

FINANCIAL ADVISERS ACT 2001
(Act No. of 2001)

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A BILL

intituled

An Act to regulate financial advisers and their representatives.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Financial Advisers Act 2001 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2.—(1) In this Act, unless the context otherwise requires —
“appointed day” means the date of commencement of this Act;

- “Authority” means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap.186);
- “book” includes any electronic 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;
- “capital markets products” has the same meaning as in section 2(1) of the Securities and Futures Act 2001;
- “collective investment scheme” has the same meaning as in section 2(1) of the Securities and Futures Act 2001;
- “company” has the same meaning as in section 4(1) of the Companies Act (Cap.50);
- “corporation” has the same meaning as in section 4(1) of the Companies Act;
- “director” has the same meaning as in section 4(1) of the Companies Act;
- “executive officer”, in relation to a corporation, means any person, by whatever name called and whether or not he is a director of the corporation, who is concerned with or takes part in the management of the corporation;
- “exempt financial adviser” means a person who is exempt under section 21(1) from holding a financial adviser’s licence;
- “financial year” has the same meaning as in section 4(1) of the Companies Act;
- “financial adviser” means any person who carries on a business of providing any financial advisory service, but does not include any person specified in the First Schedule;
- “financial advisory service” means any or all of the following services:
- (a) advising others, either directly or through publications or writings, whether in electronic, print or other form, concerning investment products, other than advising on corporate finance within the meaning of the Securities and Futures Act 2001;

- (b) issuing or promulgating analyses or reports, whether in electronic, print or other form, concerning investment products;
 - (c) marketing of collective investment schemes;
 - (d) arranging of contracts in respect of life policies;
- “financial adviser’s licence” means a licence granted or renewed under section 10 in respect of a financial adviser and “licensed financial adviser” shall be construed accordingly;
- “foreign exchange trading” has the same meaning as in section 2(1) of the Securities and Futures Act 2001;
- “futures contract” has the same meaning as in section 2(1) of the Securities and Futures Act 2001;
- “investment product” means —
- (a) any capital markets product;
 - (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 2001;
- “licence” means a financial adviser’s licence or representative’s licence and “licensee” shall be construed accordingly;
- “life policy” has the same meaning as in the First Schedule to the Insurance Act (Cap.142);
- “officer” has the same meaning as in section 4(1) of the Companies Act (Cap.50);
- “registered insurer” means an insurer who is for the time being registered under section 8 of the Insurance Act;
- “representative” means an individual, in the direct employment of or acting for or by arrangement with a financial adviser, who performs for the financial adviser any of the functions of a financial adviser (other than work ordinarily performed by accountants, clerks or cashiers), whether his remuneration (if any) is by way of salary, wages, commission or otherwise, and includes any director or officer of the financial adviser who performs for the financial adviser any of those functions (whether or not his

remuneration is by way of salary, wages, commission or otherwise);

“representative’s licence” means a licence granted or renewed under section 10 in respect of a representative and “licensed representative” shall be construed accordingly;

“securities” has the same meaning as in section 2(1) of the Securities and Futures Act 2001;

“substantial shareholder” has the same meaning as in Division 4 of Part IV of the Companies Act (Cap.50);

“written direction” means a written direction issued under section 59.

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

(3) The Authority may, at any time, by notification published in the *Gazette* —

(a) amend, add to or vary the First Schedule; and

(b) in relation to paragraph (a), make such incidental, consequential or supplementary provisions as may be necessary or expedient.

PART II

LICENSING OF FINANCIAL ADVISERS AND THEIR REPRESENTATIVES

Need for financial adviser’s licence

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

(a) authorised to do so in respect of that financial advisory service by a financial adviser’s licence; or

(b) an exempt financial adviser.

(2) For the purposes of subsection (1)(a), 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.

Need for representative's licence

4.—(1) No person, other than a representative of an exempt financial adviser, shall act as a representative unless he holds a representative's licence.

(2) 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.

Application for and renewal of licence

5.—(1) An application for the grant or renewal of a licence shall be made —

- (a) to the Authority in such form and manner as may be prescribed; and
- (b) in the case of an application for the renewal of a licence, not later than one month or such other period before the expiry of the licence as the Authority may prescribe.

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

(3) An application for the grant or renewal of a licence shall be accompanied by a non-refundable application fee which shall be paid in the manner as specified by the Authority.

(4) An application for the grant or renewal of a representative's licence shall be sponsored by a person which is, or which has submitted an application to be, a licensed financial adviser.

(5) An application for a representative's licence shall be deemed to be withdrawn with effect from the date on which the person

which sponsored the application withdraws its sponsorship in writing or its application for a financial adviser's licence is refused by the Authority.

(6) Where a person submits an application for renewal of his licence before or during the period referred to in subsection (1)(b), his licence shall be deemed to be extended for the period from the date of expiry of his licence until the date on which his licence is renewed or his application is refused, as the case may be.

(7) Where a person submits an application for renewal of his licence after the period referred to in subsection (1)(b), the Authority may impose a late renewal fee —

- (a) where the person is an individual, not exceeding \$50 for every day or part thereof that the application for renewal is late, subject to a maximum of \$1,500; or
- (b) where the person is a corporation, not exceeding \$100 for every day or part thereof that the application for renewal is late, subject to a maximum of \$3,000.

Requirements for grant or renewal of financial adviser's licence

6.—(1) The Authority may refuse an application for the grant or renewal 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 5(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;

- (e) the applicant or any of its substantial shareholders is in the course of being wound up or dissolved, whether in Singapore or elsewhere;
- (f) a receiver, receiver and manager, or judicial manager, has been appointed, whether in Singapore or elsewhere, 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) a levy of execution in respect of the applicant has not been satisfied;
- (i) the Authority is not satisfied as to the educational qualification or experience of the officers 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 directors, officers or employees, will not perform the functions of a licensed financial adviser efficiently, honestly or fairly;
- (k) a prohibition order under section 61 has been made by the Authority, and remains in force, against the applicant;
- (l) the applicant or any of its substantial shareholders, directors, officers or employees —
 - (i) has been convicted, whether in Singapore or elsewhere, of an offence 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 directors, officers, employees and substantial shareholders are fit and proper persons;
- (n) the Authority has reason to believe that the applicant may not be able to 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 substantial shareholders, directors, officers or employees;

- (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 directors, officers, employees or substantial shareholders; or
 - (ii) to reflect discredit on the manner of conducting the business of the applicant or any of its substantial shareholders; or
- (q) the Authority is of the opinion that it is in the interests of the public to do so.

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

- (a) the Authority may prescribe different amounts of cover under a professional indemnity insurance policy or any other measure in lieu of a professional indemnity insurance policy, as the case may be, 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.

Failure to maintain minimum financial requirements or professional indemnity insurance policy

7.—(1) A licensed financial adviser which --

- (a) becomes aware of any inability by it to comply with the minimum financial requirements prescribed under section 6(1)(b); or

- (b) fails 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 6(1)(c),

shall immediately notify the Authority in writing.

(2) Where the Authority becomes aware

- (a) of any inability by a licensed financial adviser to comply with the minimum financial requirements prescribed under section 6(1)(b); or
- (b) that a licensed financial adviser has failed 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 under section 6(1)(c) --

the Authority may, whether or not the financial adviser has notified the Authority under subsection (1) —

- (i) suspend the financial adviser's licence for such period as it may consider appropriate;
- (ii) permit the financial adviser to continue to act as such subject to such conditions as the Authority may impose; or
- (iii) require the financial adviser to comply with such written directions as the Authority may impose and, in particular, may require the financial adviser —
 - (A) to cease to act as a financial adviser other than for the purpose of giving effect to any agreement, transaction or arrangement permitted by or by virtue of its licence and entered into before the time when it became aware of its inability to comply with the minimum financial requirements prescribed under section 6(1)(b), or 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 6(1)(c), as the case may be; or
 - (B) to submit such statements or reports as the Authority may require on a weekly basis until it meets the minimum financial requirements prescribed under section 6(1)(b) or for such period as the Authority may specify.

(3) For the purposes of subsection (1), a licensed financial adviser shall be deemed to be aware of an inability to comply with the minimum financial requirements prescribed under section 6(1)(b) if any of its directors or officers is so aware or would, with the exercise of reasonable diligence, have been aware of such inability.

(4) 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.

Requirements for grant or renewal of representative's licence

8.—(1) The Authority may refuse an application for the grant or renewal of a representative's licence if —

- (a) the applicant is not an individual;
- (b) the applicant is not a fit and proper person to be licensed;
- (c) the applicant has not furnished the Authority with such information or documents as may be required under section 5(2), or such other information or documents relating to him as may be required by the Authority;
- (d) the applicant is an undischarged bankrupt, or has made a compromise or arrangement with his creditors, whether in Singapore or elsewhere;
- (e) a levy of execution against the applicant has not been satisfied;
- (f) the Authority is not satisfied as to the educational qualification or experience of the applicant, having regard to the nature of the duties of a licensed representative;
- (g) the Authority has reason to believe that the applicant will not perform the functions of a representative efficiently, honestly or fairly;
- (h) a prohibition order under section 61 has been made by the Authority, and remains in force, against the applicant;
- (i) the applicant has been convicted, in Singapore or elsewhere, within the period of 10 years immediately preceding the date on which the application was made, of an offence involving fraud or dishonesty;
- (j) the Authority has reason to believe that the applicant may not be able to act in the best interests of the clients of the financial adviser of which he is a representative, having

regard to his reputation, character, financial integrity and reliability;

- (k) the Authority is not satisfied as to —
 - (i) the financial standing of the applicant; or
 - (ii) the record of past performance or expertise of the applicant;
- (l) 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 applicant or any person employed by or associated with him for the purpose of his business;
- (m) the applicant is in arrears in the payment of such contributions on his own behalf as a self-employed person to the Central Provident Fund under the Central Provident Fund Act (Cap.36); or
- (n) the Authority is of the opinion that it is in the interests of the public to do so.

(2) For the purposes of subsection (1)(b) and without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether the applicant is a fit and proper person to be licensed, have regard to such criteria as may be specified in written directions.

(3) The Authority may, for the purposes of subsection (1)(f), prescribe the qualifications to be obtained by any class or description of applicants for representative's licences.

Representative to act for only one financial adviser

9.—(1) Subject to subsection (2), no licensed representative shall, at any one time, be a representative of more than one financial adviser.

(2) The Authority may permit a licensed representative to be a representative of more than one financial adviser.

(3) For the purposes of subsection (2) and without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in deciding whether to grant permission, have regard to such matters as may be prescribed or specified in written directions.

(4) Any licensed representative who, without reasonable excuse, 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.

Grant or renewal of licence

10.—(1) The Authority may grant or renew any licence, subject to such conditions or restrictions as it thinks fit.

(2) Without prejudice to the generality of subsection (1), the Authority may —

- (a) in granting or renewing any licence, impose conditions or restrictions with respect to the type of financial advisory service which may or may not be provided by the licensee, described in such manner as the Authority may consider appropriate; or
- (b) in granting or renewing a representative's licence, relate the representative's licence to the financial adviser which sponsored the application for the licence.

(3) For the purposes of subsection (2)(a), the Authority may —

- (a) incorporate, in the description of the type of financial advisory service to be provided by the licensee, such limitation or prohibition as it considers appropriate, including the circumstances in which the type of financial advisory service may or may not be provided by the licensee; or
- (b) specify a narrower or wider description of the type of financial advisory service to be provided by the licensee than that contained in his application for a licence.

(4) The Authority may at any time add to, vary or revoke any condition or restriction of a licence.

(5) Any licensee who fails to comply with 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 \$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.

Licence fees

11.—(1) A licensee shall pay to the Authority such licence fees as may be prescribed.

(2) The Authority may prescribe different fees according to the type of activities undertaken or to be undertaken by a licensee.

(3) There shall be no refund of any licence fee paid to the Authority if the licence is suspended or revoked, or if the licensee ceases to carry on the business for which he is licensed, at any time before the expiry of the licence.

Period of licence

12.—(1) Subject to subsection (2), a licence shall be in force for a period of 3 years, or such other period as the Authority may specify, from the date of its issue.

(2) A licence that has been renewed in accordance with the provisions of this Part shall continue in force for a period of 3 years, or such other period as the Authority may specify, from the date on which but for its renewal it would have expired.

Variation of licence

13.—(1) A licensee may apply to the Authority in the prescribed form to vary the type of financial advisory service authorised to be provided by his licence.

(2) The Authority may, on the application of a licensee, vary his licence by —

- (a) adding a type of financial advisory service to that specified in the licence; or
- (b) removing a type of financial advisory service from that specified in the licence.

(3) An application under subsection (1) shall be accompanied by a non-refundable application fee which shall be paid in the manner as specified by the Authority.

(4) The Authority may approve the application subject to such conditions as the Authority may impose, or may refuse the application on any of the grounds set out in section 6(1) or 8(1), as the case may be.

False statements in relation to applications for grant, renewal or variation of licence

14. Any person who, in connection with an application for the grant, renewal or variation of a licence, wilfully makes a statement which is false or misleading in a material particular, knowing it to be false or misleading, or wilfully 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 or to imprisonment for a term not exceeding 2 years or to both.

Notification of change in particulars

15.—(1) Where —

- (a) a licensed financial adviser ceases to carry on any financial advisory service to which its licence relates;
- (b) a licensed representative ceases to be a representative of the financial adviser which sponsored his application for a representative's licence; or
- (c) a change occurs in any matter in relation to a licensee, particulars of which are required by section 65 to be entered in the register of licensees,

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

(2) Any licensee who, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence.

Revocation and suspension of licence

16.—(1) A licence shall be deemed to be revoked if —

- (a) in the case of a licensed financial adviser —
 - (i) it has not commenced the business for which it is licensed within 6 months of being granted the licence;
 - (ii) it has ceased to carry on the business for which it is licensed for a continuous period of 3 months; or
 - (iii) it is wound up or dissolved; or
- (b) in the case of a licensed representative —
 - (i) he has not commenced his duties as a representative to which his licence relates within 6 months of being granted the licence;
 - (ii) he has ceased to act as a representative for a continuous period of 3 months;
 - (iii) the licence of the financial adviser of which he is a representative is revoked; or
 - (iv) he dies or becomes mentally incapacitated.

(2) The Authority may revoke a licence —

- (a) in the case of a licensed financial adviser, if —
- (i) there exists a ground on which the Authority may refuse an application under section 6(1);
 - (ii) any of the officers of the financial adviser holding a managerial or executive position has been convicted of any offence under this Act;
 - (iii) the Authority is satisfied that the financial adviser has misappropriated any of its clients' money;
 - (iv) the financial adviser has contravened any provision of this Act, or any condition or restriction imposed or any written direction given by the Authority under this Act;
 - (v) it appears to the Authority that the financial adviser has failed to satisfy any of its obligations under or arising from this Act;
 - (vi) the financial adviser is carrying on its business in a manner likely to be detrimental to its clients, including disseminating or giving information to any person which is false or misleading in a material particular; or
 - (vii) the financial adviser ceases to carry on the business for which it was licensed; or
- (b) in the case of a licensed representative, if —
- (i) there exists a ground on which the Authority may refuse an application under section 8(1);
 - (ii) he has contravened any provision of this Act, or any condition or restriction imposed or any written direction given by the Authority under this Act;
 - (iii) the Authority is satisfied that he has misappropriated any property of any of the clients of the financial adviser of which he is a representative;
 - (iv) it appears to the Authority that he has failed to satisfy any of his obligations under or arising from this Act;
 - (v) he is performing his functions in a manner likely to be detrimental to the clients of the financial adviser of which he is a representative, including disseminating or giving information to any person which is false or misleading in a material particular; or

(vi) he ceases to perform the functions for which he was licensed.

- (3) The Authority may, if it considers it desirable to do so —
- (a) suspend a licence for a specific period instead of revoking it under subsection (2); and
 - (b) at any time remove the suspension.

Effect of revocation, suspension or expiry of licence

17.—(1) Where the Authority revokes or suspends a licence under section 16, the Authority shall specify the date on which the revocation or suspension takes effect.

(2) A person whose licence is revoked or suspended shall cease to act as a financial adviser or representative, as the case may be, from the date on which the revocation or suspension takes effect, except as may be approved by the Authority and in accordance with such conditions as the Authority may impose for the purpose of giving effect to any transaction which the person had entered into before he became aware of the revocation or suspension.

(3) No licensed representative shall act as a representative of a financial adviser whose licence has expired or has been suspended.

(4) A revocation, suspension or expiry of a 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 licensee, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the licence; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement referred to in paragraph (a).

(5) Any person who continues to act as a financial adviser in contravention of subsection (2) 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.

(6) Any person who continues to act as a representative in contravention of 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.

(7) Any person who fails to comply with any condition imposed by the Authority under subsection (2) 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.

(8) Any licensed representative who contravenes subsection (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 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.

Right of appeal

18. Any person who is aggrieved $\frac{3}{4}$

- (a) by the refusal of the Authority to grant, renew or vary a licence; or
- (b) by the revocation or suspension of a licence by the Authority,

may, within 30 days of the refusal, revocation or suspension of the licence by the Authority, appeal in writing to the Minister in accordance with Part VIII.

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

19.—(1) No person, other than —

- (a) a licensed financial adviser;
- (b) an exempt financial adviser; or
- (c) a person or class of persons approved by the Authority,

shall, without the written approval of the Authority —

- (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, including in electronic form, or in any other manner.

(2) Nothing in this section shall prohibit an association of financial advisers from using the words “financial advisers” in any language as part of its name or description of its activities, subject to the Authority’s prior written approval.

(3) No person, other than —

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

(b) a person or class of persons approved by the Authority,

shall, without the written approval of the Authority —

(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, including in electronic form, or in any other manner.

(4) Nothing in this section shall prohibit an association of financial advisers which provide any financial advisory service in respect of life policies from using the words “life insurance broker” or any of its derivatives in any language as part of its name or description of its activities, subject to the Authority’s prior written approval.

(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.

Holding out as financial adviser

20.—(1) No person shall hold himself out to be a financial adviser unless he is a licensed financial adviser or an exempt financial adviser.

(2) 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.

Exempt financial advisers and their representatives

21.34(1) The following persons shall be exempt from holding a financial adviser's licence:

- (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 society registered under the Insurance Act (Cap.142);
- (d) a holder of a capital markets services licence under the Securities and Futures Act 2001;
- (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; and
- (f) such other persons or classes of persons as may be prescribed, subject to such conditions as the Authority may impose.

(2) Subject to this Act, sections 23 to 27, 30 to 33, 35 and 57 shall, with the necessary modifications, apply to an exempt financial adviser (other than a person referred to in subsection (1)(f)) as if it is a licensed financial adviser.

(3) Subject to this Act, sections 9, 23 to 25, 27, 30, 32, 33 and 35 shall, with the necessary modifications, apply to a representative of an exempt financial adviser (other than a person referred to in subsection (1)(f)) as if he is a licensed representative.

(4) The Authority may, on the application of an exempt financial adviser or any of its representatives, exempt such person from complying with any of the provisions referred to in subsection (2) or (3), as the case may be.

(5) The Authority may prescribe the provisions of this Act that apply to the persons referred to in subsection (1)(f).

(6) The Authority may prescribe or specify in written directions such conditions or restrictions on an exempt financial adviser or any of its representatives as it deems fit.

(7) The Authority may withdraw an exemption granted to any person under subsection (1)(f) or (4) if the person contravenes any

condition or restriction imposed by the Authority under subsection (6), or for any other reason.

(8) Any exempt financial adviser which, or any representative of an exempt financial adviser who, contravenes any condition or restriction imposed by the Authority under subsection (6) shall be guilty of an offence.

PART III

CONDUCT OF BUSINESS

Division 1 - General

Restriction on granting unsecured loans, advances or credit facilities to director, etc., of licensed financial adviser

22.—(1) No licensed financial adviser shall grant any unsecured advance, unsecured loan or unsecured credit facility to any of its directors, officers, employees or representatives, where —

- (a) the unsecured advance, unsecured loan or unsecured credit is given for the purpose of enabling or assisting the person to whom the credit is given to purchase, subscribe for or trade in any investment product; or
- (b) the licensed financial adviser knows or has reason to believe that the unsecured advance, unsecured loan or unsecured credit facility will be used for the purpose of purchasing, subscribing for or trading in any investment product.

(2) Subject to subsection (1), no licensed financial adviser shall grant, whether directly or indirectly, any unsecured advance, unsecured loan or unsecured credit facility to —

- (a) any of its directors, other than a director who is its employee, whether or not such advance, loan or credit facility is obtained by its directors jointly or severally; or
- (b) any of its officers or employees, including a director who is its employee,

which in the aggregate and outstanding at any one time exceeds such amounts as may be prescribed.

(3) For the purposes of this section —

- (a) “director” includes the spouse, father, step-father, mother, step-mother, son, step-son, daughter, step-daughter, brother or sister of a director; and
- (b) the Authority may prescribe the items which constitute “unsecured advance”, “unsecured loan” or “unsecured credit facility”.

(4) Any licensed financial adviser which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

Obligation to disclose product information to clients

23.—(1) A licensee shall disclose, to every existing and prospective client, all information relating to any investment product that is recommended by the licensee to the client, including —

- (a) the terms or conditions of the investment product;
- (b) the benefits to be, or likely to be, derived from the investment product;
- (c) the name of the person who provides the investment product;
- (d) the name of the person who issues the investment product;
- (e) the relationship between the licensee and the person who provides or issues the investment product; and
- (f) the premium, costs, fees or expenses that may be charged or imposed by the person who provides or issues the investment product.

(2) The Authority may specify, in written directions, the form or manner in which information relating to any investment product specified in the written directions may be disclosed to any client of a licensee.

(3) The Authority may, in writing, require a licensee to submit to it —

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

(4) If it appears to the Authority, after affording the licensee 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 licensee to discontinue the use, in Singapore, of the written communication immediately or from a date as specified in the notice.

(5) A licensee who —

- (a) fails to comply with a requirement under subsection (3);
or
- (b) uses a copy of any written communication in contravention of 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.

(6) For the purposes of this section, “written communication” includes a brochure, leaflet, circular or advertising matter, whether in electronic, print or other form.

Statements by licensees

24.—(1) No licensee shall, with intent to deceive, make a false or misleading statement as to —

- (a) any amount that would be payable in respect of a proposed contract in respect of any investment product; or
- (b) the effect of any provision of a contract or a proposed contract in respect of any investment product.

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

(3) Any licensee who contravenes subsection (1) 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 \$25,000 or to imprisonment for a term not exceeding 12 months or to both.

Recommendations by licensees

25.—(1) No licensee 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 licensee does not have a reasonable basis for making the recommendation.

(2) For the purposes of subsection (1), a licensee 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).

(3) Where —

- (a) a licensee, 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,

the licensee is liable to pay damages to the person in respect of that loss or damage.

(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.

Receipt of client's money or property

26.—(1) The Authority may, by regulations —

- (a) determine the manner in which a licensee may receive or deal with client's money or property; and
- (b) prohibit licensees from receiving or dealing with client's money or property in specified circumstances or in relation to specified activities.

(2) In this section, “client's money or property” means money received or retained by, or property deposited with, a licensee in

the course of his business as such for which he is liable to account to another person.

Obligation to furnish information to Authority

27.—(1) The Authority may, in writing, require —

- (a) any licensed financial adviser to furnish it with information about any matter related to its business carried on in Singapore or elsewhere; or
- (b) any licensed representative to furnish it with information about any matter related to the business of its financial adviser carried on in Singapore or elsewhere,

if, in the opinion of the Authority, it requires that information for the discharge of its functions under this Act.

(2) Any person who contravenes 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 12 months 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.

Saving for validity of transactions

28.—(1) A failure to comply with 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, contract or other arrangement.

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

(3) Without prejudice to the generality of section 87(1), the regulations referred to in subsection (2) may provide that a failure to comply with any requirement of this Act has a specified effect on the validity or enforceability of any agreement, transaction, contract or arrangement.

Division 2 - Life Insurance

Application of this Division

29. This Division applies to licensees who provide any financial advisory service in respect of life policies.

Effect of payment in respect of contracts of insurance

30.—(1) Where a contract of insurance is arranged or effected by a licensee, payment to the licensee of moneys payable by the insured to the insurer under or in relation to the contract, whether in respect of a premium or otherwise, is a discharge, as between the insured and the insurer, of any liability of the insured under or in respect of the contract, to the extent of the amount of the payment.

(2) Payment to a licensee by or on behalf of an intending insured of moneys in respect of a contract of insurance to be arranged or effected by the licensee, whether the payment is in respect of a premium or otherwise, is a discharge, as between the insured and the insurer, of any liability of the insured under or in respect of the contract, to the extent of the amount of the payment.

(3) Payment by an insurer to a licensee of moneys payable to an insured, whether in respect of a claim, return of premiums or otherwise, under or in relation to a contract of insurance, does not discharge any liability of the insurer to the insured in respect of those moneys.

(4) An agreement, insofar as it purports to alter or restrict the operation of subsection (1), (2) or (3), shall be void.

(5) Subsection (4) does not render void an agreement between a licensed financial adviser and an insured insofar as the agreement allows the financial adviser to set off, against moneys payable to the insured, moneys payable by the insured to the financial adviser in respect of premiums.

Insurance broking premium accounts

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

(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) such other matter which the Authority considers to be incidental to or necessary for this section.

(3) In this section, “moneys” means any sum received by a licensed financial adviser as agent for an insured, including policy moneys as defined in the First Schedule to the Insurance Act (Cap.142), premiums and claims payments.

(4) 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.

Negotiation and placement of risk with unregistered insurer

32.—(1) Subject to subsections (3) and (4), no licensee shall, in the course of his business as such, negotiate any contract of insurance with an insurer, whether directly or indirectly, except with a registered insurer acting in the course of his business as such.

(2) 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.

(3) The reference in subsection (1) to a contract of insurance shall not apply to reinsurance, business relating to risks outside Singapore or such other risks as may be prescribed.

(4) For the purpose of subsection (3), “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 registered insurer in Singapore.

(5) 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 effect an insurance for that case with a registered insurer acting in the course of his business as such, the Authority may permit any licensee —

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

Representations by licensees

33.—(1) No licensee 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 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.

(2) No licensee 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 the 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 to 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.

(3) Any licensee who contravenes subsection (1) or (2) 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 \$25,000 or to imprisonment for a term not exceeding 12 months or to both.

Division 3 - Capital Markets Products

Application of this Division

34. This Division applies to licensees who provide any financial advisory service in respect of capital markets products.

Licensee to disclose certain interests in capital markets products

35.—(1) Where a licensee sends a circular or other similar written communication in which he makes a recommendation, whether expressly or by implication, with respect to any capital markets product, 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 capital markets product that he or a person associated with him has, at the date on which the circular or other communication is sent.

(2) Where a person is charged with an offence in respect of a contravention of subsection (1), it shall be a defence for the person 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 capital markets product; or
- (b) that the person associated with him had an interest in, or an interest in the acquisition or disposal of, the capital markets product,

as the case may be.

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

- (a) an interest of a person in the disposal of any capital markets product 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 capital markets product;
- (b) without limiting the generality of paragraph (a), a person who has entered into an underwriting agreement in respect of any capital markets product shall be deemed to have an interest in the acquisition or disposal of the capital markets product; and
- (c) notwithstanding subsection (4), a person is not associated with another person in relation to the sending of a circular or other communication or the making of a recommendation —

- (i) by reason only that he is a director of a corporation of which the other person is also a director, whether

or not the corporation carries on business of providing any financial advisory service; or

- (ii) 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 communication or the making of the recommendation.

(4) A reference in this section 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, secretary or an officer of the corporation;
 - (ii) a person who is in a position to control not less than 20% of the voting power in the corporation; or
 - (iii) a corporation that is related to the other person or a director, secretary or an officer of such a corporation;
- (b) where the other person is an individual —
 - (i) the person's spouse, father, step-father, mother, step-mother, son, step-son, daughter, step-daughter, brother or sister;
 - (ii) a corporation of which the person is an officer;
 - (iii) an employee or employer of the person; or
 - (iv) an officer of any corporation of which the person is an officer; or
- (c) a person with whom the other person is acting, or proposes to act, in concert.

(5) A licensee shall not send to a person a circular, other communication or recommendation to which subsection (1) applies unless the circular, other communication or recommendation is signed by —

- (a) in the case of a licensed financial adviser, a director, an executive officer or a secretary of the financial adviser; or
- (b) in the case of a licensed representative, the representative.

(6) When a licensee sends to a person a circular, other communication or recommendation to which subsection (1) applies, the licensee shall preserve a copy of the circular, other communication or recommendation, duly signed in accordance with subsection (5), for 6 years.

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

(8) The Authority may, in the public interest, exempt any person or class of persons, or any capital markets product or class of capital markets products, from the application of this section.

(9) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,500 or to imprisonment for a term not exceeding 12 months or to both.

Division 4 - Register of Interests in Securities

Application of this Division

36.—(1) This Division applies to —

- (a) licensees who provide any financial advisory service in respect of capital markets products; and
- (b) financial journalists.

(2) For the purposes of this Division —

- (a) “financial journalist” means a person who contributes advice concerning securities, or prepares analyses or reports concerning securities, for publication in a newspaper or periodical;
- (b) “relevant person” means any person referred to in subsection (1); and
- (c) a reference to securities is a reference to securities which are quoted on a securities exchange approved under the Securities and Futures Act 2001 or a recognised trading system provider operated in Singapore recognised under that Act.

Register of securities

37.—(1) A relevant person shall —

- (a) maintain in the prescribed form a register of his interests in securities;
- (b) enter in the register, within 7 days after the date that he acquires any interest in securities, particulars of the

securities in which he has an interest and particulars of his interest in those securities; and

- (c) retain that entry in an easily accessible form for a period of not less than 6 years after the date on which such entry was first made.

(2) Where there is a change, not being a prescribed change, in any interest in securities of a relevant person, he shall —

- (a) enter in the register particulars of the change, including the date of the change and the circumstances by reason of which that change has occurred; and
- (b) retain that entry in an easily accessible form for a period of not less than 6 years after the date on which that entry was first made.

(3) Any relevant person who contravenes subsection (1) or (2) shall be guilty of an offence.

Notice of particulars to Authority

38.—(1) A relevant person, or a person who intends to become a relevant person, shall give notice to the Authority in the prescribed form containing such particulars as may be prescribed.

(2) The notice under subsection (1) shall be given —

- (a) in the case of a person who is required by this Act to hold a licence, as part of his application for the licence; or
- (b) in any other case, within 14 days after he becomes a relevant person.

(3) The notice under subsection (1) shall be given by a person notwithstanding that he has ceased to be a relevant person before the expiry of the period referred to in subsection (2)(b).

(4) A person who ceases to be a relevant person shall, within 14 days thereafter, notify the Authority.

(5) Any person who, without reasonable excuse, contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

Place at which register is kept

39.^{3/4}(1) A relevant person shall keep the register of his interests in securities —

- (a) in the case of an individual, at his principal place of business; or

(b) in the case of a corporation, at any of its places of business.

(2) Where a register of interests in securities is kept in electronic form, a person shall be deemed to be in compliance with subsection (1) if he ensures that full access to the register in electronic form may be gained by the Authority at the place referred to in subsection (1) (a) or (b), as the case may be.

(3) Any relevant person who contravenes subsection (1) shall be guilty of an offence.

Defence to prosecution

40.—(1) Where a person is charged with an offence in respect of contravention of section 37 or 38, it shall be a defence for the person to prove —

(a) that his failure 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; or

(ii) he became so aware before the date of the summons and complied with the relevant section within 14 days after becoming so aware.

(2) For the purposes of subsection (1), 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.

Production of register

41.—(1) The Authority may require any relevant person to produce for inspection the register of his interests in securities and the Authority may make a copy of or make extracts from the register.

(2) Any relevant person who —

(a) fails to produce the register of his interests in securities for inspection by the Authority; or

(b) fails to allow the Authority or any person authorised by it to make a copy of or make extracts from the register,

shall be guilty of an offence.

Particulars of financial journalists

42.^{3/4}(1) The Authority may, by notice in writing, require the proprietor or publisher of a newspaper or periodical to supply him with the name and address of any financial journalist who has contributed any advice concerning securities or prepared any analysis or report concerning securities that has been published in the newspaper or periodical, within such period as may be specified in the notice.

(2) A proprietor or publisher of a newspaper or periodical who, without reasonable excuse, fails to comply with a notice under subsection (1), shall be guilty of an offence.

Extract of register

43. The Authority may supply a copy of any extract of a register obtained under section 41 to any person who, in the opinion of the Authority, should in the public interest be informed of the dealing in securities disclosed in the register.

PART IV

ACCOUNTS AND AUDIT

Division 1 - Accounts

Accounts to be kept by licensed financial advisers

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

(2) A licensed financial adviser shall —

- (a) cause to be kept such books, accounts and records as will sufficiently explain the transactions and financial position of the financial adviser in Singapore and enable the financial adviser to comply with the requirements of this section; and
- (b) cause such books, accounts and records to be kept in such manner as will enable them to be conveniently and properly audited.

(3) A licensed financial adviser shall retain such books, accounts and records for such period as may be prescribed.

(4) 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.

(5) 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.

Duty to furnish Authority with returns and information

45.—(1) A licensed financial adviser shall furnish such returns and information relating to its business as the Authority may require.

(2) 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.

Division 2 - Audit

Appointment of auditors

46. Notwithstanding the provisions of the Companies Act (Cap.50), a licensed financial adviser shall appoint an auditor to carry out an audit of his accounts and other statements prepared in accordance with section 44(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.

Lodgment of accounts

47.³/₄(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 the account and balance sheet with the Authority within 5 months, or such other extension thereof permitted by the Authority under subsection (2), after the end of the financial year together with the auditor's report on the accounts and balance sheets and such other statements to be lodged by the licensee under section 44(1).

(2) Where an application has been made for an extension of the period of 5 months specified in subsection (1) and the Authority is

satisfied that there are special reasons 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) 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 \$1,000 for every day or part thereof that the lodgment is late, subject to a maximum of \$100,000.

(4) Any licensed financial adviser which fails to comply with 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.

(5) 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, at any time remove the auditor and require the financial adviser, as soon as practicable thereafter, to appoint another auditor.

(6) No person shall act as an auditor for any licensed financial adviser unless —

- (a) he has a place of business in Singapore; and
- (b) he is approved under section 9 of the Companies Act as a company auditor for the purposes of that Act.

Duties of auditor

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

- (a) of any matter which, in his opinion, adversely affects or may adversely affect the financial position of the financial adviser to a material extent;
- (b) of any matter which, in his opinion, constitute or may constitute a contravention of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) that irregularities that have or may have a material effect upon the accounts have occurred, including irregularities that jeopardise the funds or property of the clients of the financial adviser,

he shall immediately thereafter send to the Authority a report in writing of the matter or the irregularity.

(2) Notwithstanding the provisions of the Companies Act (Cap.50) or anything contained in this Division, the Authority may impose any or all of the following additional duties on an auditor:

- (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 any 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 additional duty or duties.

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

(4) Any auditor who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Power of Authority to appoint auditor

49.—(1) Where —

- (a) a licensed financial adviser fails to lodge an auditor's report under section 47; or
- (b) the Authority receives a report under section 48(1),

the Authority may, 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, accounts and records 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), the amount specified in the direction may be sued for and recovered by the Authority as a civil debt.

(4) An auditor appointed under this section shall, on the conclusion of the examination and audit, make a report thereon to the Authority.

Powers of auditor appointed by Authority

50.^{3/4}(1) An auditor appointed by the Authority under section 49(1)(b) may, for the purpose of carrying out an examination and audit —

- (a) examine on oath or affirmation the licensed financial adviser, any of its employees or agents, any other auditor appointed under this Act, or any other person who has been a party to any dealings with the financial adviser;
- (b) require the licensed financial adviser, any of its employees or agents, any other auditor appointed under this Act, or any other person who has been a party to any dealings with the financial adviser, to produce books, accounts, documents, records and securities held by him relating to the business of the financial adviser;
- (c) employ such persons as he considers necessary to assist him to carry 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 himself could do as an auditor under this subsection, except 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 49(1)(b) 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.

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

51.—(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 48(2) or

appointed under section 49, and any employee of such auditor, shall not divulge any information which may come to his knowledge 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 or any person approved or designated by the Authority; and
- (b) in the case of an employee of such auditor, the auditor.

(2) Any person who contravenes subsection (1) 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.

Defamation

52.³/₄(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 sending of any report to the Authority under this Part.

(2) This section does 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.

Penalty for destroying, concealing or altering records or sending records or other property out of Singapore

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

- (a) destroys, conceals or alters any book, account, record or document 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, account, record or document or any property of any description belonging to or 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 a prosecution for an offence under subsection (1), it is proved that the person charged with the offence —

- (a) destroyed, concealed or altered any book, account, record or document referred to in subsection (1)(a); or
- (b) sent or conspired to send, out of Singapore, any book, account, record or document or any property referred to in subsection (1)(b),

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

Safeguarding of records

54.—(1) A licensed financial adviser shall take reasonable precautions —

- (a) to prevent falsification of books, accounts, records and documents required to be kept by it; and
- (b) to facilitate the discovery of any falsification of any such book, account, record or document required to be kept by it.

(2) A licensed financial adviser which contravenes subsection (1) shall be guilty of an offence.

PART V

POWERS OF AUTHORITY

Approval of chief executive officer and executive director of licensed financial adviser

55.—(1) No licensed financial adviser shall appoint a person as its chief executive officer or executive director in Singapore unless it has obtained the approval of the Authority.

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

(3) Any person aggrieved by a decision of the Authority under this section may appeal, within 30 days of the decision of the Authority, to the Minister in accordance with Part VIII.

(4) 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.

(5) In this section —

“chief executive officer” means any person by whatever name called employed by a licensed financial adviser to be directly responsible for the conduct of any type of business of the financial adviser in Singapore;

“executive director” means any director by whatever name called who is concerned with or takes part in the management of the business of the licensed financial adviser.

Removal of chief executive officer or director of licensed financial advisers

56.—(1) If at any time it appears to the Authority that a chief executive officer or director of a licensed financial adviser has failed to perform his functions, the Authority may, in writing, direct the financial adviser to remove the chief executive officer or director, as the case may be.

(2) For the purposes of subsection (1) and without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether the chief executive officer or director has failed to perform his functions, have regard to such criteria as may be prescribed or specified in written directions.

(3) Any person aggrieved by a decision of the Authority under this section may appeal to the Minister in accordance with Part VIII.

(4) Any licensed financial adviser which fails to comply with any direction of the Authority under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000.

(5) For the purposes of this section —

“chief executive officer” has the same meaning as in section 55(4); and

“director” includes an executive director as defined in section 55(4).

Inspection by Authority

57.—(1) The Authority may, from time to time, inspect under conditions of secrecy the books, accounts and records of a licensed financial adviser.

(2) The Authority shall, at all times, have the power to make a copy of or take possession of the books, accounts and records of a licensed financial adviser.

(3) For the purpose of an inspection under this section, a licensed financial adviser shall —

- (a) afford the Authority access to, and shall produce, its books, accounts and records; and
- (b) give such information and facilities as may be required to conduct the inspection.

(4) Nothing in subsection (1) shall preclude the Authority from

—

- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under any written law of Singapore or elsewhere;
- (b) disclosing to a court in the course of any proceedings referred to in paragraph (a) any information that was obtained during the inspection;
- (c) producing a document or disclosing information to a person to whom, in the opinion of the Authority, it is in the public interest that the document be produced or the information be disclosed, as the case may be;
- (d) producing a document or disclosing information that is required or permitted by any written law of Singapore or elsewhere to be produced or disclosed, as the case may be; or
- (e) producing a document or disclosing information for such purpose, or in such circumstance, as may be prescribed.

(5) Any person who, without reasonable excuse, fails to comply with subsection (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 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.

Investigation by Authority

58.—(1) The Authority may conduct such investigation as it considers necessary to determine whether any person has contravened or is contravening any provision of this Act.

(2) For the purposes of subsection (1), the Authority may, in writing, require any person named therein to provide information or to produce books, accounts and records relating to any matter under investigation, and such person shall immediately comply with that requirement.

(3) Nothing in this Part 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 the taking of any such document or other material which is in his possession.

(4) An advocate and solicitor who refuses to produce any document or other material referred to in subsection (3) 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.

(5) Any person who, without reasonable excuse, fails to comply with subsection (2) or (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 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.

Power of Authority to issue written directions

59.—(1) The Authority may, if it thinks it necessary or expedient in the public interest or in the interest of the financial services industry, issue written directions, either of a general or specific nature, to any licensee, exempt financial adviser or representative of an exempt financial adviser, or any class of such persons, to comply with such requirements as the Authority may specify in the written directions or for any other purpose.

(2) Any written direction issued under subsection (1) shall be deemed not to be subsidiary legislation.

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

(4) 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 licensee, exempt financial adviser or a representative of an exempt financial adviser in the conduct of its or his business; or
 - (ii) the type and frequency of financial returns and other information to be submitted to the Authority; or
- (b) where any person has contravened or is contravening 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 appearing to the Authority to be improperly paid; or
 - (vii) to make good any default committed by him.

(5) Failure to comply with any written direction issued under subsection (1) does not of itself give rise to any right of action by any person affected by such written direction or affect the validity of any agreement, transaction or arrangement.

(6) Any person who contravenes 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 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.

(7) For the purposes of this section, “written direction” includes a circular or notice.

Power of court to make certain orders

60.—(1) Where, on the application of the Authority, it appears to the High Court that a person has committed an offence under this Act or is about to do an act which, if done, would be such an offence, the High Court may, without prejudice to any order it is entitled to make otherwise than under this section, make one or more of the following orders:

- (a) in the case of persistent or continuing contravention of this Act, an order restraining the person from acting as a financial adviser or representative, or from holding himself out as so acting;
- (b) for the purpose of securing compliance with any other order made under this section, an order directing the person to do or refrain from doing any specified act;
- (c) any ancillary order considered to be desirable in consequence of the making of any other order under this section.

(2) The High Court may, before making any 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) 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.

(4) Nothing in this section shall affect the powers of the High Court to punish for contempt of court.

(5) The High Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

Power of Authority to make prohibition orders

61.—(1) The Authority may make a prohibition order against a person, by giving written notice to the person, if —

- (a) the Authority suspends or revokes the licence held by the person;
- (b) the Authority has reason to believe that the person has not complied, or will not comply, with its obligations under this Act; or

- (c) the person has been convicted of an offence under this Act or has been convicted, whether in Singapore or elsewhere, of an offence the conviction for which involved a finding that he acted fraudulently or dishonestly.
- (2) A prohibition order made under subsection (1) may —
- (a) prohibit the person from providing any financial advisory service, or from providing such financial advisory service in specified circumstances or capacities, whether permanently or for a specified period; and
 - (b) include a provision allowing the person, subject to any specified condition —
 - (i) to do specified acts; or
 - (ii) to do specified acts in specified circumstances, that the order would otherwise prohibit him from doing.

Effect of prohibition orders

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

(2) No licensed financial adviser or exempt financial adviser shall employ or otherwise deal with any representative who has been issued a prohibition order under section 61.

(3) Any person who contravenes subsection (1) or (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 2 years or to both.

Variation or revocation of prohibition orders

63.—(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 the prescribed document and prescribed fee, if any.

Date of effect of prohibition order

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

(2) The Authority shall, as soon as practicable after making, varying or revoking a prohibition order, publish a notice in the *Gazette* stating when the action took effect and —

- (a) in the case of the making of a prohibition order, set out a copy of the prohibition order; or
- (b) in the case of the variation of a prohibition order, set out a copy of the prohibition order as varied.

(3) Where a prohibition order contains a provision which the Authority considers would cause the notice referred to in subsection (2) to be unreasonably long, the Authority may publish a summary of the effect of the provision in lieu of the provision.

Registers

65.—(1) The Authority shall establish and maintain one or more registers in respect of the following persons:

- (a) licensees;
- (b) persons against whom a prohibition order is made under section 61;
- (c) persons removed by a licensed financial adviser as directed by the Authority in exercise of its powers under section 56; and
- (d) such other persons as may be prescribed.

(2) The Authority may prescribe the manner in which the registers are established or maintained, including the details or particulars required to be entered in the registers.

(3) Any person may, upon payment of the prescribed fee, inspect and take an extract from the registers established under subsection (1), and any such extract, certified by the Authority, shall be admissible as evidence in any legal proceedings.

(4) Any disclosure necessary for the purposes of this section is authorised by subsection (3).

Codes, guidelines or no-action letters by Authority

66.—(1) The Authority may publish, by notification in the *Gazette* or in any other manner it considers appropriate, such

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

- (a) for the 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 power of the Authority to publish codes, guidelines or no-action letters under this section is in addition to and not in derogation of any other power of the Authority to publish codes, guidelines or no-action letters under this Act or any other written law.

(3) The Authority may, from time to time, amend the whole or any part of any code, guideline or no-action letter published under this section, and —

- (a) the other provisions of this section shall apply, with the necessary modifications, to such amendments to the code, guideline or no-action letter as they apply to the code, guideline or no-action letter; and
- (b) any reference in this Act or any other written law to the code, guideline or no-action letter, however expressed, shall, unless the context otherwise requires, be a reference to the code, guideline or no-action letter as so amended.

(4) A failure on the part of any person to observe any of the provisions of a code, guideline or no-action letter published under this section that apply 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) Failure to comply with any code, guideline or no-action letter published under this section does not of itself give rise to any right of action by any person affected, or affect the validity of any transaction.

(6) Any code, guideline or no-action letter published under this section —

- (a) may be of general or specific application and may be made so as to apply only in specified circumstances; and
- (b) may make different provisions for different circumstances and provide for different cases or classes of cases.

(7) Any code, guideline or no-action letter published under this section shall be deemed not to be subsidiary legislation.

(8) For the purposes of this section, a “no-action” letter is 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.

(9) A “no-action” letter does not bind the Public Prosecutor from taking proceedings for an offence based on the particular state of affairs or conduct.

Appointment of assistants

67.^{3/4}(1) 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.

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

PART VI

ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

Interpretation of this Part

68. 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;

“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;

“material” includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

“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 2001; or
- (g) such other written law as the Minister may prescribe;

“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;

“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.

Conditions for provision of assistance

69.—(1) The Authority may provide the assistance referred to in section 71 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 appointed 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 appointed 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 approval 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.

(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.

Other factors to consider for provision of assistance

70. In deciding whether to grant a request for assistance referred to in section 71 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.

Assistance that may be rendered

71.—(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 a 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) 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.

(5) An advocate and solicitor who refuses to furnish or transmit any material or copy thereof, or to disclose, any privileged communication in accordance with 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) 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 72.

Offences under this Part

72.—(1) Any person who —

- (a) without reasonable excuse, refuses or fails to comply with an order under section 71(1) (b), (c) or (d);
- (b) in purported compliance with an order under section 71(1)(b) or (c), furnishes to the Authority or transmits to the regulatory authority, any material or copy known to the person to be false or misleading in a material particular; or
- (c) in purported compliance with an order made under section 71(1) (d), makes a statement to the Authority that is false or misleading in a material particular,

shall be guilty of an offence.

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

Immunities

73.—(1) No civil or criminal proceedings, other than proceedings for an offence under section 72, 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 71(1)(b) or (c);
- (b) making a statement to the Authority in good faith and in compliance with an order made under section 71(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.

PART VII

OFFENCES

Offence by body corporate

74.—(1) Where an offence under this Act committed by a body corporate is shown —

- (a) to have been committed with the consent or connivance of an officer of the body corporate; or
- (b) to be attributable to any neglect on the part of the officer,

the officer shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) For the purposes of this section —

“body corporate” includes any company, firm, society or other body of persons;

“officer” means a director, an executive officer, a manager, a secretary, a partner or a person purporting to act in any such capacity.

(3) Without prejudice to the generality of section 87(1), regulations may provide for the application of any provision of this section, with such modifications as may be prescribed, to a body corporate formed or recognised under the law of a country or territory outside Singapore.

Offence by director or manager

75.—(1) Any person, being a director or manager 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 of any statement submitted 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 a person under subsection (1), it shall be a defence for the person 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) A person shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court, he committed the offence wilfully.

Falsification of records by directors, etc.

76. Any director, manager, auditor, employee or agent of a licensed 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, assets or accounts 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, assets or accounts 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, assets or

accounts 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.

Duty not to furnish false information to Authority

77.—(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) applies 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 signs any document lodged with the Authority under Part IV shall use due care to ensure that the document is not false or misleading in any material particular.

(4) For the purpose of any proceedings under subsection (5), a document purporting to be signed by any person shall be presumed to have been signed by him, unless the contrary is proved.

(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 \$25,000 or to imprisonment for a term not exceeding 2 years or to both.

General penalty

78. 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.

Penalties for bodies corporate

79.—(1) Subject to subsection (2), where a company 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 offences under sections 7(4), 17(5), 22(4), 31(4), 44(4), 44(5), 45(2), 47(3), 47(4), 54(2), 55(4) and 56(4).

PART VIII

APPEALS

Appeals to Minister

80.—(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 Minister's decision shall be final.

(2) Where an appeal is made to the Minister under this Act, the Minister shall forthwith 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 within 28 days of his receipt of the appeal.

(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.

Appeal Advisory Committees

81.—(1) For the purpose of enabling Appeal Advisory Committees to be constituted under section 80, 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 reappointment.

(3) An Appeal Advisory Committee shall have the power, in the exercise of its functions, to enquire 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 enquiry.

(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 within the meaning of the Penal Code (Cap.224); and
- (b) shall have, 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 the provisions of this Part, 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 interest of the public, the protection of investors 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.

Disclosure of information

82. 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.

Regulations for purposes of this Part

83. The Minister may make regulations with regard to the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees.

PART IX

MISCELLANEOUS

Jurisdiction of court

84. A District Court shall, notwithstanding the Criminal Procedure Code (Cap.68), have jurisdiction to try any offence

under this Act and may impose the full penalty or punishment in respect of such offence.

Immunity of Authority and its employees, etc.

85. No suit or other legal proceedings shall lie against the Authority or any officer or employee of the Authority or any person acting under the direction of the Authority for any act done in good faith in the performance, or intended performance, of any duty, or in the exercise of any power under this Act or for any neglect or default in the performance or exercise in good faith of such duty or power.

Composition of offences

86. 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 \$50,000.

Regulations

87.—(1) The Authority may, from time to time, 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 or renewal of licences, and matters incidental thereto;
- (b) the activities of, and standards to be maintained by, a licensee, an exempt financial adviser or any of its representatives, including the manner, method and place of soliciting business and the conduct of such solicitation;
- (c) the standards with respect to the qualifications, experience and training of applicants for a representative's licence and of representatives of exempt financial advisers;
- (d) the particulars to be recorded in, or in respect of, accounts kept by any licensed financial adviser;
- (e) the particulars to be recorded in the profit and loss accounts and balance sheets and the information to be contained in auditor's reports required to be lodged under this Act on the annual accounts of a licensed financial adviser;

- (f) the remuneration of an auditor appointed under this Act and the costs of an audit carried out under this Act;
 - (g) the manner in which a licensee, an exempt financial adviser or any of its representatives conducts his or its dealings with the clients of the licensed financial adviser or exempt financial adviser, and the duties of a licensee, an exempt financial adviser or any of its representatives to such clients when making recommendations in respect of investment products;
 - (h) the purchase or sale of investment products directly or indirectly by licensees for their own account;
 - (i) the disclosure by a licensee, an exempt financial adviser or any of its representatives of any material interest that he or it may have in a proposed transaction relating to purchasing, subscribing for or trading in capital markets products;
 - (j) the forms for the purposes of this Act;
 - (k) the fees to be paid in respect of any matter or thing required for the purposes of this Act;
 - (l) the collection, from any licensed financial adviser and exempt financial advisers, 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;
 - (m) the control of any take-over of a licensed financial adviser;
 - (n) the winding up of a licensed financial adviser; and
 - (o) 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.
- (3) Notwithstanding anything contained in this Act, regulations may provide that, subject to such terms and conditions as may be prescribed, all or any of the provisions of this Act —
- (a) shall not have effect in relation to any specified person or to any person who is a member of a specified class of persons —

- (i) who is or may be a financial adviser by reason only of his doing anything which is merely incidental to another business;
 - (ii) who does not engage in the business of acting as a financial adviser for or on behalf of any other person; or
 - (iii) who is a financial adviser by reason only of the entering into by him of any specified transaction or class of transactions;
- (b) shall not have effect in relation to the representative of any person referred to in paragraph (a); or
- (c) shall have effect in relation to any person referred to in paragraph (a) or (b) to such extent as may be prescribed.
- (4) No use shall be made of any information obtained by or on behalf of the Authority by virtue only of subsection (2)(l) except in a form which does not disclose the affairs of any particular person.
- (5) Except as otherwise expressly provided in this Act, regulations made under this Act —
- (a) may be of general or specifically limited application; and
 - (b) may provide for the imposition —
 - (i) in the case of an individual, of a fine not exceeding \$25,000 or imprisonment for a term not exceeding 12 months or both for any contravention thereof; or
 - (ii) in the case of a company or body corporate, of a fine not exceeding \$50,000.

Repeal of Insurance Intermediaries Act

88. The Insurance Intermediaries Act (Cap.142A) is repealed.

Transitional and saving provisions

89.—(1) As from the date of repeal of the Insurance Intermediaries Act (Cap.142A) —

- (a) all direct life insurance brokers registered under Part III of that Act and their broking staff shall be entitled to carry on business as such as if this Act had not been enacted —
 - (i) for a period of 5 months from that date; or
 - (ii) if an application for a licence under this Act is made within 2 months from that date, until the date on

which the licence is granted, or the application is refused or withdrawn,

whichever is the later;

- (b) all directions, notices and circulars issued under section 32 or 41(2) of that Act shall be deemed to have been issued under section 59 of this Act and shall have effect accordingly; and
- (c) all orders issued under section 31 of that Act shall be deemed to have been issued under section 61 of this Act and shall have effect accordingly.

(2) As from the date of repeal of the Futures Trading Act (Cap.116) —

- (a) the licences issued to the following persons under that Act shall be deemed to have been issued under this Act, and the conditions of such licences shall have effect to the extent that they are consistent with the provisions of this Act:
 - (i) all futures trading advisers who —
 - (A) carry on the business of advising other persons (directly or indirectly, through any publication or writing, or by whatever means or media) concerning futures contracts, foreign exchange trading or leveraged foreign exchange trading, including advice on whether to engage in trading in futures contracts, foreign exchange trading or leveraged foreign exchange trading; and
 - (B) as part of a regular business, issue or promulgate any analysis or report concerning futures markets or foreign exchange markets; or
 - (ii) all futures trading adviser's representatives who —
 - (A) are in the direct employment of, or who act for or by arrangement with, any of the futures trading advisers referred to in sub-paragraph (i); and
 - (B) perform for that futures trading adviser any of the functions of that futures trading adviser;
- (b) upon the expiry of the licence of any person referred to in paragraph (a), the person shall be entitled to carry on his business as authorised by the licence —

- (i) for a period of one month from the date of expiry of the licence; or
 - (ii) if an application for a licence under this Act is made before or during the period referred to in sub-paragraph (i), until the date on which the licence is granted, or the application is refused or withdrawn, whichever is the later; and
 - (c) all notices and directions issued under section 21A of that Act shall be deemed to have been issued under section 59 of this Act and shall have effect accordingly.
- (3) As from the date of repeal of the Securities Industry Act (Cap.289) —
- (a) the licences issued to the following persons under that Act shall be deemed to have been issued under this Act, and the conditions of such licences shall have effect to the extent that they are consistent with the provisions of this Act:
 - (i) all investment advisers who —
 - (A) carry on the business of advising others concerning securities; or
 - (B) as part of a regular business, issue or promulgate any analysis or report concerning securities;
 - (ii) all investment adviser's representatives who are in the direct employment of, or who act for or by arrangement with, any of the investment advisers referred to in sub-paragraph (i) who perform for that investment adviser any of the functions of that investment adviser; and
 - (iii) all dealers and dealer's representatives licensed only in respect of dealings in interests as defined in section 107 of the Companies Act (Cap.50);
 - (b) upon the expiry of the licence of any person referred to in paragraph (a), the person shall be entitled to carry on the business as authorised by the licence —
 - (i) for a period of one month from the date of expiry of the licence; or
 - (ii) if an application for a licence under this Act is made before or during the period referred to in

sub-paragraph (i), until the date on which the licence is granted, or the application is refused or withdrawn, whichever is the later; and

(c) all notices issued under section 33A of that Act shall be deemed to have been issued under section 59 of this Act and shall have effect accordingly.

(4) Where a person holds two or more of the licences referred to in subsection (2)(a) or (3)(a), the first of such licences to expire shall be taken to be the licence referred to in subsection (2)(b) or (3)(b).

(5) The Minister may make regulations to provide for any other transitional, incidental and consequential matters arising from the repeal of the Insurance Intermediaries Act (Cap.142A), the Securities Industry Act (Cap.289) or the Futures Trading Act (Cap.116) (referred to in this section as the repealed Acts).

(6) All acts done by the Authority under the repealed Acts in relation to the persons referred to in subsections (1)(a), (2)(a) and (3)(a) shall continue to remain valid and have effect as though done by the Authority under this Act, until such time as such acts are invalidated, revoked or otherwise determined by the Authority.

(7) Where anything has been commenced by or on behalf of the Authority under the repealed Acts in relation to the persons referred to in subsections (1)(a), (2)(a) and (3)(a), such thing may be carried on and completed by or under the authority of the Authority.

Consequential amendments to Insurance Act

90. The Insurance Act (Cap.142) is amended in the manner set out in the Second Schedule.

FIRST SCHEDULE

EXCLUDED FINANCIAL ADVISERS

Section 2(1)

1. An advocate and solicitor or accountant in practice whose carrying on of business of a financial adviser is solely incidental to the practice of his profession.
2. A company registered under the Trust Companies Act (Cap.336) whose carrying on of business of a financial adviser is solely incidental to the carrying on of its business as a trust company.
3. A 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) insofar as the newspaper is distributed generally to the public, it is distributed only to subscribers to, and purchasers of, the newspaper for value;
 - (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 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.
4. A person who owns, operates or provides an information service through an electronic, broadcasting or telecommunications medium, where —
 - (a) the service is generally available to the public;
 - (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 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. A 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. A public statutory corporation constituted under any written law in Singapore.
7. An approved trustee under Division 3 of Part XIII of Securities and Futures Act 2001.
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. A liquidator, provisional liquidator, receiver, receiver and manager, or judicial manager of a company appointed under the Companies Act (Cap.50), in exercising his powers under that Act.

SECOND SCHEDULE

Section 89

CONSEQUENTIAL AMENDMENTS TO INSURANCE ACT

BILL

intituled

An Act to amend the Insurance Act (Chapter 142 of the 2000 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Insurance (Amendment) Act 2001 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

New Part IIA

2. The Insurance Act is amended by inserting, immediately after Part II, the following Part:

“PART IIA

INSURANCE INTERMEDIARIES

General

Insurance agent to operate under written agreement

35A.—(1) An insurance agent shall not arrange, or hold himself out as entitled to arrange, a contract of insurance as agent for a registered insurer unless an agreement in writing between the insurance agent and the insurer authorises the insurance agent to arrange, as agent for that insurer —

- (a) that contract;
- (b) any contract of insurance; or
- (c) any class of contracts of insurance which includes that contract.

(2) A registered insurer shall not cause or permit an insurance agent to arrange, or hold himself out as being entitled to arrange, a contract of insurance as agent for that insurer unless an agreement in writing between the insurer and the insurance agent authorises the insurance agent to arrange, as agent for that insurer —

- (a) that contract;
- (b) any contract of insurance; or
- (c) any class of contracts of insurance which includes that contract.

(3) Subsections (1) and (2) shall not apply in relation to any act or thing done by an employee of a registered insurer in the course of performing his duties as such an employee.

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, 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; or

- (b) in the case of a body corporate, 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.

(5) This section shall not apply to licensed financial advisers and exempt financial advisers under the Financial Advisers Act 2001.

Effect of payment to insurance intermediary

35B.—(1) Where a contract of insurance is arranged or effected by an insurance intermediary, payment to the insurance intermediary of moneys payable by the insured to the insurer under or in relation to the contract, whether in respect of a premium or otherwise, is a discharge, as between the insured and the insurer, of any liability of the insured under or in respect of the contract, to the extent of the amount of the payment.

(2) Payment to an insurance intermediary by or on behalf of an intending insured of moneys in respect of a contract of insurance to be arranged or effected by the insurance intermediary, whether the payment is in respect of a premium or otherwise, is a discharge, as between the insured and the insurer, of any liability of the insured under or in respect of the contract, to the extent of the amount of the payment.

(3) Payment by an insurer to an insurance intermediary of moneys payable to an insured, whether in respect of a claim, return of premiums or otherwise, under or in relation to a contract of insurance, does not discharge any liability of the insurer to the insured in respect of those moneys.

(4) An agreement, insofar as it purports to alter or restrict the operation of subsection (1), (2) or (3), shall be void.

(5) Subsection (4) does not render void an agreement between an insurance intermediary and an insured insofar as the agreement allows the insurance intermediary to set off, against moneys payable to the insured, moneys payable by the insured to the insurance intermediary in respect of premiums.

(6) This section shall not apply to general reinsurance brokers and life reinsurance brokers.

Disclosure by insurance intermediary and liability of insurer in relation to group policy

35C.—(1) No insurance intermediary shall invite any person to make an offer or proposal to enter into a contract of insurance without disclosing to the person —

- (a) the name of the registered insurer;
- (b) his relationship with the registered insurer; and
- (c) the premium charged by the registered insurer.

(2) No insurance intermediary shall arrange any group policy for 2 or more persons where any person insured under the group policy is liable to pay the premium without disclosing to every person insured under the group policy —

- (a) the name of the registered insurer;
- (b) his relationship with the registered insurer;
- (c) the conditions of the group policy; and
- (d) the premium charged by the registered insurer.

(3) A registered insurer shall be liable to any person insured under a group policy if the person insured has paid the premium to the group policy owner, notwithstanding that the registered insurer has not received the premium.

(4) The registered insurer of a group policy shall pay the moneys due under the policy to the person insured or any person entitled through him.

(5) This section shall not apply to general reinsurance brokers and life reinsurance brokers.

(6) For the purposes of this section, “insurance intermediary” includes the group policy owner of any group policy.

Representation by insurance intermediary

35D.—(1) No insurance intermediary shall, with intent to deceive, make a false or misleading statement as to —

- (a) any amount that would be payable in respect of a proposed contract of insurance; or
- (b) the effect of any provision of a contract of insurance or a proposed contract of insurance.

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

(3) No insurance intermediary 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.

(4) No insurance intermediary 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 the 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.

(5) Any person who contravenes subsection (1), (3) or (4) shall, notwithstanding that a contract of insurance does not come into being, be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both; or
- (b) in the case of a body corporate, to a fine not exceeding \$50,000.

(6) This section shall not apply to general reinsurance brokers and life reinsurance brokers.

Insurance agent not to act for unregistered insurer

35E.—(1) No person shall, without the approval of the Authority, act as an insurance agent for an insurer who is not entitled under this Act to carry on the business in question in Singapore.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in the case of a body corporate, to a fine not exceeding \$50,000.

Licence to carry on general business with Lloyd's underwriters

35F.—(1) No person shall —

(a) act as an insurance agent for any individual in respect of a contract of insurance with any Lloyd's underwriter; or

(b) in the course of business as a registered insurance broker, negotiate any contract of insurance with any Lloyd's underwriter,

except under the authority of a licence issued by the Authority or in respect of any risk for which the registered insurance broker has been permitted under section 35Q(5) to negotiate with any insurer.

(2) Any person who desires to obtain a licence under subsection (1) shall apply to the Authority in writing and shall furnish such information as the Authority may require.

(3) In issuing a licence under subsection (1), the Authority may impose such conditions as it thinks fit and may at any time add to, vary or revoke such conditions.

(4) Sections 35M and 35N shall apply, with the necessary modifications, in relation to the annual fees payable for, and the cancellation of, a licence issued under subsection (1).

(5) Any person who —

(a) contravenes subsection (1); or

- (b) fails to comply with any of the conditions of a licence issued under subsection (1),

shall be guilty of an offence and shall be liable on conviction —

- (i) in the case of an individual, to a fine not exceeding \$25,000 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 \$2,500 for every day or part thereof during which the offence continues after conviction; or
- (ii) in the case of a body corporate, 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) For the purposes of this section —

“Lloyd’s” means the society of underwriters known in the United Kingdom as Lloyd’s and incorporated under the Lloyd’s Act 1871;

“Lloyd’s underwriter” means an underwriting member of Lloyd’s.

Control of brochures used by insurance intermediary

35G.—(1) The Authority may, by notice in writing, require any insurance intermediary to submit to it any brochure which is for the time being in use by the insurance intermediary for describing the terms or conditions of, or the benefits to be or likely to be derived from, policies.

(2) Where the whole or part of any brochure referred to in subsection (1) is not in English, there shall be submitted with it a translation in English.

(3) A requirement under subsection (1), unless it is otherwise provided therein, shall apply to all such brochures coming into use after the making of the requirement and before the Authority notifies the insurance intermediary that the requirement is withdrawn.

(4) If it appears to the Authority, after affording the insurance intermediary an opportunity to make representations orally or in writing that any brochure contravenes any provision of this Part, or is in any respect likely to mislead, the Authority may, by notice in writing, direct the insurance

intermediary to discontinue the use of the brochure in Singapore immediately or from such date as may be specified in the notice.

(5) For each occasion on which any insurance intermediary uses a brochure or a copy thereof in contravention of subsection (4), the insurance intermediary shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, 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; or
- (b) in the case of a body corporate, 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.

(6) For the purposes of this section, “brochure” includes any leaflet, circular or similar advertising matter, whether printed or not.

General obligation to furnish information

35H. The Authority may, by notice in writing, require any insurance intermediary to furnish it with information about any matter related to any business carried on by the insurance intermediary in Singapore or elsewhere if, in the opinion of the Authority, it requires that information for the discharge of its functions under this Act.

Conduct of Insurance Broking Business

Insurance broker not to carry on business unless registered

35I.—(1) Subject to this Act, no person shall carry on business as an insurance broker in Singapore in respect of any class of insurance business unless the person is registered by the Authority in respect of that class of business.

(2) For the purposes of subsection (1), a person shall be deemed to be carrying on business as an insurance broker 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 insurance broking 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 —

- (a) in the case of an individual, 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; or
- (b) in the case of a body corporate, 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.

Registration of insurance brokers

35J.—(1) A person who desires to carry on business as an insurance broker shall apply in writing to the Authority for registration under this section and shall furnish such information as the Authority may require.

(2) Upon receiving an application under subsection (1), the Authority shall consider the application and may, subject to section 35K —

- (a) register the applicant with or without conditions; or
- (b) refuse to register the applicant.

(3) The Authority may register the applicant as a direct general insurance broker, general reinsurance broker, life reinsurance broker or a combination of any of these.

Registration requirements

35K.—(1) The Authority shall not register any applicant under section 35J unless the applicant —

- (a) is a company incorporated in Singapore;
- (b) has a paid-up share capital which is not less than such amount as may be prescribed; and

(c) has in force a professional indemnity insurance policy, the cover of which is consistent with such limit and deductible requirements as may be prescribed.

(2) For the purposes of subsection (1)(b) and (c), the Authority may prescribe different amounts for different types of insurance brokers.

(3) For the purposes of subsection (1)(c), “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 an insurance broker.

Conditions of registration

35L.—(1) The Authority may at any time add to, vary or revoke any existing condition of registration of an insurance broker or impose any condition thereto.

(2) Any insurance broker who fails to comply with any of the conditions imposed by the Authority under subsection (1) or section 35J(2) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, 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; or
- (b) in the case of a body corporate, 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.

Annual fees

35M.—(1) Every registered insurance broker shall pay to the Authority such annual fees as may be prescribed.

(2) The Authority may prescribe different annual fees for different types of registered insurance brokers.

(3) The Authority may exempt wholly or in part any registered insurance broker from the payment of the annual fees prescribed under this section.

Cancellation of registration

35N.—(1) The Authority may by order, at the request of the insurance broker or on any ground specified under subsection (2), cancel the registration of any insurance broker.

(2) The grounds referred to in subsection (1) are —

- (a) that the insurance broker has not commenced business within 6 months after being registered;
- (b) that the insurance broker has ceased to carry on business for which he is registered;
- (c) that, it appears to the Authority, the insurance broker has failed to satisfy any obligation to which it is subject by virtue of this Act;
- (d) that there exists a ground on which the Authority would be prohibited by section 35K from registering the insurance broker;
- (e) that the insurance broker —
 - (i) proposes to make, or has made, any composition or arrangement with its creditors;
 - (ii) has gone into liquidation; or
 - (iii) has been wound up or dissolved;
- (f) that the insurance broker is carrying on its business in a manner likely to be detrimental to the interests of policy owners for whom it is acting as an agent;
- (g) that the insurance broker is unable to meet its obligations;
- (h) that the insurance broker has contravened any provision of this Act (or any regulations made thereunder) or any condition imposed or any direction given by the Authority under this Act;
- (i) that any of the officers of the insurance broker holding a managerial or executive position has been convicted of any offence under this Act;
- (j) that the insurance broker has furnished false, misleading or inaccurate information, or has concealed or failed to disclose material facts, in its application for registration; and
- (k) that it is in the public interest to cancel the registration.

(3) The Authority shall, before cancelling the registration of an insurance broker under this section otherwise than at the request of the insurance broker, cause to be given to the insurance broker notice in writing of its intention to do so, specifying a date, not less than 14 days after the date of the notice, upon which the cancellation will take effect and calling upon the insurance broker to show cause to the Authority as to why the registration should not be cancelled.

(4) Notwithstanding the fact that the registration of an insurance broker has been cancelled under this section, so long as the insurance broker remains under any liability to an insurer, insured or intending insured, the insurance broker shall take such action as it considers necessary or as may be required by the Authority to ensure that reasonable provision has been or will be made for that liability.

(5) Where the Authority has cancelled a registration under this section, the Authority shall immediately inform the insurance broker of the cancellation.

(6) An order of cancellation made by the Authority shall not take effect until the expiration of a period of 14 days after the Authority has informed the insurance broker of the order.

(7) If the registration of a person as an insurance broker has been cancelled or has expired, sections 35O and 36 shall, unless the Authority otherwise directs, continue to apply in relation to the person or his estate in respect of matters that occurred before the cancellation or expiration as if his registration had not been cancelled or had not expired, as the case may be.

Duty to maintain net asset value

35O. Every registered insurance broker shall maintain a net asset value of such amount as may be prescribed.

Insurance broking premium accounts

35P.—(1) Every registered insurance broker shall, for the purposes of this section, establish and maintain a separate account with a bank licensed under the Banking Act (Cap.19).

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

- (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; or
- (f) any other matter which the Authority considers to be incidental to or necessary for this section.

(3) In this section, “moneys” shall mean any sum received by an insurance broker as agent for an insured, including policy moneys, premiums and claims payments.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

Negotiation and placement of risk with unregistered insurer

35Q.—(1) Subject to subsections (3) and (4), no registered insurance broker shall, in the course of its business as such, negotiate any contract of insurance with an insurer (whether directly or through an insurance intermediary), except with a registered insurer acting in the course of his business as such.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 3 years or to both; or
- (b) in the case of a body corporate, to a fine not exceeding \$50,000.

(3) The reference in subsection (1) to a contract of insurance shall not apply to reinsurance or business relating to risks outside Singapore or such other risks as may be prescribed.

(4) For the purpose of subsection (3), “risks outside Singapore” means any risk which would be classified as an offshore policy as defined in the First Schedule had the risk been underwritten by a registered insurer in Singapore.

(5) 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 effect an insurance for that case with a registered insurer acting in the course of his business as such, the Authority may permit any registered insurance broker —

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

Restriction as to receipt and payment of remuneration

35R.—(1) An insurer shall not pay to a registered insurance broker, and a registered insurance broker shall not receive from an insurer, in respect of the arranging or effecting of contracts of insurance by the insurance broker with the insurer, remuneration at a rate or on a basis that has been varied, having regard solely to all or any of the following:

- (a) the number of contracts so arranged or effected;
- (b) the total amount of premiums paid or payable under such contracts;
- (c) the total amount of sums insured under such contracts.

(2) Subsection (1) shall not apply to the receipt of profit commissions.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$50,000 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 \$5,000 for every day or part thereof during which the offence continues after conviction; or
- (b) in the case of a body corporate, 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.

(4) This section shall not apply to general reinsurance brokers and life reinsurance brokers.

Control of take-over of insurance broker

35S.—(1) This section shall apply to and in relation 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 an agreement to acquire shares of a registered insurance broker by virtue of which he would, if the agreement is carried out, obtain effective control of that insurance broker without first notifying the Authority of his intention to enter into the agreement and obtaining the approval of the Authority to his entering into the agreement.

(3) For the purposes of this section —

- (a) a person shall be regarded as obtaining effective control of a registered insurance broker by virtue of an agreement if the person alone or acting together with any associate or associates would, if the agreement is carried out —
 - (i) acquire or hold, directly or indirectly, 20% or more of the issued share capital of the insurance broker; or
 - (ii) control, directly or indirectly, 20% or more of the voting power of the insurance broker;
- (b) a reference to entering into an agreement to acquire shares includes —
 - (i) a reference to a person making or publishing a statement, however expressed, that expressly or impliedly invites a holder of shares to offer to dispose of his shares to the first person; and
 - (ii) a reference to a 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;
- (c) a reference to the voting power in a registered insurance broker is a reference to the total number of votes that might be cast in the general meeting of the insurance broker; and

- (d) the following persons are associates of a person:
- (i) the person's spouse or parent or remoter lineal ancestor, son, daughter or remoter issue, brother or sister of the person;
 - (ii) any partner of the person;
 - (iii) any corporation of which the person is an officer;
 - (iv) where the person is a corporation, any officer of the corporation;
 - (v) any employee or employer of the person;
 - (vi) any officer of any corporation of which the person is an officer;
 - (vii) any employee of a natural person of whom the person is an employee;
 - (viii) any corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person or, where the person is a corporation, of the directors of the person;
 - (ix) any corporation in accordance with the directions, instructions or wishes of which, or of the directors of which, the person is accustomed or under an obligation, whether formal or informal, to act;
 - (x) any corporation in which the person is in a position to control not less than 20% of the voting power in the corporation; and
 - (xi) where the person is a corporation, a person who is in a position to control not less than 20% of the voting power in the corporation.

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

- (a) in the case of an individual, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 2 years or to both; or
- (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Approval or removal of chief executive officer and director of insurance broker

35T.—(1) No registered insurance broker shall appoint a person as its chief executive officer or executive director in Singapore unless it has obtained the approval of the Authority.

(2) If at any time it appears to the Authority that a chief executive officer or director of a registered insurance broker has failed to perform his functions, the Authority may in writing direct the insurance broker to remove the chief executive officer or director, as the case may be.

(3) For the purposes of subsections (1) and (2) and without prejudice to any other matter that the Authority may consider relevant, the Authority shall have regard to such criteria as may be prescribed or as may be specified in written directions.

(4) Any person aggrieved by any decision of the Authority under subsection (1) or (2) may, within 30 days of the decision of the Authority, appeal in writing to the Minister in accordance with Part IIIB.

(5) Any registered insurance broker which fails to comply with any direction of the Authority under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000.

(6) In this section —

“chief executive officer” means any person by whatever name called employed by the registered insurance broker to be directly responsible for the conduct of any type of business of the insurance broker in Singapore;

“director” includes an executive director;

“executive director” means any director by whatever name called who is concerned with or takes part in the management of the business of the insurance broker.

Restriction on granting of unsecured loans or advances to director and employee of or adviser engaged by insurance broker

35U.—(1) No registered insurance broker shall, in respect of its business in Singapore, grant, directly or indirectly, unsecured loans or advances —

- (a) to a director of the insurance broker, other than a director who is its employee, which in the aggregate and outstanding at any one time exceed the sum of \$3,000; or
- (b) to an employee of the insurance broker, including a director who is its employee, or a person engaged by the insurance broker to provide technical advice to clients, which in the aggregate and outstanding at any one time exceed 6 months' emolument of that employee or person.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$50,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.

(3) For the purposes of this section, “director” includes the spouse, father, step-father, mother, step-mother, son, step-son, daughter, step-daughter, brother or sister of a director.

Holding out as registered insurance broker

35V. Any person who holds himself out to be a registered insurance broker in respect of any class of insurance business, when he is not registered under this Act in respect of that class of business, shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$50,000 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 \$5,000 for every day or part thereof during which the offence continues after conviction; or
- (b) in the case of a body corporate, 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.

Use of words “insurance broking”

35W.—(1) No person other than a registered insurance broker shall, without the written approval of the Authority —

- (a) use the words “insurance broking” or any of its derivatives in any language, or any other word indicating that that person carries on business as an insurance broker in the name, description or title under which it carries on business in Singapore; or
- (b) make any representation to such effect in any bill head, letter paper, notice, advertisement or in any other manner.

(2) Nothing in this section shall prohibit an association of insurance brokers from using the words “insurance broking” or any of its derivatives in any language as part of its name or description of its activities, subject to the prior written approval of the Authority.

(3) Nothing in this section shall prohibit a financial adviser licensed in respect of life policies, or an exempt financial adviser, under the Financial Advisers Act 2001, or an association of such persons, from using the words “life insurance broker” or any of its derivatives in any language.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, 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; or
- (b) in the case of a body corporate, 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.

Authority may prohibit insurance intermediary from carrying on business

35X.—(1) The Authority may, by order, prohibit any person from carrying on business as an insurance intermediary or from taking part, directly or indirectly, in the management of any insurance intermediary where the person has been convicted of an offence involving fraud, dishonesty or moral turpitude, or the Authority is satisfied that the person has —

- (a) forged policyholders’ signatures;
- (b) misappropriated policyholders’ premiums;

- (c) contravened any provision of this Act or any regulation made thereunder;
- (d) given false, misleading or inaccurate information in its application to the insurer;
- (e) wilfully misled any policyholder when assisting him to fill up the proposal form;
- (f) used dishonest means to meet the requirements set up by the insurer; or
- (g) been involved in any activity prejudicial to the public interest.

(2) No registered insurer shall deal with any insurance intermediary who has been issued an order under subsection (1).

(3) Any person who fails to comply with an order of the Authority made under subsection (1) or 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 2 years or to both.

Saving for validity of policies, etc.

35Y. Nothing in this Part shall operate to invalidate any contract of insurance or derogate from any other written law.

Exempt insurance brokers

35Z.—(1) The following persons shall be exempt from registration as insurance brokers:

- (a) a bank licensed under the Banking Act (Cap.19);
- (b) a merchant bank approved as a financial institution and approved to carry on business as an insurance broker under the Monetary Authority of Singapore Act (Cap.186);
- (c) a licensed financial adviser under the Financial Advisers Act 2001;
- (d) a holder of a capital markets licence under the Securities and Futures Act 2001;
- (e) a finance company which has been granted exemption from section 25(2) of the Finance Companies Act (Cap.108) to carry on business as an insurance broker; and

(f) such other person or class of persons as may be prescribed.

(2) Subject to this Act, sections 35P, 35Q and 35R shall, with the necessary modifications, apply to the persons referred to in subsection (1) (referred to in this section as exempt insurance brokers) as if they are registered insurance brokers.

(3) The Authority may prescribe the provisions of this Act that apply to the persons referred to in subsection (1)(f).

(4) The Authority may, by written directions, impose such conditions or restrictions on an exempt insurance broker as it deems fit.

(5) The Authority may withdraw an exemption granted to any person under subsection (1)(f) if the person contravenes any condition or restriction imposed by the Authority under subsection (4), or for any other reason.

(6) An exempt insurance broker which contravenes any condition or restriction imposed by the Authority under subsection (4) shall be guilty of an offence.

Amendment of section 36

3. Section 36 of the Insurance Act is amended —

(a) by inserting, immediately after the words “registered insurer” in subsection (1) and in the first line of subsection (4), the words “or registered insurance broker”;

(b) by deleting subsection (2) and substituting the following subsection:

“(2) A registered insurer or registered insurance broker shall —

(a) cause to be kept in Singapore such books and records as will sufficiently explain the transactions and financial position of the insurer or insurance broker, as the case may be, in Singapore and enable the insurer or insurance broker to comply with the requirements of this section and, in the case of the insurer, section 37; and

(b) cause those books and records to be kept in such manner as to enable them to be conveniently and properly audited.”;

- (c) by inserting, immediately after subsection (3), the following subsections:

“(3A) A registered insurance broker shall have its accounts audited for each financial year for which statements of accounts and other statements are prepared in accordance with regulations prescribed under subsection (1).

(3B) Notwithstanding the provisions of the Companies Act (Cap.50), a registered insurance broker shall appoint an auditor to carry out an audit of his accounts and other statements prepared in accordance with subsection (1) and where, for any reason, the auditor ceases to act for the registered insurance broker, the registered insurance broker shall, as soon as practicable thereafter, appoint another auditor to replace him.”;

- (d) by inserting, immediately before the word “he” in subsection (4)(c), the words “in the case of a registered insurer,”;

- (e) by inserting, immediately after subsection (5), the following subsection:

“(5A) Notwithstanding any other provision of this Act or the provisions of the Companies Act (Cap.50), the Authority may at any time remove an auditor appointed by a registered insurance broker if the Authority is not satisfied with the way he is performing his duties as an auditor of the registered insurance broker, and require the registered insurance broker to appoint another auditor to replace him.”;

- (f) by inserting, immediately after the word “insurer” at the end of subsection (6)(b), the words “or insurance broker, as the case may be”;

- (g) by inserting, immediately after the word “insurer” in the 11th line of subsection (6), the words “or insurance broker, as the case may be,”;

- (h) by deleting the words “by the insurer” in subsection (7);
and

- (i) by deleting subsection (8) and substituting the following subsection:

“(8) If an auditor, in the course of the performance of his duties as an auditor of an insurer or insurance broker, is satisfied that —

- (a) there has been a serious contravention of the provisions of this Act or that an offence involving fraud or dishonesty has been committed;
- (b) serious irregularities have occurred, including irregularities that jeopardise the interests of policy owners;
- (c) in the case of an insurer —
 - (i) where the insurer is incorporated or established in Singapore, the insurer is unable to meet its obligations; or
 - (ii) any transaction or dispute has taken place which will have a material effect on the solvency of any insurance fund established by the insurer under this Act; or
- (d) in the case of an insurance broker, the insurance broker is unable to meet its obligations,

the auditor shall immediately report the matter in writing to the Authority.”.

Amendment of section 39

4. Section 39 of the Insurance Act is amended by deleting the words “Where an insurer fails to comply with section 36 or 37, the insurer” in the 1st and 2nd lines of subsection (6) and substituting the words “Any person who contravenes section 36 or 37”.

Repeal and re-enactment of section 40

5. Section 40 of the Insurance Act is repealed and the following sections substituted therefor:

“Inspection and investigation of affairs of insurer

40.—(1) The Authority may, from time to time, inspect under conditions of secrecy the books, accounts and records of a registered insurer or an insurance intermediary.

(2) The Authority shall, at all times, have the power to make a copy of or take possession of the books, accounts and records of a registered insurer or an insurance intermediary.

(3) For the purpose of an inspection under this section, a registered insurer or an insurance intermediary shall —

- (a) afford the Authority access to, and produce, its books, accounts and records; and
- (b) give such information and facilities as may be required to conduct the inspection.

(4) Nothing in subsection (1) shall preclude the Authority from —

- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under any written law of Singapore or elsewhere;
- (b) disclosing to a court in the course of any proceedings referred to in paragraph (a) any information that was obtained during the inspection;
- (c) producing a document or disclosing information to a person to whom, in the opinion of the Authority, it is in the public interest that the document be produced or the information be disclosed, as the case may be;
- (d) producing a document or disclosing information that is required or permitted by any written law of Singapore or elsewhere to be produced or disclosed, as the case may be; or
- (e) producing a document or disclosing information for such purpose, or in such circumstance, as may be prescribed.

(5) Any person who, without reasonable excuse, fails to comply with subsection (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 one year 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.

Investigation by Authority

40A.—(1) The Authority may conduct such investigation as it considers necessary to determine whether any person has contravened or is contravening any provision of this Act.

(2) For the purposes of subsection (1), the Authority may, in writing, require any person named therein to provide information or to produce books, accounts and records relating to any matter under investigation, and such person shall immediately comply with that requirement.

(3) Nothing in this Part 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 the taking of any such document or other material which is in his possession.

(4) An advocate and solicitor who refuses to produce any document or other material referred to in subsection (3) 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.

(5) Any person who, without reasonable excuse, fails to comply with any requirement under subsection (2) or (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 one year 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.”.

Amendment of section 41

6. Section 41 of the Insurance Act is amended —

- (a) by inserting, immediately after the word “insurer” in the 2nd, 4th and 5th lines of subsection (1) and in the 1st line of subsection (3), the words “or insurance intermediary”;
- (b) by inserting, immediately after the word “insurer” in the 6th line of subsection (1), the words “or insurance intermediary, as the case may be”;
- (c) by inserting, immediately after the word “insurer” in subsection (1)(d), the words “or insurance intermediary, as the case may be,”; and
- (d) by deleting the words “or 20” in subsection (1)(g) and substituting the words “20, 35O or 35P”.

Amendment of section 42

7. Section 42 of the Insurance Act is amended —

- (a) by inserting, immediately after the word “insurer” wherever it appears in subsections (1) and (2), the words “or insurance broker”;
- (b) by deleting the words “or failed to comply with” in subsection (2); and
- (c) by deleting subsection (3) and substituting the following subsection:

“(3) The Authority shall be a party to any proceedings under the Companies Act relating to the winding up of the affairs of an insurer or insurance broker registered under this Act, and the liquidator in such a winding up shall give it such information as it may from time to time require about the affairs of the insurer or insurance broker, as the case may be.”.

New Parts IIIA and IIIB

8. The Insurance Act is amended by inserting, immediately after Part III, the following Parts:

“PART IIIA

ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

Interpretation of this Part

49A. In this Part, unless the context otherwise requires —

“appointed day” means the date of commencement of this Act;

“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 a subject-matter in the foreign country of the regulatory authority concerned similar to that to which this Act pertains;

“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 a subject-matter in the foreign country of the regulatory authority concerned similar to that to which this Act pertains;

“material” includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

“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) Financial Advisers Act 2001;
- (d) Monetary Authority of Singapore Act (Cap.186);
- (e) Money-changing and Remittance Businesses Act (Cap.187);
- (f) Securities and Futures Act 2001; or
- (g) such other written law as the Minister may prescribe;

“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;

“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 similar to that to which this Act pertains.

Conditions for provision of assistance

49B.—(1) The Authority may provide the assistance referred to in section 49D 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 appointed 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 appointed 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 approval 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.
- (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.

Other factors to consider for provision of assistance

49C. In deciding whether to grant a request for assistance referred to in section 49D 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.

Assistance that may be rendered

49D.—(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 a 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) 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.

(5) An advocate and solicitor who refuses to furnish or transmit any material or copy thereof, or to disclose, any privileged communication in accordance with 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) 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 49E.

Offences under this Part

49E. Any person who —

- (a) without reasonable excuse, refuses or fails to comply with an order under section 49D(1)(b), (c) or (d);
- (b) in purported compliance with an order under section 49D(1)(b) or (c), furnishes to the Authority or transmits to the regulatory authority, any material or copy known to the person to be false or misleading in a material particular; or
- (c) in purported compliance with an order made under section 49D(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 \$5,000 or to imprisonment for a term not exceeding 2 years or to both.

Immunities

49F.—(1) No civil or criminal proceedings, other than proceedings for an offence under section 49E, 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 49D(1)(b) or (c);
- (b) making a statement to the Authority in good faith and in compliance with an order made under section 49D(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.

PART IIIB

APPEALS

Appeals to Minister

49G.—(1) Where any person is aggrieved by any decision of the Authority not to register him under this Act, or to add to, vary or revoke any existing condition of registration, the person may, within 30 days of the decision of the Authority, appeal in writing to the Minister.

(2) 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 Minister's decision shall be final.

(3) Where an appeal is made to the Minister under this Act, the Minister shall forthwith 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 within 28 days of his receipt of the appeal.

(4) The Appeal Advisory Committee shall submit to the Minister a written report on the appeal referred to it under subsection (3) and may make such recommendations as it thinks fit.

(5) The Minister shall consider the report submitted under subsection (4) in making his decision under subsection (2) but he shall not be bound by the recommendations in the report.

Appeal Advisory Committees

49H.—(1) For the purposes of enabling Appeal Advisory Committees to be constituted under section 49G, 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 reappointment.

(3) An Appeal Advisory Committee shall have the power, in the exercise of its functions, to enquire 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 enquiry.

(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 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 within the meaning of the Penal Code (Cap.224); and

(b) shall have, 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, 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 interest of the public, the protection of investors 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.

Disclosure of information

49I. 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.

Regulations for the purposes of this Part

49J. The Minister may make regulations with regard to the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees.”.

Repeal and re-enactment of section 50

9. Section 50 of the Insurance Act is repealed and the following section substituted therefor:

“Appointment of assistants

50.—(1) 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.

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

Amendment of section 53

10. Section 53 of the Insurance Act is amended —

- (a) by deleting the word “Regulations” in the 1st line of subsection (1) and substituting the words “Without prejudice to the generality of section 64(1), regulations”; and
- (b) by inserting, immediately after the word “insurers” in subsection (2), the words “or insurance intermediaries”.

Repeal and re-enactment of section 54

11. Section 54 of the Insurance Act is repealed and the following section substituted therefor:

“Service of notice, etc.

54.—(1) Unless otherwise expressly provided in this Act, any notice, order or document required or authorised by this Act or any regulations made thereunder to be given to or served on any person may be given to or served on the person —

- (a) by delivering it to the person or to some adult member or employee of his family at his last known place of residence;
- (b) by leaving it at his usual or last known place of residence or business in a cover addressed to him;
- (c) by affixing it to some conspicuous part of his last known place of residence;
- (d) by sending it by registered post addressed to the person at his usual or last known place of residence or business; or
- (e) where the person is a body corporate —

- (i) by delivering it to the secretary or other like officer of the body corporate at its registered or principal office; or
- (ii) by sending it by registered post addressed to the body corporate at its registered or principal office.

(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 to whom the letter is addressed at the time when the letter would, in the ordinary course of post, be delivered and in proving service of the same, it shall be sufficient to prove that the envelope containing the notice, order or document was properly addressed, stamped and posted by registered post.”.

Amendment of section 55

12. Section 55 of the Insurance Act is amended by inserting, immediately after the word “insurer” in the 4th line of subsection (2), the words “or insurance intermediary, as the case may be,”.

Amendment of section 65

13. Section 65(1) of the Insurance Act is amended —

- (a) by inserting, immediately after the word “Act” in the 1st line, the words “, unless the context otherwise requires”; and
- (b) by inserting, immediately after the definition of “Authority”, the following definitions:

““direct general insurance broker” means a person who is for the time being registered under section 35J in respect of general business but not any reinsurance business;

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

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

“general reinsurance broker” means a person who is for the time being registered under section 35J in respect of reinsurance of liabilities under insurance policies relating to general business;

“insurance agent” means a person who is or has been carrying on insurance business in Singapore as an agent for one or more insurers;

“insurance broker” means a person who is or has been carrying on insurance business in Singapore as an agent for insureds or intending insureds, but does not include a financial adviser or representative licensed in respect of life policies, an exempt financial adviser, or a representative of an exempt financial adviser, within the meaning of the Financial Advisers Act 2001;

“insurance intermediary” means a person who, as an agent for one or more insurers or as an agent for intending insureds, arranges contracts of insurance in Singapore and includes an insurance broker, but does not include a financial adviser licensed in respect of life policies or an exempt financial adviser within the meaning of the Financial Advisers Act 2001;

“insured” includes reinsured and “insurer” includes reinsurer;

“life reinsurance broker” means a person who is for the time being registered under section 35J in respect of reinsurance of liabilities under insurance policies relating to life business;

“registered insurance broker” means a person who is for the time being registered under section 35J;”.

Transitional provision

14. Every person who, immediately before the appointed day, has been carrying on business as an insurance broker and has been registered as such under the Insurance Intermediaries Act (Cap.142A) shall, on that date, be deemed to be an insurance broker registered under the Insurance Act (Cap.142) as amended by this Act.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

jk/insurance7 (MM4) (19.3.01)