



THE STATUTES OF THE REPUBLIC OF SINGAPORE

FINANCIAL ADVISERS ACT

(CHAPTER 110)

(Original Enactment: Act 43 of 2001)

REVISED EDITION 2007

(31st March 2007)

Prepared and Published by

THE LAW REVISION COMMISSION
UNDER THE AUTHORITY OF
THE REVISED EDITION OF THE LAWS ACT (CHAPTER 275)

Informal Consolidation – version in force from 18/4/2013 to 1/7/2015

Financial Advisers Act

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An Act to regulate financial advisers and their representatives, and for other purposes relating thereto or connected therewith.

[2/2005]

[6th August 2002: Section 105 ;
1st October 2002: Sections 1 to 104]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Financial Advisers Act.

Interpretation

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

“advocate and solicitor” means an advocate and solicitor of the Supreme Court or a foreign lawyer as defined in section 2(1) of the Legal Profession Act (Cap. 161);

[Act 35 of 2012 wef 18/03/2013]

“appointed representative”, in respect of a type of financial advisory service, has the meaning given to that expression in section 23C, and “appointed representative” means an appointed representative in respect of any type of financial advisory service;

[1/2009 wef 26/11/2010]

“approved holding company” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);

“auditor” means a public accountant who is registered or deemed to be registered under the Accountants Act (Cap. 2);

“Authority” means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186);

“book” includes any record, register, document or other record of information and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or by electronic process or otherwise;

“collective investment scheme” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);

“commodity” has the same meaning as in section 2(1) of the Securities and Futures Act;

[35/2007 wef 27/02/2008]

“company” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“connected person”, in relation to —

(a) an individual, means —

(i) the individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister; and

(ii) a firm, a limited liability partnership or a corporation in which the individual or any of

the persons mentioned in sub-paragraph (i) has control of not less than 20% of the voting power in the firm, limited liability partnership or corporation, whether such control is exercised individually or jointly; or

- (b) a firm, a limited liability partnership or a corporation, means another firm, limited liability partnership or corporation in which the first-mentioned firm, limited liability partnership or corporation has control of not less than 20% of the voting power in that other firm, limited liability partnership or corporation,

and a reference in this Act to a person connected to another person shall be construed accordingly;

“corporation” has the same meaning as in section 4(1) of the Companies Act;

“dealing in securities” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);

“director” has the same meaning as in section 4(1) of the Companies Act;

“exempt financial adviser” means a financial adviser who is exempt under section 23(1) from holding a financial adviser’s licence;

“financial adviser” means a person who carries on a business of providing any financial advisory service, but does not include any person specified in the First Schedule;

“financial adviser’s licence” means a licence granted under section 13 in respect of a financial adviser, and “licensed financial adviser” shall be construed accordingly;

[1/2009 wef 26/11/2010]

“financial advisory service” means all or any of the services specified in the Second Schedule;

“financial journalist” means a person who contributes advice concerning securities, or prepares analyses or reports

concerning securities, for publication in a newspaper, but does not include such person or a person belonging to such class of persons as may be prescribed;

[1/2009 wef 26/11/2010]

“financial year” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“firm” has the same meaning as in section 2(1) of the Business Registration Act (Cap. 32);

“futures contract” means —

(a) a contract the effect of which is that —

(i) one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to another party at a specified future time and at a specified price payable at that time pursuant to the terms and conditions set out in the business rules or practices of a futures market; or

(ii) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of a specified commodity agreed at the time of the making of the contract and at a specified future time, such difference being determined in accordance with the business rules or practices of a futures market at which the contract is made,

and includes a futures option transaction within the meaning of section 2(1) of the Securities and Futures Act (Cap. 289); or

(b) such other contract or class of contracts as the Authority may prescribe,

but does not include such contract or class of contracts as the Authority may prescribe;

[1/2009 wef 26/11/2010]

“futures exchange” has the same meaning as in section 2(1) of the Securities and Futures Act;

“investment product” means —

- (a) any capital markets product as defined in section 2(1) of the Securities and Futures Act;
- (b) any life policy; or
- (c) any other product as may be prescribed;

“leveraged foreign exchange trading” has the same meaning as in section 2(1) of the Securities and Futures Act;

[Deleted by Act 1 of 2009 wef 26/11/2010]

“licensed insurer” means an insurer who is for the time being licensed under section 8 of the Insurance Act (Cap. 142);

[Act 11 of 2013 wef 18/04/2013]

“life policy” has the same meaning as in the First Schedule to the Insurance Act (Cap. 142), but does not include any contract of reinsurance;

“limited liability partnership” has the same meaning as in section 2(1) of the Limited Liability Partnerships Act (Cap. 163A);

“manager” and “partner”, in relation to a limited liability partnership, have the respective meanings assigned to them in section 2(1) of the Limited Liability Partnerships Act;

“newspaper” has the same meaning as in section 2(1) of the Newspaper and Printing Presses Act (Cap. 206);

“officer” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“prescribed written law” means this Act, or any of the following written laws and any subsidiary legislation made thereunder:

- (a) Banking Act (Cap. 19);
- (b) Finance Companies Act (Cap. 108);
- (c) Insurance Act (Cap. 142);

- (d) Monetary Authority of Singapore Act (Cap. 186);
- (e) Money-changing and Remittance Businesses Act (Cap. 187);
- (f) Securities and Futures Act (Cap. 289); or
- (g) such other written law as the Authority may prescribe;

“principal”, in relation to a representative, means a person whom the representative is in the direct employment of, is acting for or is acting by arrangement with, and on behalf of whom the representative provides or will provide any financial advisory service;

[Act 35 of 2012 wef 18/03/2013]

“provisional representative”, in respect of a type of financial advisory service, has the meaning given to that expression in section 23D, and “provisional representative” means a provisional representative in respect of any type of financial advisory service;

[1/2009 wef 26/11/2010]

“public register of representatives” means the register of that name under section 63A(3);

[1/2009 wef 26/11/2010]

“recognised market operator” has the same meaning as in section 2(1) of the Securities and Futures Act;

“record” means information that is inscribed, stored or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

[1/2009 wef 26/11/2010]

[Deleted by Act 11 of 2013 wef 18/04/2013]

“related corporation” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“representative” means a person, by whatever name called, in the direct employment of, or acting for, or by arrangement

with, a financial adviser, who performs on behalf of the financial adviser any financial advisory service, whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise, and includes any officer of the financial adviser who performs for the financial adviser any financial advisory service whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

[1/2009 wef 26/11/2010]

[Deleted by Act 1 of 2009 wef 26/11/2010]

“securities” has the same meaning as in section 2(1) of the Securities and Futures Act;

“securities exchange” has the same meaning as in section 2(1) of the Securities and Futures Act;

“share” has the same meaning as in section 4(1) of the Companies Act;

“substantial shareholder” has the same meaning as in section 2(6) of the Securities and Futures Act;

[1/2009 wef 26/11/2010]

“trading in futures contracts” has the same meaning as in section 2(1) of the Securities and Futures Act;

“voting share” has the same meaning as in section 4(1) of the Companies Act;

“written direction” means a written direction issued under section 58.

[15/2003; 2/2005; 5/2005]

(2) The definitions in the First Schedule to the Insurance Act (Cap. 142) shall have effect for the construction of references to life policies in this Act.

Associated person

3.—(1) Unless the context otherwise requires, any reference in this Act to a person associated with another person shall be construed as a reference to —

- (a) where the other person is a corporation —
- (i) a director or secretary of the corporation;
 - (ii) a related corporation; or
 - (iii) a director or secretary of such a related corporation;
- (b) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation, a person with whom the other person has entered into, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal, or express or implied —
- (i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the corporation;
 - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the corporation; or
 - (iii) under which either of those persons may acquire from the other of them shares in the corporation or may be required to dispose of such shares in accordance with the directions of the other of them,
- except that, in relation to a matter relating to shares in a corporation, a person may be an associate of the corporation and the corporation may be an associate of a person;
- (c) a person with whom the other person is acting, or proposes to act, in concert in relation to the matter to which the reference relates;
- (d) where the matter to which the reference relates is a matter, other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation —

- (i) subject to subsection (2), a person who is a director of a corporation of which the other person is a director; or
 - (ii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
- (e) a person with whom the other person is, according to any subsidiary legislation made under this Act, to be regarded as associated in respect of the matter to which the reference relates;
- (f) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
- (g) where the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as referred to in paragraph (a), (b), (c), (d), (e) or (f), that last-mentioned person.

(2) Where, in proceedings under this Act, it is alleged that a person referred to in subsection (1)(d)(i) was associated with another person at a particular time, the first-mentioned person shall not be considered to be so associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first-mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) A person shall not be taken to be associated with another person by virtue of subsection (1)(b), (c), (e) or (f) by reason only of one or more of the following:

- (a) that one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to his professional capacity or to his business relationship with the other person;

- (b) that one of those persons, a customer, gives specific instructions to the other, whose ordinary business includes dealing in securities, trading in futures contracts or leveraged foreign exchange trading, to acquire shares on the customer's behalf in the ordinary course of that business;
- (c) that one of those persons has sent, or proposes to send, to the other, a take-over offer, or has made, or proposes to make, offers under a take-over announcement, within the meaning of the Take-over Code issued under section 321(1) of the Securities and Futures Act (Cap. 289), in relation to shares held by the other;
- (d) that one of those persons has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of a corporation.

[SIA, s. 3; SF Bill, Clause 3]

Interest in securities

4.—(1) Subject to this section, a person has an interest in securities if he has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those securities.

(2) For the purposes of subsection (1), it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, particular securities is or is capable of being made subject to restraint or restriction.

(3) Where any property held in trust consists of or includes securities and a person knows, or has reasonable grounds for believing, that he has an interest under the trust, he shall be deemed to have an interest in those securities.

(4) Where a corporation has, or is by the provisions of this section deemed to have, an interest in a security and —

(a) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person; or

(b) a person has a controlling interest in the corporation,
that person shall be deemed to have an interest in that security.

(5) Where a corporation has, or is by the provisions of this section (apart from this subsection) deemed to have, an interest in a security and —

(a) a person is;

(b) the associates of a person are; or

(c) a person and his associates are,

entitled to exercise or control the exercise of not less than 20% of the votes attached to the voting shares in the corporation, that person shall be deemed to have an interest in that security.

(6) For the purposes of subsection (5), a person is an associate of another person if the first-mentioned person is —

(a) a related corporation of the second-mentioned person;

(b) a person in accordance with whose directions, instructions or wishes the second-mentioned person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (4);

(c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security;

(d) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security; or

(e) a corporation in accordance with the directions, instructions or wishes of which, or of the directors of

which, the second-mentioned person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.

(7) A person shall be deemed to have an interest in a security in any one or more of the following circumstances:

- (a) where he has entered into a contract to purchase a security;
- (b) where he has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
- (c) where he has the right to acquire a security, or an interest in a security, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
- (d) where he is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he is the registered holder.

(8) A person shall be deemed to have an interest in a security if that security is held jointly with another person.

(9) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.

(10) There shall be disregarded —

- (a) an interest in a security if the interest is that of a person who holds the security as bare trustee;
- (b) an interest in a security if the interest is that of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary

course of business in connection with the lending of money;

- (c) an interest of a person in a security if that interest is an interest held by him by reason of his holding a prescribed office;
- (d) an interest of a company in its own securities if that interest is purchased or otherwise acquired in accordance with sections 76B to 76G of the Companies Act (Cap. 50); and
- (e) a prescribed interest in a security being an interest of such person, or of a person included in such class of persons, as may be prescribed.

(11) An interest in a security shall not be disregarded by reason only of —

- (a) its remoteness;
- (b) the manner in which it arose; or
- (c) the fact that the exercise of a right conferred by the interest is or is capable of being made subject to restraint or restriction.

[SIA, s. 4; SF Bill, Clause 4]

Amendment of Schedules

5.—(1) The Minister may from time to time, by order published in the *Gazette*, amend, add to or vary the First, Second or Third Schedule.

[15/2003]

(2) The Minister may, in any order made under subsection (1), make such incidental, consequential or supplementary provisions as may be necessary or expedient.

(3) Any order made under subsection (1) shall be presented to Parliament as soon as possible after publication in the *Gazette*.

PART II

FINANCIAL ADVISERS AND REPRESENTATIVES

[1/2009 wef 26/11/2010]

*Division 1 — Financial Advisers***Need for financial adviser's licence**

6.—(1) No person shall act as a financial adviser in Singapore in respect of any financial advisory service unless he —

- (a) is authorised to do so in respect of that financial advisory service by a financial adviser's licence; or
- (b) is an exempt financial adviser.

(2) For the purposes of subsection (1), a person shall be deemed to be acting as a financial adviser in Singapore if he engages in any activity or conduct that is intended to or likely to induce the public in Singapore or any section thereof to use any financial advisory service provided by the person, whether or not the activity or conduct is intended to or likely to have that effect outside Singapore.

(3) In determining whether a person is engaging in any activity or conduct that is intended to or likely to have the effect referred to in subsection (2), regard shall be had to such considerations as the Authority may prescribe.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$7,500 for every day or part thereof during which the offence continues after conviction.

[SIA, s. 26; Aust. Corporations 2001, Clause 911D]

7. [Deleted by Act 1/2009 wef 26/11/2010]

Application for grant of financial adviser's licence

8.—(1) An application for the grant of a financial adviser's licence shall be —

- (a) made to the Authority in such form and manner as may be prescribed; and
- (b) accompanied by a non-refundable application fee of a prescribed amount, which shall be paid in the manner specified by the Authority.

[1/2009 wef 26/11/2010]

(2) The Authority may require an applicant to furnish it with such information or documents as it considers necessary in relation to the application.

[SF Bill, Clause 84]

(3) [Deleted by Act 1 of 2009 wef 26/11/2010]

(3A) [Deleted by Act 1 of 2009 wef 26/11/2010]

(4) [Deleted by Act 1 of 2009 wef 26/11/2010]

(5) [Deleted by Act 1 of 2009 wef 26/11/2010]

(6) [Deleted by Act 1 of 2009 wef 26/11/2010]

(7) [Deleted by Act 1 of 2009 wef 26/11/2010]

Grounds for refusal to grant financial adviser's licence

9.—(1) The Authority may refuse an application for the grant of a financial adviser's licence if —

- (a) the applicant is not a corporation;
- (b) the applicant is unable to meet or continue to meet such minimum financial requirements or such other requirements as the Authority may prescribe, either generally or specifically;
- (c) the applicant does not have in force a professional indemnity insurance policy, the cover of which is consistent with such limit and deductible requirements as may be prescribed, or any other measure as may be approved by the Authority in lieu of a professional indemnity insurance policy;
- (d) the applicant has not furnished the Authority with such information or documents as may be required under

section 8(2), or such other information or documents relating to it or any person employed by or associated with it for the purposes of its business or relating to any circumstance likely to affect its manner of conducting business as may be required by the Authority;

- (da) any information or document that is furnished by the applicant to the Authority is false or misleading;
- (e) the applicant or any of its substantial shareholders is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (f) a receiver, receiver and manager, judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of any property of, the applicant or any of its substantial shareholders;
- (g) the applicant or any of its substantial shareholders has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
- (h) execution against the applicant or any of its substantial shareholders in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (i) the Authority is not satisfied as to the educational qualification or experience of the officers or employees of the applicant who are to perform duties in connection with the holding of the financial adviser's licence;
- (j) the Authority has reason to believe that the applicant, or any of its officers or employees, will not perform the functions of a financial adviser efficiently, honestly or fairly;
- (k) a prohibition order under section 59 has been made by the Authority, and remains in force, against the applicant;

- (l) the applicant or any of its substantial shareholders or officers —
 - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act;
- (m) the applicant fails to satisfy the Authority —
 - (i) that it is a fit and proper person to be licensed; or
 - (ii) that all of its officers, employees and substantial shareholders are fit and proper persons;
- (n) the Authority has reason to believe that the applicant may not act in the best interests of its clients, having regard to the reputation, character, financial integrity and reliability of the applicant or any of its officers, employees or substantial shareholders;
- (o) the Authority is not satisfied as to —
 - (i) the financial standing of the applicant or any of its substantial shareholders;
 - (ii) the manner in which the applicant's business is to be conducted; or
 - (iii) the record of past performance or expertise of the applicant, having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence;
- (p) there are other circumstances which are likely —
 - (i) to lead to the improper conduct of business by the applicant, or any of its officers, employees or substantial shareholders; or
 - (ii) to reflect discredit on the manner of conduct of the business of the applicant or any of its substantial shareholders; or

- (q) the Authority is of the opinion that it would be contrary to the public interest to grant the licence.

[15/2003; 2/2005]

[1/2009 wef 26/11/2010]

- (2) For the purposes of subsection (1)(c) —

- (a) the Authority may prescribe different amounts of cover under a professional indemnity insurance policy according to the activities undertaken or to be undertaken by any applicant; and
- (b) “professional indemnity insurance policy” means a contract of insurance with an insurer under which a person is indemnified in respect of the liabilities arising out of or in the course of his business as a financial adviser.

- (3) Subject to subsection (4), the Authority shall not refuse an application for the grant of a financial adviser’s licence without giving the applicant an opportunity to be heard.

[1/2009 wef 26/11/2010]

- (4) The Authority may refuse an application for the grant of a financial adviser’s licence on any of the following grounds without giving the applicant an opportunity to be heard:

- (a) the applicant is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the applicant;
- (c) a prohibition order under section 59 has been made by the Authority, and remains in force, against the applicant;
- (d) the applicant has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[15/2003]

[1/2009 wef 26/11/2010]

[Insurance Intermediaries, s. 17; SF Bill Clause 86]

Failure to maintain minimum financial requirements or professional indemnity insurance policy

10.—(1) A licensed financial adviser shall —

- (a) maintain, at all times during the currency of its licence, such minimum financial requirements or such other requirements as may be prescribed under section 9(1)(b); and
- (b) have in force, at all times during the currency of its licence, a professional indemnity insurance policy, the cover of which is consistent with such limit and deductible requirements as may be prescribed, or any other measure as may be approved by the Authority in lieu of a professional indemnity insurance policy, under section 9(1)(c).

[15/2003]

(2) Where a licensed financial adviser contravenes subsection (1), the Authority may, without prejudice to any other remedy available to the Authority under this Act —

- (a) permit the financial adviser to continue to act as such, subject to such conditions as the Authority may impose; or
- (b) impose such requirements as may be specified in written directions, including requiring the financial adviser —
 - (i) to cease to act as a financial adviser other than for the purpose of giving effect to any agreement, transaction or arrangement that is permitted by or by virtue of its licence, and that has been entered into before the time of its failure to comply with the minimum financial requirements or such other requirements as may be prescribed under section 9(1)(b);
 - (ii) to cease to act as a financial adviser other than for the purpose of giving effect to any agreement, transaction or arrangement that is permitted by or by virtue of its licence, and that has been entered into before the time of its failure to have in force a

professional indemnity insurance policy, or such other measure as may be approved by the Authority in lieu of a professional indemnity insurance policy, under section 9(1)(c); or

- (iii) to submit such statements or reports on a weekly basis or at such other intervals as the Authority may require until it meets the minimum financial requirements or such other requirements as may be prescribed under section 9(1)(b).

[15/2003]

(3) Any licensed financial adviser which, without reasonable excuse, contravenes subsection (1) or any condition imposed by the Authority under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[15/2003]

[FTA, s. 24A]

11. [Repealed by Act 1/2009 wef 26/11/2010]

12. [Repealed by Act 1/2009 wef 26/11/2010]

Grant of financial adviser's licence

13.—(1) The Authority may grant any financial adviser's licence, subject to such conditions or restrictions as it thinks fit.

[1/2009 wef 26/11/2010]

(2) Without prejudice to the generality of subsection (1), the Authority may, in granting any financial adviser's licence, impose conditions or restrictions with respect to the type of financial advisory service which may or may not be provided by the licensed financial adviser, described in such manner as the Authority may consider appropriate.

[1/2009 wef 26/11/2010]

(3) The Authority may at any time add to, vary or revoke any condition or restriction of a financial adviser's licence.

[1/2009 wef 26/11/2010]

(4) Any licensed financial adviser which contravenes any condition or restriction imposed by the Authority under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a

further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

[SIA, s. 33]

(5) [*Deleted by Act 1 of 2009 wef 26/11/2010*]

Licence fees

14.—(1) A licensed financial adviser shall, on a yearly basis on such date as the Authority may specify, pay such licence fee as the Authority may prescribe.

[1/2009 wef 26/11/2010]

(2) Any licence fee paid to the Authority under this Act shall not be refunded or remitted if —

(a) during the period to which the licence fee relates, the licence is revoked or suspended or lapses under section 19;

(b) [*Deleted by Act 1/2009 wef 26/11/2010*]

(c) during the period to which the licence fee relates, the licensed financial adviser fails or ceases to provide any financial advisory service; or

[1/2009 wef 26/11/2010]

(d) a prohibition order has been made against the licensed financial adviser under section 59.

[1/2009 wef 26/11/2010]

(3) Subject to subsection (2), the Authority may, where it considers appropriate, refund or remit the whole or part of any licence fee paid or payable to it.

[15/2003]

[SF Bill, Clause 85]

(4) Where a licensed financial adviser fails to pay the licence fee by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day or part thereof that the payment is late and both fees shall be recoverable by the Authority as a judgment debt.

[1/2009 wef 26/11/2010]

15. [*Deleted by Act 1/2009 wef 26/11/2010*]

Variation of financial adviser's licence

16.—(1) A licensed financial adviser may apply to the Authority, in such form and manner as may be prescribed, to vary its licence —

- (a) by adding one or more types of financial advisory service authorised to be provided by its licence; or
- (b) by adding one or more types of investment product in respect of which it may provide any financial advisory service.

[1/2009 wef 26/11/2010]

(1A) The Authority may require an applicant to furnish it with such information or documents as it considers necessary in relation to the application.

[15/2003]

(2) An application under subsection (1) shall be accompanied by a non-refundable application fee of such amount as may be prescribed, which shall be paid in the manner specified by the Authority.

[1/2009 wef 26/11/2010]

(2A) [*Deleted by Act 1 of 2009 wef 26/11/2010*]

(3) The Authority may approve an application under subsection (1) subject to such conditions or restrictions as the Authority thinks fit, or may refuse the application on any of the grounds set out in section 9(1).

[1/2009 wef 26/11/2010]

[2/2005]

(4) The Authority shall not refuse an application under subsection (1) without giving the applicant an opportunity to be heard.

[15/2003]

[*SF Bill, Clause 90*]

False statements in relation to application for grant or variation of financial adviser's licence

17. Any person who, in connection with an application for the grant or variation of a financial adviser's licence —

- (a) without reasonable excuse, makes any statement which is false or misleading in a material particular; or

- (b) without reasonable excuse, omits to state any matter or thing without which the application is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[1/2009 wef 26/11/2010]

[2/2005]

[SF Bill, Clause 92]

Notification of change in particulars

18.—(1) Where —

- (a) a licensed financial adviser ceases to act as a financial adviser; or
- (b) a change occurs in any matter records of which are required by section 63 to be kept in relation to a licensed financial adviser,

[1/2009 wef 26/11/2010]

the licensed financial adviser shall, not later than 14 days after the occurrence of that event, furnish particulars of the event to the Authority in the prescribed form.

(2) [*Deleted by Act 1 of 2009 wef 26/11/2010*]

(3) A person who ceases to act as a licensed financial adviser shall return the licence to the Authority within 14 days of the date of the cessation.

[1/2009 wef 26/11/2010]

[15/2003]

(4) Any person who, without reasonable excuse, contravenes this section shall be guilty of an offence.

[SF Bill, Clause 93]

Lapsing, revocation and suspension of financial adviser's licence

19.—(1) A financial adviser's licence shall lapse —

- (a) if the licensed financial adviser is wound up or otherwise dissolved, whether in Singapore or elsewhere; or

- (b) in the event of such other occurrence or in such other circumstances as may be prescribed.

[1/2009 wef 26/11/2010]

- (2) The Authority may revoke a financial adviser's licence if —

- (a) there exists a ground on which the Authority may refuse an application under section 9(1);

- (b) the licensed financial adviser has contravened any provision of this Act, or any condition or restriction imposed or any written direction issued by the Authority under this Act;

[Act 35 of 2012 wef 18/03/2013]

- (c) it appears to the Authority that the licensed financial adviser has failed to satisfy any of its obligations under or arising from —

- (i) this Act; or

- (ii) any written direction issued by the Authority under this Act;

[Act 35 of 2012 wef 18/03/2013]

- (d) it appears to the Authority that the licensed financial adviser is carrying on its business in a manner that is —

- (i) likely to be detrimental to its clients; or

- (ii) contrary to the interests of the public;

- (e) the licensed financial adviser has furnished any information or document to the Authority that is false or misleading;

- (f) the Authority has reason to believe that the licensed financial adviser, or any of its officers or employees, has not performed its or his duties efficiently, honestly or fairly;

- (g) a prohibition order under section 59 has been made by the Authority, and remains in force, against the licensed financial adviser;

(ga) the Authority has reason to believe that the licensed financial adviser has not acted in the best interests of its clients;

[Act 35 of 2012 wef 18/03/2013]

(h) the licensed financial adviser fails to pay the licence fee referred to in section 14; or

(i) the licensed financial adviser fails or ceases to carry on business in all types of financial advisory service for which it was licensed.

[1/2009 wef 26/11/2010]

(3) The Authority may, if it considers it desirable to do so —

(a) suspend a financial adviser's licence for a specific period instead of revoking it under subsection (2); and

(b) at any time extend or revoke the suspension.

[1/2009 wef 26/11/2010]

(4) Subject to subsection (5), the Authority shall not revoke or suspend a financial adviser's licence under subsection (2) or (3) without giving the licensed financial adviser an opportunity to be heard.

[1/2009 wef 26/11/2010]

(5) The Authority may revoke or suspend a financial adviser's licence without giving the licensed financial adviser an opportunity to be heard on any of the following grounds:

(a) the licensed financial adviser is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, for or in respect of any property of the licensed financial adviser;

(c) a prohibition order under section 59 has been made by the Authority, and remains in force, against the licensed financial adviser;

(d) the licensed financial adviser has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or

dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[1/2009 wef 26/11/2010]

(6) A person whose financial adviser's licence is revoked or suspended shall cease to act as a financial adviser from the date on which the revocation or suspension takes effect.

[1/2009 wef 26/11/2010]

(7) Where the Authority has revoked or suspended a financial adviser's licence, the licensed financial adviser shall —

(a) in the case of a revocation of its licence, immediately inform all its representatives by notice in writing of such revocation, and the representatives who are so informed shall cease to act as representatives of that licensed financial adviser; or

(b) in the case of a suspension of its licence, immediately inform all its representatives by notice in writing of such suspension, and the representatives who are so informed shall cease to act as representatives of that licensed financial adviser during the period of the suspension.

[1/2009 wef 26/11/2010]

(8) A lapsing, revocation or suspension of a financial adviser's licence shall not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement relating to any investment product entered into by the licensed financial adviser, whether the agreement, transaction or arrangement was entered into before, on or after the lapsing, revocation or suspension of the licence; or

(b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[1/2009 wef 26/11/2010]

(9) Any person who continues to act as a financial adviser in contravention of subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000

for every day or part thereof during which the offence continues after conviction.

[1/2009 wef 26/11/2010]

(10) Any financial adviser which contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

[1/2009 wef 26/11/2010]

Right of appeal

20. Any person who is aggrieved —

(a) by the refusal of the Authority to grant a financial adviser's licence to it, or to vary its licence; or

[1/2009 wef 26/11/2010]

(b) by the revocation or suspension of its licence by the Authority,

[1/2009 wef 26/11/2010]

may, within 30 days of the refusal, revocation or suspension, appeal in writing to the Minister.

[2/2005]

[SF Bill, Clause 98]

Use of words “financial adviser” or “life insurance broker”

21.—(1) No person, other than —

(a) a licensed financial adviser;

(b) an exempt financial adviser; or

(c) a person, or a person belonging to a class of persons, approved by the Authority,

shall —

(i) use the words “financial adviser” in any language, or any other word indicating that that person carries on business as a financial adviser, in the name, description or title under which it carries on business in Singapore; or

- (ii) make any representation to such effect in any bill head, letter paper, notice, advertisement, publication or writing, whether in electronic, print or other form.

(2) Nothing in this section shall prohibit —

- (a) an appointed or provisional representative of a licensed financial adviser or exempt financial adviser; or

[1/2009 wef 26/11/2010]

- (b) a representative of an exempt financial adviser referred to in section 23(1)(*ea*) or (*f*),

[1/2009 wef 26/11/2010]

from using the words “financial adviser” together with the word “representative” or any other word indicating that he is a representative of a financial adviser.

(3) No person, other than —

- (a) a licensed financial adviser which is authorised by its licence to provide any financial advisory service in respect of life policies;

- (b) an exempt financial adviser which provides any financial advisory service in respect of life policies; or

- (c) a person, or a person belonging to a class of persons, approved by the Authority,

shall —

- (i) use the words “life insurance broker” or any of its derivatives in any language, or any other word indicating that that person carries on business of providing any financial advisory service in respect of life policies, in the name, description or title under which he carries on business in Singapore; or

- (ii) make any representation to such effect in any bill head, letter paper, notice, advertisement, publication or writing, whether in electronic, print or other form.

(4) Nothing in this section shall prohibit —

(a) an appointed or provisional representative of a licensed financial adviser or exempt financial adviser which provides any financial advisory service in respect of life policies; or

[1/2009 wef 26/11/2010]

(b) a representative of an exempt financial adviser referred to in section 23(1)(ea) or (f) which provides any financial advisory service in respect of life policies,

[1/2009 wef 26/11/2010]

from using the words “life insurance broker” together with the word “representative” or any other word indicating that he is a representative of a financial adviser providing any financial advisory service in respect of life policies.

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,500 and, in the case of a continuing offence, to a further fine not exceeding \$1,250 for every day or part thereof during which the offence continues after conviction.

[Insurance Intermediaries, s. 14]

Holding out as financial adviser

22.—(1) No person shall hold himself out to be a financial adviser unless he is a licensed financial adviser, an exempt financial adviser or a person specified in the First Schedule.

(2) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$7,500 for every day or part thereof during which the offence continues after conviction.

[Insurance Intermediaries, s. 13]

Exempt financial advisers and their representatives

23.—(1) Subject to subsection (10), the following persons shall be exempt from holding a financial adviser's licence to act as a financial adviser in Singapore in respect of any financial advisory service:

- (a) a bank licensed under the Banking Act (Cap. 19);
 - (b) a merchant bank approved as a financial institution and approved to carry on a business of providing any financial advisory service under the Monetary Authority of Singapore Act (Cap. 186);
 - (c) a company or co-operative society licensed under the Insurance Act (Cap. 142);
- [Act 11 of 2013 wef 18/04/2013]*
- (d) a holder of a capital markets services licence under the Securities and Futures Act (Cap. 289);
 - (e) a finance company which has been granted an exemption from section 25(2) of the Finance Companies Act (Cap. 108) to carry on a business of providing any financial advisory service;
 - (ea) a securities exchange, a futures exchange, a recognised market operator, or an approved holding company, in respect of the provision of any financial advisory service that is solely incidental to its operation of a securities market, a futures market, or to its performance as an approved holding company, as the case may be; and
 - (f) such other persons or classes of persons as may be prescribed.

[2/2005]

(2) *[Deleted by Act 2 of 2005]*

(3) *[Deleted by Act 2 of 2005]*

(4) Subject to the provisions of this Act, sections 25 to 29, 32, 33, 34 and 36 shall apply, with the necessary modifications, to an exempt financial adviser (other than a person referred to in subsection (1)(ea) or (f)) in respect of its business of providing any financial advisory service as if it is a licensed financial adviser.

[2/2005]

(5) [*Deleted by Act 1 of 2009 wef 26/11/2010*]

(5A) Subject to the provisions of this Act, sections 25, 26 and 36 shall apply, with the necessary modifications, to —

- (a) a person referred to in subsection (1)(*ea*) in respect of its business of providing any financial advisory service as if it is a licensed financial adviser; and
- (b) any of its representatives in respect of his acting as such as if he is a licensed financial adviser.

[1/2009 wef 26/11/2010]

[2/2005]

(5B) [*Deleted by Act 1/2009 wef 26/11/2010*]

(5C) The reference in subsections (4) and (5A) to specific sections of this Act do not include references to any regulations made under those sections unless the Authority prescribes that such regulations so apply.

[1/2009 wef 26/11/2010]

(6) The Authority may, on the application of an exempt financial adviser (other than a person referred to in subsection (1)(*f*)), exempt the exempt financial adviser from complying with any of the provisions referred to in subsection (4) or (5A), as the case may be.

[1/2009 wef 26/11/2010]

(6A) The Authority may, on the application of a person referred to in subsection (1)(*ea*), exempt any of its representatives from complying with any of the provisions referred to in subsection (5A).

[1/2009 wef 26/11/2010]

(7) The Authority may prescribe or specify in written directions the provisions of this Act that apply to the persons referred to in subsection (1)(*f*) or their representatives.

[2/2005]

(8) An exemption granted under subsection (6) need not be published in the *Gazette*.

[2/2005]

(9) The Authority may prescribe or specify in written directions such conditions or restrictions as may be imposed on an exempt financial adviser or a representative of a person referred to in

subsection (1)(*ea*) or (*f*) in relation to the provision of any financial advisory service as the Authority thinks fit.

[1/2009 wef 26/11/2010]

(10) The Authority may withdraw an exemption granted to any person under this section if —

- (a) he fails to pay the annual fee under section 23A;
- (b) he contravenes any other provision of this Act; or
- (c) the Authority considers it necessary in the public interest.

[1/2009 wef 26/11/2010]

(11) Where the Authority withdraws an exemption granted to any person under this section, the Authority need not give the person an opportunity to be heard.

(12) An exempt financial adviser which is aggrieved by the decision of the Authority to withdraw an exemption granted to it under this section may, within 30 days of the decision, appeal in writing to the Minister.

(13) A withdrawal under subsection (10) of an exemption granted to any person shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement, relating to any investment product entered into by the person, whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the exemption; or
- (b) affect any right, obligation or liability arising under any agreement, transaction or arrangement referred to in paragraph (a).

[SF Bill, Clause 99]

(14) Any exempt financial adviser which contravenes any condition or restriction imposed under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

[1/2009 wef 26/11/2010]

(15) Any representative who contravenes any condition or restriction imposed under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

[1/2009 wef 26/11/2010]

Annual fees payable by exempt financial advisers and certain representatives

23A.—(1) Every exempt financial adviser and representative of a person exempted under section 23(1)(*ea*) or (*f*) shall, on a yearly basis on such date as the Authority may specify, pay such fee as the Authority may prescribe and in such manner and on such date as the Authority may specify.

[1/2009 wef 26/11/2010]

(2) Any fee paid under subsection (1) shall not be refunded or remitted if —

(a) in the case of an exempt financial adviser —

- (i) its exemption is withdrawn;
- (ii) it fails or ceases to provide any financial advisory service; or
- (iii) a prohibition order has been made against it under section 59,

during the period to which the fee relates; and

(b) in the case of a representative of a person exempted under section 23(1)(*ea*) or (*f*) —

- (i) the exemption of the person who is so exempted is withdrawn;
- (ii) he fails or ceases to act as a representative; or
- (iii) a prohibition order has been made against him under section 59,

during the period to which the fee relates.

[1/2009 wef 26/11/2010]

(3) Subject to subsection (2), the Authority may, where it considers appropriate, refund or remit the whole or part of any fee paid or payable to the Authority.

[1/2009 wef 26/11/2010]

(4) Where an exempt financial adviser or representative of a person exempted under section 23(1)(*ea*) or (*f*) fails to pay the fee by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day or part thereof that the payment is late and both fees shall be recoverable by the Authority as a judgment debt.

[1/2009 wef 26/11/2010]

Division 2 — Representatives

Acting as representative

23B.—(1) No person shall act as a representative in respect of any type of financial advisory service or hold himself out as doing so, unless he is —

- (a) an appointed or provisional representative in respect of that type of financial advisory service; or
- (b) a representative of an exempt financial adviser referred to in section 23(1)(*ea*) or (*f*), in so far as —
 - (i) the type and scope of the financial advisory service provided by the first-mentioned person are within the type and scope of, or are the same as, that provided by the exempt financial adviser (in his capacity as such exempt financial adviser); and
 - (ii) the manner in which the first-mentioned person provides that type of financial advisory service is the same as the manner in which the exempt financial adviser (in his capacity as such exempt financial adviser) provides that type of financial advisory service.

(2) The Authority may exempt any person or class of persons from subsection (1), subject to such conditions or restrictions as may be imposed by the Authority.

(3) A principal shall not permit any individual to provide any type of financial advisory service on its behalf unless —

- (a) the individual is an appointed or provisional representative in respect of that type of financial advisory service; or
- (b) the principal is an exempt financial adviser under section 23(1)(*ea*) or (*f*) and —
 - (i) the type and scope of the financial advisory service provided by the individual are within the type and scope of, or are the same as, that provided by the exempt financial adviser (in his capacity as an exempt financial adviser); and
 - (ii) the manner in which the individual provides that type of financial advisory service is the same as the manner in which the exempt financial adviser (in his capacity as an exempt financial adviser) provides that type of financial advisory service.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(5) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Appointed representative

23C.—(1) For the purposes of this Act, an appointed representative in respect of a type of financial advisory service is an individual —

- (a) who satisfies such entry and examination requirements as may be specified by the Authority for that type of financial advisory service, the fact of which has been notified to the Authority either in the document lodged under

section 23F(1), or (if applicable) under section 23D(5) within the time prescribed under that provision;

- (b) whose name is entered in the public register of representatives as an appointed representative;
- (c) whose status as an appointed representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from providing that type of financial advisory service;
- (d) whose entry in the public register of representatives indicates that he is appointed to provide that type of financial advisory service and does not indicate that he has ceased to be so; and
- (e) whose principal —
 - (i) is licensed to provide that type of financial advisory service; or
 - (ii) provides that type of financial advisory service in its capacity as a person exempted from the requirement to hold a financial adviser's licence under section 23(1)(a), (b), (c), (d) or (e).

(2) For the purpose of subsection (1)(a), the Authority shall, by direction published in such manner as may be prescribed, specify the examination requirements for each type of financial advisory service.

(3) The Authority may require the principal or individual to furnish it with such information or documents as the Authority considers necessary in relation to the proposed appointment of the individual as an appointed representative, and the principal or individual, as the case may be, shall comply with such a request.

(4) An individual shall cease to be an appointed representative in respect of any type of financial advisory service on the date —

- (a) he ceases to be the principal's representative or to provide that type of financial advisory service on behalf of the principal, the fact of which has been notified to the Authority under subsection (8);

- (b) his principal ceases to provide that type of financial advisory service;
- (c) the licence of his principal is revoked or lapses or a prohibition order under section 59 is made against his principal prohibiting it from providing that type of financial advisory service;
- (d) the individual dies; or
- (e) of the occurrence of such other circumstances as the Authority may prescribe.

(5) An individual shall not be treated as an appointed representative during the period in which the licence of his principal is suspended.

(6) Nothing in subsection (4) or (5) prevents the individual from being treated as an appointed representative in respect of that type of financial advisory service if he becomes a representative of a new principal in respect of that type of financial advisory service and subsection (1) is complied with.

(7) Subsections (4) and (5) shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to any investment product entered into by that individual, whether the agreement, transaction or arrangement was entered into before, on or after the cessation or date of suspension; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(8) A principal shall, no later than the next business day after the day —

- (a) an individual ceases to be his representative; or
- (b) an individual who is his representative ceases to provide any type of financial advisory service, which he is appointed to provide,

furnish particulars of such cessation to the Authority, in the prescribed form and manner.

Provisional representative

23D.—(1) For the purposes of this Act, a provisional representative in respect of a type of financial advisory service is an individual —

- (a) who satisfies such entry requirements as may be specified by the Authority for that type of financial advisory service;
- (b) who intends to undergo an examination in order to satisfy the examination requirements specified by the Authority under section 23C(2) for that type of financial advisory service, the fact of which has been notified to the Authority in the document lodged under section 23F(1);
- (c) whose name is entered in the public register of representatives as a provisional representative;
- (d) whose status as a provisional representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from providing that type of financial advisory service;
- (e) whose entry in the public register of representatives indicates that he is appointed to provide that type of financial advisory service and does not indicate that he has ceased to be so;
- (f) whose principal —
 - (i) is licensed to provide that type of financial advisory service; or
 - (ii) provides that type of financial advisory service in its capacity as a person exempted from the requirement to hold a financial adviser's licence under section 23(1)(a), (b), (c), (d) or (e);
- (g) who has not previously been appointed as a provisional representative by the Authority; and
- (h) who is not, by virtue of any circumstances prescribed by the Authority, disqualified from acting as a provisional representative.

(2) An individual shall only be a provisional representative in respect of any type of financial advisory service for such period of time as the Authority may specify against his name in the public register of representatives.

(3) A provisional representative in respect of any type of financial advisory service shall immediately cease to be one —

- (a) upon the expiry of the period of time specified by the Authority under subsection (2);
- (b) if he fails to comply with any condition or restriction imposed on him under section 23K;
- (c) upon his principal informing the Authority of the satisfaction of the examination requirements specified for that or any other type of financial advisory service under subsection (5); or
- (d) on the occurrence of such other circumstances as the Authority may prescribe.

(4) Section 23C(3) to (8) (other than subsection (4)(e) thereof) shall apply to a provisional representative —

- (a) as if the reference in section 23C(6) to section 23C(1) were a reference to subsection (1); and
- (b) with such other modifications and adaptations as the differences between provisional representatives and appointed representatives require.

(5) Where a provisional representative in respect of a type of financial advisory service has satisfied the examination requirements specified for that type of financial advisory service, his principal shall inform the Authority of that fact in the prescribed form and manner and within the prescribed time.

Offences

23E.—(1) Any person who contravenes section 23C(3) or 23D(4) (in relation to the application of section 23C(3) to a provisional representative) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(2) Any person who contravenes section 23C(8), 23D(4) (in relation to the application of section 23C(8) to a provisional representative) or 23F(5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Lodgment of documents

23F.—(1) A principal who desires to appoint an individual as an appointed or provisional representative in respect of any type of financial advisory service shall lodge the following documents with the Authority in such form and manner as the Authority may prescribe:

- (a) a notice of intent by the principal to appoint the individual as an appointed or provisional representative in respect of that type of financial advisory service;
- (b) a certificate by the principal that the individual is a fit and proper person to be an appointed or provisional representative in respect of that type of financial advisory service; and
- (c) in the case of a provisional representative, an undertaking by the principal to undertake such responsibilities in relation to the representative as may be prescribed.

(1A) Subsection (1) shall not apply to a principal who desires to appoint, as an appointed representative in respect of any type of financial advisory service, an individual who is a provisional representative in respect of that type of financial advisory service, if —

- (a) that individual has satisfied the examination requirements specified for that type of financial advisory service; and
- (b) the principal has informed the Authority of that fact in the prescribed form and manner under section 23D(5).

[Act 35 of 2012 wef 18/03/2013]

(2) Subject to section 23J, the Authority shall, upon receipt of the documents lodged in accordance with subsection (1), enter in the public register of representatives the name of the representative, whether he is an appointed or provisional representative, the type of financial advisory service which he may provide, and such other particulars as the Authority considers appropriate.

(3) The Authority may refuse to enter in the public register of representatives the particulars referred to in subsection (2) of the representative if the fee referred to in section 23H(1) or (3) (if applicable) is not paid.

(4) A principal who submits a certificate under subsection (1)(b) shall keep, in such form and manner and for such period as the Authority may prescribe, copies of all information and documents which the principal relied on in giving the certificate.

(5) Where a change occurs in any particulars of the appointed or provisional representative in any document required to be furnished to the Authority under subsection (1), the principal shall, no later than 14 days after the occurrence of such change, furnish particulars of such change to the Authority, in the prescribed form and manner.

(6) A principal who contravenes subsection (4) shall be guilty of an offence.

[Act 35 of 2012 wef 18/03/2013]

Representative to act for only one principal

23G.—(1) Unless otherwise approved by the Authority in writing, no appointed representative or provisional representative shall at any one time be a representative of more than one principal.

(2) Notwithstanding subsection (1), an appointed representative may be a representative of more than one principal if the principals are related corporations.

(3) The Authority may require an applicant for approval under subsection (1) to furnish it with such information or documents as the Authority considers necessary in relation to the application.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding

\$25,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

Lodgment and annual fees

23H.—(1) An individual shall, by the prescribed time, pay to the Authority such fee as may be prescribed by the Authority for the lodgment of documents under section 23F by his principal in relation to his appointment as an appointed or provisional representative.

(2) An individual who is an appointed or provisional representative shall, by the prescribed time each year, pay such annual fee as may be prescribed by the Authority in relation to the retention of his name in the public register of representatives as an appointed or provisional representative.

(3) A representative shall pay such fee as may be prescribed by the Authority for any resubmission of a form or change in the particulars of a form lodged with the Authority in relation to his appointment as an appointed or provisional representative.

(4) Unless otherwise prescribed by the Authority, any fee paid to the Authority under this section shall not be refunded.

(5) Where the representative fails to pay the fee referred to in subsection (1) or (2) by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day or part thereof that the payment is late and both fees shall be recoverable by the Authority as a judgment debt.

(6) The fees referred to in this section shall be paid in the manner specified by the Authority.

Additional financial advisory service

23I.—(1) The principal of an appointed representative may at any time lodge a notice with the Authority of its intention to appoint the representative as an appointed representative in respect of a type of financial advisory service in addition to that indicated against the representative's name in the public register of representatives.

(2) The notification shall be lodged in such form and manner as may be prescribed and shall be accompanied by a certificate by the principal that the representative is a fit and proper person to be a representative in respect of the additional type of financial advisory service.

(3) Subject to section 23J, the Authority shall, upon receipt of the notification, enter in the public register of representatives the additional type of financial advisory service as one which the representative may provide as a representative.

(4) The Authority may, before entering in the public register of representatives the matter set out in subsection (3), require the principal or representative to furnish it with such information or documents as the Authority considers necessary.

(5) A notification under subsection (1) shall be accompanied by a non-refundable prescribed fee which shall be paid in the manner specified by the Authority.

Power of Authority to refuse entry or revoke or suspend status of appointed or provisional representative

23J.—(1) Subject to regulations made under this Act, the Authority may refuse to enter the name and other particulars of an individual in the public register of representatives, refuse to enter an additional type of financial advisory service for an appointed representative in that register, or revoke the status of an individual as an appointed or provisional representative if —

- (a) being an appointed or provisional representative, he fails or ceases to act as a representative in respect of all of the types of financial advisory services that were notified to the Authority as services which he is appointed to provide as a representative;
- (b) he or his principal has not provided the Authority with such information or documents as the Authority may require;
- (c) he is an undischarged bankrupt, whether in Singapore or elsewhere;

- (d) execution against him in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (e) he has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (f) he —
 - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act;
- (g) in the case of the proposed appointment of an appointed or provisional representative in respect of a type of financial advisory service, or of an application to enter an additional type of financial advisory service for an appointed representative in the register —
 - (i) the Authority is not satisfied as to his educational or other qualification or experience having regard to the nature of the duties he is to perform in relation to that type of financial advisory service;
 - (ii) he or his principal fails to satisfy the Authority that he is a fit and proper person to be an appointed or provisional representative or to perform that type of financial advisory service;
 - (iii) the Authority is not satisfied as to his record of past performance or expertise having regard to the nature of the duties which he is to perform in relation to that type of financial advisory service;
 - (iv) the Authority has reason to believe that he will not perform that type of financial advisory service efficiently, honestly or fairly;

- (h) in the case of the revocation of the status of an individual as an appointed or provisional representative —
- (i) he or his principal fails to satisfy the Authority, pursuant to a requirement imposed by the Authority as a condition for him to be an appointed or provisional representative, under section 23K or by regulations (as the case may be), that he remains a fit and proper person to be an appointed or provisional representative or to perform the type of financial advisory service for which he is appointed;
[Act 35 of 2012 wef 18/03/2013]
 - (ii) the Authority is not satisfied with —
 - (A) his educational or other qualification or experience (being qualification or experience not known to the Authority at the time his name and particulars are entered in the public register of representatives); or
 - (B) his record of past performance or expertise, having regard to the nature of his duties as an appointed or provisional representative;
[Act 35 of 2012 wef 18/03/2013]
 - (iii) the Authority has reason to believe that he has not performed, or will not perform, the type of financial advisory service for which he is appointed efficiently, honestly or fairly; or
[Act 35 of 2012 wef 18/03/2013]
 - (iv) the Authority has reason to believe that he has not acted in the best interests of the clients of his principal;
[Act 35 of 2012 wef 18/03/2013]
 - (i) the Authority has reason to believe that he may not be able to act in the best interests of the clients of his principal, having regard to his reputation, character, financial integrity and reliability;
 - (j) the Authority is not satisfied as to his financial standing;

- (k) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the individual or any person employed by or associated with him for the purpose of his business;
 - (l) the individual is in arrears of the payment of such contributions on his own behalf to the Central Provident Fund as are required under the Central Provident Fund Act (Cap. 36);
 - (m) the Authority is of the opinion that it would be contrary to the interests of the public to enter the individual's name in the public register of representatives or allow him to continue as an appointed or provisional representative or to provide that additional type of financial advisory service, as the case may be;
 - (n) the Authority has reason to believe that any information or document that is furnished by him or his principal to the Authority is false or misleading;
 - (o) he has contravened any provision of this Act applicable to him, any condition or restriction imposed on him under this Act or any direction issued to him by the Authority under this Act;
 - (oa) it appears to the Authority that he has failed to satisfy any of his obligations under or arising from —
 - (i) this Act; or
 - (ii) any written direction issued by the Authority under this Act;
- [Act 35 of 2012 wef 18/03/2013]*
- (p) a prohibition order under section 59 has been made by the Authority, and remains in force, against him;
 - (q) the licence of his principal is revoked;
 - (r) the individual fails to pay any fee referred to in section 23H; or

- (s) in the case of the proposed appointment of a provisional representative in respect of a type of financial advisory service —
- (i) he is not or was not previously licensed, authorised or otherwise regulated as a representative in relation to a comparable type of financial advisory service in a foreign jurisdiction for such minimum period as may be prescribed for this sub-paragraph;
 - (ii) he was previously so licensed, authorised or regulated in a foreign jurisdiction but the period between the date of his ceasing to be so licensed, authorised or regulated and the date of his proposed appointment as a provisional representative exceeds such period as may be prescribed for this sub-paragraph; or
 - (iii) the Authority is not satisfied that the laws and practices of the jurisdiction under which the individual is or was so licensed, authorised or regulated provide protection to investors comparable to that applicable to an appointed representative under this Act.
- (2) The Authority may, if it considers it desirable to do so —
- (a) instead of revoking the status of an individual as an appointed or provisional representative, suspend that status for such period as the Authority may determine; and
 - (b) at any time —
 - (i) extend the period of suspension; or
 - (ii) revoke the suspension.
- (3) An individual whose status as an appointed or provisional representative has been revoked shall be deemed not to be an appointed or provisional representative, as the case may be.
- (4) Where the status of an individual as an appointed or provisional representative has been suspended, he shall be deemed not to be an

appointed or provisional representative (as the case may be) during the period of suspension.

(5) Where the Authority has revoked the status of an individual as an appointed or provisional representative, the Authority shall —

(a) indicate against his name in the public register of representatives that fact, which indication shall remain in the register for such period as the Authority considers appropriate; or

(b) remove his name from the register.

(6) Where the Authority has suspended the status of an individual as an appointed or provisional representative, the Authority shall indicate against his name in the public register of representatives that fact and the period of the suspension.

(7) Where the Authority has extended or revoked a suspension of the status of an individual as an appointed or provisional representative, the Authority shall indicate against his name in the public register of representatives the new expiry date of the suspension, or indicate that he is no longer suspended, as the case may be.

(8) The Authority shall not take any action under subsection (1) or (2)(a) on the ground referred to in subsection (1)(n), if —

(a) in a case where the information or document was furnished by the individual to the Authority, the individual proves that he had —

(i) made all inquiries (if any) that were reasonable in the circumstances; and

(ii) after doing so, believed on reasonable grounds that the information or document was not false or misleading; or

(b) in a case where the information or document was furnished by the principal to the Authority and —

(i) such information or document was furnished to the principal by the individual, the individual proves that he had —

- (A) made all inquiries (if any) that were reasonable in the circumstances; and
 - (B) after doing so, believed on reasonable grounds that the information or document was not false or misleading; or
- (ii) such information or document was not furnished to the principal by the individual, the principal proves that he had —
- (A) made all inquiries (if any) that were reasonable in the circumstances; and
 - (B) after doing so, believed on reasonable grounds that the information or document was not false or misleading.

(9) Subject to subsection (10), the Authority shall not take any action under subsection (1) or (2)(a) or (b)(i) without giving the individual an opportunity to be heard.

(10) The Authority may take action under subsection (1) or (2)(a) or (b)(i) on any of the following grounds without giving the individual an opportunity to be heard:

- (a) he is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) a prohibition order under section 59 has been made by the Authority, and remains in force, against him;
- (c) he has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more;
- (d) the ground referred to in subsection (1)(s)(i) or (ii).

(11) Any revocation or suspension by the Authority shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to any investment product entered into by such individual, whether the agreement, transaction or arrangement was entered into before, on or after the revocation or suspension, as the case may be; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

Power of Authority to impose conditions or restrictions

23K.—(1) The Authority may, by notice in writing to an appointed or provisional representative, impose such conditions or restrictions as it thinks fit on him.

(2) Without prejudice to the generality of subsection (1), the Authority may, in entering the appointed or provisional representative's name in the public register of representatives, impose conditions or restrictions with respect to the type of financial advisory service which the appointed or provisional representative may or may not provide.

(3) The Authority may, at any time by notice in writing to the appointed or provisional representative, vary any condition or restriction or impose such further condition or restriction as it may think fit.

(4) Any person who contravenes any condition or restriction imposed by the Authority under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

False statements in relation to notification of appointed or provisional representative

23L.—(1) Any principal who, in connection with the lodgment of any document under section 23F —

- (a) makes a statement which is false or misleading in a material particular; or

- (b) omits to state any matter or thing without which the document is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(2) Any individual who, in connection with the lodgment by his principal of any document under section 23F —

- (a) makes a statement to his principal which is false or misleading in a material particular, being a statement subsequently lodged with the Authority; or

- (b) omits to state any matter or thing to his principal as a result of which the document is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(3) Any person who, when required to furnish any document or information to the Authority under section 23C(3) or 23D(4) (in relation to the application of section 23C(3) to a provisional representative) —

- (a) makes a statement to the Authority which is false or misleading in a material particular; or

- (b) omits to state any matter or thing to the Authority without which the document or information is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(4) A person referred to in subsection (1), (2) or (3) shall not be guilty of an offence if he proves that he —

- (a) made all inquiries (if any) that were reasonable in the circumstances; and

- (b) after doing so, believed on reasonable grounds that the statement made or the omission to state the matter or thing, as the case may be, was not false or misleading.

Appeals

23M. Any person who is aggrieved by —

- (a) the refusal of the Authority under section 23J(1) to enter his name and other particulars in the public register of representatives, or to enter an additional type of financial advisory service for him in that register; or
- (b) the revocation or suspension of his status as an appointed or provisional representative under section 23J(1) or (2)(a),

may, within 30 days after he is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.

PART III**CONDUCT OF BUSINESS***Division 1 — General*

24. [*Deleted by Act 1/2009 wef 26/11/2010*]

Obligation to disclose product information to clients

25.—(1) A licensed financial adviser shall disclose, to every client and prospective client, all material information relating to any designated investment product that the licensed financial adviser recommends to such person, including —

- (a) the terms and conditions of the designated investment product;
- (b) the benefits to be, or likely to be, derived from the designated investment product, and the risks that may arise from the designated investment product;
- (c) the premium, costs, expenses, fees or other charges that may be imposed in respect of the designated investment product;
- (d) where the designated investment product is a unit in a collective investment scheme, the name of the manager of

the scheme and the relationship between the licensed financial adviser and the manager;

- (e) where the designated investment product is a life policy, the name of the licensed insurer under the life policy and the relationship between the licensed financial adviser and the insurer; and

[Act 11 of 2013 wef 18/04/2013]

- (f) such other information as the Authority may prescribe.

[1/2009 wef 26/11/2010]

(2) The Authority may specify, in written directions, the information required to be disclosed under subsection (1)(a), (b) or (c), and the form or manner in which information relating to any designated investment product may be disclosed to any client of a licensed financial adviser.

[1/2009 wef 26/11/2010]

(3) The Authority may, in writing, require a licensed financial adviser to submit to it —

- (a) all written communication which sets out information relating to any designated investment product for the time being in use by the licensed financial adviser; and
- (b) where any written communication referred to in paragraph (a) is not in English, a translation of such written communication in English.

[1/2009 wef 26/11/2010]

(4) If it appears to the Authority, after affording the licensed financial adviser an opportunity to make representations orally or in writing, that any written communication submitted under subsection (3) contravenes any provision of this Act, or is in any respect likely to mislead, the Authority may, in writing, direct the licensed financial adviser to discontinue the use, in Singapore, of the written communication immediately or from a specified date.

[1/2009 wef 26/11/2010]

(5) Any licensed financial adviser who —

- (a) contravenes subsection (1);
- (b) fails to comply with a requirement imposed by the Authority under subsection (3); or

- (c) fails to comply with a direction of the Authority under subsection (4),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both.

[1/2009 wef 26/11/2010]

(5A) Where, on or after the date of commencement of section 6 of the Financial Advisers (Amendment) Act 2012 —

- (a) a licensed financial adviser, in making a recommendation to a person, contravenes subsection (1);
- (b) that person does, or refrains from doing, a particular act as a result of that contravention;
- (c) it is reasonable, having regard to that contravention and all other relevant circumstances, for that person to do, or refrain from doing, as the case may be, that act as a result of that contravention; and
- (d) that person suffers any loss or damage as a result of doing, or refraining from doing, as the case may be, that act,

then, without prejudice to any other remedy available to that person, the licensed financial adviser is liable to pay damages to that person in respect of that loss or damage.

[Act 35 of 2012 wef 18/03/2013]

(6) In this section —

“client”, in relation to a designated investment product which is a group life policy under which any person insured is liable to pay the premium, includes every person insured under the group life policy;

“designated investment product” means a unit in a collective investment scheme, a life policy (including a group life policy), or such other investment product as the Authority may prescribe;

“written communication” includes a brochure, a leaflet, a circular or an advertising matter, whether in electronic, print or other form.

[Insurance Intermediaries, ss. 5, 9; SIA, s. 50]

False or misleading statements, etc., by licensed financial advisers

26.—(1) A licensed financial adviser shall not make a false or misleading statement —

- (a) as to any amount that would be payable in respect of a proposed contract in respect of any investment product;
- (b) as to the effect of any provision of a contract or a proposed contract in respect of any investment product; or
- (c) in connection with the provision of any financial advisory service,

if, when he makes the statement —

- (i) he does not care whether the statement is true or false; or
- (ii) he knows or ought reasonably to have known that the statement is false or misleading.

[Act 35 of 2012 wef 18/03/2013]

[1/2009 wef 26/11/2010]

(1A) A licensed financial adviser shall not, in connection with the provision of any financial advisory service —

- (a) employ any device, scheme or artifice to defraud; or
- (b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person.

[Act 35 of 2012 wef 18/03/2013]

(1B) Where, on or after the date of commencement of section 7(a) of the Financial Advisers (Amendment) Act 2012 —

- (a) a licensed financial adviser makes a false or misleading statement referred to in subsection (1) and thereby contravenes that subsection;

- (b) a person, in reliance on that statement, does, or refrains from doing, a particular act;
- (c) it is reasonable, having regard to that statement and all other relevant circumstances, for that person to do, or refrain from doing, as the case may be, that act, in reliance on that statement; and
- (d) that person suffers any loss or damage as a result of doing, or refraining from doing, as the case may be, that act,

then, without prejudice to any other remedy available to that person, the licensed financial adviser is liable to pay damages to that person in respect of that loss or damage.

[Act 35 of 2012 wef 18/03/2013]

(1C) Where, on or after the date of commencement of section 7(a) of the Financial Advisers (Amendment) Act 2012 —

- (a) a licensed financial adviser contravenes subsection (1A);
- (b) a person does, or refrains from doing, a particular act as a result of that contravention;
- (c) it is reasonable, having regard to that contravention and all other relevant circumstances, for that person to do, or refrain from doing, as the case may be, that act as a result of that contravention; and
- (d) that person suffers any loss or damage as a result of doing, or refraining from doing, as the case may be, that act,

then, without prejudice to any other remedy available to that person, the licensed financial adviser is liable to pay damages to that person in respect of that loss or damage.

[Act 35 of 2012 wef 18/03/2013]

(2) A reference in subsection (1) to the making of a false or misleading statement includes a reference to omitting to disclose any matter that is material to the statement.

[Act 35 of 2012 wef 18/03/2013]

(3) Any licensed financial adviser who contravenes subsection (1) or (1A) shall, notwithstanding that a contract does not come into being, be guilty of an offence and shall be liable on conviction to a

fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both.

[1/2009 wef 26/11/2010]

[Act 35 of 2012 wef 18/03/2013]

[Insurance Intermediaries, s. 6 (1), (2) and (5)]

Recommendations by licensed financial advisers

27.—(1) No licensed financial adviser shall make a recommendation with respect to any investment product to a person who may reasonably be expected to rely on the recommendation if the licensed financial adviser does not have a reasonable basis for making the recommendation to the person.

[1/2009 wef 26/11/2010]

(2) For the purposes of subsection (1), a licensed financial adviser does not have a reasonable basis for making a recommendation to a person unless —

- (a) he has, for the purposes of ascertaining that the recommendation is appropriate, having regard to the information possessed by him concerning the investment objectives, financial situation and particular needs of the person, given such consideration to, and conducted such investigation of, the subject-matter of the recommendation as is reasonable in all the circumstances; and
- (b) the recommendation is based on the consideration and investigation referred to in paragraph (a).

[1/2009 wef 26/11/2010]

(3) Where —

- (a) a licensed financial adviser, in making a recommendation to a person, contravenes subsection (1);
- (b) the person, in reliance on the recommendation, does a particular act, or refrains from doing a particular act;
- (c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act, or to refrain from doing that act, as the case may be, in reliance on the recommendation; and

(d) the person suffers loss or damage as a result of doing that act, or refraining from doing that act, as the case may be, then, without prejudice to any other remedy available to that person, the licensed financial adviser is liable to pay damages to that person in respect of that loss or damage.

[1/2009 wef 26/11/2010]

(4) In this section, a reference to the making of a recommendation is a reference to the making of a recommendation expressly or by implication.

(5) This section shall not apply to any licensed financial adviser or class of licensed financial advisers in such circumstances or under such conditions as may be prescribed.

[1/2009 wef 26/11/2010]

[2/2005]

[SF Bill, Clause 121]

Receipt of client's money or property

28.—(1) Without prejudice to the generality of section 104(1), the Authority may, by regulations —

(a) determine the manner in which a licensed financial adviser may receive or deal with client's money or property; or

[1/2009 wef 26/11/2010]

(b) prohibit licensed financial advisers from receiving or dealing with client's money or property in specified circumstances or in relation to specified activities.

[1/2009 wef 26/11/2010]

(2) A lien or claim on client's money or property in any account, which may be required to be established by any licensed financial adviser under regulations made under subsection (1), shall be void unless the moneys in the account are for fees due and owing to the licensed financial adviser.

[1/2009 wef 26/11/2010]

(3) A charge or mortgage on client's money or property in any account, which may be required to be established by any licensed financial adviser under regulations made under subsection (1), shall be void.

[1/2009 wef 26/11/2010]

(4) In this section, “client’s money or property” means money received or retained by, or property deposited with, a licensed financial adviser in the course of his business as such for which he is liable to account to another person.

[1/2009 wef 26/11/2010]

[Insurance Intermediaries, s. 28 (8) and (9)]

Obligation to furnish information to Authority

29.—(1) The Authority may, in writing, require any licensed financial adviser to furnish it with information about any matter related to its business whether carried on in Singapore or elsewhere if, in the opinion of the Authority, it requires the information for the discharge of its functions under this Act.

[1/2009 wef 26/11/2010]

(2) A licensed financial adviser which has been required to furnish information to the Authority under subsection (1) shall comply with such requirement.

[1/2009 wef 26/11/2010]

(3) Any person who, without reasonable excuse, contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

[Insurance Intermediaries, s. 10]

Saving for validity of transactions

30.—(1) Subject to subsection (3), a contravention of any requirement of this Act (including requirements in regulations made for the purposes of this Act) does not affect the validity or enforceability of any agreement, transaction or arrangement.

(2) Failure to comply with any code, guideline, policy statement or practice note issued under section 64 does not affect the validity of any agreement, transaction or arrangement.

(3) Subsection (1) has effect subject to any express provision to the contrary in this Act or in any regulations made for the purposes of another provision of this Act.

(4) Without prejudice to the generality of section 104(1), the regulations referred to in subsection (3) may provide that a contravention of any requirement of this Act has a specified effect on the validity or enforceability of any agreement, transaction or arrangement.

[Aust. Corporations 2001, s. 1101H]

Division 2 — Life Insurance

Application of this Division

31. This Division shall apply to licensed financial advisers who provide any financial advisory service in respect of life policies.

[1/2009 wef 26/11/2010]

Insurance broking premium accounts

32.—(1) Every licensed financial adviser which receives any money —

- (a) from or on behalf of an insured or intending insured for or on account of an insurer in connection with a contract of insurance or a proposed contract of insurance; or
- (b) from or on behalf of an insurer for or on account of an insured or intending insured,

shall, for the purposes of this section, establish and maintain a separate account with a bank licensed under the Banking Act (Cap. 19).

[15/2003]

(2) The Authority may prescribe, in relation to an account established under subsection (1) —

- (a) the types of moneys that must be paid into or withdrawn from such account;
- (b) the manner in which moneys should be paid into or withdrawn from such account;

- (c) the manner in which moneys held in such account are to be invested;
- (d) the manner in which the proceeds from the investment of moneys held in such account are to be distributed;
- (e) the rights and obligations of any party in relation to moneys held in such account; and
- (f) any other matter which the Authority considers to be incidental to or necessary for this section.

(3) A lien or claim on the moneys in any account established by any licensed financial adviser under subsection (1) shall be void unless the moneys in the account are for fees due and owing to the licensed financial adviser.

(4) A charge or mortgage on the moneys in any account established by any licensed financial adviser under subsection (1) shall be void.

(5) In this section, “moneys” means any sum received by a licensed financial adviser as agent for an insured or intending insured, including policy moneys, premiums and claims payments.

(6) Any licensed financial adviser which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

[Insurance Intermediaries, s. 22]

Negotiation and placement of risk with unlicensed insurer

33.—(1) Subject to subsection (4), no licensed financial adviser shall, in the course of his business as such, negotiate any contract of insurance with an insurer (directly or indirectly) except with a licensed insurer acting in the course of his business as such.

[1/2009 wef 26/11/2010]

[Act 11 of 2013 wef 18/04/2013]

(2) The reference in subsection (1) to a contract of insurance shall not apply to —

- (a) reinsurance;
- (b) business relating to risks outside Singapore; or
- (c) such other risks as may be prescribed.

(3) In subsection (2)(b), “risks outside Singapore” means any risk which would be classified as an offshore policy as defined in the First Schedule to the Insurance Act (Cap. 142) had the risk been underwritten by a licensed insurer in Singapore.

[Act 11 of 2013 wef 18/04/2013]

(4) Where in any particular case the Authority is satisfied that, by reason of the exceptional nature of the risk or other exceptional circumstances, it is not reasonably practicable to comply with subsection (1), the Authority may permit any licensed financial adviser —

- (a) to negotiate the contract of insurance with such insurer as the licensed financial adviser sees fit; and
- (b) if in the opinion of the Authority the case requires it, to effect the contract of insurance and receive the premium in Singapore on behalf of such insurer.

[1/2009 wef 26/11/2010]

(5) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 3 years or to both.

[Insurance Intermediaries, s. 23]

Representations by licensed financial advisers

34.—(1) No licensed financial adviser shall, with intent to deceive, in relation to a proposed contract of insurance —

- (a) write on a form, being a form that is given or sent to an insurer, any matter that is material to the contract and is false or misleading in a material particular;
- (b) omit to disclose to the insurer any matter that is material to the proposed contract;
- (c) advise or induce the intending insured to write on a form, being a form that is given or sent to the insurer, any matter that is false or misleading in a material particular; or

- (d) advise or induce the intending insured to omit to disclose to the insurer any matter that is material to the proposed contract.

[1/2009 wef 26/11/2010]

(2) No licensed financial adviser shall, with intent to deceive, in relation to a claim under a contract of insurance —

- (a) fill up, in whole or in part, a form, being a form that is given or sent to an insurer, in such a way that the form is false or misleading in a material particular;
- (b) omit to disclose to the insurer any matter that is material to the claim;
- (c) induce the insured to fill up, in whole or in part, a form, being a form that is given or sent to the insurer, in such a way that the form is false or misleading in a material particular; or
- (d) advise or induce the insured to omit to disclose to the insurer any matter that is material to the claim.

[1/2009 wef 26/11/2010]

(3) Any licensed financial adviser who contravenes this section shall, notwithstanding that a contract of insurance does not come into being, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both.

[1/2009 wef 26/11/2010]

[Insurance Intermediaries, s. 6 (3), (4) and (5)]

Division 3 — Securities

Application of this Division

35. This Division shall apply to licensed financial advisers who provide any financial advisory service in respect of securities.

[1/2009 wef 26/11/2010]

Licensed financial adviser to disclose certain interests in securities

36.—(1) Where a licensed financial adviser sends a circular or other similar written communication in which he makes a

recommendation, whether expressly or by implication, with respect to any securities, he shall include in the circular or other communication, in type not less legible than that used in the remainder of the circular or other communication, a concise statement of the nature of any interest in, or any interest in the acquisition or disposal of, the securities that he, or a person associated with or connected to him, has at the date on which the circular or other communication is sent.

[1/2009 wef 26/11/2010]

(2) Where a licensed financial adviser is charged with an offence in respect of a contravention of subsection (1), it shall be a defence for the licensed financial adviser to prove that, at the time the circular or other communication was sent, he was not aware and could not reasonably be expected to have been aware —

- (a) that he had an interest in, or an interest in the acquisition or disposal of, the securities; or
- (b) that the person associated with or connected to him had an interest in, or an interest in the acquisition or disposal of, the securities,

as the case may be.

[1/2009 wef 26/11/2010]

(3) For the purposes of subsections (1) and (2) —

- (a) an interest of a person in the disposal of any securities includes any financial benefit or advantage that will, or is likely to, accrue directly or indirectly to the person, upon or arising out of the disposal of the securities;
- (b) without limiting the generality of paragraph (a), a person who has entered into an underwriting agreement in respect of any securities shall be deemed to have an interest in the acquisition or disposal of the securities; and
- (c) notwithstanding section 2(1) or 3, a person is not connected to or associated with another person unless the person and the other person are acting jointly, or otherwise acting under or in accordance with an

arrangement made between them, in relation to the sending of the circular or other communication.

(4) [*Deleted by Act 15 of 2003*]

(5) When a licensed financial adviser sends to a person a circular or other communication to which subsection (1) applies, the licensed financial adviser shall preserve a copy of the circular or other communication for 5 years.

[1/2009 wef 26/11/2010]

[15/2003; 2/2007]

(6) For the purposes of this section, a circular or other communication sent to a person shall, if it is signed by an officer of a licensed financial adviser, be deemed to have been sent by the financial adviser.

(7) The Authority may, by regulations, exempt any person or class of persons, or any securities or class of securities, from the application of this section, subject to such terms or conditions as the Authority considers appropriate.

(8) Any licensed financial adviser who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both.

[1/2009 wef 26/11/2010]

[*SF Bill, Clause 120*]

Division 4 — Appointed and Provisional Representatives

[1/2009 wef 26/11/2010]

Business conduct requirements for appointed and provisional representatives

37.—(1) Subject to the provisions of this Act, sections 25, 26, 27, 29, 33, 34 and 36 shall apply, with the necessary modifications, to an appointed or provisional representative in respect of his acting as such as if he were a licensed financial adviser.

(2) The Authority may, on the application of a licensed financial adviser or an exempt financial adviser, exempt any of its

representatives from complying with any of the provisions referred to in subsection (1).

(3) An exemption granted under subsection (2) need not be published in the *Gazette*.

(4) The Authority may withdraw an exemption granted to any person under subsection (2) if the person contravenes any provision of this Act, or if the Authority considers it necessary in the public interest.

(5) Where the Authority withdraws an exemption granted to any person under subsection (2), the Authority need not give the person an opportunity to be heard.

(6) A licensed financial adviser or an exempt financial adviser which is aggrieved by the decision of the Authority to withdraw an exemption granted to any of its appointed or provisional representatives under subsection (2) may, within 30 days of the decision, appeal in writing to the Minister.

(7) A withdrawal under subsection (4) of an exemption granted to any person shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to any investment product entered into by the person, whether the agreement, transaction or arrangement was entered into before, on or after the withdrawal of the exemption; or
- (b) affect any right, obligation or liability arising under any agreement, transaction or arrangement referred to in paragraph (a).

[1/2009 wef 26/11/2010]

38. to 44. *[Deleted by Act 1/2009 wef 26/11/2010]*

PART IV

ACCOUNTS AND AUDIT

*Division 1 — Accounts***Accounts to be kept by licensed financial advisers**

45.—(1) A licensed financial adviser shall prepare, and lodge with the Authority, such statements of accounts and other statements and in such form and manner as may be prescribed.

(2) A licensed financial adviser shall —

(a) keep, or cause to be kept, such books as will sufficiently explain the transactions and financial position of the financial adviser in Singapore and enable true and fair profit and loss accounts and balance-sheets to be prepared from time to time; and

(b) keep, or cause to be kept, such books, in such manner as will enable them to be conveniently and properly audited.

(3) A licensed financial adviser shall retain such books as may be required to be kept under this Act for such period as may be prescribed.

(4) An entry in the books of a licensed financial adviser required to be kept in accordance with this Division shall be deemed to have been made by, or with the authority of, the licensed financial adviser.

(5) Any licensed financial adviser which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(6) Any licensed financial adviser which contravenes subsection (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[Insurance Intermediaries, s. 28 (1) and (2); SF Bill, Clause 102 (1), (2) and (3)]

Duty of licensed financial advisor to furnish Authority with returns, records and information

46.—(1) A licensed financial adviser shall —

- (a) furnish such returns and records, relating to its business, to the Authority in such form and manner as may be prescribed or as may be notified in writing by the Authority; and
- (b) furnish such information relating to its business as the Authority may require.

(2) Any licensed financial adviser which contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

[SF Bill, s. 102 (4)]

*Division 2 — Audit***Appointment of auditors**

47.—(1) A licensed financial adviser shall appoint an auditor to audit its accounts and statements prepared under section 45(1) and where, for any reason, the auditor ceases to act for such financial adviser, the financial adviser shall, as soon as practicable thereafter, appoint another auditor.

(2) Any licensed financial adviser which contravenes this section shall be guilty of an offence.

[SF Bill, Clause 106]

Lodgment of annual accounts, etc., by licensed financial adviser

48.—(1) A licensed financial adviser shall, in respect of each financial year —

- (a) prepare a true and fair profit and loss account and a balance-sheet made up to the last day of the financial year; and

(b) lodge that account and balance-sheet with the Authority within 5 months, or such extension thereof permitted by the Authority under subsection (2), after the end of the financial year, together with a report in the prescribed form of an auditor appointed under section 47 on the account and balance-sheet and such other statements lodged under section 45(1).

(2) Where an application for an extension of the period of 5 months specified in subsection (1) has been made by a licensed financial adviser to the Authority and the Authority is satisfied that there is any special reason for requiring the extension, the Authority may extend the period by not more than 4 months, subject to such conditions as the Authority may think fit to impose.

(3) Notwithstanding any other provision of this Act or the provisions of the Companies Act (Cap. 50), the Authority may, if it is not satisfied with the performance of duties by an auditor appointed by a licensed financial adviser under section 47 —

(a) at any time direct the licensed financial adviser to remove the auditor; and

(b) direct the licensed financial adviser, as soon as practicable thereafter, to appoint another auditor,

and the licensed financial adviser shall comply with such direction.

(4) [*Deleted by Act 2 of 2005*]

(5) Any licensed financial adviser which contravenes subsection (1)(b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 for every day or part thereof that the lodgment is late, subject to a maximum of \$50,000.

(6) Any licensed financial adviser which contravenes any condition imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(7) Any licensed financial adviser which contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(8) [*Deleted by Act 2 of 2005*]

[SF Bill, Clause 107]

Reports by auditor to Authority in certain cases

49.—(1) Where, in the performance of his duties as an auditor for a licensed financial adviser, an auditor becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the financial adviser to a material extent;
- (b) any matter which, in his opinion, constitutes or may constitute a contravention of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts, including any irregularity that jeopardises the moneys or other assets of the clients of the financial adviser,

the auditor shall immediately thereafter submit a report in writing of the matter or the irregularity to the Authority.

(2) The Authority may impose all or any of the following duties on an auditor for a licensed financial adviser:

- (a) a duty to submit to the Authority such additional information in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge or extend the scope of his audit of the business and affairs of the financial adviser;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report to the Authority on any of the matters referred to in paragraphs (b) and (c),

and the auditor shall carry out such duty or duties.

(3) The licensed financial adviser shall remunerate the auditor in respect of the discharge of such duty or duties as the Authority may impose on the auditor under subsection (2).

(4) Any auditor who contravenes subsection (1) or (2) shall be guilty of an offence.

(5) Any licensed financial adviser which contravenes subsection (3) shall be guilty of an offence.

[SF Bill, Clause 108 and 115]

Power of Authority to appoint auditor

50.—(1) Where —

(a) a licensed financial adviser fails to lodge an auditor's report under section 48(1)(b); or

(b) the Authority receives a report under section 49(1),

the Authority may, without prejudice to its powers under section 49(2), if it is satisfied that it is in the interests of the financial adviser, its clients or the general public to do so, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books of the financial adviser.

(2) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (1) should be borne by the licensed financial adviser, the Authority may, in writing, direct the licensed financial adviser to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(3) Where a licensed financial adviser fails to comply with a direction under subsection (2) to pay the specified amount or any part thereof, such amount may be sued for and recovered by the Authority as a civil debt.

(4) An auditor appointed under subsection (1) shall, on the conclusion of the examination and audit, submit a report thereon to the Authority.

(5) Any auditor who contravenes subsection (4) shall be guilty of an offence.

[SF Bill, Clause 109]

Powers of auditor appointed by Authority

51.—(1) An auditor appointed by the Authority under section 50(1) may, for the purpose of carrying out an examination and audit —

- (a) examine, on oath or affirmation, any officer, employee or agent of the licensed financial adviser, or any other auditor for the licensed financial adviser appointed under this Act;
- (b) require any officer, employee or agent of the licensed financial adviser, or any other auditor for the licensed financial adviser appointed under this Act, to produce any of the books held by or on behalf of the licensed financial adviser relating to its business, or to make copies of or take extracts from, or retain possession of, such books for such period as may be necessary to enable them to be inspected;
- (c) employ such persons as he considers necessary to assist him in carrying out the examination and audit; and
- (d) authorise in writing any person employed by him to do, in relation to the examination and audit, any act or thing that he could do as an auditor under this subsection, other than the examination of a person on oath or affirmation.

(2) Any person who, without reasonable excuse, refuses or fails to answer any question put to him, or fails to comply with any request made to him, by an auditor appointed under section 50(1) or a person authorised under subsection (1)(d) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both.

[SF Bill, Clause 110]

Restriction on auditor's and employee's right to communicate certain matters

52.—(1) Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor carrying out any duty imposed under section 49(2) or appointed under section 50(1), and any employee of such auditor, shall not disclose any information which may come to his knowledge or possession in

the course of performing his duties as such auditor or employee, as the case may be, to any person other than —

- (a) the Authority; and
- (b) in the case of an employee of such auditor, the auditor.

(2) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an auditor, to a fine not exceeding \$50,000; or
- (b) in the case of an employee of an auditor, to a fine not exceeding \$25,000.

[SF Bill, Clause 113]

Defamation

53.—(1) No auditor or employee of such auditor shall, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of —

- (a) any statement made orally or in writing in the discharge of his duties under this Part; or
- (b) the submission of any report to the Authority under section 49(1) or (2)(d) or 50(4).

(2) Subsection (1) shall not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his employee has as a defendant in an action for defamation.

[SF Bill, Clause 116]

Offence to destroy, conceal, alter, etc., records

54.—(1) Any person who, with intent to prevent, delay or obstruct the carrying out of any examination or audit under this Part —

- (a) destroys, conceals or alters any book relating to the business of a licensed financial adviser; or
- (b) sends, or conspires with any other person to send, out of Singapore, any book or asset of any description belonging to, in the possession of or under the control of the licensed financial adviser,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) If, in any proceedings for an offence under subsection (1), it is proved that the person charged with the offence —

(a) destroyed, concealed or altered any book referred to in subsection (1)(a); or

(b) sent, or conspired to send, out of Singapore, any book or asset referred to in subsection (1)(b),

the onus of proving that, in so doing, he did not act with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Part shall lie on him.

[SF Bill, Clause 111]

Safeguarding of records by licensed financial adviser

55.—(1) A licensed financial adviser shall take reasonable steps —

(a) to prevent falsification of the books required to be kept by it under this Act; and

(b) to facilitate the discovery of any falsification of any such book.

(2) Any licensed financial adviser which contravenes this section shall be guilty of an offence.

[SF Bill, Clause 112]

PART V

POWERS OF AUTHORITY

Approval of chief executive officer and director of licensed financial adviser

56.—(1) Subject to subsection (1B), no licensed financial adviser shall —

(a) appoint a person as its chief executive officer or director;
or

- (b) change the nature of the appointment of a person as a director from one that is non-executive to one that is executive,

unless it has obtained the approval of the Authority.

[1/2009 wef 26/11/2010]

(1A) Where a licensed financial adviser has obtained the approval of the Authority to appoint a person as its chief executive officer or director under subsection (1)(a), the person may be re-appointed as chief executive officer or director, as the case may be, of the licensed financial adviser immediately upon the expiry of the earlier term without the approval of the Authority.

[1/2009 wef 26/11/2010]

[15/2003]

(1B) Subsection (1) shall not apply to the appointment of a person as a director of a foreign company, or the change in the nature of the appointment of a person as a director of a foreign company if, at the time of the appointment or change, the person —

- (a) does not reside in Singapore; and
- (b) is not directly responsible for its business in Singapore or any part thereof.

[1/2009 wef 26/11/2010]

(1C) In subsection (1B), “foreign company” has the same meaning as in section 4(1) of the Companies Act (Cap. 50).

[1/2009 wef 26/11/2010]

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1), have regard to such criteria as may be prescribed or as may be specified in written directions.

[1/2009 wef 26/11/2010]

(3) Subject to subsection (4), the Authority shall not refuse an application for approval under subsection (1) without giving the licensed financial adviser an opportunity to be heard.

(4) The Authority may refuse an application for approval under subsection (1) on any of the following grounds without giving the licensed financial adviser an opportunity to be heard:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) a prohibition order under section 59 has been made by the Authority, and remains in force, against the person;
- (c) the person has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

[15/2003]

(5) Where the Authority refuses an application for approval under subsection (1), the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(6) Any licensed financial adviser which is aggrieved by the decision of the Authority under subsection (1) may, within 30 days of the decision of the Authority, appeal in writing to the Minister.

(7) Any licensed financial adviser which, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(7A) Without prejudice to the Authority's power to impose conditions or restrictions under section 13, the Authority may at any time, by notice in writing to a licensed financial adviser, impose on it a condition requiring it to notify the Authority of a change to any specified attribute (such as residence and nature of appointment) of its chief executive officer or director, and vary any such condition.

[1/2009 wef 26/11/2010]

(7B) Any person who contravenes any condition or restriction imposed under subsection (7A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[1/2009 wef 26/11/2010]

(8) In this section, "chief executive officer" means any person, by whatever name described, who is —

- (a) in the direct employment of, or acting for or by arrangement with, a licensed financial adviser; and
- (b) principally responsible for the management and conduct of any type of business of the financial adviser in Singapore.

[SF Bill, Clause 96]

Removal of officer of licensed financial adviser

57.—(1) Where the Authority is satisfied that an officer of a licensed financial adviser —

- (a) has wilfully contravened or wilfully caused that licensed financial adviser to contravene any provision of this Act;
- (b) has, without reasonable excuse, failed to secure compliance with this Act;
- (c) has failed to discharge the duties or functions of his office;
[1/2009 wef 26/11/2010]
- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (f) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (fa) has had a prohibition order under section 59 made by the Authority against him that remains in force;
[1/2009 wef 26/11/2010]
- (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
[1/2009 wef 26/11/2010]
- (h) is not a fit and proper person for such office,
[1/2009 wef 26/11/2010]

then the Authority may, if it thinks it necessary in the public interest or for the protection of investors or policy owners, direct, by notice in

writing, the licensed financial adviser to remove from its office or employment the officer, and the licensed financial adviser shall comply with such notice.

[15/2003; 2/2005]

(2) Without prejudice to any other matter that the Authority may consider relevant, that Authority shall, in determining whether an officer of a licensed financial adviser has failed to discharge the duties of his office under subsection (1)(c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) Subject to subsection (4), the Authority shall not direct a licensed financial adviser to remove from its office or employment an officer under subsection (1) without giving the licensed financial adviser an opportunity to be heard.

(4) The Authority may direct a licensed financial adviser to remove an officer from its office or employment under subsection (1) on any of the following grounds without giving the licensed financial adviser an opportunity to be heard:

- (a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) a prohibition order under section 59 has been made by the Authority, and remains in force, against the officer;
- (c) the officer has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

[15/2003]

(5) Where the Authority directs a licensed financial adviser to remove from its office or employment an officer under subsection (1), the Authority need not give that officer an opportunity to be heard.

(6) Any licensed financial adviser which is aggrieved by the direction of the Authority to remove from its office or employment an

officer under subsection (1) may, within 30 days of the decision of the Authority, appeal in writing to the Minister.

(7) Any licensed financial adviser which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(8) No criminal or civil liability shall be incurred by a licensed financial adviser, or any person acting on behalf of the licensed financial adviser, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(9) Nothing in section 152 of the Companies Act (Cap. 50) shall prevent the Authority from exercising any power under subsection (1).

[SF Bill, Clause 97]

Control of take-over of licensed financial adviser

57A.—(1) This section applies to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

(2) No person shall enter into any arrangement in relation to shares in a licensed financial adviser that is a company by virtue of which he would, if the arrangement is carried out, obtain effective control of the licensed financial adviser, unless he has obtained the prior approval of the Authority to his entering into the arrangement.

(3) An application for the Authority's approval under subsection (2) shall be made in writing, and the Authority may approve the application if the Authority is satisfied that —

- (a) the applicant is a fit and proper person to have effective control of the licensed financial adviser;
- (b) having regard to the applicant's likely influence, the licensed financial adviser is likely to continue to conduct its business prudently and comply with the provisions of this Act and directions made thereunder; and

- (c) the applicant satisfies such other criteria as may be prescribed or as may be specified in written directions by the Authority.

(4) Any approval under subsection (3) may be granted to the applicant subject to such conditions as the Authority may determine, including any condition —

- (a) restricting his disposal or further acquisition of shares or voting power in the licensed financial adviser; or
- (b) restricting his exercise of voting power in the licensed financial adviser,

and the applicant shall comply with such conditions.

(5) Any condition imposed under subsection (4) shall have effect notwithstanding any provision of the Companies Act (Cap. 50) or anything contained in the memorandum or articles of association of the licensed financial adviser.

(6) For the purposes of this section and section 57B —

- (a) a reference to a person entering into an arrangement in relation to shares includes —
 - (i) entering into an agreement or any formal or informal scheme, arrangement or understanding, to acquire those shares;
 - (ii) making or publishing a statement, however expressed, that expressly or impliedly invites the holder of those shares to offer to dispose of his shares to the first person;
 - (iii) the first person obtaining a right to acquire shares under an option, or to have shares transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on fulfilment of a condition or not; and
 - (iv) becoming a trustee of a trust in respect of those shares;

- (b) a person shall be regarded as obtaining effective control of a licensed financial adviser by virtue of an arrangement if the person alone or acting together with any connected person would, if the arrangement is carried out —
- (i) acquire or hold, directly or indirectly, 20% or more of the issued share capital of the licensed financial adviser; or
 - (ii) control, directly or indirectly, 20% or more of the voting power in the licensed financial adviser; and
- (c) a reference to the voting power in the licensed financial adviser is a reference to the total number of votes that may be cast in a general meeting of the licensed financial adviser.

(7) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 3 years or to both.

(8) Any person who contravenes subsection (4) shall be guilty of an offence.

[1/2009 wef 26/11/2010]

Objection to control of licensed financial adviser

57B.—(1) The Authority may serve a written notice of objection on —

- (a) any person required to obtain the Authority's approval or who has obtained the approval under section 57A; or
- (b) any person who, whether before, on or after the date of commencement of this section, either alone or together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the licensed financial adviser or controls, directly or indirectly, 20% or more of the voting power in the licensed financial adviser,

if the Authority is satisfied that —

- (i) any condition of approval imposed on the person under section 57A(4) has not been complied with;

- (ii) the person is not or ceases to be a fit and proper person to have effective control of the licensed financial adviser;
- (iii) having regard to the likely influence of the person, the licensed financial adviser is not able to or is no longer likely to conduct its business prudently or to comply with the provisions of this Act or any direction made thereunder;
- (iv) the person does not or ceases to satisfy such criteria as may be prescribed;
- (v) the person has furnished false or misleading information or documents in connection with an application under section 57A; or
- (vi) the Authority would not have granted its approval under section 57A had it been aware, at that time, of circumstances relevant to the person's application for such approval.

(2) The Authority shall not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

- (a) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;
- (c) a prohibition order under section 59 has been made by the Authority, and remains in force, against the person;
- (d) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly.

(3) The Authority shall, in any written notice of objection, specify a reasonable period within which the person to be served the written notice of objection shall —

- (a) take such steps as are necessary to ensure that he ceases to be a party to the arrangement described in section 57A(2) or ceases to have control of a licensed financial adviser in the manner described in subsection (1)(b); or
- (b) comply with such other requirements as the Authority may specify in written directions.

(4) Any person served with a notice of objection under this section shall comply with the notice.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 3 years or to both.

[1/2009 wef 26/11/2010]

Power of Authority to issue written directions

58.—(1) The Authority may, if it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue written directions, either of a general or specific nature, to —

- (a) any licensed financial adviser;
[1/2009 wef 26/11/2010]
- (b) any person exempt under section 23 or 100;
- (c) any representative; or
[1/2009 wef 26/11/2010]
- (d) any class of the persons referred to in paragraph (a), (b) or (c),

to comply with such requirements as the Authority may specify in the written directions, or for any other purpose.

[15/2003; 2/2005]

[Act 35 of 2012 wef 18/03/2013]

(2) Without prejudice to the generality of subsection (1), written directions may be issued —

- (a) with respect to —
- (i) the standards to be maintained by —
 - (A) a licensed financial adviser;
[1/2009 wef 26/11/2010]
 - (B) any person exempt under section 23 or 100; or
 - (C) any representative,
*[1/2009 wef 26/11/2010]*in the conduct of his business, including the provision of any financial advisory service to any person outside Singapore and the duties to be undertaken when making recommendations to clients in respect of investment products;
 - (ii) the type and frequency of financial returns and other information to be submitted to the Authority;
 - (iii) the qualifications, experience and training of representatives; or
 - (iv) the procedure for the conduct of disciplinary control of licensed financial advisers, exempt financial advisers and their representatives;
[1/2009 wef 26/11/2010]
- (b) where any person is contravening, is likely to contravene or has contravened, any provision of this Act, to require the person —
- (i) to comply with that provision or to cease contravention of that provision;
 - (ii) to take such action necessary to enable him to conduct his business in accordance with sound principles;
 - (iii) where the person is a corporation, to remove any of its directors;
 - (iv) to remove any person whom the Authority considers unfit to be associated with him;

- (v) to take action as to the disposition or recovery of assets;
 - (vi) to take any available step for the recovery of sums which appear to the Authority to have been improperly paid; or
 - (vii) to make good any default committed by him; or
- (c) for any other purpose specified in this Act.

[15/2003; 2/2005]

(3) It shall not be necessary to publish any written direction issued under subsection (1) in the *Gazette*.

[Act 35 of 2012 wef 18/03/2013]

(4) The Authority may at any time vary, rescind or revoke any written direction issued under subsection (1).

(5) Any person who fails to comply with any requirement specified in a written direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

[2/2005]

(6) In this section, “written direction” includes a circular or notice.

[SF Bill, Clause 101]

Power of Authority to make prohibition orders

59.—(1) The Authority may make a prohibition order against a person, by notice in writing, if —

(a) the Authority suspends or revokes the financial adviser’s licence held by the person;

[1/2009 wef 26/11/2010]

(b) where the person is an exempt financial adviser, the Authority has reason to believe that circumstances exist under which, if the person were a licensed financial adviser, there would exist a ground on which the Authority may revoke his licence under section 19(2);

[1/2009 wef 26/11/2010]

(ba) the Authority revokes or suspends the status of the person as an appointed or provisional representative under section 23J;

[1/2009 wef 26/11/2010]

(bb) where the person (not being a person referred to in paragraph (bd)) is or was a representative of an exempt financial adviser, the Authority has reason to believe that circumstances exist under which, if the person were an appointed or provisional representative, there would exist a ground on which the Authority may revoke under section 23J his status as an appointed or provisional representative;

[Act 35 of 2012 wef 18/03/2013]

(bc) where the person (not being a person referred to in paragraph (bd)) is or was a representative of a licensed financial adviser, the Authority has reason to believe that circumstances exist under which there would exist a ground on which the Authority may revoke under section 23J his status as an appointed or provisional representative;

[Act 35 of 2012 wef 18/03/2013]

(bd) where the person is or was a representative of a financial adviser, and is exempted from section 23B(1) by the Authority under section 23B(2), the Authority has reason to believe that circumstances exist under which, if the person were an appointed representative, there would exist a ground on which the Authority may revoke under section 23J his status as an appointed representative;

[Act 35 of 2012 wef 18/03/2013]

(c) the Authority has reason to believe that the person is contravening, is likely to contravene or has contravened —

(i) any provision of this Act;

(ii) any condition or restriction imposed by the Authority under this Act; or

(iii) any written direction issued by the Authority under this Act;

[Act 35 of 2012 wef 18/03/2013]

- (d) the person has been convicted of an offence under this Act or has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly;

[1/2009 wef 26/11/2010]

- (e) the person has been convicted of an offence involving the contravention of any law or requirement of a foreign country or territory relating to any financial advisory service provided by that person; or

[1/2009 wef 26/11/2010]

[2/2005]

- (f) the person has been removed at the direction of the Authority from office or employment as an officer of a licensed financial adviser under section 57(1)(h).

[1/2009 wef 26/11/2010]

(2) A prohibition order made under subsection (1) do one or both of the following:

- (a) prohibit the person, whether permanently or for a specified period, from —

(i) providing any financial advisory service, or providing such financial advisory service in specified circumstances or capacities; or

(ii) taking part, directly or indirectly, in the management of, acting as a director of, or becoming a substantial shareholder of a licensed financial adviser or exempt financial adviser; and

[1/2009 wef 26/11/2010]

- (b) include a provision allowing the person, subject to any condition specified in the order —

(i) to do specified acts; or

(ii) to do specified acts in specified circumstances,

that the order would otherwise prohibit him from doing.

[1/2009 wef 26/11/2010]

(3) The Authority shall not make a prohibition order against a person without giving the person an opportunity to be heard.

(4) Any person who is aggrieved by the decision of the Authority to make a prohibition order against him may, within 30 days of the decision, appeal in writing to the Minister.

[Aust. Corporations 2001, Clauses 920A, 920B]

(5) Where the Authority makes a prohibition order against any person who is an appointed or provisional representative, it shall indicate against his name in the public register of representatives that fact, and the indication shall remain in the register for the duration of the order.

[1/2009 wef 26/11/2010]

Effect of prohibition orders

60.—(1) A person against whom a prohibition order is made shall comply with the prohibition order.

(2) Where a prohibition order is made against a person and notified to a licensed financial adviser or exempt financial adviser, the licensed financial adviser or exempt financial adviser shall not employ the first-mentioned person to provide any financial advisory service or use his service, to the extent that this is prohibited by the order.

[1/2009 wef 26/11/2010]

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) Any licensed financial adviser or exempt financial adviser which contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[Aust. Corporations 2001, Clause 920C]

(5) A licensed financial adviser or exempt financial adviser against whom a prohibition order has been issued prohibiting it from providing any financial advisory service shall immediately inform all its representatives who perform the financial advisory service, by notice in writing of such prohibition order, and the representatives

who are so informed shall cease to perform such financial advisory service during the period specified in the prohibition order.

[1/2009 wef 26/11/2010]

(6) Any person who contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 and, in the case of a continuing offence, to a further fine not exceeding \$7,500 for every day or part thereof during which the offence continues after conviction.

[1/2009 wef 26/11/2010]

Variation or revocation of prohibition orders

61.—(1) The Authority may vary or revoke a prohibition order, by giving written notice to the person against whom the order was made, if the Authority is satisfied that it is appropriate to do so because of a change in any of the circumstances based on which the Authority made the order.

(2) The Authority may vary or revoke a prohibition order under subsection (1) —

(a) on its own initiative; or

(b) if the person against whom the order was made lodges with the Authority an application for the Authority to do so, accompanied by such document or fee as may be prescribed.

(3) The Authority shall not vary a prohibition order made against a person under subsection (2)(a) without giving the person an opportunity to be heard.

(4) Any person who is aggrieved by the decision of the Authority to vary a prohibition order made against him under subsection (2)(a) may, within 30 days of the decision, appeal in writing to the Minister.

[Aust. Corporations 2001, Clause 920D]

Date and effect of prohibition orders

62.—(1) A prohibition order, or any variation or revocation of a prohibition order, shall take effect on the date specified in the order by the Authority.

- (2) A prohibition order shall not operate so as to —
- (a) avoid or affect any agreement, transaction or arrangement entered into by the person against whom the order is made, whether the agreement, transaction or arrangement was entered into before, on or after the issue of the prohibition order; or
 - (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[1/2009 wef 26/11/2010]

Records to be kept by Authority

63.—(1) The Authority shall keep in such form as it thinks fit records of licensed financial advisers setting out the following information of each of them:

- (a) its name;
- (b) the address of the principal place of business at which it carries on the business in respect of which the licence is held;
- (c) the type or types of financial advisory service and investment product to which its licence relates;
- (d) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on;
- (e) officers removed by it from office or employment on the direction of the Authority under section 57; and
- (f) such other information as may be prescribed.

(2) The Authority shall also keep in such form as it thinks fit records on persons against whom prohibition orders are made under section 59.

(3) The Authority may publish the records referred to in subsections (1) and (2), or any part of them in such manner as it considers appropriate.

(4) Any person may, upon payment of such fee as may be prescribed, inspect and take an extract from the records established

under subsection (1) or (2), and any such extract, certified by the Authority to be a true copy, shall be admissible as prima facie evidence of the matter stated therein in any legal proceedings.

[1/2009 wef 26/11/2010]

Records and public register of representatives

63A.—(1) The Authority shall keep in such form as it thinks fit records of the following information of each appointed representative and provisional representative:

- (a) his name;
- (b) the name of his current principal and every past principal (if any);
- (c) the current and past types of financial advisory service provided by him, and the date of commencement and cessation (if any) of such service;
- (d) where the business of the principal for which he acts is carried on under a name or style other than the name of the principal, the name or style under which the business is carried on;
- (e) disciplinary proceedings or other action taken by the Authority against him and published under section 67; and
- (f) such other information as may be prescribed.

(2) The information referred to in subsection (1) need only be kept for such period of time as the Authority considers appropriate.

(3) The Authority may reproduce the records referred to in subsection (1) or any part of them in a public register of representatives which shall be published in such manner as it considers appropriate.

[1/2009 wef 26/11/2010]

Codes, guidelines, etc., by Authority

64.—(1) The Authority may issue, and in its discretion publish by notification in the *Gazette* or in any other manner it considers appropriate, such codes, guidelines, policy statements, practice notes

and no-action letters as it considers appropriate for providing guidance —

- (a) in furtherance of its regulatory objectives;
 - (b) in relation to any matter relating to any of the functions of the Authority under this Act; or
 - (c) in relation to the operation of any of the provisions of this Act.
- (2) The Authority may, at any time, amend or revoke the whole or any part of any code, guideline, policy statement, practice note or no-action letter issued under this section.
- (3) Where amendments are made under subsection (2) —
- (a) the other provisions of this section shall apply, with the necessary modifications, to such amendments as they apply to the code, guideline, policy statement, practice note or no-action letter; and
 - (b) any reference in this Act or any other written law to the code, guideline, policy statement, practice note or no-action letter, however expressed, shall, unless the context otherwise requires, be a reference to the code, guideline, policy statement, practice note or no-action letter as so amended.
- (4) Any person who fails to comply with any of the provisions of a code, guideline, policy statement or practice note issued under this section that applies to him shall not of itself render that person liable to criminal proceedings, but any such failure may, in any proceedings, whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or negate any liability which is in question in the proceedings.
- (5) The issue by the Authority of a no-action letter shall not of itself prevent the institution of any proceedings against any person for the contravention of any provision of this Act.
- (6) Any code, guideline, policy statement or practice note issued under this section may be of general or specific application, and may

specify that different provisions thereof apply to different circumstances or provide for different cases or classes of cases.

(7) For the avoidance of doubt, any code, guideline, policy statement, practice note or no-action letter issued under this section shall be deemed not to be subsidiary legislation.

(8) In this section, a no-action letter means a letter written by the Authority to a person to the effect that, if the facts are as represented by the person, the Authority will not institute proceedings against the person in respect of a particular state of affairs or particular conduct.

[HK SF Bill, Clause 385; SF Bill, Clause 321]

Appointment of assistants

65.—(1) Subject to subsection (1A), the Authority may appoint any person to exercise any of its powers or perform any of its functions or duties under this Act, either generally or in any particular case, except the power to make subsidiary legislation.

[15/2003]

(1A) The Authority may, by notification published in the *Gazette*, appoint one or more of its officers to exercise the power to grant an exemption to any person (not being an exemption granted to a class of persons) under a provision of this Act specified in the Third Schedule, or to revoke any such exemption.

[15/2003]

(2) Any person appointed by the Authority under subsection (1) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224).

[SF Bill, Clause 320]

General provisions as to winding up

66.—(1) The persons who may apply under the Companies Act (Cap. 50) for the winding up of the affairs of a licensed financial adviser, or for the continuance of the winding up of the affairs of a licensed financial adviser subject to the supervision of the court, shall include the Authority.

[42/2005]

(2) The Authority may, in accordance with the provisions of the Companies Act, apply for the winding up of a licensed financial adviser if the licensed financial adviser has contravened any of the provisions of this Act.

[42/2005]

(3) The Authority shall be a party to any proceedings under the Companies Act relating to the winding up of the affairs of a licensed financial adviser.

(4) The liquidator in any winding up referred to in subsection (3) shall give the Authority such information as it may, from time to time, require about the affairs of the licensed financial adviser.

(5) Any liquidator who contravenes subsection (4) shall be guilty of an offence.

[*Insurance Intermediaries, s. 33*]

Power of Authority to publish information

67. The Authority may, from time to time and in such form or manner as it considers appropriate, publish information relating to all or any of the following:

- (a) the lapsing, revocation or suspension of the licence of any person under section 19;
- (b) the removal of any officer under section 57;
- (c) the making of any prohibition order against any person under section 59;
- (d) the acceptance by any person of an offer to compound an offence under section 89;
- (e) the reprimand of any person under section 97;
- (f) the revocation or withdrawal of any exemption granted under this Act;
- (g) the conviction of any person for any offence under this Act;
- (h) the conviction of any licensed financial adviser for any offence, whether in Singapore or elsewhere;

[1/2009 wef 26/11/2010]

- (i) any other action as may have been taken by the Authority against any person under this Act,

and any other information as the Authority may consider necessary or expedient to publish in the public interest.

PART VI

SUPERVISION AND INVESTIGATION

Division 1 — General

Self-incrimination

68.—(1) A person is not excused from disclosing information to the Authority, pursuant to a requirement made of him under this Part, on the ground that the disclosure of the information might tend to incriminate him.

(2) Where a person claims, before making a statement disclosing information that he is required to disclose by a requirement made of him under this Part, that the statement might tend to incriminate him, that statement shall not be admissible in evidence against him in criminal proceedings other than proceedings for an offence under section 76(2).

[1/2009 wef 26/11/2010]

[SF Bill, Clause 153 (1)]

Savings for advocates and solicitors

69.—(1) Nothing in this Part shall —

- (a) compel an advocate and solicitor to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him in that capacity; or
- (b) authorise the taking of any such document or other material which is in his possession.

[15/2003]

(2) An advocate and solicitor who refuses to disclose the information or produce the document or other material referred to in subsection (1) shall nevertheless be obliged to give the name and

address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

[15/2003]

(3) Any advocate and solicitor who contravenes subsection (2) shall be guilty of an offence.

[SF Bill, Clause 153 (2)]

Division 2 — Inspection Powers of Authority

Inspection by Authority

70.—(1) The Authority may from time to time inspect, under conditions of secrecy, the books of —

- (a) a licensed financial adviser;
- (b) an exempt financial adviser in respect of its business of providing any financial advisory service; or
- (c) a representative.

[1/2009 wef 26/11/2010]

(2) For the purposes of an inspection under this section —

- (a) a person referred to in subsection (1), and any person who is in possession of the books, shall produce such books to the Authority and give such information or facilities as may be required by the Authority;

[1/2009 wef 26/11/2010]

- (b) a person referred to in subsection (1) shall procure that any person who is in possession of its books produce the books to the Authority and give such information or facilities as may be required by the Authority; and

[1/2009 wef 26/11/2010]

(c) the Authority may —

- (i) make copies of, or take possession of, any of such books;
- (ii) use, or permit the use of, any of such books for the purposes of any proceedings under this Act; and
- (iii) retain possession of any of such books for so long as is necessary —

- (A) for the purposes of exercising a power conferred by this section (other than subsection (4));
- (B) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such books; or
- (C) for such proceedings to be commenced and carried on.

(3) No person shall be entitled, as against the Authority, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(4) While the books are in the possession of the Authority, the Authority —

(a) shall permit another person to inspect at all reasonable times such (if any) of the books as the other person would be entitled to inspect if they were not in the possession of the Authority; and

(b) may permit another person to inspect any of the books.

[1/2009 wef 26/11/2010]

(5) The Authority may require a person who produced any book to the Authority to explain, to the best of his knowledge and belief, any matter about the compilation of the book or to which the book relates.

(6) Any person who fails, without reasonable excuse, to comply with subsection (2) or a requirement of the Authority under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

[SF Bill, Clause 150]

Confidentiality of inspection reports

70A.—(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by the Authority upon an inspection under section 70 in respect of any licensed financial adviser, exempt financial adviser or representative (referred to in this

section as the inspected person) and is provided by the Authority to the inspected person, the report shall not be disclosed by the inspected person or, if the inspected person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made —

- (a) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that inspected person;
- (b) by any officer or auditor of the inspected person to any other officer or auditor of that inspected person, solely in connection with the performance of their duties in that inspected person; or
- (c) to such other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2)(c), the Authority may impose such conditions or restrictions as it thinks fit on the inspected person, any of its officers or auditors or the person to whom disclosure is approved, and that person shall comply with such conditions or restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment by the inspected person.

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both, unless he proves that —

- (a) the disclosure was made contrary to his desire;
- (b) where the disclosure was made in any written form, he had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and
- (c) where the disclosure was made in an electronic form, he had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.

[1/2009 wef 26/11/2010]

Division 3 — Investigative Powers of Authority

Subdivision (1) — General

[Act 35 of 2012 wef 19/03/2013]

Investigation by Authority

71.—(1) The Authority may conduct such investigation as it considers necessary or expedient for any of the following purposes:

- (a) to perform any of the Authority's functions under this Act;
- (b) to ensure compliance with this Act or any written direction issued under this Act; or
- (c) to investigate an alleged or suspected contravention of any provision of this Act.

(2) The Authority may exercise any of its powers for the purposes of conducting an investigation under this Division notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law.

(3) A requirement imposed by the Authority in the exercise of its powers under this Division shall have effect notwithstanding any obligation as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) Any person who complies with a requirement imposed by the Authority in the exercise of its powers under this Division shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(5) No civil or criminal action, other than proceedings for an offence under section 76, shall lie against any person for —

- (a) providing information or producing books to the Authority if he had provided the information or produced the books in good faith in compliance with a requirement imposed by the Authority under this Division; or
- (b) doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with a requirement imposed by the Authority under this Division.

[SF Bill, Clause 152]

(6) In this section, “requirement imposed by the Authority” includes a requirement imposed by an investigator under Subdivision (2) or (3).

[Act 35 of 2012 wef 18/03/2013]

Confidentiality of investigation reports

71A.—(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by the Authority in respect of any investigation under section 71 and is provided by the Authority to the person under investigation (referred to in this section as the investigated person), the report shall not be disclosed by the investigated person or, if the investigated person is a corporation, by any of its officers or auditors to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made —

- (a) by the investigated person to any officer or auditor of that investigated person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that investigated person;

(b) by any officer or auditor of the investigated person to any other officer or auditor of that investigated person, solely in connection with the performance of their duties in that investigated person; or

(c) to such other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2)(c), the Authority may impose such conditions or restrictions as it thinks fit on the investigated person, any of its officers or auditors or the person to whom disclosure is approved, and that person shall comply with such conditions or restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment by the investigated person.

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both, unless he proves that —

(a) the disclosure was made contrary to his desire;

(b) where the disclosure was made in any written form, he had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

(c) where the disclosure was made in an electronic form, he had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all

copies thereof in other forms had been surrendered to the Authority.

[1/2009 wef 26/11/2010]

Subdivision (2) — Examination of persons

[Act 35 of 2012 wef 18/03/2013]

Proceedings at examination

71B. The provisions of this Subdivision shall apply where, pursuant to a requirement made under section 71C for the purposes of an investigation under this Division, a person (referred to in this Subdivision as the examinee) appears before another person (referred to in this Subdivision as the investigator) for examination.

[Act 35 of 2012 wef 18/03/2013]

Requirement to appear for examination

71C.—(1) For the purpose of an investigation under this Division, the Authority may, in writing, require a person —

- (a) to give the Authority all reasonable assistance in connection with the investigation; and
- (b) to appear before an officer of the Authority duly authorised by the Authority for examination on oath and to answer questions.

(2) A requirement in writing imposed under subsection (1) shall state the general nature of the matter investigated or to be investigated under this Division.

[Act 35 of 2012 wef 18/03/2013]

Requirements made of examinee

71D.—(1) The investigator may examine the examinee on oath or affirmation and may, for that purpose, administer an oath or affirmation to the examinee.

(2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make are true.

(3) The investigator may require the examinee to answer a question that is put to the examinee at the examination and is relevant to a matter that the Authority is investigating, or is to investigate, under this Division.

[Act 35 of 2012 wef 18/03/2013]

Examination to take place in private

71E.—(1) The examination shall take place in private and the investigator may give directions as to who may be present during the examination or part thereof.

(2) A person shall not be present at the examination unless he is —

- (a) the investigator or the examinee;
- (b) a person approved by the Authority; or
- (c) entitled to be present by virtue of a direction under subsection (1).

[Act 35 of 2012 wef 18/03/2013]

Record of examination

71F.—(1) The investigator may, and shall if the examinee so requests, cause a record to be made of statements made at the examination.

(2) If a record made under subsection (1) is in writing or is reduced to writing —

- (a) the investigator may require the examinee to read the record, or have it read to the examinee, and may require the examinee to sign it; and
- (b) the investigator shall, if requested in writing by the examinee to give to the examinee a copy of the written record, comply with the request without charge but subject to such conditions as the investigator may impose.

[Act 35 of 2012 wef 18/03/2013]

Giving copies of record to other persons

71G.—(1) The Authority may give a copy of a written record of the examination, or such a copy together with a copy of any related book, to an advocate and solicitor acting on behalf of a person who is

carrying on, or is contemplating in good faith, a legal proceeding in respect of a matter to which the examination relates.

(2) If the Authority gives a copy to a person under subsection (1), the person, or any person who has possession, custody or control of the copy or a copy of it, shall not, except in connection with preparing, beginning or carrying on, or in the course of, any legal proceedings —

- (a) use the copy or a copy of it; or
- (b) publish, or communicate to a person, the copy, a copy of it, or any part of the contents of the copy.

(3) The Authority may, subject to such conditions or restrictions as it may impose, give to a person a copy of a written record of the examination, or the copy together with a copy of any related book.

[Act 35 of 2012 wef 18/03/2013]

Copies given subject to conditions or restrictions

71H. If a copy of a written record or a book is given to a person under section 71F(2) or 71G(3) subject to conditions or restrictions imposed by the investigator or the Authority (as the case may be), the person, and any other person who has possession, custody or control of the copy or a copy of it, shall comply with the conditions or restrictions.

[Act 35 of 2012 wef 18/03/2013]

Offences under this Subdivision

71I.—(1) A person who, without reasonable excuse, refuses or fails to comply with a requirement under section 71C or 71D(3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) A person who, without reasonable excuse —

- (a) refuses or fails to take an oath or make an affirmation when required to do so by an investigator examining him under this Subdivision;

(b) refuses or fails to comply with a requirement of an investigator under section 71F(2)(a); or

(c) refuses or fails to comply with section 71G(2) or 71H,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) A person who, in purported compliance with the provisions of this Subdivision, or in the course of examination of the person, furnishes information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) It shall be a defence to a prosecution for an offence under subsection (3) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.

(5) A person who, without reasonable excuse, obstructs or hinders the Authority or another person in the exercise of any power under this Subdivision shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[Act 35 of 2012 wef 18/03/2013]

Subdivision (3) — Powers to obtain information

[Act 35 of 2012 wef 18/03/2013]

Power to order production of books

72. For the purpose of an investigation under this Division, the Authority may, in writing, require any person to provide information or produce any book relating to any matter under investigation at a specified time and place, and such person shall immediately comply with that requirement.

[SF Bill, Clause 163]

Power to enter premises without warrant

72A.—(1) In connection with an investigation under this Division, any officer of the Authority who is authorised by the Authority to do so (referred to in this section as an investigator) and such other officers or persons as the Authority has authorised in writing to accompany the investigator (each referred to in this section as an authorised person) may enter any premises.

(2) No investigator and no authorised person accompanying the investigator shall enter any premises in the exercise of the powers under this section unless the investigator has given the occupier of the premises a written notice which —

- (a) gives at least 2 working days' notice of the intended entry;
- (b) indicates the subject-matter and purpose of the investigation; and
- (c) indicates the nature of the offences created by section 76.

(3) Subsection (2) shall not apply —

- (a) if the investigation relates to an alleged or suspected contravention of any provision of Part III, and the investigator has reasonable grounds for suspecting that the premises are, or have been, occupied by a person who is being investigated in relation to the contravention; or
- (b) if the investigator has taken all such steps as are reasonably practicable to give notice under subsection (2)(a) but has not been able to do so.

(4) Where subsection (3) applies, the power of entry conferred by subsection (1) shall only be exercised upon production of —

- (a) evidence of the investigator's authorisation and the authorisation of every authorised person accompanying him; and
- (b) a document containing the information referred to in subsection (2)(b) and (c).

(5) An investigator or authorised person entering any premises under this section may —

- (a) take with him such equipment as appears to him to be necessary;
- (b) require any person on the premises to produce any book which the investigator or authorised person considers relates to any matter relevant to the investigation;
- (c) require any person on the premises to state, to the best of the person's knowledge and belief, where any such book is to be found; and
- (d) take any step, or issue to any person on the premises any requirement, which appears to be necessary for the purpose of preserving or preventing interference with any book which the investigator or authorised person considers relates to any matter relevant to the investigation.

[Act 35 of 2012 wef 18/03/2013]

Warrant to seize books, etc.

73.—(1) A Magistrate may, on the application of the Authority —

- (a) issue a warrant, if the Magistrate is satisfied that there are reasonable grounds to suspect that there is, on any particular premises, any book —
 - (i) the production of which has been required by the Authority under section 72 or by an investigator or authorised person under section 72A, but which has not been produced in compliance with that requirement; or
 - (ii) which, if required by the Authority under section 72 to be produced, will be concealed, removed, tampered with or destroyed; and
- (b) if the Magistrate is also satisfied that there are reasonable grounds to suspect that there is, on those premises, any other book which relates to any matter relevant to the investigation concerned, direct that the powers exercisable under the warrant shall extend to that other book.

(2) A warrant issued under subsection (1) shall authorise the Authority or any person named in the warrant, with or without assistance —

- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and to break open and search anything, whether a fixture or not, in the premises;
- (c) to take possession of, or secure against interference, any book that appears to be a book referred to in subsection (1)(a) or, where applicable, subsection (1)(b);
- (d) to require any person to provide an explanation of any book that appears to be a book referred to in subsection (1)(a) or, where applicable, subsection (1)(b), or to state, to the best of that person's knowledge and belief, where any such book may be found;
- (e) to search any person on those premises, if there are reasonable grounds to suspect that the person has in his possession any book referred to in subsection (1)(a) or, where applicable, subsection (1)(b), or any equipment or article which relates to any matter relevant to the investigation concerned; and
- (f) to remove from those premises for examination any book that appears to be a book referred to in subsection (1)(a) or, where applicable, subsection (1)(b), or any equipment or article which relates to any matter relevant to the investigation concerned.

(3) The Authority or any person named in the warrant to execute it may allow any equipment or article referred to in subsection (2)(f) to be retained on the premises specified in the warrant to be searched, subject to such conditions as the Authority or that person may require.

(4) Any person entering any premises by virtue of a warrant issued under subsection (1) may take with him such equipment as appears to him to be necessary.

(5) Where a warrant is issued under subsection (1), and there is no one present at the premises specified in the warrant to be searched when the Authority or any person named in the warrant proposes to execute the warrant, the Authority or that person shall, before executing the warrant —

- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the premises of the intended entry into the premises; and
- (b) subject to subsection (6), give the occupier or the occupier's legal or other representative a reasonable opportunity to be present when the warrant is executed.

(6) If the Authority or any person named in the warrant to execute it is unable to inform the occupier of the premises of the intended entry into the premises, the Authority or that person shall, when executing the warrant, leave a copy of the warrant in a prominent place on the premises.

(7) On leaving any premises specified in a warrant issued under subsection (1), the Authority or any person named in the warrant to execute it shall, if the premises are unoccupied or if the occupier of the premises is temporarily absent, leave the premises as effectively secured as the Authority or that person found the premises.

(8) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by any other written law or rule of law.

(9) In this section —

“occupier”, in relation to any premises specified in a warrant issued under subsection (1), includes any person whom the Authority or any person named in the warrant to execute it reasonably believes to be the occupier of those premises;

“premises” includes any structure, building, aircraft, vehicle or vessel.

[Act 35 of 2012 wef 18/03/2013]

Powers where books are produced or seized

74.—(1) This section shall apply where —

(a) books are produced to the Authority —

(i) pursuant to a requirement of the Authority under section 72 or of an investigator or authorised person under section 72A(5); or

(ii) during an entry into any premises by an investigator or authorised person under section 72A;

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(b) under a warrant issued under section 73, the Authority or a person named therein —

(i) takes possession of books; or

(ii) secures books against interference; or

(c) under a previous application of subsection (6), books are delivered into the possession of the Authority or a person authorised by it.

(2) If subsection (1)(a) applies, the Authority may take possession of any of the books.

(3) The Authority or, where applicable, a person referred to in subsection (1)(b) may —

(a) inspect, and make copies of, or take extracts from, any of the books;

(b) use, or permit the use of, any of the books for the purposes of any proceedings;

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(c) retain possession of any of the books for so long as is necessary —

(i) for the purposes of exercising a power conferred by this section (other than subsection (5));

(ii) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such book; or

(iii) for such proceedings to be commenced and carried on; and

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(d) require any book which the Authority or person referred to in subsection (1)(b) is satisfied relates to any matter relevant to an investigation under this Division, and which is stored in any electronic form, to be produced in a form which can be taken away and which is visible and legible.

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(4) No person shall be entitled, as against the Authority or, where applicable, a person referred to in subsection (1)(b), to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(5) While the books are in the possession of the Authority or, where applicable, the person referred to in subsection (1)(b), the Authority or the person —

(a) shall permit another person to inspect at all reasonable times such of the books (if any) as the second-mentioned person would be entitled to inspect if they were not in the possession of the Authority or the first-mentioned person; and

(b) may permit any other person to inspect any of the books.

(6) Unless subsection (1)(b)(ii) applies, an investigator or authorised person referred to in subsection (1)(a) or a person referred to in subsection (1)(b) may deliver any of the books into the possession of the Authority or of a person authorised by it to receive them.

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(7) Without prejudice to sections 72A(5) and 73(2)(d), if subsection (1)(a) or (b) applies, the Authority, an investigator or authorised person referred to in subsection (1)(a), a person referred to in subsection (1)(b) or a person into whose possession the books are delivered under subsection (6), may require —

(a) if subsection (1)(a) applies, a person who so produced any of the books; or

- (b) in any other case, a person who was a party to the compilation of any of the books,

to explain, to the best of his knowledge and belief, any matter about the compilation of any of the books or to which any of the books relate.

[Act 35 of 2012 wef 18/03/2013]

[SF Bill, Clause 165; ASIC 2001, s. 37]

Powers where books not produced

75. Where a person fails to comply with a requirement imposed by the Authority under section 72 to produce any book, the Authority may require the person to state, to the best of his knowledge and belief —

- (a) the place where such book may be found; or
(b) the person who last had possession, custody or control of such book and the place where that person may be found.

[SF Bill, Clause 166; ASIC 2001, s. 38]

Offences under this Division

76.—(1) Any person who, without reasonable excuse, refuses or fails to comply with a requirement imposed under section 72, 72A(5), 74(3)(d) or (7) or 75, or pursuant to an authorisation referred to in section 73(2)(d), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[Act 35 of 2012 wef 18/03/2013]

(2) Any person who, in purported compliance with a requirement imposed under this Subdivision, furnishes information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[Act 35 of 2012 wef 18/03/2013]

(3) It shall be a defence to a prosecution for an offence under subsection (2) if the defendant proves that he believed on reasonable grounds that the information or statement was true and not misleading.

(4) Any person, who conceals, destroys, mutilates or alters any book, equipment or article relating to a matter that the Authority is investigating or about to investigate under this Division or who, where any such book, equipment or article is within the territory of Singapore, takes or sends the book, equipment or article out of Singapore, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

[Act 35 of 2012 wef 18/03/2013]

(5) Any person who, without reasonable excuse, obstructs or hinders the Authority in the exercise of any power under section 72, 74 or 75, or obstructs or hinders a person who is exercising any power under section 72A(1) or (5) or executing a warrant issued under section 73, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[Act 35 of 2012 wef 18/03/2013]

(6) Any occupier or person in charge of any premises who fails to provide, to any person who enters those premises under section 72A(1) or under a warrant issued under section 73(1), all reasonable facilities and assistance for the effective exercise of that person's powers under section 72A(1) or (5) or under the warrant, as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

[Act 35 of 2012 wef 18/03/2013]

[SF Bill, Clause 168; ASIC 2001, ss. 63-67]

Division 4 — Transfer of Evidence

[Act 35 of 2012 wef 18/03/2013]

Interpretation of this Division

76A. In this Division —

“Commercial Affairs Officer” means a Commercial Affairs Officer appointed under section 64 of the Police Force Act (Cap. 235);

“police officer” means a member of the Singapore Police Force who is deployed in the Commercial Affairs Department of that Force.

[Act 35 of 2012 wef 18/03/2013]

Evidence obtained by Authority may be used in criminal investigations and proceedings

76B.—(1) Notwithstanding the provisions of any written law or any rule of law, the Authority may furnish any book, document, written record of any examination or other information obtained by the Authority in the exercise of its powers under this Part to —

- (a) a police officer;
- (b) a Commercial Affairs Officer; or
- (c) the Public Prosecutor,

for the purposes of any investigation into or criminal proceedings against a person for an alleged contravention of any provision under this Act.

(2) For the avoidance of doubt, any book, document, written record of examination or other information furnished by the Authority under subsection (1) shall not be inadmissible in any criminal proceedings by reason only that it was first obtained by the Authority in the exercise of its powers under this Act, and the admissibility thereof shall be determined in accordance with the rules of evidence under written law and any relevant rules of law.

[Act 35 of 2012 wef 18/03/2013]

PART VII

ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

Interpretation of this Part

77. In this Part, unless the context otherwise requires —

“enforce” means enforce through criminal, civil or administrative proceedings;

“enforcement” means the taking of any action to enforce a law or regulatory requirement against a specified person, being a law or regulatory requirement that relates to any financial advisory service in the foreign country of the regulatory authority concerned;

“foreign country” means a country or territory other than Singapore;

“investigation” means an investigation to determine if a specified person has contravened or is contravening a law or regulatory requirement, being a law or regulatory requirement that relates to any financial advisory service in the foreign country of the regulatory authority concerned;

“material” includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

“regulatory authority”, in relation to a foreign country, means an authority of the foreign country exercising any function that corresponds to a regulatory function of the Authority under this Act;

“relevant day” means —

- (a) in relation to any financial advisory service in respect of securities or futures contracts, 6th March 2000; or
- (b) in relation to any other financial advisory service, 1st October 2002;

“supervision”, in relation to a regulatory authority, means the taking of any action for or in connection with the supervision of a subject-matter in the foreign country of the regulatory authority, being a subject-matter relating to any financial advisory service.

[SF Bill, Clause 169]

Conditions for provision of assistance

78.—(1) The Authority may provide the assistance referred to in section 80 to a regulatory authority of a foreign country if the Authority is satisfied that all of the following conditions are fulfilled:

- (a) the request by the regulatory authority for assistance is received by the Authority on or after the relevant day;
- (b) the assistance is intended to enable the regulatory authority, or any other authority of the foreign country, to carry out supervision, investigation or enforcement;
- (c) the contravention of the law or regulatory requirement to which the request relates took place on or after the relevant day;
- (d) the regulatory authority has given a written undertaking that any material or copy thereof obtained pursuant to its request shall not be used for any purpose other than a purpose that is specified in the request and approved by the Authority;
- (e) the regulatory authority has given a written undertaking not to disclose to a third party (other than a designated third party of the foreign country in accordance with paragraph (f)) any material received pursuant to the request unless the regulatory authority is compelled to do so by the law or a court of the foreign country;
- (f) the regulatory authority has given a written undertaking to obtain the prior consent of the Authority before disclosing any material received pursuant to the request to a designated third party, and to make such disclosure only in accordance with such conditions as may be imposed by the Authority;
- (g) the material requested for is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means;
- (h) the matter to which the request relates is of sufficient gravity; and
- (i) the rendering of assistance will not be contrary to the public interest or the interest of the investing public or policy owners.

(2) For the purposes of subsection (1)(e) and (f), “designated third party”, in relation to a foreign country, means —

- (a) any person or body responsible for supervising the regulatory authority in question;
- (b) any authority of the foreign country responsible for carrying out the supervision, investigation or enforcement in question; or
- (c) any authority of the foreign country exercising a function that corresponds to a regulatory function of the Authority under this Act.

[SF Bill, Clause 170]

Other factors to consider for provision of assistance

79. In deciding whether to grant a request for assistance referred to in section 80 from a regulatory authority of a foreign country, the Authority may also have regard to the following:

- (a) whether the act or omission that is alleged to constitute the contravention of the law or regulatory requirement to which the request relates would, if it had occurred in Singapore, have constituted an offence under this Act;
- (b) whether the regulatory authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the regulatory authority for similar assistance;
- (c) whether the regulatory authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance that the regulatory authority has requested for.

[SF Bill, Clause 171]

Assistance that may be rendered

80.—(1) Notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, the Authority or any person authorised by the Authority may, in relation

to a request by a regulatory authority of a foreign country for assistance —

- (a) transmit to the regulatory authority any material in the possession of the Authority that is requested by the regulatory authority or a copy thereof;
- (b) order any person to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority;
- (c) order any person to transmit directly to the regulatory authority any material that is requested by the regulatory authority or a copy thereof;
- (d) order any person to make an oral statement to the Authority on any information requested by the regulatory authority, record such statement, and transmit the recorded statement to the regulatory authority; or
- (e) request any Ministry, Government department or statutory authority to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority.

(2) The assistance referred to in subsection (1)(c) may only be rendered if the material sought is to enable the regulatory authority to carry out investigation or enforcement.

(3) An order under subsection (1)(b), (c) or (d) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) A person is not excused from making an oral statement pursuant to an order made under subsection (1)(d) on the ground that the statement might tend to incriminate him but, where the person claims before making the statement that the statement might tend to incriminate him, that statement is not admissible in evidence against him in criminal proceedings other than proceedings for an offence under section 81.

- (5) Nothing in this section shall compel an advocate and solicitor —
- (a) to furnish or transmit any material or copy thereof that contains; or
 - (b) to disclose,

a privileged communication made by or to him in that capacity.

(6) An advocate and solicitor who refuses to disclose, or to furnish or transmit any material or copy thereof that contains, any privileged communication shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(7) Any advocate and solicitor who contravenes subsection (6) shall be guilty of an offence.

[SF Bill, Clause 172]

Offences under this Part

81. Any person who —

- (a) without reasonable excuse, refuses or fails to comply with an order under section 80(1)(b), (c) or (d);
- (b) in purported compliance with an order under section 80(1)(b) or (c), furnishes to the Authority or transmits to the regulatory authority any material or copy thereof known to the person to be false or misleading in a material particular; or
- (c) in purported compliance with an order made under section 80(1)(d), makes a statement to the Authority that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

[SF Bill, Clause 173]

Immunity from criminal or civil liability

82.—(1) No civil or criminal proceedings, other than proceedings for an offence under section 81, shall lie against any person for —

- (a) furnishing to the Authority or transmitting any material or copy thereof to the Authority or a regulatory authority of a foreign country if he had furnished or transmitted that material or copy in good faith in compliance with an order made under section 80(1)(b) or (c);
- (b) making a statement to the Authority in good faith and in compliance with an order made under section 80(1)(d); or
- (c) doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) Any person who complies with an order referred to in subsection (1)(a) or (b) shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

[SF Bill, Clause 174]

PART VIII

OFFENCES

Corporate offenders and unincorporated associations

83.—(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate, the officer as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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

(3) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as

well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3A) Where an offence under this Act committed by a limited liability partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner or manager of the limited liability partnership, the partner or manager (as the case may be) as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

[5/2005]

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

(5) In this section —

“body corporate” and “partnership” exclude a limited liability partnership within the meaning of the Limited Liability Partnerships Act (Cap. 163A);

“officer” —

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

“partner”, in relation to a partnership, includes a person purporting to act as a partner.

[15/2003; 5/2005]

(6) Without prejudice to the generality of section 104(1), the Authority may make regulations to provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

[UK FSMA 2000, s. 400; SF Bill, s. 331]

Offence by officers

84.—(1) Any officer of a licensed financial adviser who fails to take all reasonable steps to secure —

- (a) compliance with any provision of this Act; or
- (b) the accuracy and correctness of any statement submitted to the Authority or such other person as may be required under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) In any proceedings against an officer under subsection (1), it shall be a defence for the officer to prove that he had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate, as the case may be, and that that person was competent, and in a position, to discharge that duty.

(3) An officer shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court, he committed the offence wilfully.

[SF Bill, Clause 332]

Falsification of records by officers, etc.

85.—(1) Any officer, auditor, employee or agent of a licensed financial adviser or an exempt financial adviser who —

- (a) wilfully makes, or causes to be made, a false entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that financial adviser;
- (b) wilfully omits to make an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that financial adviser, or wilfully causes any such entry to be omitted; or
- (c) wilfully alters, extracts, conceals or destroys an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that financial adviser, or wilfully causes any such entry to be altered, extracted, concealed or destroyed,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) In subsection (1), “officer” includes a person purporting to act in the capacity of an officer.

[SF Bill, Clause 328]

Duty not to furnish false information to Authority

86.—(1) Any person who furnishes the Authority with any information under or for the purposes of any provision of this Act shall use due care to ensure that the information is not false or misleading in any material particular.

(2) Subsection (1) shall apply only to a requirement in relation to which no other provision of this Act creates an offence in connection with the furnishing of information.

(3) Any person who —

- (a) signs any document lodged with the Authority; or

- (b) lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to him by the Authority,

shall use due care to ensure that the document is not false or misleading in any material particular.

[1/2009 wef 26/11/2010]

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 2 years or to both.

[SF Bill, Clause 329]

General penalty

87. Any person guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$12,500.

Penalty for corporations

88.—(1) Subject to subsections (2) and (3), where a corporation or body corporate is convicted of an offence under this Act, the penalty that the court may impose is a fine not exceeding 2 times the maximum amount that the court could, but for this subsection, impose as a fine for that offence.

(2) Subsection (1) shall not apply to —

- (a) offences under sections 10(3), 13(4), 19(9) and (10), 32(6), 45(5) and (6), 46(2), 47(2), 48(5), (6) and (7), 49(5), 55(2), 56(7) and (7B) and 57(7); or

[1/2009 wef 26/11/2010]

- (b) offences under any subsidiary legislation made under this Act where it is expressly provided in the subsidiary legislation that subsection (1) shall not apply to those offences.

[15/2003]

(3) Where an individual is convicted of an offence under this Act by virtue of section 83, he shall be liable to the fine or imprisonment or both as prescribed for that offence and subsection (1) shall not apply.

(4) In this section, “body corporate” excludes a limited liability partnership within the meaning of the Limited Liability Partnerships Act (Cap. 163A).

[5/2005]

[SF Bill, Clause 333]

Composition of offences

89.—(1) The Authority may, in its discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence.

(2) The Authority may, in its discretion, compound any offence under this Act (including an offence under a provision that has been repealed) which —

(a) was compoundable under this section at the time the offence was committed; but

(b) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence at the time it was committed.

(3) All sums collected by the Authority under subsection (1) or (2) shall be paid into the Consolidated Fund.

[Act 35 of 2012 wef 18/03/2013]

Territorial scope of Act

90. Where a person does an act partly in and partly outside Singapore which, if done wholly in Singapore, would constitute an offence under this Act, that person shall be guilty of that offence as if the act were carried out by that person wholly in Singapore, and may be dealt with as if the offence were committed wholly in Singapore.

PART IX
APPEALS

Appeals to Minister

91.—(1) Where an appeal is made to the Minister under this Act, the Minister may confirm, vary or reverse the decision of the Authority on appeal, or give such directions in the matter as he thinks fit, and the decision of the Minister shall be final.

(2) Where an appeal is made to the Minister under this Act, the Minister shall, within 28 days of his receipt of the appeal, constitute an Appeal Advisory Committee comprising not less than 3 members of the Appeal Advisory Panel and refer that appeal to the Appeal Advisory Committee.

(3) The Appeal Advisory Committee shall submit to the Minister a written report on the appeal referred to it under subsection (2) and may make such recommendations as it thinks fit.

(4) The Minister shall consider the report submitted under subsection (3) in making his decision under subsection (1) but he shall not be bound by the recommendations in the report.

[SF Bill, Clause 310]

Appeal Advisory Committees

92.—(1) For the purpose of enabling Appeal Advisory Committees to be constituted under section 91, the Minister shall appoint a panel (referred to in this Part as the Appeal Advisory Panel) comprising such members from the financial services industry, and the public and private sectors, as the Minister may appoint.

(2) A member of the Appeal Advisory Panel shall be appointed for a term of not more than 2 years and shall be eligible for re-appointment.

[15/2003]

(3) An Appeal Advisory Committee shall have the power, in the exercise of its functions, to inquire into any matter or thing related to the financial services industry and, for this purpose, may summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the inquiry.

(4) Nothing in subsection (3) shall compel the production by an advocate and solicitor of a document or other material containing any privileged communication made by or to him in that capacity or authorise the taking of any such document or other material which is in his possession.

(5) An advocate and solicitor who refuses to produce any document or other material referred to in subsection (4) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(6) For the purposes of this Act, every member of an Appeal Advisory Committee —

- (a) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224); and
- (b) in case of any suit or other legal proceedings brought against him for any act done or omitted to be done in the execution of his duty under this Part, shall have the like protection and privileges as are by law given to a Judge in the execution of his office.

(7) Every Appeal Advisory Committee shall have regard to the public interest, the protection of investors and policy owners and the safeguarding of sources of information.

(8) Subject to the provisions of this Part, an Appeal Advisory Committee may regulate its own procedure and shall not be bound by the rules of evidence.

[SF Bill, Clause 311]

Disclosure of information

93. Nothing in this Act shall require the Minister or any public servant to disclose facts which he considers to be against the public interest to disclose.

[SF Bill, Clause 312]

Regulations for purposes of this Part

94.—(1) The Minister may make regulations for the purposes and provisions of this Part and for the due administration thereof.

[15/2003]

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to —

- (a) the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees;
- (b) the form and manner in which an appeal to the Minister under this Act shall be made;
- (c) the fees to be paid in respect of any appeal made to the Minister under this Act, including the refund or remission, whether in whole or in part, of such fees;
- (d) the remuneration of the members of the Appeal Advisory Panel and Appeal Advisory Committees; and
- (e) all matters and things which by this Part are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to any provision of this Part.

[15/2003]

[SF Bill, Clause 313]

PART X**MISCELLANEOUS****Criminal jurisdiction of District Court**

95. Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of any offence under this Act.

[SF Bill, Clause 327]

Opportunity to be heard

96. Where this Act provides for a person to be given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the person shall be given an opportunity to be heard.

[SF Bill, Clause 316]

Power to reprimand for misconduct

97.—(1) Where the Authority is satisfied that a relevant person is guilty of misconduct, the Authority may, if it thinks it necessary in the public interest or for the protection of investors or policy owners, reprimand the relevant person.

(2) In this section —

“misconduct” means —

(a) the contravention of —

(i) any provision of this Act;

(ii) any condition or restriction of a financial adviser’s licence or an exemption granted under this Act;

[1/2009 wef 26/11/2010]

(iia) any written direction made by the Authority under this Act;

[1/2009 wef 26/11/2010]

(iib) any condition or restriction imposed on an appointed or provisional representative under section 23K; or

[1/2009 wef 26/11/2010]

(iii) any code, guideline, policy statement or practice note issued or published under section 64;

(b) the failure by an officer of a licensed financial adviser or an exempt financial adviser to discharge any duty or function of his office; or

(c) the commission of an offence under section 83 or 84(1);

“officer” —

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner;

“relevant person” means any licensed financial adviser, exempt financial adviser, representative, or officer or partner of a licensed financial adviser or an exempt financial adviser.

[1/2009 wef 26/11/2010]

[SF Bill, Clause 334]

Power of court to make certain orders

98.—(1) Where, on the application of the Authority, it appears to the court that a person —

- (a) has committed an offence under this Act; or
- (b) is about to do an act that, if done, would be an offence under this Act,

the court may, without prejudice to any order it would be entitled to make otherwise than under this section, make one or more of the following orders:

- (i) in the case of a persistent or continuing contravention of this Act, an order restraining a person from acting as a financial adviser or representative, or from holding himself out as so acting;

- (ii) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing any specified act;
- (iii) any ancillary order considered to be desirable in consequence of the making of any other order under this section.

(2) The court may, before making an order under subsection (1), direct that notice of the application be given to such person as it thinks fit or that notice of the application be published in such manner as it thinks fit, or both.

(3) Any person who, without reasonable excuse, contravenes an order made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) Subsection (3) shall not affect the powers of the court in relation to the punishment of contempt of court.

(5) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

[SIA, s. 13]

Power of court to prohibit payment or transfer of moneys, investment products, etc.

99.—(1) A court may, on an application by the Authority, make one or more of the orders referred to in subsection (2) where —

- (a) an investigation is being carried out under this Act in relation to any act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act;
- (b) a criminal proceeding has been instituted against a person for an offence under this Act; or
- (c) a civil proceeding has been instituted against a person under this Act, and the court considers it necessary or desirable to do so for the purpose of protecting the interests of any person to whom the person referred to in paragraph (a) or (b) or this paragraph (referred to in this

section as the relevant person) is liable or may become liable to pay any moneys, whether in respect of a debt, or by way of damages or otherwise, or to account for any investment products or other property.

(2) The orders of court that may be made under subsection (1) are as follows:

- (a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or any person associated with the relevant person from making a payment in total or partial discharge of such debt that is due or accruing due to the relevant person, or to another person at the direction or request of the relevant person;
- (b) an order prohibiting, either absolutely or subject to conditions, a person holding moneys, investment products or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person, from paying, transferring or otherwise parting with possession of all or any of the moneys, investment products or other property, to the relevant person, or to another person at the direction or request of the relevant person;
- (c) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Singapore of moneys of the relevant person or of any person associated with the relevant person;
- (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of investment products or documents of title to investment products or other property of the relevant person or of any person who is associated with the relevant person, from a place or person in Singapore to a place or person outside Singapore (including the transfer of securities from a register in Singapore to a register outside Singapore);

- (e) an order appointing —
- (i) where the relevant person is an individual, a receiver, having such powers as the court orders, of the property or part of the property of the relevant person; or
 - (ii) where the relevant person is a corporation, a receiver or receiver and manager, having such powers as the court orders, of the property or part of the property of the relevant person;
- (f) where the relevant person is an individual, an order requiring the relevant person to deliver up to the court his passport and such other documents as the court thinks fit;
- (g) where the relevant person is an individual, an order prohibiting the relevant person from leaving Singapore without the consent of the court.

(3) Where an application is made to the court for any order referred to in subsection (2), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, make any interim order as it thinks fit pending the determination of the application.

(4) Where the Authority makes an application to the court for the making of an order or interim order under this section, the court shall not require the Authority or any other person, as a condition of granting the order or interim order, to give any undertaking as to damages.

(5) Where the court has made an order or interim order under this section, the court may, on application by the Authority or by any person affected by the order or interim order, rescind or vary the order or interim order.

(6) An order or interim order made under this section may be expressed to operate for a period specified in the order or interim order or until the order or interim order is rescinded.

(7) Any person who contravenes an order or interim order made by the court under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Subsection (7) shall not affect the powers of the court in relation to the punishment for contempt of court.

[Act 35 of 2012 wef 18/03/2013]

Injunctions

99A.—(1) Where a person has engaged, is engaging or is likely to engage in any conduct that constitutes or would constitute a contravention of this Act, the court may, on the application of —

(a) the Authority; or

(b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if the court is of the opinion that it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is likely to refuse or fail, to do any act or thing that he is required by this Act to do, the court may, on the application of —

(a) the Authority; or

(b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

make an order requiring the first-mentioned person to do that act or thing.

(3) Where an application is made to the court for an injunction under subsection (1) or an order under subsection (2), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) or make an interim order requiring a person to do any act or thing, pending the determination of the application.

(4) Where the court has power under this section to grant an injunction or interim injunction or make an order or interim order restraining a person from engaging in conduct of a particular kind, or requiring a person to do a particular act or thing, the court may, either in addition to or in substitution for the injunction, interim injunction, order or interim order, order that person to pay damages to any other person.

(5) Where the court has granted an injunction or interim injunction or made an order or interim order under this section, the court may, on an application by any party referred to in subsection (1) or (2) or by any person affected by the injunction, interim injunction, order or interim order, rescind or vary the injunction, interim injunction, order or interim order.

(6) An injunction, interim injunction, order or interim order granted or made under this section may be expressed to operate for a period specified in the injunction, interim injunction, order or interim order or until the injunction, interim injunction, order or interim order is rescinded.

(7) Any person who contravenes an injunction, interim injunction, order or interim order by the court under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Where an application is made to the court for the grant of an injunction under subsection (1), the power of the court to grant the injunction may be exercised —

- (a) if the court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to

any person if the first-mentioned person engages in conduct of that kind.

(9) Where an application is made to the court for the making of an order under subsection (2), the power of the court to make the order may be exercised —

- (a) if the court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- (b) if it appears to the court that, in the event that an order is not made, it is likely the person will refuse or fail to do that act or thing, whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(10) Where the Authority or any person referred to in subsection (1)(b) or (2)(b) makes an application to the court for the grant of an injunction or interim injunction or for the making of an order or interim order under this section, the court shall not require the Authority or that person, as the case may be, or any other person, as a condition of granting the injunction, interim injunction, order or interim order, to give any undertaking as to damages.

(11) Subsection (7) shall not affect the powers of the court in relation to the punishment for contempt of court.

[Act 35 of 2012 wef 18/03/2013]

Court may have regard to claimant's conduct

99B.—(1) Where, in any proceedings commenced pursuant to section 25(5A), 26(1B) or (1C) or 27(3) by a person (referred to in this section as the claimant) against a licensed financial adviser or an exempt financial adviser, the court finds that the licensed financial adviser or exempt financial adviser is liable to pay damages to the claimant under section 25(5A), 26(1B) or (1C) or 27(3), as the case may be, the court shall, in making any order in those proceedings,

have regard to whether or not the claimant made a reasonable effort to —

- (a) minimise any loss or damage referred to in section 25(5A), 26(1B) or (1C) or 27(3), as the case may be, that was suffered by the claimant; and
- (b) resolve the dispute with the licensed financial adviser or exempt financial adviser before commencing those proceedings.

(2) For the purposes of subsection (1)(b), if any prescribed dispute resolution scheme was available to the claimant in respect of the dispute, the court shall consider whether the claimant had sought to resolve the dispute through such a scheme.

(3) In subsection (2), “prescribed dispute resolution scheme” means a dispute resolution scheme prescribed for the purposes of that subsection by regulations made under section 104.

[Act 35 of 2012 wef 18/03/2013]

General exemption

100.—(1) The Authority may, by regulations, exempt any person or any class of persons from all or any of the provisions of this Act, subject to such terms or conditions as may be prescribed.

(2) The Authority may, on the application of any person, exempt the person from all or any of the provisions of this Act or the requirements specified in any written direction, by notice in writing, if the Authority considers it appropriate to do so in the circumstances of the case.

[15/2003]

(3) An exemption under subsection (2) —

- (a) may be granted subject to such terms or conditions as the Authority may specify by notice in writing;
- (b) need not be published in the *Gazette*; and
- (c) may be withdrawn at anytime by the Authority.

[15/2003]

(3A) The Authority may at any time add to, vary or revoke any term or condition imposed under this section.

[1/2009 wef 26/11/2010]

(4) Any person who contravenes any term or condition prescribed under subsection (1) or specified by the Authority under subsection (3)(a), including any term or condition added or varied under subsection (3A), shall be guilty of an offence.

[1/2009 wef 26/11/2010]

Service of documents, etc.

101.—(1) Any notice, order or document required or authorised by this Act to be served on any person may be served —

- (a) by delivering it to the person or to some adult member or employee of his family or household at his last known place of residence;
- (b) by leaving it at his usual or last known place of residence or business in an envelope addressed to the person;
- (c) by sending it by registered post addressed to the person at his usual or last known place of residence or business; or
- (d) in the case of a body corporate, firm or body of persons —
 - (i) by delivering it to the secretary or other like officer of the body corporate, firm or body of persons at its registered office or principal place of business; or
 - (ii) by sending it by registered post addressed to the body corporate, firm or body of persons at its registered office or principal place of business.

(2) Any notice, order or document sent by registered post to any person in accordance with subsection (1) shall be deemed to be duly served on the person at the time when the notice, order or document, as the case may be, would in the ordinary course of post be delivered.

(3) When proving service of the notice, order or document referred to in subsection (2), it shall be sufficient to prove that the envelope containing the notice, order or document, as the case may be, was properly addressed, stamped and posted by registered post.

[BA, s. 75A]

Copies or extracts of books to be admitted in evidence

102.—(1) Subject to this section, a copy of or an extract from a book mentioned in this Act that is proved to be a true copy of the book or of the relevant part of the book is admissible in evidence as if it were the original book or the relevant part of the original book.

(2) For the purposes of subsection (1), evidence that a copy of or an extract from a book is a true copy of the book or of a part of the book may be given —

- (a) by a person who has compared the copy or extract with the book or the relevant part of the book; and
- (b) orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

[SF Bill, Clause 149]

Translations of instruments

102A.—(1) Where a person submits or furnishes to or lodges with the Authority any book, application, return, report, statement or other information or document under this Act which is not in the English language, the person shall, at the same time or at such other time as may be permitted by the Authority, submit or furnish to or lodge with the Authority, as the case may be, an accurate translation thereof in the English language.

[15/2003]

(2) Where a person is required to make available for inspection by the public, or any section thereof, any document, report, or other book under this Act which is not in the English language, the person shall, at the same time or at such other time as may be permitted by the Authority, make available for such inspection an accurate translation thereof in the English language.

[15/2003]

(3) Where a person is required to maintain or keep any book under this Act and the book or any part thereof is not maintained or kept in the English language, the person shall —

- (a) cause an accurate translation of that book or that part of the book in the English language to be made from time to time at intervals of not more than 7 days; and
- (b) maintain or keep the translation with the book for so long as the book is required under this Act to be maintained or kept.

[15/2003]

(4) Subsections (1), (2) and (3) are subject to any express provision to the contrary in this Act or any regulations made thereunder.

[15/2003]

(5) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

[15/2003]

(6) Where a person is charged with an offence under subsection (5), it shall be a defence for the person to prove that —

- (a) he had taken all reasonable steps to ensure that the translation that was submitted or furnished to or lodged with the Authority, made available for inspection, or maintained or kept, as the case may be, was accurate in the circumstances; and
- (b) he had believed on reasonable grounds that the translation was accurate.

[15/2003]

(7) In subsections (1), (2) and (3), “Act” includes any written direction made by the Authority under this Act.

[15/2003]

[SF Bill, Clause 149]

Power to make regulations giving effect to treaty, etc.

103.—(1) Without prejudice to the generality of section 104(1), the Authority may make regulations prescribing the matters necessary or expedient to give effect, in Singapore, to the provisions of any treaty, convention, arrangement, memorandum of understanding, exchange of letters or other similar instrument relating to the provision of any financial advisory service, to which Singapore or the Authority is a party.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for —

- (a) exemptions from the requirements relating to licensing, approval or registration requirements under this Act;
- (b) the application of the provisions of this Act with such modifications as may be necessary; and
- (c) the revocation or withdrawal of, or the variation of any condition or restriction imposed in connection with, any exemption granted under this Act.

[SF Bill, Clause 338]

Regulations

104.—(1) The Authority may make regulations for carrying out the purposes and provisions of this Act and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Authority may make regulations for or with respect to —

- (a) applications for the grant of financial adviser's licences, and matters incidental thereto;

[1/2009 wef 26/11/2010]

- (aa) the appointment of an individual as an appointed or provisional representative, the entering of his name or an additional type of financial advisory service for him in the public register of representatives, and the revocation or suspension of his status as an appointed or provisional representative;

[1/2009 wef 26/11/2010]

- (ab) specifying, in the context of the granting of an unsecured advance, unsecured loan or unsecured credit facility by a licensed financial adviser to any officer, employee or representative of the licensed financial adviser, or any person related, in the manner prescribed by the regulations, to any such officer, employee or representative —

- (i) what constitutes any such unsecured advance, unsecured loan or unsecured credit facility; and

- (ii) the requirements and restrictions relating to any such grant;
[Act 35 of 2012 wef 18/03/2013]
- (b) the activities of, and standards to be maintained by, a licensed financial adviser, exempt financial adviser or representative, including the manner, method and place of soliciting business and the conduct of such solicitation;
[1/2009 wef 26/11/2010]
- (c) *[Deleted by Act 15 of 2003]*
- (d) the particulars to be recorded in, or in respect of, books kept by any licensed financial adviser;
- (e) the remuneration of an auditor appointed under this Act and the costs of an audit carried out under this Act;
- (f) the manner in which a licensed financial adviser, exempt financial adviser or representative conducts his dealings with the clients of the licensed financial adviser or exempt financial adviser, as the case may be;
[1/2009 wef 26/11/2010]
- (g) the purchase or sale of investment products directly or indirectly by licensed financial advisers and their appointed or provisional representatives for their own account;
[1/2009 wef 26/11/2010]
- (h) the disclosure by a licensed financial adviser, exempt financial adviser or representative of any material interest that he may have in a proposed transaction relating to purchasing, subscribing for or trading in capital markets products;
[1/2009 wef 26/11/2010]
- (i) the forms for the purposes of this Act;
- (j) the fees to be paid in respect of any matter or thing required for the purposes of this Act, and the refund and remission, whether in whole or in part, of such fees;
- (k) the collection, from any licensed financial adviser or exempt financial adviser, by or on behalf of the Authority at such intervals or on such occasions as may be

prescribed, of statistical information as to such matters relevant to investment products as may be prescribed, and for the collection and use of such information for any purpose, whether or not connected with the prescribed investment products;

- (l) the maintenance by a proprietor or publisher of a newspaper of the particulars of any financial journalist who has contributed any advice, analysis or report concerning any securities, that has been published in the newspaper, and the provision of such particulars to the Authority;

[1/2009 wef 26/11/2010]

- (m) the maintenance by a licensed financial adviser, representative of a licensed financial adviser and applicant for a financial adviser's licence of registers of their interests in securities and their duties relating to the registers, and matters relating thereto; and

[1/2009 wef 26/11/2010]

- (n) all matters and things which are required or permitted to be prescribed by this Act, or which may be necessary or expedient to be prescribed to give effect to this Act.

[15/2003]

(3) No use shall be made of any information obtained by or on behalf of the Authority by virtue only of subsection (2)(k) except in a form which does not disclose the affairs of any particular person.

(4) Except as otherwise expressly provided in this Act, regulations made under this Act —

- (a) may be of general or specific application;

- (aa) may contain provisions of a savings or transitional nature;

[Act 35 of 2012 wef 18/03/2013]

- (b) may provide that a contravention of any specified provision thereof shall be an offence; and

- (c) may provide for penalties not exceeding a fine of \$50,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of

the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

[15/2003]

(5) Where a person is charged with an offence for contravening a regulation made under subsection (2)(m), it shall be a defence for the person to prove —

- (a) that his contravention was due to his not being aware of a fact or occurrence, the existence of which was necessary to constitute the offence; and
- (b) that —
 - (i) he was not so aware on the date of the summons issued for the charge; or
 - (ii) he became so aware before the date of the summons and complied with the regulation within 14 days after becoming so aware.

[1/2009 wef 26/11/2010]

(6) For the purposes of subsection (5), a person shall, in the absence of proof to the contrary, be conclusively presumed to have been aware of a fact or occurrence at a particular time which an employee or agent of the person, being an employee or agent having duties or acting in relation to his employer's or principal's interest or interests in the securities concerned, was aware of at that time.

[1/2009 wef 26/11/2010]

Regulations to apply Act to persons previously regulated under Commodity Trading Act

104A.—(1) The Authority may by regulations prescribe such provisions as it may consider necessary or expedient for the purpose of applying this Act in relation to commodity futures trading advisers and commodity futures trading adviser's representatives; and for this purpose this Act shall apply with such modifications as may be prescribed.

(2) In subsection (1), “commodity futures trading adviser” and “commodity futures trading adviser's representative” have the meanings given to those expressions in the Commodity Trading

Act (Cap. 48A) in force immediately before the commencement of this provision.

[35/2007 wef 27/08/2007]

Transitional and savings provisions

105. The Authority may, by regulations, prescribe such transitional, savings and other consequential provisions as it may consider necessary or expedient.

FIRST SCHEDULE

Sections 2(1) and 22(1)

EXCLUDED FINANCIAL ADVISERS

1. Any —

(a) advocate and solicitor, law corporation, Formal Law Alliance or Joint Law Venture, which is approved or registered under the Legal Profession Act (Cap. 161); or

(b) public accountant who is registered under the Accountants Act (Cap. 2), or accounting corporation which is approved under that Act,

whose carrying on of the business of providing any financial advisory service is solely incidental to his legal or accounting practice, as the case may be.

2. Any company licensed under the Trust Companies Act (Cap. 336) whose carrying on of the business of providing any financial advisory service is solely incidental to its carrying on of the business for which it is licensed under that Act.

[1/2009 wef 26/11/2010]

3. Any person who is the proprietor of a newspaper and holder of a permit issued under the Newspaper and Printing Presses Act (Cap. 206), where —

(a) the newspaper is distributed generally to the public in Singapore;

(b) any advice given, or analysis or report issued or promulgated, is given, issued or promulgated only through that newspaper;

(c) that person receives no commission or other consideration, apart from any fee received from subscription to or purchase of the newspaper, for giving the advice, or for issuing or promulgating the analysis or report; and

(d) the advice is given, or the analysis or report is issued or promulgated, solely as incidental to the conduct of that person's business as a newspaper proprietor.

FIRST SCHEDULE — *continued*

4. Any person who owns, operates or provides an information service through an electronic, or a broadcasting or telecommunications medium, where —

- (a) the service is generally available to the public in Singapore;
- (b) any advice given, or analysis or report issued or promulgated, is given, issued or promulgated only through that service;
- (c) that person receives no commission or other consideration, apart from any fee received from subscription to the service, for giving the advice, or for issuing or promulgating the analysis or report; and
- (d) the advice is given, or the analysis or report is issued or promulgated, solely as incidental to that person's ownership, operation or provision of that service.

5. Any person who provides credit rating services, where any analysis or report issued or promulgated by that person —

- (a) is issued or promulgated solely as incidental to the conduct of that person's business of providing credit rating services; and
- (b) does not contain any specific recommendation with respect to the acquiring of, disposing of, subscribing for, or underwriting of, any securities.

6. Any public statutory corporation established under any Act in Singapore.

7. Any approved trustee under Division 2 of Part XIII of the Securities and Futures Act (Cap. 289).

8. The Official Assignee in exercising his powers under the Bankruptcy Act (Cap. 20).

9. The Public Trustee in exercising his powers under the Public Trustee Act (Cap. 260).

10. Any person acting in relation to a company as its liquidator, provisional liquidator, receiver, receiver and manager, or judicial manager.

11. A foreign company (within the meaning of section 4(1) of the Companies Act (Cap. 50)) whose provision of any financial advisory service is effected under an arrangement between the foreign company (on the one hand) and its related corporation which is licensed under this Act or exempt under section 23 (other than subsection (1)(*ea*) and (*f*)) (on the other hand), where such arrangement is approved by the Authority.

[FTA, s. 2; SIA, s. 2]

[15/2003; 2/2005; 11/2005]

[1/2009 wef 26/11/2010]

SECOND SCHEDULE

Section 2(1)

TYPES OF FINANCIAL ADVISORY SERVICE

1. Advising others, either directly or through publications or writings, and whether in electronic, print or other form, concerning any investment product, other than —

(a) in the manner set out in paragraph 2; or

(b) advising on corporate finance within the meaning of the Securities and Futures Act (Cap. 289).

2. Advising others by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product.

3. Marketing of any collective investment scheme.

4. Arranging of any contract of insurance in respect of life policies, other than a contract of reinsurance.

[15/2003; 2/2005]

THIRD SCHEDULE

Section 65(1A)

SPECIFIED PROVISIONS

1. Section 23(6)

1A. Section 23(6A)

[Act 35 of 2012 wef 18/03/2013]

1B. Section 23B(2)

[Act 35 of 2012 wef 18/03/2013]

1C. Section 37(2)

[Act 35 of 2012 wef 18/03/2013]

2. Section 100(2).

[15/2003; 2/2005]

LEGISLATIVE SOURCE KEY
FINANCIAL ADVISERS ACT
(CHAPTER 110)

Unless otherwise stated, the abbreviations used in the references to other Acts and statutory provisions are references to the following Acts and statutory provisions. The references are provided for convenience and are not part of the Act:

Aust. Corporations 2001	:	Australia, Corporations Act 2001 (No. 50, 2001) as amended by the Australian Financial Services Reform Bill 2001
ASIC 2001	:	Australia, Australian Securities and Investment Commission Act 2001
HK SF Bill	:	Hong Kong, Securities and Futures Bill (Gazette published on 24 November 2000, Legal Supplement No. 3)
UK FSMA 2000	:	United Kingdom, Financial Services and Markets Act 2000 (Chapter c. 8)
BA	:	Singapore, Banking Act (Chapter 19, 1999 Revised Edition)
FTA	:	Singapore, Futures Trading Act (Chapter 116, 1996 Revised Edition — repealed)
Insurance Intermediaries	:	Singapore, Insurance Intermediaries Act (Chapter 142A, 2000 Revised Edition — repealed)
SF Bill	:	Singapore, Securities and Futures Bill (Bill 33/2001)
SIA	:	Singapore, Securities Industry Act (Chapter 289, 1985 Revised Edition — repealed)
SIR	:	Singapore, Securities Industry Regulations (Cap. 289, Rg. 1)

LEGISLATIVE HISTORY
FINANCIAL ADVISERS ACT
(CHAPTER 110)

This Legislative History is provided for the convenience of users of the Financial Advisers Act. It is not part of the Act.

1. Act 43 of 2001 — Financial Advisers Act 2001

Date of First Reading : 25 September 2001
(Bill No. 34/2001 published on
26 September 2001)

Date of Second and Third Readings : 5 October 2001

Date of commencement : 6 August 2002 (section 106)

2. 2002 Revised Edition — Financial Advisers Act

Date of operation : 31 December 2002

3. Act 15 of 2003 — Financial Advisers (Amendment) Act 2003

Date of First Reading : 14 August 2003
(Bill No. 14/2003 published on
15 August 2003)

Date of Second and Third Readings : 2 September 2003

Date of commencement : 22 December 2003

4. Act 24 of 2003 — Monetary Authority of Singapore (Amendment) Act 2003

(Consequential amendments made to Act by)

Date of First Reading : 16 October 2003
(Bill No. 21/2003 published on
17 October 2003)

Date of Second and Third Readings : 10 November 2003

Date of commencement : 1 January 2004

5. Act 5 of 2005 — Limited Liability Partnerships Act 2005

(Consequential amendments made to Act by)

Date of First Reading : 19 October 2004
(Bill No. 64/2004 published on
20 October 2004)

Date of Second and Third Readings : 25 January 2005

Date of commencement : 11 April 2005

6. Act 2 of 2005 — Financial Advisers (Amendment) Act 2005

- Date of First Reading : 19 October 2004
(Bill No. 47/2004 published on
20 October 2004)
- Date of Second and Third Readings : 25 January 2005
- Date of commencement : 1 July 2005

7. Act 11 of 2005 — Trust Companies Act 2005

(Consequential amendments made to Act by)

- Date of First Reading : 25 January 2005
(Bill No. 1/2005 published on
26 January 2005)
- Date of Second and Third Readings : 18 February 2005
- Date of commencement : 1 February 2006

8. Act 42 of 2005 — Statutes (Miscellaneous Amendments) (No. 2) Act 2005

- Date of First Reading : 17 October 2005
(Bill No. 30/2005 published on
18 October 2005)
- Date of Second and Third Readings : 21 November 2005
- Date of commencement : 1 April 2006 (item (13) of the
First Schedule)

9. Act 2 of 2007 — Statutes (Miscellaneous Amendments) Act 2007

- Date of First Reading : 8 November 2006
(Bill No. 14/2006 published on
9 November 2006)
- Date of Second and Third Readings : 22 January 2007
- Date of commencement : 1 March 2007 (except
sections 6, 8 and 11)

10. 2007 Revised Edition — Financial Advisers Act

- Date of operation : 31 March 2007

11. Act 35 of 2007 — Commodity Trading (Amendment) Act 2007

(Consequential amendments made to Act by)

- Date of First Reading : 21 May 2007
(Bill No. 23/2007 published on
22 May 2007)
- Date of Second and Third Readings : 17 July 2007

Date of commencement : 27 August 2007 (sections 26(b) and 28(c))

12. Act 35 of 2007 — Commodity Trading (Amendment) Act 2007
(Consequential amendments made to Act by)

Date of First Reading : 21 May 2007
(Bill No. 23/2007 published on 22 May 2007)

Date of Second and Third Readings : 17 July 2007

Date of commencement : 27 February 2008 (sections 2 to 25, 26(a), 27, 28(a) and (b) and 29)

13. Act 1 of 2009 — Financial Advisers (Amendment) Act 2009

Date of First Reading : 15 September 2008
(Bill No. 22/2008 published on 16 September 2008)

Date of Second and Third Readings : 19 January 2009

Date of commencement : 26 November 2010

14. Act 35 of 2012 — Financial Advisers (Amendment) Act 2012

Date of First Reading : 15 October 2012
(Bill No. 32/2012 published on 15 October 2012)

Date of Second and Third Readings : 15 November 2012

Date of commencement : 18 March 2013

15. Act 11 of 2013 — Insurance (Amendment) Act 2013
(Consequential amendments made by)

Date of First Reading : 4 February 2013
(Bill No. 5/2013 published on 4 February 2013)

Date of Second and Third Readings : 15 March 2013

Date of commencement : 18 April 2013 (except sections 65(a) and (b))

COMPARATIVE TABLE
FINANCIAL ADVISERS ACT
(CHAPTER 110)

The following provisions in the Financial Advisers Act 2001 (Act 43 of 2001) were renumbered by the Law Revision Commissioners in the 2002 Revised Edition.

This Comparative Table is provided for the convenience of users. It is not part of the Financial Advisers Act.

2002 Ed.	Act 43 of 2001
64—(2) and (3)	64—(2)
(4)	(3)
(5)	(4)
(6)	(5)
(7)	(6)
(8)	(7)
105	106