and meetings.

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3.(1) The FSRCC may determine its own procedures.

(2) The quorum at a meeting of the FSRCC is–

(a) any five members, in respect of either or both of the following items of business–

(i) consideration of whether to take resolution action under Part 17 in relation to a financial institution;

(ii) the application of any resolution tool or the exercise of any resolution power under that Part; or

(b) any four members, in respect of any other item of business.

(3) For the purpose of this Schedule, in respect of conflicts of interest, paragraph 2 of Schedule 4 applies to the FSRCC (with any necessary modifications) as it applies to the GFSC.

General powers.

4. The FSRCC may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any function conferred on the FSRCC by or under this or any other Act.

Reports.

5.(1) As soon as practicable after the end of each financial year, the FSRCC must prepare a report providing information on its exercise of the GFSC's resolution functions during that year.

(2) The FSRCC must send a copy of the report to the GFSC and the Minister.

Immunity.

6.(1) The FSRCC is not liable in damages for anything done or omitted in the discharge or purported discharge of any of its functions.

(2) Any person who is, or (when the act or omission occurred) was, a member, officer, employee or delegate of the FSRCC is not liable in damages for anything done or omitted in the discharge or purported discharge of any of the FSRCC's functions.

(3) Sub-paragraphs (1) and (2) do not apply to an act or omission which is shown to have been in bad faith.

(4) The FSRCC must (unless bad faith is definitively found to have existed) indemnify any person to whom sub-paragraph (2) applies for all costs and damages incurred in defending any

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action brought by a third party in respect of anything the person is alleged to have done or omitted in the discharge or purported discharge of any of the FSRCC's functions.

(5) In this paragraph–

"delegate" means any person to whom the FSRCCC has delegated any of its functions or who it has authorised to perform any functions on its behalf; and

"functions" means the powers or duties of the FSRCC conferred by or under this Act.

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SCHEDULE 8

Section 33

DESIGNATION OF GFSC AS COMPETENT AUTHORITY

1. The GFSC is designated as the competent authority under the following Regulations as they form part of the law of Gibraltar by virtue of section 6 of the European Union (Withdrawal) Act 2019–

the Benchmarks Regulation;

the Capital Requirements Regulation;

EMIR;

the ELTIF Regulation;

the EUSEF Regulation;

the EuVECA Regulation;

the Interchange Fee Regulation;

MiFIR;

the Market Abuse Regulation;

the PRIIP Regulation;

the Prospectus Regulation;

the SFTR Regulation.

2. The GFSC is designated as the competent authority under the law of Gibraltar which gives effect to the following Directives as they applied immediately before IP completion day–

the AIFM Directive;

the Audit Directive;

the Capital Requirements Directive;

the Consumer Credit Directive;

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the DGS Directive;

the Distance Marketing Directive;

the E-Money Directive;

the Insurance Distribution Directive;

the Listing Directive;

the MiFID 2 Directive;

the Mortgage Credit Directive;

the Occupational Pensions Scheme Directive;

the Payment Accounts Directive;

the Payment Services Directive;

the Recovery and Resolution Directive;

the Solvency 2 Directive;

the Takeover Bids Directive;

the Transparency Directive;

the UCITS Directive.

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SCHEDULE 9

Section 45

DOMESTIC AUTHORITIES

Board of Charity Commissioners

Commissioner of Income Tax;

Financial Services Resolution and Compensation Committee;

Gambling Commissioner;

Gibraltar Co-ordinating Centre for Criminal Intelligence & Drugs;

Gibraltar Financial Intelligence Unit;

Gibraltar Regulatory Authority;

Gibraltar Resolution Authority;

HM Customs;

Legal Services Regulatory Authority;

Liquidators or administrators of former regulated persons;

Minister with responsibility for finance;

Minister with responsibility for financial services;

National Coordinator for anti-money laundering and combating terrorist financing;

Office of Criminal Prosecutions & Litigation;

Office of Fair Trading;

Registrar of Friendly Societies

Royal Gibraltar Police.

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SCHEDULE 10

Omitted

SCHEDULE 11

Omitted

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SCHEDULE 12

Section 64(1)

THE THRESHOLD CONDITIONS

Location of offices.

1.(1) Sub-paragraph (2) or (3) applies if the firm concerned ("A") is carrying on, or is seeking to carry on, a regulated activity that is not within sub-paragraph (4) or (5).

(2) If A is a legal person–

(a) A must have its head office in Gibraltar; and

(b) if A has a registered office, that office must also be in Gibraltar; but

(c) if A has no registered office, A must carry on business in Gibraltar.

(3) If A is not a legal person and A's head office is in Gibraltar, A must carry on business in Gibraltar.

(4) If A is carrying on, or is seeking to carry on, a regulated activity which consists of or includes the taking up or pursuit of insurance distribution or reinsurance distribution, A's registered office must be in Gibraltar or, if A has no registered office, its head office must be in Gibraltar.

(5) If A is an individual who is carrying on, or is seeking to carry on, a regulated activity which consists of or includes the taking up or pursuit of insurance distribution or reinsurance distribution, A is to be treated for the purposes of sub-paragraph (4) as having a head office in Gibraltar if the individual is resident in Gibraltar.

Appropriate resources.

2.(1) The business of the firm concerned must be conducted in a sound and prudent manner.

(2) To satisfy the condition in sub-paragraph (1), the firm must, in particular, have financial and non-financial resources which are appropriate in relation to the regulated activities which the applicant carries on or seeks to carry on.

(3) The matters which are relevant in determining whether the firm has appropriate resources include–

(a) the nature and scale of the business carried on or to be carried on by the firm;

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(b) the risks to the continuity of the services provided by, or to be provided by, the firm;

(c) the firm's membership of a group and any effect which that membership may have.

(4) The "non-financial resources" of a firm include any systems, controls, plans or policies that the firm maintains, any information that the firm holds and the human resources that the firm has available.

Effective supervision.

3.(1) The firm concerned must be capable of being effectively supervised having regard to all the circumstances.

(2) The matters which are relevant in determining whether the firm satisfies the condition in sub-paragraph (1) include–

(a) the nature (including the complexity) of the regulated activities that the firm carries on or seeks to carry on;

(b) the complexity of any products or services that the firm provides or will provide in carrying on those activities;

(c) the way in which the firm's business is organised;

(d) if the firm is a member of a group, whether membership of the group is likely to prevent the GFSC's effective supervision of the firm;

(e) whether the firm is subject to consolidated supervision under –

(i) the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;

(ii) the Financial Services (Financial Conglomerates) Regulations 2020;

(iii) the Financial Services (Insurance Companies) Regulations 2020; or

(iv) the Financial Services (Recovery and Resolution) Regulations 2020;

(f) if the firm has close links with another person ("CL")–

(i) the nature of the relationship between the firm and CL;

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(ii) whether those links are or that relationship is likely to prevent the GFSC's effective supervision of the firm; and

(iii) if the firm is subject to the laws, regulations or administrative provisions of a country or territory outside Gibraltar ("the foreign provisions"), whether those foreign provisions, or any deficiency in their enforcement, would prevent the GFSC's effective supervision of the firm.

(3) The firm has close links with CL if–

(a) CL is a parent undertaking of the firm;

(b) CL is a subsidiary undertaking of the firm;

(c) CL is a parent undertaking of a subsidiary undertaking of the firm;

(d) CL is a subsidiary undertaking of a parent undertaking of the firm;

(e) CL owns or controls 20% or more of the voting rights or capital of the firm; or

(f) the firm owns or controls 20% or more of the voting rights or capital of CL.

Suitability.

4.(1) The firm concerned must be a fit and proper person, having regard to all the circumstances.

(2) The matters which are relevant in determining whether the firm satisfies the condition in sub-paragraph (1) include–

(a) the firm's connection with any person;

(b) the nature (including the complexity) of the regulated activities that the firm carries on or seeks to carry on;

(c) the need to ensure that the firm's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the Gibraltar financial system;

(d) whether the firm has complied with and is complying with–

(i) requirements imposed by or under this Act;

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(ii) requirements imposed by the GFSC in the exercise of the functions conferred on it by or under this Act; or

(iii) requests made by the GFSC relating to the provision of information to the GFSC;

(e) whether those who manage the firm's affairs have adequate skills and experience and have acted and may be expected to act with probity;

(f) the need to minimise the extent to which it is possible for the business carried on by the firm, or to be carried on by the applicant, to be used for a purpose connected with financial crime.

(3) In sub-paragraph (2)(d)(ii), "functions" means functions conferred on the GFSC by or under this Act.

Business model.

5.(1) The business model of the firm concerned (that is, the firm's strategy for doing business) must be suitable for a person carrying on the regulated activities that the firm carries on or seeks to carry on.

(2) The matters which are relevant in determining whether the firm satisfies the condition in sub-paragraph (1) include–

(a) whether the business model is compatible with the firm's affairs being conducted, or continuing to be conducted in a sound and prudent manner;

(b) the interests of consumers;

(c) the integrity of the Gibraltar financial system.

Fees

6. The firm concerned must pay such periodical and other fees as the Minister may by regulations prescribe.

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SCHEDULE 13

Section 69(1)(c)

GFSC's power under section 69: sector-specific conditions

General.

1. Nothing in this Schedule limits the generality of the power conferred on the GFSC by section 69.

Accepting deposits.

2.(1) This paragraph applies to any regulated firm ("credit institution") which has permission under Part 7 to carry on the regulated activity of accepting deposits.

(2) The GFSC may exercise its power under section 69 to cancel or vary the regulated firm's permission under Part 7 to carry on that regulated activity if it appears to the GFSC that–

(a) the firm has failed, during a period of at least six months, to carry on a regulated activity for which it has permission;

(aa) the firm only uses the permission to engage in the activities in sub-paragraph (b) of the definition of credit institution in the Capital Requirements Regulation and has, for a period of five consecutive years, average total assets below the thresholds set out in that Article;

(b) the firm obtained the permission by making a false statement or by any other irregular means;

(c) the firm no longer meets the conditions that a firm must meet in order to obtain permission to carry on the regulated activity of accepting deposits;

(d) the firm no longer meets the prudential requirements set out in Parts 3, 4 or 6 of the Capital Requirements Regulation (other than Articles 92a and 92b) or imposed by regulations 140(1)(a) and 141 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 or can no longer be relied on to fulfil its obligations to its creditors and, in particular, no longer provides security for the assets entrusted to it by its depositors;

(e) the firm has committed any breach referred to in regulation 146 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;

(f) the firm's carrying on of the regulated activity of accepting deposits is otherwise unlawful.

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Issuing electronic money.

3.(1) This paragraph applies to a regulated firm ("electronic money institution") which has permission under Part 7 to carry on the regulated activity of issuing electronic money.

(2) The GFSC may exercise its power under section 69 to cancel or vary the regulated firm's permission to carry on that regulated activity if it appears to the GFSC that–

(a) the firm has failed, during a period of at least six months, to carry on that regulated activity;

(b) the firm obtained the permission by making a false statement or by any other irregular means;

(c) the firm no longer meets, or is unlikely to continue to meet, the conditions that a firm must meet in order to obtain a permission to carry on the regulated activity of issuing electronic money;

(d) the firm has issued electronic money otherwise than in accordance with its permission;

(e) the firm would constitute a threat to the stability of, or trust in, the payment system by continuing its electronic money business;

(f) the cancellation or variation of the permission is desirable in order to protect the interests of consumers;

(g) the firm's issuance of electronic money is otherwise unlawful.

Providing payment services.

4.(1) This paragraph applies to a regulated firm ("payment institution") which has permission under Part 7 to carry on the regulated activity of providing payment services.

(2) The GFSC may exercise its power under section 69 to cancel or vary the regulated firm's permission to carry on that regulated activity if it appears to the GFSC that–

(a) the firm has failed, during a period of at least six months, to carry on that regulated activity;

(b) the firm obtained the permission by making a false statement or by any other irregular means;

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(c) the firm no longer meets, or is unlikely to continue to meet, the conditions that a firm must meet in order to obtain a permission to carry on the regulated activity of providing payment services;

(d) the firm has provided payment services otherwise than in accordance with its permission;

(e) the firm would constitute a threat to the stability of, or trust in, the payment system by continuing its payment services business;

(f) the cancellation or variation of the permission is desirable in order to protect the interests of consumers;

(g) the firm's provision of payment services is otherwise unlawful.

Direct insurance or direct reinsurance.

5.(1) This paragraph applies to a regulated firm ("insurance undertaking") which has permission under Part 7 to carry on the regulated activity of effecting or carrying out contracts of insurance.

(2) The GFSC may exercise its power under section 69 to cancel or vary the regulated firm's permission to carry on the regulated activity in question if it appears to the GFSC that–

(a) the firm has failed, during a period of at least six months, to carry on that regulated activity;

(b) the firm no longer meets the conditions that a firm must meet in order to obtain a permission to carry on the regulated activity in question;

(c) the firm does not comply with the relevant minimum capital requirement;

(d) any of the following applies–

(i) the firm has failed to submit a finance scheme;

(ii) the firm has submitted to the GFSC a finance scheme that is manifestly inadequate; or

(iii) after the GFSC has approved a finance scheme submitted to it, the firm has failed to comply with the finance scheme within a period of three months beginning with the date when the firm first became aware that it had failed to comply with the appropriate capital requirement to which the scheme relates;

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(e) the firm has seriously failed to comply with requirements imposed by or under this Act including, in particular, by or under the Financial Services (Insurance Companies) Regulations 2020;

(f) the firm's carrying on of the regulated activity in question is otherwise unlawful.

Services and activities relating to investments and structured deposits.

6.(1) This paragraph applies to any regulated firm ("investment firm") which has permission under Part 7 to carry on any of the following regulated activities–

(a) reception and transmission of orders;

(b) execution of orders on behalf of clients;

(c) dealing on own account;

(d) portfolio management;

(e) investment advice;

(f) underwriting or placing on a firm commitment basis;

(g) placing without a firm commitment basis;

(h) operation of an MTF; or

(i) operation of an OTF.

(2) This paragraph also applies to a regulated firm which has permission under Part 7 to carry on the regulated activity of selling or advising in relation to structured deposits.

(3) The GFSC may exercise its power under section 69 to cancel or vary the regulated firm's permission to carry on the regulated activity in question if it appears to the GFSC that–

(a) the firm has failed, during a period of at least six months, to carry on that regulated activity;

(b) the firm obtained the permission by making a false statement or by any other irregular means;

(c) the firm no longer meets the conditions that a firm must meet in order to obtain permission to carry on the regulated activity in question;

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(d) the firm has seriously or systematically infringed requirements imposed by or under this Act including, in particular, by or under the Financial Services (Investment Services) Regulations 2020;

(e) the firm has seriously or systematically infringed MiFIR;

(f) the firm's carrying on of the regulated activity in question is otherwise unlawful.

(4) The GFSC may exercise its power under section 69 to cancel or vary the regulated firm's Part 7 permission to carry on the regulated activity in question if it appears to the GFSC that the firm has failed to comply with a requirement of the Market Abuse Regulation of any provision made under it.

Administering benchmarks.

7.(1) This paragraph applies in relation to a regulated firm ("benchmark administrator") which has permission under Part 7 to carry on the regulated activity of administering a benchmark.

(2) The GFSC may exercise its power under section 69 to cancel or vary the regulated firm's permission to carry on that regulated activity if it appears to the GFSC that–

(a) the firm obtained the permission to carry on that regulated activity by making a false statement or by any other irregular means;

(b) the firm has endorsed a benchmark by making a false statement or by any other irregular means;

(c) the firm no longer meets the conditions that a firm must meet in order to obtain a permission to carry on the regulated activity of administering a benchmark;

(d) the firm has seriously or repeatedly infringed the requirements of the Benchmarks Regulation;

(f) the firm's carrying on of the regulated activity of administering a benchmark is otherwise unlawful.

Operating a regulated market.

8.(1) This paragraph applies in relation to a regulated firm ("regulated market") which has permission under Part 7 to carry on the regulated activity of operating a regulated market.

(2) The GFSC may exercise its power under section 69 to cancel or vary the regulated firm's permission to carry on that activity if it appears to the GFSC that–

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(a) the firm has failed, during a period of at least six months, to carry on that regulated activity;

(b) the firm obtained the permission by making a false statement or by any other irregular means;

(c) the firm no longer meets the conditions that a firm must meet in order to obtain permission to carry on the regulated activity of operating a regulated market;

(d) the firm has seriously or systematically infringed requirements imposed by or under this Act including, in particular, by or under the Financial Services (Investment Services) Regulations 2020;

(e) the firm has seriously or systematically infringed MiFIR;

(f) the firm's carrying on of the regulated activity of operating a regulated market is otherwise unlawful.

Providing data reporting services.

9.(1) This paragraph applies in relation to a regulated firm ("data services provider") which has permission under Part 7 to carry on any of the following regulated activities–

(a) operating an approved publication arrangement ("APA");

(b) operating a consolidated tape provider ("CTP"); or

(c) operating an approved reporting mechanism ("ARM").

(2) The GFSC may exercise its power under section 69 to cancel or vary the regulated firm's permission to carry on the regulated activity in question if it appears to the GFSC that–

(a) the firm has failed, during a period of at least six months, to carry on that regulated activity;

(b) the firm obtained the permission by making a false statement or by any other irregular means;

(c) the firm no longer meets the conditions that a firm must meet in order to obtain permission to carry on the regulated activity in question;

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(d) the firm has seriously or systematically infringed requirements imposed by or under this Act including, in particular, by or under the Financial Services (Investment Services) Regulations 2020;

(e) the firm has seriously or systematically infringed MiFIR;

(f) the firm's carrying on of the regulated activity in question is otherwise unlawful.

Managing a UCITS.

10.(1) This paragraph applies to a regulated firm ("UCITS management company") which has permission under Part 7 to carry on the regulated activity of managing a UCITS.

(2) The GFSC may exercise its power under section 69 to cancel or vary the regulated firm's permission to carry on that activity if it appears to the GFSC that–

(a) the firm has failed, during a period of at least six months, to carry on that regulated activity;

(b) the firm obtained the permission by making a false statement or by any other irregular means;

(c) in a case where the permission includes permission to provide the discretionary portfolio management service referred to in regulation 15(1)(a) of the Financial Services (UCITS) Regulations 2020, the firm no longer complies with the provisions referred to in regulation 15(3) of those Regulations or with the Capital Requirements Regulation;

(d) the firm no longer meets the conditions that a firm must meet in order to obtain a permission to carry on the regulated activity of managing a UCITS;

(e) the firm has seriously or systematically infringed requirements imposed by or under this Act including, in particular, by or under the Financial Services (UCITS) Regulations 2020;

(f) the firm's carrying on of the regulated activity of managing a UCITS is otherwise unlawful.

In-scope Gibraltar AIFMs.

11.(1) This paragraph applies to any regulated firm ("an in-scope Gibraltar AIFM") which–

(a) has permission under Part 7 to carry on the regulated activity of managing AIFs (in-scope AIFM); and

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(b) is not a small AIFM.

(2) The GFSC may exercise its power under section 69 to cancel or vary the regulated firm's permission to carry on that regulated activity if it appears to the GFSC that–

(a) the firm has failed, during a period of at least six months, to carry on that regulated activity;

(b) the firm obtained the permission by making a false statement or by any other irregular means;

(c) in a case where the permission includes permission to provide the discretionary portfolio management service referred to in regulation 12(4)(a) of the Financial Services (Alternative Investment Fund Managers) Regulations 2020, the firm no longer complies with those Regulations, the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 or the Capital Requirements Regulation;

(d) the firm no longer meets the conditions that a firm must meet in order to obtain a permission to carry on the regulated activity of managing AIFs (in-scope AIFM);

(e) the firm has seriously or systematically infringed–

(i) requirements imposed by or under this Act including, in particular, by or under Financial Services (Alternative Investment Fund Managers) Regulations 2020;

(ii) *Omitted*

(iii) requirements contained in the ELTIF Regulation or any legislation made under that Regulation; or

(f) the firm's carrying on of the regulated activity of managing AIFs (in-scope AIFM) is otherwise unlawful.

Mortgage credit intermediaries.

12.(1) This paragraph applies to a regulated firm ("mortgage credit intermediary") which has permission under Part 7 to carry on the regulated activity of–

(a) acting as a mortgage credit intermediary; or

(b) providing advisory services in connection with mortgage credit.

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(2) The GFSC may exercise its power under section 69 to cancel or vary the regulated firm's permission to carry on the regulated activity in question if it appears to the GFSC that–

(a) the firm has failed, during a period of at least six months, to carry on the regulated activity in question;

(b) the firm obtained the permission by making a false statement or by any other irregular means;

(c) the firm no longer meets the conditions that a firm must meet in order to obtain permission to carry on the regulated activity in question;

(d) the firm has seriously or systematically infringed requirements imposed by or under this Act including, in particular, by or under the Financial Services (Mortgage Credit) Regulations 2020.

Other regulated activities.

13.(1) This paragraph applies to a regulated firm which has permission under Part 7 to carry on a regulated activity other than the regulated activities to which paragraphs 2 to 12 apply.

(2) The GFSC may exercise its power under section 69 to cancel or vary the regulated firm's permission to carry on the regulated activity in question if it appears to the GFSC that–

(a) the firm has failed, during a period of at least six months, to carry on the regulated activity in question;

(b) the firm obtained the permission by making a false statement or by any other irregular means;

(c) the firm no longer meets the conditions that a firm must meet in order to obtain permission to carry on the regulated activity in question;

(d) the firm has seriously failed to comply with requirements imposed by or under this Act;

(f) the firm's carrying on of the regulated activity in question is otherwise unlawful.

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SCHEDULE 14

Section 86

REGULATED FUNCTIONS

Notes

* These functions may be outsourced but, where an entry contains any restriction or limitation on doing so, only to the extent provided (see section 94A).

† In a regulated firm to which paragraph 2(1) of Schedule 15 applies, these roles must be performed by independent non-executive directors (see paragraph 4 of that Schedule).

Part 1
Regulated Functions: All RI Firms

*Head of Compliance (may only be outsourced by an insurance undertaking, reinsurance undertaking or insurance intermediary, and only to an individual from either an entity within the same group or a Gibraltar-based authorised insurance manager)

Money Laundering Reporting Officer (other than firms which are general insurance undertakings, general reinsurance undertakings or general insurance intermediaries)

Executive director (if firm is a company)

Non-executive director to whom section 88A(2) applies (if firm is a company)

Partner (if firm is a partnership)

Sole trader (if firm is a sole trader)

Branch manager (if firm has one or more branches, whether in or outside Gibraltar)

Part 2
Regulated Functions: Certain Categories of Regulated Firms

Credit institutions

Head of Finance
Chief Operating officer
Head of Treasury
Head of Risk management
Head of Internal Audit

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Insurance and re-insurance undertakings

*Head of Actuarial function
Head of Internal audit
*Head of Risk management (may only be outsourced to an individual from either an entity within the same group or a Gibraltar-based authorised insurance manager)
*Head of Finance

Investment firms

Chief Investment Officer
Head of Risk Management

Regulated market

Head of Markets (if market is trading)
Head of Regulation

Alternative Investment Fund Managers (other than small scheme managers)

Head of Investment
Head of Account (Valuations)
Head of Internal Audit
Head of Risk Management

UCITS self-managed company / management company firms

Head of Investment
Head of Account (Valuations)
Head of Internal Audit
Head of Risk Management

Non-bank mortgage creditor firms

Head of Credit

DLT providers

Head of Security
Head of Technology
Head of Risk Management
Head of Finance

Part 3

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Other Regulated Functions

†Chair (if regulated firm is a company)

Chief Executive or Managing Director (if regulated firm is a company)

†Chair of the Risk committee (if regulated firm is a company)

†Chair of the Audit committee (if regulated firm is a company)

Head of Finance

Chief Operating Officer

Head of Credit (if regulated firm is a Credit institution)

Head of Trading (if regulated firm is an Investment firm or a DLT provider)

Head of Markets (if regulated firm is a DLT provider)

Head of operations (if regulated firm is a Regulated market or a DLT provider)

Head of underwriting (if regulated firm is an insurance or reinsurance undertaking or intermediary)

Head of claims (if regulated firm is an insurance or reinsurance undertaking or intermediary)

Head of Client Asset Oversight

Head of Customer Care (if regulated firm is a DLT provider)

Head of Business Continuity (if regulated firm is a DLT provider)

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This version is out of date

SCHEDULE 15

Section 88A

NON-EXECUTIVE DIRECTORS

Interpretation.

1. In this Schedule–

"independent" is to be construed in accordance with paragraph 3;

"non-executive director" means an individual who is a member of a company's board of directors who has no executive responsibilities in, and is not an employee of, the company;

"senior independent director" means the independent non-executive director appointed by a company's board of directors to lead oversight of–

(a) the performance of the Chair; and

(b) the adequacy and quality of the resources provided by the firm to enable the Chair to fulfil that role.

Requirement to have non-executive directors.

2.(1) A regulated firm that is a company which is–

(a) a credit institution;

(b) an insurance or re-insurance undertaking (other than a captive insurer or captive reinsurer);

(c) a large investment firm;

(d) an electronic money institution; or

(e) a DLT provider,

must have not less than two independent non-executive directors who must be approved as regulated individuals.

(2) The GFSC may waive or modify the application of sub-paragraph (1) to a regulated firm where the GFSC is satisfied that doing so is appropriate, and a waiver or modification may be for such period or subject to such conditions as the GFSC may specify.

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(3) A regulated firm which is a company other than one to which sub-paragraph (1) applies must have at least one independent non-executive director, but such a director does not need to be approved as a regulated individual.

(4) The requirement in sub-paragraph (3) does not apply–

(a) to a regulated firm which is only authorised as one or more of the following–

(i) company manager;

(ii) professional trustee or foundation councillor;

(iii) trust administrator; or

(iv) bureau de change; or

(b) where the GFSC has agreed to waive its application to–

(i) a firm, by agreement with that firm; or

(ii) firms of a specified class or description to which the firm belongs.

(5) For the purposes of sub-paragraph (4)(b)(ii), "specified" means specified by the GFSC, with the consent of the Minister, in a notice published in the manner it considers appropriate.

(6) The GFSC, acting in accordance with section 70, may require a regulated firm to which sub-paragraph (1) or (3) applies to have more than the minimum number of non-executive directors (whether independent or not) specified in the relevant sub-paragraph.

Independence of non-executive directors.

3.(1) A regulated firm to which paragraph 2(1) or (3) applies must identify in its annual report each non-executive director it considers to be independent.

(2) A non-executive director may be regarded as independent if the individual has no business, family or other interest or relationship (and has not recently had such an interest or relationship) which may influence, or may reasonably be perceived to influence, the individual's capacity to make independent judgements on issues before the company's board and to act in the best interests of the company as a whole.

(3) A non-executive director is not to be regarded as having (or having had) an interest or relationship to which sub-paragraph (2) applies solely on the basis that the individual is acting

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or has acted for the company as a professional adviser in the ordinary course of professional practice.

(4) Where a non-executive director which the company considers to be independent has or recently had–

(a) an interest or relationship of the kind in sub-paragraph (2); or

(b) a professional connection of the kind in sub-paragraph (3),

the company must provide a clear explanation of its decision in its annual report.

Regulated functions to be performed by non-executive directors.

4.(1) In a regulated firm that is a company to which paragraph 2(1) applies, each of the following regulated functions in Part 3 of Schedule 14 must be performed by independent non-executive directors–

(a) Chair;

(b) Chair of the risk committee;

(c) Chair of the audit committee.

(2) In such a firm the same independent non-executive director may not be appointed as both the Chair and the Chair of the audit committee.

Requirement to have senior independent director.

5. Where a regulated firm to which paragraph 2(1) or (3) applies has three or more non-executive directors, it must appoint one of them to be the senior independent director.

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SCHEDULE 16

Section 131

CONNECTED PERSONS

Bodies corporate.

1. If the person ("P") is a body corporate, a person who is or has been–

(a) a director, manager or similar officer of P or of a parent undertaking of P;

(b) an employee of P;

(c) an agent of P or of a parent undertaking of P.

Partnerships.

2. If the person ("P") is a partnership, a person who is or has been a member, manager, employee or agent of P.

Unincorporated associations.

3. If the person ("P") is an unincorporated association of persons which is neither a partnership nor an unincorporated friendly society, a person who is or has been an officer, manager, employee or agent of P.

Friendly societies.

4.(1) If the person ("P") is a friendly society, a person who is or has been an officer, manager or employee of P.

(2) In relation to P, "officer" has the same meaning as in section 2(1) of the Friendly Societies Act.

Individuals.

5. If the person ("P") is an individual, a person who is or has been an employee or agent of P.

Additional roles

6. A person who is, or at the relevant time was, the partner, manager, employee, agent, appointed representative, banker, auditor or actuary of–

(a) the person ("P");

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(b) a parent undertaking of P;

(c) a subsidiary undertaking of P;

(d) a subsidiary undertaking of a parent undertaking of P; or

(e) a parent undertaking of a subsidiary undertaking of P.

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SCHEDULE 17

Omitted.

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SCHEDULE 18

Section 27(4)

THE FSRCC'S FUNCTIONS UNDER PARTS 15 AND 16

FSRCC's Powers.

1.(1) In the exercise of its functions under Part 15 or 16 the FSRCC may in its own name–

(a) acquire, hold, manage and dispose of property;

(b) enter into contracts;

(c) sue and be sued; and

(d) do anything reasonably necessary or expedient for, or incidental to, any of those matters.

(2) Any contract entered into by the FSRCC must be signed on its behalf by at least one authorised signatory.

(3) For the purposes of sub-paragraph (2) "authorised signatory" means a person who is authorised by resolution of the FSRCC to sign a contract on the FSRCC's behalf and such a resolution may only provide–

(a) general authority or authority in a particular case to a member of the FSRCC; or

(b) authority in a particular case to a member of the FSRCC staff seconded in accordance with paragraph 2.

Staffing arrangements.

2.(1) The FSRCC, for the purpose of discharging its functions under Part 15 or 16, may enter into arrangements with the GFSC for employees of the GFSC to be seconded to, and form the staff of, the FSRCC.

(2) An employee may be seconded for such period and on such terms as may be agreed between the FSRCC and the GFSC.

Accounts and audit.

3.(1) The FSRCC must, in respect of its functions under Parts 15 and 16–

(a) keep proper accounts and accounting records; and

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(b) prepare in respect of each financial year a statement of accounts.

(1A) The FSRCC must keep separate accounts and accounting records, and prepare separate statements–

(a) in respect of–

(i) the deposit guarantee scheme;

(ii) the resolution financing arrangements; and

(iii) the administration fund maintained under section 198(1)(c); and

(b) in respect of–

(i) the investor compensation scheme; and

(ii) the administration fund maintained under section 269(1)(a).

(2) The FSRCC must arrange for its annual accounts and for the accounts in sub-paragraph (1A)(a) to be audited separately from those in sub-paragraph (1A)(b) to be audited.

(3) The FSRCC must without delay send a copy of each of the audited accounts to the GFSC and the Minister.

(4) The FSRCC must comply with any directions of the Minister in relation to the matters in sub-paragraphs (1) to (3).

Reports.

4.(1) As soon as reasonably possible after the end of each financial year, the FSRCC must prepare a report–

(a) providing information on the exercise of its functions under Parts 15 and 16 during that year, including its activities in respect of–

(i) the deposit guarantee scheme;

(ii) the resolution financing arrangements; and

(iii) the investor compensation scheme;

(b) containing any other information that the Minister requires, and

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(c) including a copy of the statement of accounts for that year.

(2) The FSRCC must–

(a) send a copy of the report to the GFSC and to the Minister; and

(b) publish the report.

(3) The Minister must lay a copy of the report before Parliament.

(4) The FSRCC may publish such other reports and information on matters relevant to its functions under Part 15 or 16 as it considers appropriate.

Financial year.

6. The FSRCC's financial year under Parts 15 and 16 begins on 1st April in each year and ends on 31st March in the following year.

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SCHEDULE 19

Section 221

Depositor Information Sheet

Basic information about the protection of your eligible deposit	
Eligible deposits in [insert name of credit institution] are protected by:	The Gibraltar Deposit Guarantee Scheme[1]
Limit of protection:	£120,000 per depositor per credit institution[2] The following trading names are part of [insert name of credit institution]: [insert all trading names under which the credit institution operates]
If you have more eligible deposits at the same credit institution:	All your eligible deposits at the same credit institution are 'aggregated' and the total is subject to the limit of £120,000[2]
If you have a joint account with other person(s):	The limit of £120,000 applies to each depositor separately[3]
Reimbursement period in case of credit institution's failure:	Seven working days[4]
Currency of reimbursement:	Pound sterling.
Contact:	[insert postal address, email address and telephone number of the FSRCC]
More information:	[insert website of the FSRCC]
Acknowledgement of receipt by the depositor:	

Additional information [insert as appropriate]

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[1]Scheme responsible for the protection of your deposit

Your eligible deposit is covered by a statutory deposit guarantee scheme. The Gibraltar Deposit Guarantee Scheme is defined in Part 15 of the Financial Services Act 2019. If insolvency of your credit institution should occur, your eligible deposits would in any case be repaid up to £120,000 by the Deposit Guarantee Scheme.

[2]General limit of protection.

If a covered deposit is unavailable because a credit institution is unable to meet its financial obligations, depositors are repaid by a Deposit Guarantee Scheme. This repayment covers at maximum £120,000 per credit institution. This means that all eligible deposits at the same credit institution are added up in order to determine the coverage level. If, for instance a depositor holds a savings account with £90,000 and a current account with £40,000, he or she will only be repaid £120,000.

[Insert where applicable] This method will also be applied if a credit institution operates under different trading names. The [insert name of the account-holding credit institution] also trades under [insert all other trademarks of the same credit institution]. This means that all deposits with one or more of these trading names are in total covered up to £120,000.

In some cases eligible deposits which are categorised as 'temporary high balances' are protected above £120,000 for six months after the amount has been credited or from the moment when such eligible deposits become legally transferable. These are eligible deposits connected with certain events, including:

(a) certain transactions relating to the depositor's current or prospective only or main residence or dwelling;

(b) a death, or the depositor's marriage or civil partnership, divorce, retirement, dismissal, redundancy or invalidity;

(c) the payment to the depositor of insurance benefits or compensation for criminal injuries or wrongful conviction.

[3]Limit of protection for joint accounts

In case of joint accounts, the limit of £120,000 applies to each depositor.

However, eligible deposits in an account to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, are aggregated and treated as if made by a single depositor for the purpose of calculating the limit of £120,000.

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[4]Reimbursement

The responsible deposit guarantee scheme is the Gibraltar Deposit Guarantee Scheme, [insert the Scheme's postal address, email address and telephone number]. Except where specific exceptions apply, it will repay your eligible deposits (up to £120,000) within seven working days.

If you have not been repaid within this deadline, you should contact the Deposit Guarantee Scheme since the time to claim reimbursement may be barred after a certain time limit. Further information can be obtained under [insert the Scheme's website address].

Other important information

In general, all retail depositors and businesses are covered by deposit guarantee schemes. Exceptions for certain deposits are stated on the website of the responsible deposit guarantee scheme. Your credit institution will also inform you on request whether certain products are covered or not. If deposits are eligible, the credit institution must also confirm this on the statement of account.

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SCHEDULE 20

Section 239

INVESTORS TO WHOM PART 16 DOES NOT APPLY

1. The persons referred to in points (1) to (4) of section I of Schedule 1 to the Financial Services (Investment Services) Regulations 2020.

2. Local and municipal authorities.

3. The following persons, but only in relation to the participating firms referred to in each sub-paragraph below–

(a) directors, managers and personally liable members of a participating firm;

(b) persons holding 5% or more of the capital of a participating firm;

(c) persons responsible for carrying out the statutory audits of a participating firm's accounting documents;

(d) investors in a firm who satisfy sub-paragraph (a), (b) or (c) in relation to other participating firms in the same group as that firm.

4.(1) Close relatives of the persons referred to in paragraph 3, in relation to that participating firm referred to in paragraph 3.

(2) For the purposes of this paragraph "close relative", in relation to a person ("P"), means–

(a) P's spouse or civil partner;

(b) P's children and step children, P's parents and step-parents, P's sisters and brothers and P's step-sisters and step-brothers; and

(c) the spouse or civil partner of any person within paragraph (b).

5. Third parties acting on behalf of the persons referred to in paragraph 3, in relation to that participating firm referred to in paragraph 3.

6. Other firms in the same group.

7. Investors who have any responsibility for or have taken advantage of certain facts relating to a participating firm which gave rise to the firm's financial difficulties or contributed to the deterioration of its financial situation.

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SCHEDULE 21

Omitted

SCHEDULE 22

Section 290(5)

ARRANGEMENTS NOT AMOUNTING TO A COLLECTIVE INVESTMENT SCHEME

Schemes not operated by way of business

1. Arrangements do not amount to a collective investment scheme if they are operated otherwise than by way of business.

Schemes entered into for commercial purposes relating to existing business

2.(1) Arrangements do not amount to a collective investment scheme where each of the participants–

(a) carries on a business which is not a specified business; and

(b) enters into the arrangements for commercial purposes related to that business.

(2) Sub-paragraph (1) does not apply where a person will carry on the business in question by virtue of being a participant in the arrangements.

(3) "Specified business" means the business of engaging in a regulated activity of the kind specified in–

(a) Chapter 2 of Part 6 of Schedule 2;

(b) Chapter 3 of Part 6 of that Schedule;

(c) Part 7 of that Schedule;

(d) Chapter 2 of Part 11 of that Schedule;

(e) Chapter 3 of Part 11 of that Schedule.

Group schemes

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3. Arrangements do not amount to a collective investment scheme if each of the participants is a body corporate in the same group as the operator.

Certain employee share schemes

4. Arrangements do not amount to a collective investment scheme where–

(a) each of the participants is a bona fide employee or former employee (or the wife, husband, civil partner, widow, widower, former civil partner, child or step-child under the age of eighteen of such an employee or former employee) of the operator or of a body corporate in the same group as the operator;

(b) the property to which the arrangements relate consists of investments in or issued by a member of that group and are–

(i) transferable securities or money market instruments; or

(ii) options, futures, swaps, forwards or other derivative instruments, so far as relating to transferable securities or money market instruments; or

(iii) rights to and interests in any financial instruments specified in sub-paragraph (i) or (ii).

Pure deposit-based schemes

5. Arrangements do not amount to a collective investment scheme if the whole amount of each participant's contribution is a deposit (within the meaning Part 2 of Schedule 2) which is accepted by an authorised person with permission to carry on a regulated activity of the kind specified in that Part.

Franchise arrangements

6.(1) Franchise arrangements do not amount to a collective investment scheme.

(2) "Franchise arrangements" means arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade mark, trade name or design or other intellectual property or the goodwill attached to it.

Contracts of insurance

7. A contract of insurance does not amount to a collective investment scheme.

Schemes relating to the use of property

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8. Arrangements do not amount to a collective investment scheme where–

(a) the predominant purpose of the arrangement is to enable the participants to share in the use or enjoyment of property or to make its use or enjoyment available gratuitously to other persons; and

(b) the property to which the arrangements relate does not consist of the currency of any country or territory and does not consist of or include any of the items listed in section 5(2) in relation to which a regulated activity is carried on.

Debt issues

9.(1) Arrangements do not amount to a collective investment scheme if they are arrangements in which the rights or interests of the participants are, except as provided by sub-paragraph (2), represented by investments of one, and only one, of the following descriptions–

(a) money market instruments which are–

(i) issued by a single body corporate other than an open-ended investment company; or

(ii) issued by a single issuer which is not a body corporate and which are guaranteed by the government of Gibraltar or of any other country or territory;

(b) investments within sub-paragraph (a)(i) or (ii) ("the former investments") which are convertible into or exchangeable for transferable securities, provided that the transferable securities are issued by the same person who issued the former investments or are issued by a single other issuer;

(c) sovereign debt which is issued by a single issuer; or

(d) instruments entitling the holder to subscribe for other investments, being instruments which are issued otherwise than by an open-ended investment company and which confer rights in respect of–

(i) transferable securities issued by the same issuer; or

(ii) instruments within any of sub-paragraphs (a), (b) or (c).

(2) Arrangements which would otherwise not amount to a collective investment scheme by virtue of sub-paragraph (1) are not to be regarded as amounting to such a scheme by reason only that one or more participants ("the counterparty") is a person–

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(a) whose ordinary business involves the counterparty in carrying on regulated activities of the kind specified in paragraph 2(3) of this Schedule; and

(b) whose rights or interests in the arrangement are or include rights or interests under a swap arrangement.

(3) In sub-paragraph (2), "swap arrangement" means an arrangement the purpose of which is to facilitate the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things, being an arrangement under which the counterparty–

(a) is entitled to receive amounts (whether representing principal or interest) payable in respect of any property subject to the arrangements or sums determined by reference to such amounts; and

(b) makes payments, whether or not of the same amount and whether or not in the same currency as those referred to in paragraph (a), which are calculated in accordance with an agreed formula by reference to those amounts or sums.

(4) In this paragraph–

"money market instruments" means those classes of instruments which are normally dealt in on the money market such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;

"sovereign debt" means a debt instrument issued by a sovereign issuer;

"sovereign issuer" means any of the following that issues debt instruments–

(a) the Government;

(b) the government of any country or territory outside Gibraltar;

(c) a public or local authority in Gibraltar or elsewhere; or

(d) a body the members of which comprise–

(i) states including Gibraltar or the United Kingdom; or

(ii) bodies whose members comprise states including Gibraltar or the United Kingdom.

Common accounts

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11. Arrangements do not amount to a collective investment scheme if–

(a) they are arrangements under which the rights or interests of participants are rights to or interests in money held in a common account;

(b) that money is held in the account on the understanding that an amount representing the contribution of each participant is to be applied–

(i) in making payments to that participant;

(ii) in satisfaction of sums owed by that participant; or

(iii) in the acquisition of property or the provision of services for that participant.

Occupational and personal pension schemes

12.(1) An occupational pension scheme does not amount to a collective investment scheme.

(2) A personal pension scheme does not amount to a collective investment scheme.

Clearing services

13. Arrangements do not amount to a collective investment scheme if their purpose is the provision of clearing services and they are operated by a regulated market.

Friendly societies

14. A society registered under the Friendly Societies Act does not amount to a collective investment scheme.

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SCHEDULE 23

Section 292(1)(a)

INVESTMENTS OF UCITS SCHEMES

1. The transferable securities or other liquid financial assets referred to in section 292(1)(a) in which a UCITS scheme may invest comprise only one or more of the following–

(a) transferable securities and money market instruments admitted to or dealt in on a regulated market in Gibraltar;

(b) *Omitted*

(c) transferable securities and money market instruments admitted to official listing on a stock exchange in a country or territory outside Gibraltar or dealt in on another regulated market in a country or territory outside Gibraltar which operates regularly and is recognised and open to the public provided that–

(i) the choice of stock exchange or market has been approved by GFSC; or

(ii) it is provided for in law or the UCITS scheme's fund rules or instruments of incorporation;

(d) recently issued transferable securities, provided that–

(i) the terms of issue include an undertaking that an application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognised and open to the public, provided that the choice of stock exchange or market has been approved by the GFSC or is provided for in law or in the UCITS scheme's fund rules or instruments of incorporation; and

(ii) the admission referred to in paragraph (i) is secured within a year of issue;

(e) units of UCITS schemes or of other collective investment undertakings which fall within the meaning of section 292(1)(a) to (c), provided that–

(i) such other collective investment undertakings are authorised under laws which provide that they are subject to supervision considered by the GFSC to be equivalent to that laid down by or under this Act, and that cooperation between authorities is sufficiently ensured;

(ii) the level of protection for unitholders in the other collective investment undertakings is equivalent to that provided for unit-holders in a UCITS

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scheme, and in particular that the rules on asset segregation, borrowing, lending, and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of the Financial Services (UCITS) Regulations 2020;

(iii) the business of the other collective investment undertakings is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period; and

(iv) no more than 10% of the assets of the UCITS schemes or of the other collective investment undertakings, whose acquisition is contemplated, can, according to their fund rules or instruments of incorporation, be invested in aggregate in units of other UCITS schemes or other collective investment undertakings;

(f) deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided that, if the credit institution has its registered office in a country or territory outside Gibraltar, it is subject to prudential rules considered by the GFSC as equivalent to those laid down by of under this Act;

(g) financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in sub-paragraph (a) or (c) or financial derivative instruments dealt in derivatives traded solely over the counter ("OTC derivatives"), provided that–

(i) the underlying of the derivative consists of instruments covered by this paragraph, financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS scheme may invest according to its investment objectives as stated in the UCITS scheme's fund rules or instruments of incorporation;

(ii) the counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the GFSC; and

(iii) the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS scheme's initiative; or

(h) money market instruments other than those dealt in on a regulated market, if the issue or issuer of such instruments is itself regulated for the purpose of protecting investors and savings, provided that the instruments–

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(i) are issued or guaranteed by–

(aa) the government of Gibraltar or the government of a country or territory outside Gibraltar;

(bb) a central, regional or local authority or central bank of a country or territory outside Gibraltar;

(cc) the European Union, the European Central Bank or the European Investment Bank; or

(dd) a public international body to which Gibraltar, the United Kingdom or one or more EEA States belongs;

(ii) are issued by an undertaking whose securities are dealt in on regulated markets referred to in sub-paragraph (a) or (c);

(iii) are issued or guaranteed by an establishment which is subject to and complies with prudential rules considered by the GFSC to be at least as stringent as those laid down by or under this Act; or

(iv) if the UCITS scheme is authorised in Gibraltar, are issued by other bodies belonging to the categories approved by the GFSC and provided that–

(aa) investments in such instruments are subject to investor protection equivalent to that laid down in paragraphs (i), (ii) or (iii);

(bb) the issuer is a company whose capital and reserves amount to at least EUR 10,000,000; and

(cc) the issuer presents and publishes its annual accounts in accordance with the provisions of the Companies Act 2014, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of the group or to the securitisation vehicles which benefit from a banking liquidity line.

2. A UCITS scheme must not–

(a) invest more than 10% of its assets in transferable securities or money market instruments other than those referred to in paragraph 1; or

(b) acquire either precious metals or certificates representing them;

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but a UCITS scheme may hold ancillary liquid assets.

3. An open-ended investment company may acquire movable or immovable property which is essential for the direct pursuit of its business.

Interpretation

4. The following provisions have effect for the purposes of paragraphs 1 and 2 of this Schedule.

Transferable securities.

5.(1) "Transferable securities"–

(a) means–

(i) shares in companies and other securities equivalent to shares in companies (shares);

(ii) bonds and other forms of securitised debt (debt securities);

(iii) any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange; and

(b) is to be understood in accordance with paragraphs 6 and 7; but

(c) excludes such other techniques and instruments as may be prescribed by regulations made under section 337.

6.(1) The reference to "transferable securities" in paragraph 5 is to be understood as a reference to financial instruments which meet the following criteria–

(a) the potential loss which the UCITS scheme may incur with respect to holding those instruments is limited to the amount paid for them;

(b) their liquidity does not compromise the ability of the UCITS scheme to repurchase or redeem its units at the request of a unit holder in accordance with regulations made under Part 18;

(c) reliable valuation is available for them—

(i) in the case of securities within paragraph 1(a) to (d), in the form of accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers;

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(ii) in the case of other securities referred to in paragraph 2 or 3, in the form of a valuation on a periodic basis which is derived from information from the issuer of the instrument or from competent investment research;

(d) appropriate information is available for them–

(i) in the case of securities within paragraph 1(a) to (d), in the form of regular, accurate and comprehensive information to the market in question on the security or, where relevant, on the portfolio of the security;

(ii) in the case of other securities referred to in paragraph 2 or 3, in the form of regular and accurate information to the UCITS scheme on the security or, where relevant, on the portfolio of the security;

(e) they are negotiable;

(f) their acquisition is consistent with the investment objectives or the investment policy, or both, of the UCITS scheme pursuant to provisions of, or made under, Part 18; and

(g) their risks are adequately captured by the risk management process of the UCITS scheme.

(2) For the purposes of sub-paragraph (1)(b) and (e), any financial instrument within paragraph 1(a) or (c) is to be presumed–

(a) not to compromise the ability of the UCITS scheme to repurchase or redeem its units at the request of a unit holder in accordance with regulations made under Part 18; and

(b) to be negotiable.

(3) But sub-paragraph (2) does not apply if there is information available to the UCITS scheme that would lead to a different determination.

7.(1) The reference to "transferable securities" in paragraph 5 is to be taken to include the following–

(a) units in closed-ended funds constituted as investment companies or as unit trusts and meeting the following criteria–

(i) the units meet the criteria set out in paragraph 6;

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(ii) the closed-ended funds are subject to corporate governance mechanisms applied to companies; and

(iii) where asset management activity is carried out by another entity on behalf of the closed-ended fund, that entity is itself regulated for the purpose of investor protection;

(b) units in closed-ended funds constituted under the law of contract which meet the following criteria–

(i) the units of the closed-ended funds meet the criteria set out in paragraph 6;

(ii) the closed-ended funds are subject to corporate governance mechanisms equivalent to those applied to bodies corporate under the Companies Act 2014;

(iii) the closed-ended funds are managed by an entity which is subject to regulation under Gibraltar law for the purpose of investor protection;

(c) financial instruments meeting the following criteria–

(i) they meet the criteria set out in paragraph 6; and

(ii) they are backed by, or linked to the performance of, other assets, which may differ from those listed in paragraph 1.

(2) Where a financial instrument covered by sub-paragraph (1)(c) contains an embedded derivative component, the requirements as to portfolio management imposed by or under this Act apply to that component.

Money market instruments

8. "Money market instruments" means instruments normally traded on the money markets which are liquid and have a value which can be accurately determined at any time.

9. The reference in paragraph 8 to money market instruments as "instruments" is to be understood as a reference to the following–

(a) financial instruments within paragraph 1(a) or (c); or

(b) financial instruments which are not admitted to trading.

Instruments normally dealt in on the money market.

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10. The reference in paragraph 8 to money market instruments as instruments "normally dealt in on the money market" is to be understood as a reference to financial instruments which meet one of the following criteria–

(a) they have a maturity at issuance of up to and including 397 days;

(b) they have a residual maturity of up to and including 397 days;

(c) they undergo regular yield adjustments in line with money market conditions at least every 397 days; or

(d) their risk profile, including credit and interest rate risks, corresponds to that of financial instruments which have a maturity as referred to in sub-paragraphs (a) or (b), or are subject to a yield adjustment as referred to in sub-paragraph (c).

Liquid instruments with a value which can be accurately determined at any time.

11.(1) The reference in paragraph 8 to money market instruments as instruments which are "liquid" is to be understood as a reference to financial instruments which can be sold at limited cost in an adequately short time frame, taking into account the obligation of a UCITS scheme to repurchase or redeem its units at the request of any unit holder.

(2) The reference in paragraph 8 to money market instruments as instruments "which have a value which can be accurately determined at any time" is to be understood as a reference to financial instruments for which accurate and reliable valuations systems are available, being systems that–

(a) enable the UCITS scheme to calculate a net asset value in accordance with the value at which the financial instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction; and

(b) are based either on market data or on valuation models including systems based on amortised costs.

(3) The criteria referred to in sub-paragraphs (1) and (2) are to be presumed as being met in the case of financial instruments which–

(a) are normally dealt in on the money market for the purposes of paragraph 8; and

(b) are admitted to, or dealt in, on a regulated market in accordance with paragraph 1(a) or (c).

(4) But sub-paragraph (3) does not apply if there is information available to the UCITS scheme that would lead to a different determination.

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Liquid financial assets with respect to financial derivative instruments.

12.(1) The reference to "liquid financial assets" in section 292(1)(a) is to be understood with respect to financial derivative instruments as a reference to financial derivative instruments which meet the following criteria–

(a) their underlyings consist of one or more of the following—

(i) assets as listed in paragraph 1, including financial instruments having one or several characteristics of those assets;

(ii) interest rates;

(iii) foreign exchange rates or currencies;

(iv) financial indices;

(b) in the case of OTC derivatives, they comply with the conditions set out in paragraph 1(g)(ii) and (iii).

(2) Sub-paragraph (3) applies–

(a) to the reference to "liquid financial assets" in section 292(1)(a); and

(b) for the purposes of paragraph 1(g).

(3) The liquid financial assets in which a UCITS scheme is permitted to invest must not include derivatives on commodities.

13.(1) Financial derivative instruments referred to in paragraph 1(g) are to be taken to include instruments which meet the following criteria–

(a) they allow the transfer of the credit risk of an asset as referred to in paragraph 12(1)(a) independently from the other risks associated with that asset;

(b) they do not result in the delivery or in the transfer, including in the form of cash, of assets other than those referred to in paragraph 1 or 2;

(c) they comply with the criteria for OTC-derivatives in paragraph 1(g)(ii) and (iii) and in sub-paragraphs (2) and (3);

(d) their risks are adequately captured by the risk management process of the UCITS scheme, and by its internal control mechanisms in the case of risks of asymmetry

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of information between the UCITS scheme and the counterparty to the credit derivative resulting from potential access of the counterparty to non-public information on firms the assets of which are used as underlyings by credit derivatives.

(2) For the purposes of paragraph 1(g)(iii), the reference to fair value is to be understood as a reference to the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

(3) For the purposes of paragraph 1(g)(iii), the reference to reliable and verifiable valuation is to be understood as a reference to a valuation, by the UCITS scheme, corresponding to the fair value as referred to in sub-paragraph (2), which does not rely only on market quotations by the counterparty and which meets the following criteria–

(a) the basis for the valuation is either a reliable up-to-date market value of the instrument, or, if such a value is not available, a pricing model using an adequate recognised methodology;

(b) verification of the valuation is carried out by one of the following–

(i) an appropriate third party which is independent from the counterparty of the OTC-derivative, at an adequate frequency and in such a way that the UCITS scheme is able to check it;

(ii) a unit within the UCITS scheme which is independent from the department in charge of managing the assets and which is adequately equipped for such purpose.

Financial indices

14.(1) The reference in paragraph 1(g)(i) to "financial indices" is to be understood as a reference to indices which meet the following criteria–

(a) they are sufficiently diversified, in that the following criteria are met—

(i) the index is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;

(ii) where the index is composed of assets referred to in paragraph 1, its composition is at least diversified in accordance with regulations made under Part 18;

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(iii) where the index is composed of assets other than those referred to in paragraph 1, it is diversified in a way which is equivalent to that provided for in such regulations;

(b) they represent an adequate benchmark for the market to which they refer, in that the following criteria are met–

(i) the index measures the performance of a representative group of underlying assets in a relevant and appropriate way;

(ii) the index is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers following criteria which are publicly available;

(iii) the underlying assets are sufficiently liquid, which allows users to replicate the index, if necessary;

(c) they are published in an appropriate manner, in that the following criteria are met–

(i) their publication process relies on sound procedures to collect prices and to calculate and subsequently to publish the index value, including pricing procedures for components where a market price is not available;

(ii) material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.

(2) Where the composition of assets which are used as underlyings by financial derivatives in accordance with paragraph 1 does not meet the criteria set out in sub-paragraph (1), those financial derivatives are, if they comply with the criteria set out in paragraph 12(1), to be regarded as financial derivatives on a combination of the assets referred to in paragraph 12(1)(a)(i), (ii) and (iii).

Instruments whose issue or issuer is regulated for the purpose of protecting investors and savings.

15.(1) The reference in paragraph 1(h) to money market instruments, other than those dealt in on a regulated market, of which the issue or the issuer is itself regulated for the purpose of protecting investors and savings, is to be understood as a reference to financial instruments which meet the following criteria–

(a) they meet one of the criteria set out in paragraph 10 and all the criteria set out in paragraph 11(1) and (2);

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(b) appropriate information is available for the instruments, including information which allows an appropriate assessment of the credit risks related to the investment in such instruments, taking into account sub-paragraphs (2) to (4); and

(c) the instruments are freely transferable.

(2) Where money market instruments are covered by paragraph 1(h)(ii) and (iv) or are issued by a local or regional authority but not guaranteed by the country or territory concerned or by a public international body but not guaranteed by a country or territory which is a member of that body, the "appropriate information" referred to in sub-paragraph (1)(b) is–

(a) information on both the issue or the issuance programme and the legal and financial situation of the issuer prior to the issue of the money market instrument;

(b) updates of the information referred to in paragraph (a) on a regular basis and whenever a significant event occurs;

(c) the information referred to in paragraph (a), verified by appropriately qualified third parties not subject to instructions from the issuer;

(d) available and reliable statistics on the issue or the issuance programme.

(3) Where money market instruments are covered by paragraph 1(h)(iii), the "appropriate information" referred to in sub-paragraph (1)(b) is–

(a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument;

(b) updates of the information referred to in paragraph (a) on a regular basis and whenever a significant event occurs;

(c) available and reliable statistics on the issue or the issuance programme or other data enabling an appropriate assessment of the credit risks related to the investment in such instruments.

(4) In the case of all money market instruments covered by paragraph 1(h)(i), except those referred to in sub-paragraph (2) and those issued by the European Central Bank or by a central bank, the "appropriate information" referred to in sub-paragraph (1)(b) is information on–

(a) the issue or the issuance programme; or

(b) the legal and financial situation of the issuer prior to the issue of the money market instrument.

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Money market instruments: prudential rules.

16. The reference in paragraph 1(h)(iii) to an establishment which is subject to, and complies with, prudential rules considered by the GFSC to be at least as stringent as those laid down by or under this Act is to be understood as a reference to an issuer which is subject to, and complies with, prudential rules and meets one of the following criteria–

(a) it is located in the United Kingdom or the European Economic Area;

(b) it is located in an OECD country belonging to the Group of Ten;

(c) it has at least investment grade rating;

(d) it can be demonstrated on the basis of an in-depth analysis of the issuer that the prudential rules applicable to that issuer are at least as stringent as those laid down by or under this Act.

Securitisation vehicles which benefit from a banking liquidity line.

17. In paragraph 1(h)(iv)(cc)–

(a) the reference to "securitisation vehicles" is to be understood as a reference to structures, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations; and

(b) the reference to "banking liquidity lines" is to be understood as a reference to banking facilities secured by a financial institution which itself complies with paragraph 1(h)(iii).

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SCHEDULE 24

Section 293(4)

EXEMPTIONS FROM RESTRICTION ON PROMOTION

PART 1

Persons exempted from section 293(1)

1. Section 293(1) does not apply to–

   (a) the Government of Gibraltar;

   (b) the Accountant General and the Director of Postal Services in the exercise of their functions;

   (c) the Registrar, Supreme Court when managing funds paid into court;

   (d) the Public Trustee in the exercise of the Public Trustee's functions under the Public Trustee Act;

   (e) The Official Receiver;

   (f) a person acting in the person's capacity as manager of any fund established under–

      (i) the Charities Act;

      (ii) the Trustee Act;

      (iii) the Administration of Justice Act.

2. *Omitted*

PART 2

Private schemes

3. This Part of this Schedule applies to collective investment schemes which—

   (a) are not listed on a stock exchange; and

   (b) are not authorised by the scheme's constituting instrument to have more than 50 participants.

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4.(1) A private scheme is promoted in accordance with this Part of this Schedule where the scheme is promoted by way of an offer addressed exclusively to a restricted category of persons.

(2) For the purposes of sub-paragraph (1), an offer is not addressed exclusively to a restricted category of persons unless–

(a) the offer is addressed to an identifiable category of not more than 50 persons, whether in Gibraltar or elsewhere, to whom it is directly communicated by the offeror or the offeror's appointed agent;

(b) the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the offer; and

(c) *Omitted*

(d) the offer is made in respect of units in a scheme that is, or on its establishment will be, a private scheme and that will remain as a private scheme for at least one year after the date that the offer is made.

5. The Minister may by regulations amend this Part of this Schedule by adding, modifying or removing provisions or by substituting any provision contained in it.

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SCHEDULE 24A

Section 346E

PROSPECTUSES: COMPENSATION EXEMPTIONS

Statements believed to be true.

1.(1) A person ("P") is not liable under section 346E for loss caused by a statement if P satisfies the court–

(a) that, at the time when the prospectus was submitted to the GFSC, P reasonably believed (having made such enquiries, if any, as were reasonable) that–

(i) the statement was true and not misleading; or

(ii) the matter whose omission caused the loss was properly omitted; and

(b) that one or more of the conditions in sub-paragraph (2) are satisfied.

(2) The conditions are that–

(a) P continued in that belief until the time when the securities in question were acquired;

(b) the securities were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire them;

(c) before the securities were acquired, P had taken all reasonable steps to secure that a correction was brought to the attention of those persons; or

(d) P continued in that belief until after the commencement of dealings in the securities following their admission to trading and they were acquired after such a lapse of time that P ought in the circumstances to be reasonably excused.

(3) In this paragraph "statement" means–

(a) any untrue or misleading statement in a prospectus; or

(b) the omission from a prospectus of any matter required to be included by or under this Act or the Prospectus Regulation.

Statements by experts.

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2.(1) A person ("P") is not liable under section 346E for loss in respect of any securities caused by an expert statement if P satisfies the court–

(a) that, at the time when the prospectus was submitted to the GFSC, P reasonably believed that the other person–

(i) was competent to make or authorise the expert statement; or

(ii) had consented to its inclusion in the form and context in which it was included; and

(b) that one or more of the conditions in sub-paragraph (2) are satisfied.

(2) The conditions are that–

(a) P continued in that belief until the time when the securities were acquired;

(b) the securities were acquired before it was reasonably practicable to bring the fact that the expert was not competent, or had not consented, to the attention of persons likely to acquire the securities in question;

(c) before the securities were acquired P had taken all reasonable steps to secure that that fact was brought to the attention of those persons; or

(d) P continued in that belief until after the commencement of dealings in the securities following their admission to trading and they were acquired after such a lapse of time that P ought in the circumstances to be reasonably excused.

(3) In this paragraph "expert statement" means a statement included in a prospectus which–

(a) purports to be made by, or on the authority of, another person as an expert; and

(b) is stated to be included in the prospectus with that other person's consent.

(4) In this schedule, "expert" includes any engineer, valuer, accountant or other person whose profession, qualifications or experience give authority to a statement made by that person.

Correction of statements.

3.(1) A person ("P") is not liable under section 346E for loss caused by a statement if P satisfies the court–

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(a) that before the securities in question were acquired, a correction had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities; or

(b) that P took all reasonable steps to secure such publication and reasonably believed that it had taken place before the securities were acquired.

(2) This paragraph applies without affecting paragraph 1.

(3) In this paragraph "statement" has the same meaning as in paragraph 1.

Correction of statements by experts.

4.(1) A person ("P") is not liable under section 346E for loss caused by an expert statement if P satisfies the court–

(a) that before the securities in question were acquired, the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities; or

(b) that P took all reasonable steps to secure such publication and reasonably believed that it had taken place before the securities were acquired.

(2) This paragraph applies without affecting paragraph 2.

(3) In this paragraph "expert statement" has the same meaning as in paragraph 2.

Official statements.

5. A person ("P") is not liable under section 346E for loss resulting from–

(a) a statement made by an official person which is included in the prospectus; or

(b) a statement contained in a public official document which is included in the prospectus,

if P satisfies the court that the statement is accurately and fairly reproduced.

False or misleading information known about.

6. A person ("P") is not liable under section 346E if P satisfies the court that the person suffering the loss acquired the securities in question with knowledge (as the case may be)–

(a) that the statement was false or misleading;

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(b) of the omitted matter; or

(c) of the change or new matter.

Belief that supplementary prospectus not called for.

7. A person ("P") is not liable under section 346E if P satisfies the court that P reasonably believed that the change or new matter in question was not such as to call for supplementary prospectus.

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SCHEDULE 25

Section 379(6)

TRANSPARENCY REQUIREMENTS: THIRD COUNTRY EQUIVALENCE

Requirements equivalent to section 359(2)(b).

1.(1) For the purposes of section 379(1), a third country is to be treated as setting requirements equivalent to those set out in section 359(2)(b) where, under the law of that country, the annual management report is required to include at least the following information–

(a) a fair review of the development and performance of the issuer's business and of its position, together with a description of the principal risks and uncertainties that it faces, such that the review presents a balanced and comprehensive analysis of the development and performance of the issuer's business and of its position, consistent with the size and complexity of the business;

(b) an indication of any important events that have occurred since the end of the financial year;

(c) indications of the issuer's likely future development.

(2) The analysis in point sub-paragraph (1)(a) must, to the extent necessary for an understanding of the issuer's development, performance or position, include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business.

Requirements equivalent to section 360(7).

2. For the purposes of section 379(1), a third country is to be treated as setting requirements equivalent to those set out in section 360(7) where, under the law of that country, a condensed set of financial statements is required in addition to the interim management report, and the interim management report is required to include at least the following information–

(a) review of the period covered;

(b) indications of the issuer's likely future development for the remaining six months of the financial year; and

(c) for issuers of shares and if already not disclosed on an ongoing basis, major related parties transactions.

Requirements equivalent to sections 359(2)(c) and 360(2)(c).

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3. For the purposes of section 379(1), a third country is to be treated as setting requirements equivalent to those set out in sections 359(2)(c) and 360(2)(c) where, under the law of that country, a person or persons within the issuer are responsible for the annual and half-yearly financial information and, in particular, for–

(a) the compliance of the financial statements with the applicable reporting framework or set of accounting standards; and

(b) the fairness of the management review included in the management report.

Requirements equivalent to section 359(3)(a).

4.(1) For the purposes of section 379(1), a third country is to be treated as setting requirements equivalent to those set out in section 359(3)(a) where, under the law of that country, the provision of individual accounts by the parent company is not required but the issuer whose registered office is in that third country is required, in preparing consolidated accounts, to include the following information–

(a) for issuers of shares, dividends computation and ability to pay dividends; and

(b) for all issuers, where applicable, minimum capital and equity requirements and liquidity issues.

(2) For the purposes of equivalence, the issuer must also be able to provide the GFSC with additional audited disclosures giving information on the individual accounts of the issuer as a standalone, relevant to the elements of information referred to in sub-paragraphs (1)(a) and (b), and those disclosures may be prepared under the accounting standards of the third country.

Requirements equivalent to section 359(3)(b).

5.(1) For the purposes of section 379(1), a third country is to be treated as setting requirements equivalent to those set out in section 359(3)(b) in relation to individual accounts where, under the law of a third country, an issuer whose registered office is in that third country is not required to prepare consolidated accounts but is required to prepare its individual accounts in accordance with UK-adopted international accounting standards or with third country national accounting standards equivalent to those standards.

(2) For the purposes of equivalence–

(a) if the financial information is not in line with those standards, it must be presented in the form of restated financial statements; and

(b) the individual accounts must be audited independently.

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Requirements equivalent to section 366(11).

6.(1) For the purposes of section 379(1), a third country is to be treated as setting requirements equivalent to those in section 366(11) where, under the law of that country, the time period within which an issuer whose registered office is in that third country must be notified of major holdings and within which it must disclose to the public those major holdings is in total equal to or shorter than seven trading days.

(2) The time frames for the notification to the issuer and for the subsequent disclosure to the public by the issuer may be different from those set out in sections 366(2) and (11).

Requirements equivalent to section 370.

7.(1) For the purposes of section 379(1), a third country is to be treated as setting requirements equivalent to those set out in section 370 where, under the law of that country, an issuer whose registered office is in that third country is required to comply with the following conditions–

(a) in the case of an issuer allowed to hold up to a maximum of 5% of its own shares to which voting rights are attached, it must make a notification whenever that threshold is reached or crossed;

(b) in the case of an issuer allowed to hold up to a maximum of between 5% and 10% of its own shares to which voting rights are attached, it must make a notification whenever a 5% threshold or that maximum threshold is reached or crossed; and

(c) in the case of an issuer allowed to hold more than 10% of its own shares to which voting rights are attached, it must make a notification whenever the 5% threshold or the 10% threshold is reached or crossed.

(2) For the purposes of equivalence, notification above the 10% threshold need not be required.

Requirements equivalent to section 371.

8. For the purposes of section 379(1), a third country is to be treated as setting requirements equivalent to those set out in section 371 where, under the law of that country, an issuer whose registered office is in that third country is required to disclose to the public the total number of voting rights and capital within 30 calendar days after an increase or decrease of such total number has occurred.

Requirements equivalent to sections 373(3)(a) and 374(2)(c)(i).

9. For the purposes of section 379(1), a third country is to be treated as setting requirements equivalent to those set out in sections 373(3)(a) and 374(2)(c)(i), as far as the content of the

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information about meetings is concerned, where, under the law of that country, an issuer whose registered office is in that third country is required to provide at least information on the place, time and agenda of meetings.

Equivalence in relation to the test of independence for parent undertakings of management companies and investment firms.

10.(1) For the purposes of section 379(5), a third country is to be treated as setting requirements equivalent to those set out in section 366(7) and (9) where, under the law of that country, a management company or investment firm as referred to in section 379(5) is required to meet the following conditions–

(a) the management company or investment firm must be free in all situations to exercise, independently of its parent undertaking, the voting rights attached to the assets it manages; and

(b) the management company or investment firm must disregard the interests of the parent undertaking or of any other controlled undertaking of the parent undertaking whenever conflicts of interest arise.

(2) The parent undertaking must–

(a) comply with the notification requirements set out in section 367(2)(a) and (3); and

(b) make a statement that, in the case of each management company or investment firm concerned, the parent undertaking complies with the conditions set out in sub-paragraph (1).

(3) Without limiting section 380, where the issuer's registered office is in Gibraltar the parent undertaking must be able to demonstrate to the GFSC, on request, that the requirements set out in section 367(4) are respected.

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SCHEDULE 26

Section 419(1)

THE MARKET ABUSE REGULATION

1. *Omitted*.

2. *Omitted.*

GFSC's powers.

3.(1) For the purpose of supervising or investigating compliance with the Market Abuse Regulation, the GFSC may–

(a) exercise any power that the GFSC has under this Act or any other law that confers regulatory responsibilities on the GFSC;

(b) act directly or in collaboration with market undertakings or other statutory or competent authorities;

(c) delegate tasks under its responsibility; or

(d) institute legal proceedings.

(2) The GFSC may–

(a) require the provision of documents and data in any form and retain copies;

(b) require information from any person and, if necessary, summon and question a person with a view to obtaining information;

(c) in relation to commodity derivatives–

(i) request information in standardised formats from market participants on related spot markets;

(ii) require reports on transactions; and

(iii) require direct access to traders' systems;

(d) carry out on-site inspections and investigations other than at premises used wholly or mainly as a dwelling;

(e) require–

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(i) existing recordings of telephone conversations, electronic communications or data traffic records held by regulated firms which are investment firms, credit institutions or financial institutions; or

(ii) where permitted by the laws of Gibraltar, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of a contravention of Article 14(a), 14(b) or 15 of the Market Abuse Regulation and where those records may be relevant to the investigation of that contravention;

(f) suspend the trading of a financial instrument;

(g) impose a temporary prohibition of professional activity;

(h) require the temporary cessation of any practice that the GFSC considers to be contrary to the Market Abuse Regulation;

(i) request the freezing or sequestration of assets;

(j) refer a matter for criminal prosecution; and

(k) take all necessary measures to ensure that the public is correctly informed, including by–

(i) correcting false or misleading disclosed information; or

(ii) requiring an issuer or other person who has published or disseminated false or misleading information to publish a corrective statement.

(3) A person who provides information to the GFSC in accordance with the Market Abuse Regulation does not–

(a) contravene any restriction on the disclosure of information, whether imposed by contract or any legislative, regulatory or administrative provision; or

(b) incur any liability of any kind in respect of that disclosure.

(4) This paragraph applies without limiting the GFSC's powers under any other provision of this Act or any enactment which confers supervisory functions on the GFSC.

(5) The Minister may, by Regulations, make further provision in respect of the GFSC's powers under this paragraph.

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Sanctions for certain contraventions.

4.(1) The GFSC may take any of the steps in section 153 or 154 or paragraphs 5 to 8 if it is satisfied that a person has–

(a) contravened any of the following provisions of the Market Abuse Regulation–

(i) Articles 14 or 15;

(ii) Article 16(1) or (2);

(iii) Article 17(1), (2), (4), (5) or (8);

(iv) Article 18(1) to (6);

(v) Article 19(1), (2), (3), (5), (6), (7) or (11); or

(vi) Article 20(1); or

(b) failed to cooperate or comply with an investigation, inspection or request made in the exercise of a power–

(i) under paragraph 3(2); or

(ii) under section 413 or 414 in respect of the investigation of a contravention of the Market Abuse Regulation.

(2) This paragraph and paragraphs 5 to 8 apply without limiting the GFSC's powers under–

(a) the Market Abuse Regulation;

(b) any other provision of this Act and, in particular, section 413 or 414 or paragraph 3; or

(c) any other law which confers regulatory functions on the GFSC.

Prohibition order.

5.(1) The GFSC may by order ("a prohibition order") prohibit a specified individual–

(a) from discharging managerial responsibilities within a specified regulated firm that is an investment firm;

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(b) from exercising management functions in regulated firms that are investment firms; or

(c) from dealing in financial instruments on the person's own account.

(2) A prohibition order–

(a) must specify a period during which it has effect; and

(b) in the case of an order made under sub-paragraph (1)(a) or (b), may specify an indefinite period in respect of repeated contraventions of Article 14 or 15 of the Market Abuse Regulation.

Suspension of permission.

6.(1) The GFSC may by order suspend a permission that it has granted to a regulated firm that is an investment firm.

(2) A suspension under sub-paragraph (1) must specify a period during which it has effect.

Disgorgement.

7. Where it is practicable to do so, the GFSC may by order require the person responsible for a contravention–

(a) to account for the profits gained or losses avoided by the contravention, and

(b) to make restitution payments to those who have suffered loss as a result of the contravention.

Administrative penalties.

8.(1) The GFSC may by order impose an administrative penalty in accordance with section 152 of an amount which does not exceed the higher of the following–

(a) where the profits gained or losses avoided by the contravention can be determined, three times the amount of those profits or avoided losses;

(b) in the case of a legal person, for a contravention of–

(i) Article 14 or 15 of the Market Abuse Regulation, EUR 15,000,000 or 15% of the total annual turnover according to the last available annual accounts approved by its management body;

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(ii) Article 16 or 17 of the Market Abuse Regulation, EUR 2,500,000 or 2% of the total annual turnover according to the last available annual accounts approved by its management body; or

(iii) Article 18, 19 or 20 of the Market Abuse Regulation, EUR 1,000,000; or

(c) in the case of an individual, for a contravention of–

(i) Article 14 or 15 of the Market Abuse Regulation, EUR 5,000,000;

(ii) Article 16 or 17 of the Market Abuse Regulation, EUR 1,000,000; or

(iii) Article 18, 19 or 20 of the Market Abuse Regulation, EUR 500,000.

(2) A penalty under sub-paragraph (1)(b) or (c) may be imposed as an equivalent amount expressed in Sterling, based on the exchange rate as at 2 July 2014.

(3) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Part 7 of the Companies Act 2014, the relevant total turnover for the purpose of sub-paragraph (1)(b)(i) or (ii) is the total annual turnover, or the corresponding type of income in accordance with the Financial Services (Credit Institutions) (Accounts) Regulations 2021 or the Financial Services (Insurance Companies) (Accounts) Regulations 2021, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

Exercise of powers.

9.(1) The provisions of sections 158 to 162 apply to the exercise of any power under paragraphs 4 to 8, but as if section 158(1)(e) ended with the words "(but without limiting the need to ensure the disgorgement under paragraph 7 of Schedule 26 of profits gained or losses avoided by that person)".

(2) Subject to sub-paragraphs (3) to (8), the GFSC must publish on its website details of any sanctioning action taken under this Schedule.

(3) Publication must be made without undue delay after the person concerned has been informed of the decision.

(4) The information published must be limited to–

(a) the identity of the person against whom the action has been taken;

(b) the type and nature of the contravention; and

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(c) the details of the sanctioning action taken.

(5) The GFSC must ensure that any publication remains on its website for not less than five years, but any personal data contained in the publications must only be kept on the website for the period which the GFSC considers to be necessary in accordance with the data protection legislation.

(6) The GFSC must take one of the steps in subsection (7) where–

(a) following an obligatory prior assessment, it considers that it would be disproportionate to publish the identity of the person, or personal data of an individual or details of a sanctioning action from which such person could be identified; or

(b) it considers that publication would jeopardise the stability of financial markets or an ongoing investigation.

(7) Those steps are–

(a) to defer publication until the reasons for non-publication cease to exist;

(b) to publish on an anonymous basis; or

(c) not to publish, if it considers that the steps in paragraph (a) or (b) would be insufficient to prevent the disproportionate effect or jeopardy referred to in sub-paragraph (6).

(8) Where a decision to which this paragraph applies is subject to an appeal, the GFSC must publish information to that effect on its website and, without undue delay, revise that information to reflect the status and outcome of any appeal.

Reporting of contraventions.

10.(1) The GFSC must establish appropriate arrangements for the reporting of contraventions and potential contraventions of the Market Abuse Regulation to it by any person.

(2) Schedule 27 makes further provision in respect of the reporting of contraventions of the Market Abuse Regulation and related matters.

(3) The arrangements established under sub-paragraph (1) must include–

(a) secure communication channels for the reporting of contraventions;

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(b) specific procedures for the receipt and investigation of reported contraventions; and

(c) arrangements which accord with the data protection legislation for the protection of the personal data of an individual who reports a contravention and any individual who is allegedly responsible for a contravention.

(4) The GFSC must treat information about the identity of a person who reports a contravention as confidential, except where its disclosure is necessary for the purpose of any further investigations or subsequent judicial proceedings.

(5) Regulated firms must establish appropriate internal procedures for their employees to report contraventions.

(6) An employee of a regulated firm who reports a contravention in accordance with arrangements established under sub-paragraph (1) or (5)–

(a) is not to be considered to be in breach of any restriction on disclosure of information imposed by contract or by any enactment and any provision in an agreement is void in so far as it purports to preclude an employee from reporting a contravention; and

(b) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the employee has reported a contravention.

(7) An employee who has been subjected to a detriment contrary to sub-paragraph (6)(b) may present a complaint to the Employment Tribunal as if the reporting of a contravention was a protected disclosure within the meaning of Part IVA of the Employment Act.

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This version is out of date

SCHEDULE 27

Section 419(2)

REPORTING CONTRAVENTIONS OF THE MARKET ABUSE REGULATION

Interpretation.

1.(1) In this Schedule–

"contravention report" means a report submitted by a reporting person to the GFSC about a contravention or potential contravention of the Market Abuse Regulation;

"reported person" means a person who is alleged to have committed or intend to commit a contravention of the Market Abuse Regulation; and

"reporting person" means a person reporting a contravention or potential contravention of the Market Abuse Regulation to the GFSC.

(2) Section 406 also applies to the interpretation of this Schedule.

Dedicated staff.

2.(1) The GFSC must have dedicated members of staff who are appropriately trained to handle contravention reports ("dedicated staff members").

(2) Dedicated staff members are to exercise the following functions–

(a) providing information to interested persons on the procedures for reporting contraventions;

(b) receiving and following-up contravention reports;

(c) maintaining contact with a reporting person (if that person's identity has been made known by that person to the GFSC).

Information about reporting contraventions.

3. The GFSC must publish on a separate, easily identifiable and accessible section of its website–

(a) the communication channels it has established in accordance with paragraph 5(1) for contacting dedicated staff members and receiving and following-up contravention reports, including–

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(i) telephone numbers, indicating whether or not calls are recorded when using those numbers; and

(ii) dedicated electronic and postal addresses which are secure and ensure confidentiality;

(b) the contravention reporting procedures set out in paragraph 4;

(c) the confidentiality regime which applies to contravention reports submitted in accordance with those procedures;

(d) the procedures for the protection of employed persons who report contraventions; and

(e) a statement clearly explaining that a person, in providing information to the GFSC in accordance with the Market Abuse Regulation, does not–

(i) contravene any restriction on the disclosure of information, whether imposed by contract or any legislative, regulatory or administrative provision; or

(ii) incur any liability of any kind in respect of that disclosure.

Contravention reporting procedures.

4.(1) The procedures referred to in paragraph 3(b) must clearly indicate–

(a) that contravention reports may be submitted anonymously;

(b) how the GFSC may require the reporting person to clarify the information reported or to provide additional information that is available to the reporting person;

(c) the information that the reporting person can expect to receive from the GFSC in respect of the outcome of a contravention report, including the time in which that information is likely to be provided; and

(d) the confidentiality regime that applies to contravention reports, including the circumstances under which the confidential data of a reporting person may be disclosed in accordance with Articles 27, 28 and 29 of the Market Abuse Regulation.

(2) The information provided under sub-paragraph (1)(d) must ensure that a reporting person is aware of the exceptional cases in which confidentiality of data may not be ensured, including where its disclosure is a necessary and proportionate obligation required by law in the context

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of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the reported person, and in each case subject to appropriate safeguards under the relevant law.

Dedicated communication channels.

5.(1) The GFSC must establish communication channels which are independent, autonomous, secure and ensure confidentiality, for receiving and following-up contravention reports ("dedicated communication channels").

(2) A dedicated communication channel is independent and autonomous if it meets all of the following criteria–

(a) it is separate from the GFSC's general communication channels, including those through which the GFSC communicates internally and with third parties in the ordinary course of business;

(b) it is designed, set up and operated in a manner that–

(i) ensures the completeness, integrity and confidentiality of information; and

(ii) prevents access by non-authorised GFSC staff members;

(c) it enables the storage of durable information in accordance with paragraph 6 to allow for further investigations.

(3) Dedicated communication channels must allow contravention reports to be made by any of the following methods–

(a) in writing (whether in electronic or paper form);

(b) orally by telephone;

(c) in a meeting with a dedicated staff member.

(4) The GFSC must provide the information referred to in paragraph 3 to the reporting person either before or at the moment when it receives a contravention report.

(5) Where a contravention report is received by the GFSC other than by means of a dedicated communication channel, the report must without delay be forwarded in unmodified form to a dedicated staff member by means of a dedicated communication channel.

Record keeping.

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6.(1) The GFSC must keep a record of every contravention report it receives.

(2) The GFSC must without delay acknowledge the receipt of a written contravention report, to the postal or electronic address provided by the reporting person, except where–

(a) the reporting person requests otherwise; or

(b) the GFSC reasonably believes that acknowledging receipt would jeopardise the protection of the reporting person's identity.

(3) Where a recorded telephone line is used for receiving contravention reports, the GFSC may record those reports by means of–

(a) an audio recording of the conversation in a durable and retrievable form; or

(b) a complete and accurate transcript of the conversation prepared by a dedicated staff member.

(4) Where an unrecorded telephone line is used for reporting of contraventions, the GFSC may record those reports in the form of accurate minutes of the conversation prepared by a dedicated staff member.

(5) Where a person requests a meeting with a dedicated staff member in order to report a contravention in accordance with paragraph 5(3)(c), the GFSC must ensure that a complete and accurate record of the meeting is kept in a durable and retrievable form which may be either–

(a) an audio recording of the conversation in a durable and retrievable form; or

(b) accurate minutes of the meeting prepared by a dedicated staff member.

(6) In any case where the reporting person has disclosed his or her identity, the GFSC must offer that person an opportunity to check, rectify and agree (by signing them)–

(a) the transcript or minutes of a call; or

(b) the minutes of a meeting.

Personal data.

7. The GFSC must store the records referred to in paragraph 6 in a confidential and secure system that is subject to access restrictions which ensure those records are only available to GFSC staff members for whom access to that data is necessary to perform their professional duties.

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Data transmission.

8.(1) The GFSC must have adequate arrangements for transmitting, both within and outside of the GFSC, the personal data of reporting persons and reported persons.

(2) The GFSC must ensure that the transmission of data related to a contravention report does not–

(a) disclose the identity of the reporting person or reported person, whether directly or indirectly; or

(b) refer to circumstances that would allow the identity of the reporting person or reported person to be deduced.

(3) Sub-paragraph (2) does not apply to a transmission made in accordance with the confidentiality regime referred to in paragraph 4(1)(d).

Protection of employed persons.

9.(1) The GFSC must establish arrangements for the effective exchange of information and cooperation in respect of whistle-blower protection between the GFSC and–

(a) other competent authorities; and

(b) any other relevant authority involved in whistle-blower protection.

(2) In this paragraph "whistle-blower protection" means the protection of persons working under a contract of employment who–

(a) report contraventions to the GFSC; or

(b) are accused of contraventions;

against retaliation, discrimination or any other form of unfair treatment arising from or in connection with the reporting of a contravention.

(3) The arrangements established under this paragraph must ensure that a reporting person has access to–

(a) comprehensive information and advice on the legal procedures and remedies available to protect the person against unfair treatment, including on the procedures for claiming compensation; and

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(b) effective assistance from the GFSC before any relevant authority involved in the person's protection against unfair treatment, including certification by the GFSC in any employment dispute of the reporting person's status as a whistle-blower.

Protection of reported persons.

10.(1) Where the identity of a reported person is not known to the public, the GFSC must ensure that the person's identity is protected in the same manner as a person who is the subject of an investigation by the GFSC.

(2) The requirements of paragraph 7 also apply to records which contain the identity of a reported person.

Review of procedures.

11.(1) The GFSC must review its procedures for receiving and following up contravention reports.

(2) Reviews under sub-paragraph (1) must be conducted regularly and, in any event, not less than once every two years.

(3) In conducting a review under sub-paragraph (1), the GFSC must–

(a) have regard to its experience, and that of other competent authorities, in receiving and following up contravention reports; and

(b) take account of that experience and market and technological developments in adapting its procedures.

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SCHEDULE 28

Section 638

TRANSITIONAL PROVISIONS

Interpretation.

1.(1) In this Schedule "authorisation" under a repealed enactment includes a licence, registration, approval or other permission granted under a repealed enactment and "authorised" is to be construed accordingly.

(2) Where an authorisation under a repealed enactment is subject to any terms, conditions or requirements, an authorisation, permission, approval, registration or licence granted under paragraphs 2 to 5 is subject to the same terms, conditions or requirements (if any).

Transitional provision in respect of regulated activities.

2. A person who, immediately before Part 2 comes into operation, is authorised to carry on a regulated activity under a corresponding provision of a repealed enactment is to be treated as if that authorisation is a permission to carry on the regulated activity in question granted by the GFSC in accordance with this Act.

Transitional provision in respect of collective investment and pension schemes, etc.

3. Each of the following–

(a) a collective investment scheme authorised under the Financial Services (Collective Investment Schemes) Act 2011;

(b) an occupational pensions institution licensed under the Financial Services (Occupational Pensions Institutions) Act 2006; or

(c) a personal pension scheme approved under the Financial Services (Pensions) Regulations 2017,

which is so authorised, licensed or approved immediately before Part 2 comes into operation is to be treated as if that authorisation, licence or approval is an authorisation or recognition under Part 18, an authorisation under Part 26 or approval under Part 27 (as the case may be) granted by the GFSC under this Act.

Transitional provision in respect of Statutory auditors and audit firms.

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4. A statutory auditor or audit firm that, immediately before Part 24 comes into operation, is approved or registered under the Financial Services (Auditors) Act 2009 is to be treated as if that approval or registration was granted by the GFSC under Part 24.

Transitional provision in respect of insolvency practitioners.

5. An insolvency practitioner who, immediately before Part 25 comes into operation, is licensed under the Insolvency Act 2011 is to be treated as if that licence was granted by the GFSC under Part 25.

Transitional provision in respect of outstanding applications.

6. An application for authorisation under a repealed enactment which was made in accordance with that enactment but not determined by the GFSC before the corresponding provision of this Act came into operation is to be dealt with as if it was an application for authorisation to carry on the activity in question made in accordance with that corresponding provision.

Transitional provision in respect of offences and enforcement activity.

7.(1) Despite its repeal by this Act, a repealed enactment is to continue to have effect in connection with–

(a) any investigation or proceedings in respect of an offence under the enactment which is alleged to have been or was committed before its repeal; or

(b) any supervisory or enforcement activity by the GFSC in respect of any matter to which the enactment relates and which was brought to the GFSC's attention before its repeal.

(2) Any penalty to be imposed for an offence to which sub-paragraph (1)(a) applies must be determined in accordance with the provisions of the repealed enactment and not this Act.

(3) Any penalty or sanction to be imposed for a contravention of a repealed enactment as a consequence of supervisory or enforcement activity to which sub-paragraph (1)(b) applies must be determined in accordance with section 163.

Transitional provision in respect of appeals.

8. Where an appeal to the Supreme Court under a repealed enactment–

(a) was instituted before the corresponding provision of this Act came into operation; or

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(b) is instituted after that date in connection with a decision taken under the repealed enactment–

(i) before that date; or

(ii) after that date in accordance with paragraph 7,

the appeal must be determined in accordance with the repealed enactment.

Transitional provision for firms without an individual performing a regulated function.

9.(1) This paragraph applies to a firm which on the date that Part 8 comes into operation is obliged to but does not satisfy section 87 (obligation to ensure regulated functions are being performed).

(2) Section 87 does not apply to the firm in respect of the regulated function until–

(a) 12 months have elapsed from the date that Part 8 comes into operation; or

(b) the function is being performed by a regulated individual,

whichever comes first.

(3) If, within 12 months of the date that Part 8 comes into operation, the firm applies for approval of an individual to perform the regulated function, the period referred to in sub-paragraph (2)(a) is extended until the application and any appeal from a decision on that application has been determined.

Acquired rights: regulated individuals

10.(1) This paragraph applies to an individual–

(a) who immediately before Part 8 comes into operation was performing a regulated function in a firm to which section 87 (obligation to ensure regulated functions are being performed) applies; and

(b) who had previously–

(i) been approved by the GFSC to perform that function under the corresponding provision of a repealed enactment; or

(ii) satisfied the GFSC as to the individual's fitness and propriety.

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(2) The individual is to be treated as having been approved by the GFSC as a regulated individual, in respect of that regulated function in that firm, on the date that Part 8 comes into operation.

(3) Approval under this paragraph is subject to the same terms and conditions (if any) which applied to–

(a) the approval referred to in sub-paragraph (1)(b)(i); or

(b) the satisfaction referred to in sub-paragraph (1)(b)(ii).

(4) Approval under this paragraph does not affect an individual's liability for any contravention of a repealed enactment which occurred before Part 8 comes into operation.

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SCHEDULE 29

Section 639

REPEALS AND REVOCATIONS

The following enactments are repealed or revoked in their entirety:

Primary legislation

Financial Services (Insurance Companies) Act
Financial Services (Investment and Fiduciary Services) Act
Financial Services (Banking) Act
Financial Institutions (Prudential Supervision) Act 1997
Banking (Extension to Building Societies) Act 1998
Banking (Gibraltar and United Kingdom Passporting) Act 1998
Financial Services (Investor Compensation Scheme) Act 2002
Prospectus Act 2005
Financial Services (Listing of Securities) Act 2006
Financial Services (Occupational Pensions Institutions) Act 2006
Financial Services (Training and Competence) Act 2006
Financial Services (Takeover Bids) Act 2006
Financial Services Commission Act 2007
Bureaux de Change (Repeal) Act 2008
Financial Services (Auditors) Act 2009
Financial Services (Collective Investment Schemes) Act 2011
Financial Services (Information Gathering and Co-operation) Act 2013
Financial Services (Compensation and Resolution Schemes) Act 2015
Financial Services (Insurance Companies) (Solvency II Directive) Act 2015
Financial Services Ombudsman Act 2016
Market Abuse Act 2016
Financial Services (Markets in Financial Instruments) Act 2018

Subsidiary legislation

Financial Services (Accounting and Financial) Regulations 1991
Financial Services (Conduct of Business) Regulations 1991
Financial Services (Licensing) Regulations 1991
Financial Services (Penalty Fees) Regulations 1993
Insider dealing (Appointment of Competent Authority) Regulations 1998
Financial Services (Conduct of Business in the United Kingdom) Regulations 2006
Financial Services (Conduct of Fiduciary Services) Regulations 2006
Financial Services (Investment Exchange) (Rules and Notifications) Regulations 2007
Listed Securities (Notification of Majority Holdings) Regulations 2007
Official Listing Rules 2007

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Financial Services (Markets in Financial Instruments) (Penalty Fees) Regulations 2007
Financial Services (Collective Investment Schemes) (Conduct of Business) Regulations 2011
Financial Services (Collective Investment Schemes) (Corporate Restructuring) Regulations 2011
Financial Services (Collective Investment Schemes) (Key Investor Information) Regulations 2011
Financial Services (Collective Investment Schemes) (Miscellaneous Provisions) Regulations 2011
Financial Services (Collective Investment Schemes) Regulations 2011
Financial Services (Alternative Investment Fund Managers) (Depositaries) Regulations 2013
Financial Services (Alternative Investment Fund Managers) (Regulatory Powers) Regulations 2013
Financial Services (Alternative Investment Fund Managers) Regulations 2013
Financial Services (Capital Requirements Directive IV) Regulations 2013
Financial Services (Recovery and Resolution) Regulations 2014
Financial Services Commission (Fees) Regulations 2016
EMIR (Designation of Competent Authority) Order 2017
Benchmarks Regulations 2017
Financial Services Commission (Supervisory Acts) Order 2017
Financial Services (Distributed Ledger Technology Providers) Regulations 2017

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