

ANNEX 2A: DRAFT FINANCIAL ADVISERS
(AMENDMENT) REGULATIONS 2012
COMPARATIVE TABLE

COMPARATIVE TABLE OF PROVISIONS

AMENDMENTS TO THE FINANCIAL ADVISERS REGULATIONS

Existing Provision

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...

Interpretation

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

...

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

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

...

Lapsing, revocation and suspension of financial adviser’s licence

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

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

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elsewhere; or

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

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

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

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

issued

(c) it appears to the Authority that the licensed financial adviser has failed to satisfy any of its obligations under or arising from this Act ~~;~~;

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

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

- (i) likely to be detrimental to its clients; or
- (ii) contrary to the interests of the public;

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

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false or misleading;

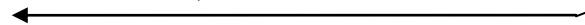
(f) the Authority has reason to believe that the licensed financial adviser, or any of its officers or employees, has not performed its or his duties efficiently, honestly or fairly;

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

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

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

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



...

Lodgment of documents

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

(a) a notice of intent by the principal to appoint the individual as an appointed or provisional

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representative in respect of that type of financial advisory service;

(b) a certificate by the principal that the individual is a fit and proper person to be an appointed or provisional representative in respect of that type of financial advisory service; and

(c) in the case of a provisional representative, an undertaking by the principal to undertake such responsibilities in relation to the representative as may be prescribed.

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

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

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

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(1A) Subsection (1) shall not apply to a principal of an individual who is a provisional representative in respect of a type of financial advisory service if:

(a) that individual has satisfied the examination requirements specified for that type of financial advisory service; and

(b) the principal has informed the Authority of that fact in the prescribed form and manner under section 23D(5).

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information and documents which the principal relied on in giving the certificate.

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

(6) A principal who contravenes subsection (4) ~~or (5)~~ shall be guilty of an offence.

...

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

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

(a) being an appointed or provisional representative, he fails or ceases to act as a representative in respect of all of the types of financial advisory services that were notified to the Authority as services which he is appointed to provide as a representative;

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- (b) he or his principal has not provided the Authority with such information or documents as the Authority may require;
- (c) he is an undischarged bankrupt, whether in Singapore or elsewhere;
- (d) execution against him in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (e) he has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (f) he —
 - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act;
- (g) in the case of the proposed appointment of an appointed or provisional representative in respect of a type of financial advisory service, or of an application to enter an additional type of financial advisory service for an appointed representative in the register —
 - (i) the Authority is not satisfied as to his educational

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or other qualification or experience having regard to the nature of the duties he is to perform in relation to that type of financial advisory service;

(ii) he or his principal fails to satisfy the Authority that he is a fit and proper person to be an appointed or provisional representative or to perform that type of financial advisory service;

(iii) the Authority is not satisfied as to his record of past performance or expertise having regard to the nature of the duties which he is to perform in relation to that type of financial advisory service;

(iv) the Authority has reason to believe that he will not perform that type of financial advisory service efficiently, honestly or fairly;

(h) in the case of the revocation of the status of an individual as an appointed or provisional representative —

(i) he or his principal fails to satisfy the Authority, pursuant to a requirement imposed by the Authority as a condition of ~~licenee~~, under section 23K or by regulations (as the case may be), that he remains a fit and proper person to be an appointed or provisional representative or to perform the type of financial advisory service for which he is appointed;

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(ii) the Authority is not satisfied with —

(A) his educational or other qualification or experience (being qualification or experience not known to the Authority at the time his name and particulars are entered in the public register of representatives); or

(B) his record of past performance or expertise,

having regard to the nature of his duties as an appointed or provisional representative; or

(iii) the Authority has reason to believe that he will not perform the type of financial advisory service for which he is appointed efficiently, honestly or fairly;

or has not performed

or

(i) the Authority has reason to believe that he may not be able to act in the best interests of the clients of his principal, having regard to his reputation, character, financial integrity and reliability;

(iv) the Authority has reason to believe that he has not acted in the best interests of the clients of his principal;

(j) the Authority is not satisfied as to his financial standing;

(k) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the

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individual or any person employed by or associated with him for the purpose of his business;

(l) the individual is in arrears of the payment of such contributions on his own behalf to the Central Provident Fund as are required under the Central Provident Fund Act (Cap. 36);

(m) the Authority is of the opinion that it would be contrary to the interests of the public to enter the individual's name in the public register of representatives or allow him to continue as an appointed or provisional representative or to provide that additional type of financial advisory service, as the case may be;

(n) the Authority has reason to believe that any information or document that is furnished by him or his principal to the Authority is false or misleading;

(o) he has contravened any provision of this Act applicable to him, any condition or restriction imposed on him under this Act or any direction issued to him by the Authority under this Act;

(p) a prohibition order under section 59 has been made by the Authority, and remains in force, against him;

...

Obligation to disclose product information to clients

25. —(1) A licensee shall disclose, to every client and

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(oa) it appears to the Authority that he has failed to satisfy any of its obligations under or arising from this Act (including any written direction issued by the Authority under this Act);

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prospective client, all material information relating to any designated investment product that the licensed financial adviser recommends to such person, including —

- (a) the terms and conditions of the designated investment product;
- (b) the benefits to be, or likely to be, derived from the designated investment product, and the risks that may arise from the designated investment product;
- (c) the premium, costs, expenses, fees or other charges that may be imposed in respect of the designated investment product;
- (d) where the designated investment product is a unit in a collective investment scheme, the name of the manager of the scheme and the relationship between the licensee and the manager;
- (e) where the designated investment product is a life policy, the name of the registered insurer under the life policy and the relationship between the licensee and the insurer; and
- (f) such other information as the Authority may prescribe.

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

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disclosed to any client of a licensed financial adviser.

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

- (a) all written communication which sets out information relating to any designated investment product for the time being in use by the 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 licensed financial adviser an opportunity to make representations orally or in writing, that any written communication submitted under subsection (3) contravenes any provision of this Act, or is in any respect likely to mislead, the Authority may, in writing, direct the licensee to discontinue the use, in Singapore, of the written communication immediately or from a specified date.

(5) Any licensed financial adviser who —

- (a) contravenes subsection (1);
- (b) fails to comply with a requirement imposed by the Authority under subsection (3); or
- (c) fails to comply with a direction of the Authority under subsection (4),

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

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to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both.

(6) In this section —

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

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

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

Statements by licensed financial advisers

~~26. —(1) No licensed financial adviser 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.~~

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(5A) Where —

(a) a licensed financial adviser, in making a recommendation to a person, contravenes subsection (1);

(b) the person, as a result of the contravention of subsection (1), does a particular act, or refrains from doing a particular act;

(c) it is reasonable, having regard to the contravention of subsection (1) and all other relevant circumstances, for the person to do that act, or to refrain from doing that act, as the case may be, as a result of the contravention of subsection (1); and

(d) the person suffers loss or damage as a result of doing that act, or refraining from doing that act, as the case may be,

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

and employment of manipulative and deceptive devices

(1) No licensed financial adviser shall make a false or misleading statement —

(a) as to any amount that would be payable in respect of a

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proposed contract in respect of any investment product;

(b) as to the effect of any provision of a contract or a proposed contract in respect of any investment product; or

(c) otherwise in connection with the provision of any financial advisory service,

if, when he makes the statement —

(i) he does not care whether the statement is true or false; or

(ii) he knows or ought reasonably to have known that the statement is false or misleading.

(1A) No licensed financial adviser shall, in connection with the provision of any financial advisory service, employ any device, scheme or artifice to defraud, or engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person.

(1B) Where —

(a) a licensed financial adviser contravenes subsection (1) or subsection (1A);

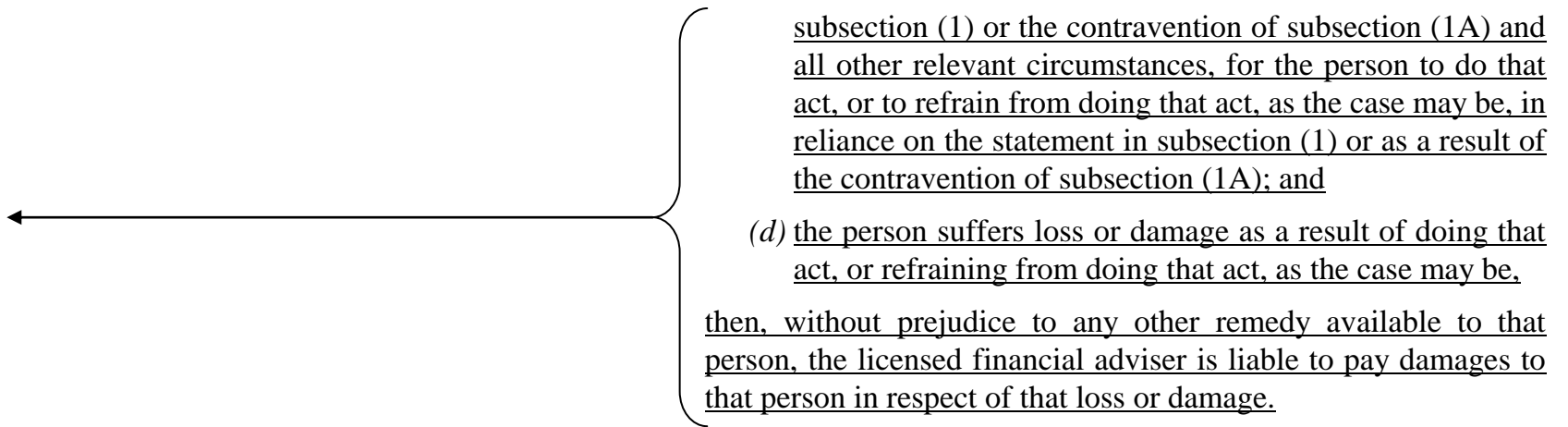
(b) the person, in reliance on the statement in subsection (1) or as a result of the contravention of subsection (1A), does a particular act, or refrains from doing a particular act;

(c) it is reasonable, having regard to the statement in



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subsection (1) or the contravention of subsection (1A) 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 statement in subsection (1) or as a result of the contravention of subsection (1A); and

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

(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 the statement. ← false or

(3) Any licensed financial adviser 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 \$50,000 or to imprisonment for a term not exceeding 12 months or to both. ← or subsection (1A)

...

Power of Authority to issue written directions

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

(a) any licensed financial adviser;

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- (b) any person exempt under section 23 or 100;
- (c) any representative; or
- (d) any class of the persons referred to in paragraph (a), (b) or (c),

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

...

Power of Authority to make prohibition orders

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

- (a) the Authority suspends or revokes the financial adviser’s licence held by the person;
- (b) where the person is an exempt financial adviser, the Authority has reason to believe that circumstances exist under which, if the person were a licensed financial adviser, there would exist a ground on which the Authority may revoke his licence under section 19(2);
- (ba) the Authority revokes or suspends the status of the person as an appointed or provisional representative under section 23J;



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(bb) in the case of a person (other than a person referred to in subsection (bd)) who is or was a representative of an exempt financial adviser, the Authority has reason to believe that circumstances exist under which, if the person was an appointed or provisional representative, there would exist a ground on which the Authority may revoke his status as an appointed or provisional representative (as the case may be) under section 23J;

(bc) in the case of a person (other than a person referred to in subsection (bd)) who is or was a representative of a licensed financial adviser, the Authority has reason to believe that circumstances exist under which, there would exist a ground on which the Authority may revoke his status as an appointed or provisional representative (as the case may be) under section 23J; and

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~~(e) the Authority has reason to believe that the person is contravening, is likely to contravene or has contravened, any provision of this Act;~~

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

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

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

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

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

- (i) any provision of this Act;
- (ii) any condition or restriction imposed by the Authority under this Act; or
- (iii) any written direction issued by the Authority under this Act;

...

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Division 3 — Investigative Powers of Authority

Investigation by Authority

Subdivision (1) – General

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

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

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

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

(4) Any person who complies with a requirement imposed by the Authority in the exercise of its powers under this

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Division shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

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

(a) providing information or producing books to the Authority if he had provided the information or produced the books in good faith in compliance with a requirement imposed by the Authority under this Division; or

(b) doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with a requirement imposed by the Authority under this Division.

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



Confidentiality of investigation reports

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

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its officers or auditors to any other person except in the circumstances provided under subsection (2).

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

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

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

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

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

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

(5) Any person who contravenes subsection (1) or (3) shall

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

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

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

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Subdivision (2) – Examination of Persons

Requirement to appear for examination

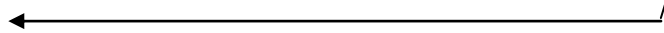
71B. – (1) For the purpose of an investigation under this Division, the Authority may, in writing, require a person –

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

(2) A requirement in writing imposed under subsection (1) shall state the general nature of the matter referred to in subsection (1).

Proceedings at examination

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



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Requirements made of examinee

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

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

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

Examination to take place in private

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

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

(a) the investigator or the examinee;

(b) a person approved by the Authority; or

(c) entitled to be present by virtue of a director under



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subsection (1).

Record of examination

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

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

(a) the investigator may require the examinee to read the record, or have it read to him, and may require him to sign it; and

(b) the investigator shall, if requested in writing by the examinee to give to the examinee a copy of the written record, comply with the request without charge but subject to such conditions as the investigator may impose.

Giving copies of record to other persons

71G. – (1) The Authority may give a copy of a written record of the examination, or such a copy together with a copy of any related book, to an advocate and solicitor acting on behalf of a person who is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination relates.



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

(a) use the copy or a copy of it; or

(b) publish, or communicate to a person, the copy, a copy of it, or any part of the copy's contents.

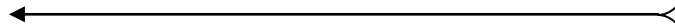
(3) The Authority may, subject to such conditions or restrictions as it may impose, give to a person a copy of a written record of the examination, or a copy together with a copy of any related book.

Copies given subject to conditions

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

Offences under this Subdivision

71I. – (1) A person who, without reasonable excuse, refuses or



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fails to comply with section 71B or 71D(3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) A person who, without reasonable excuse –

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

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

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

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

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

(4) It shall be a defence to a prosecution for an offence under subsection (3) if the defendant proves that he believed on reasonable grounds that the information or statement was true



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Power to order production of books

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

and was not misleading.

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

Subdivision 3 - Powers to obtain information

Power to enter premises without warrant

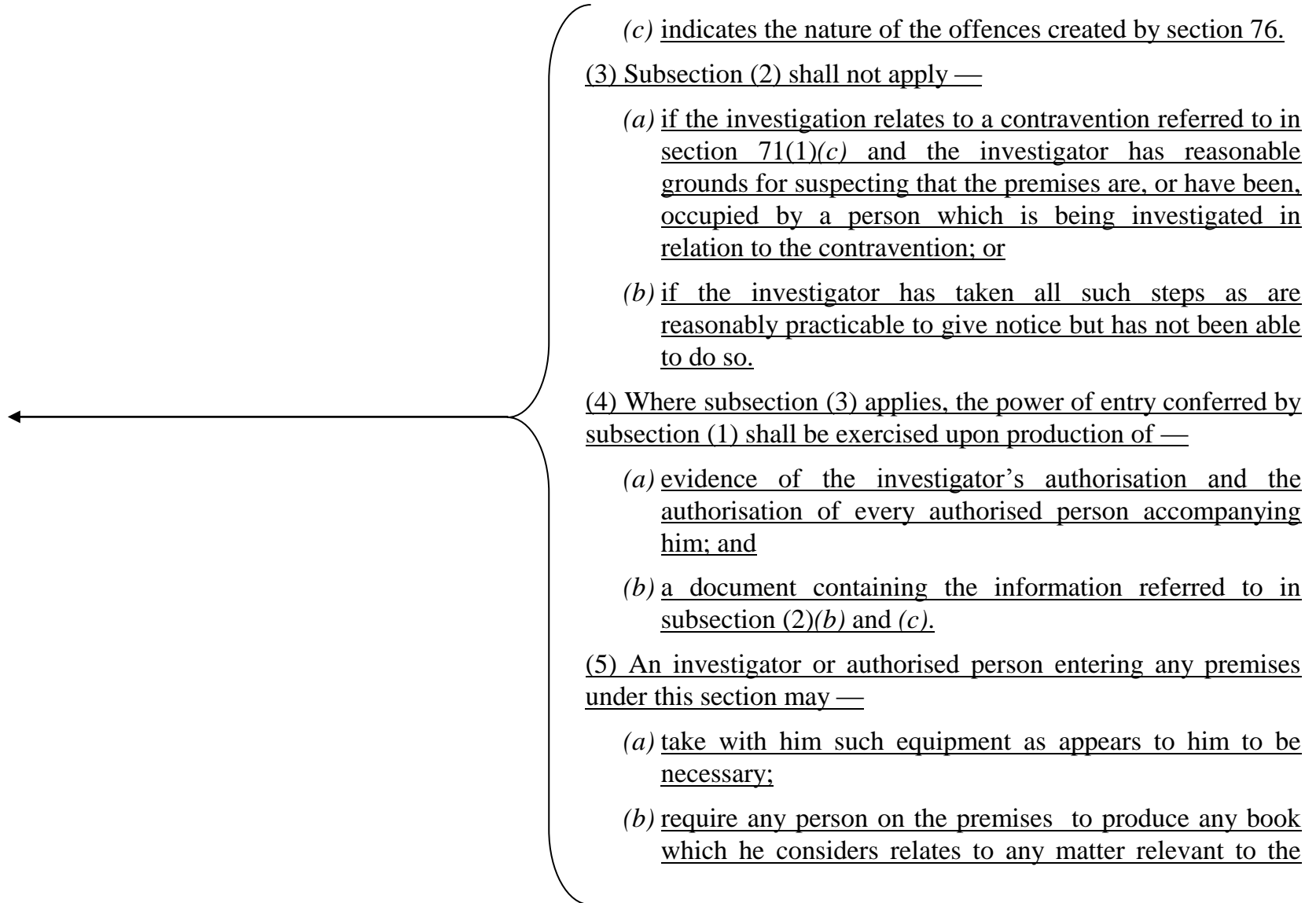
72A. – (1) In connection with an investigation under this Division, any officer of the Authority who is authorised by the Authority to do so (referred to in this section as an investigator) and such other officers or persons as the Authority has authorised in writing to accompany the investigator (referred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

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

- (a) gives at least 2 working days' notice of the intended entry;
- (b) indicates the subject matter and purpose of the investigation; and

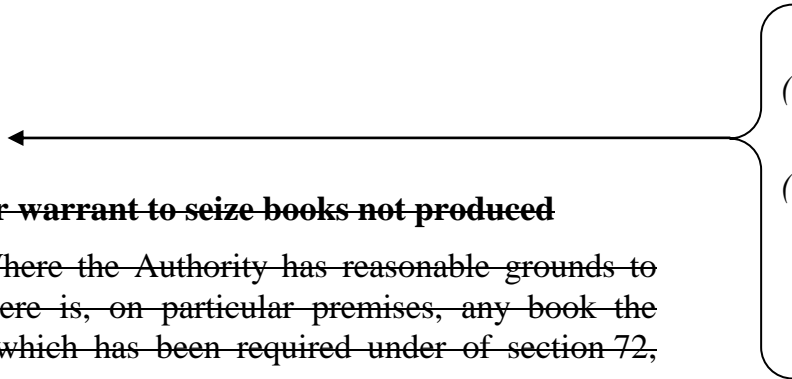
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Application for warrant to seize books not produced

~~73.—(1) Where the Authority has reasonable grounds to suspect that there is, on particular premises, any book the production of which has been required under of section 72, and—~~

~~(a) which has not been produced in compliance with that requirement; or~~

~~(b) which the Authority has reasonable grounds to believe will not be produced in compliance with that requirement,~~

~~the Authority may apply to a Magistrate for the issue of a warrant to search the premises for such book.~~

~~(2) Whenever it appears to a Magistrate, upon an application made under subsection (1) and after such enquiry as he may think necessary, that there are reasonable grounds for suspecting that there is, on particular premises, any book the production of which has been required under section 72, and—~~

~~(a) which has not been produced in compliance with that requirement; or~~

investigation;

(c) require any person to state, to the best of his knowledge and belief, where any such book is to be found; and

(d) take any step or issue any requirement to any person which appears to be necessary for the purpose of preserving or preventing interference with any book which he considers relates to any matter relevant to the investigation.

Existing Provision

~~(b) which the Magistrate has reasonable grounds to suspect will not be produced in compliance with that requirement,~~

~~the Magistrate may issue a warrant authorising the Authority or any person named therein, with or without assistance —~~

~~(i) to enter and search the premises and to break open and search anything, whether a fixture or not, in the premises; and~~

~~(ii) to take possession of, or secure against interference, any book that appears to be a book the production of which was so required.~~

~~(3) The powers conferred under subsections (1) and (2) are in addition to, and are not in derogation of, any other power conferred by any other written law or rule of law.~~

~~(4) In this section, “premises” includes any structure, building, aircraft, vehicle, vessel or place. ←~~

Proposed Amendment

Application for warrant to seize books not produced

73. – (1) The Authority may apply to a Magistrate for a warrant and the Magistrate may issue such a warrant if he is satisfied that there are reasonable grounds to suspect that there is, on any particular premises, any book –

(a) the production of which has been required under section 72 or 72A, and which has not been produced in compliance with that requirement; or

(b) which the Authority has power under section 72 to require to be produced and if the books were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed.

(2) A warrant under this section shall authorise the Authority or any person named therein, with or without assistance –

(a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;

(b) to search the premises and to break open and search anything, whether a fixture or not, in the premises;

(c) to take possession of, or secure against interference, any book that appears to be a book of a kind in respect of which the application under subsection (1) was granted;

Existing Provision

Proposed Amendment

(d) to require any person to provide an explanation of any book that appears to be a book of a kind in respect of which the application under subsection (1) was granted, or to state, to the best of his knowledge and belief, where it may be found;

(e) to search any person on those premises if there are reasonable grounds for believing that that person has in his possession any book, equipment or article which has a bearing on the investigation concerned; and

(f) to remove from those premises for examination any equipment or article which relates to any matter relevant to the investigation concerned.

(3) If, in the case of a warrant issued under subsection (2), the Magistrate is satisfied that it is reasonable to suspect that there are also on the premises other books relating to the investigation concerned, the warrant shall also authorise the actions mentioned in subsections 2(a) to (f) to be taken in relation to any such book.

(4) The Authority or any person named in the warrant may allow any equipment or article which has a bearing on an investigation and which may be removed from any premises for examination under subsection (2)(f) to be retained on those premises subject to such conditions as the Authority or person named in the warrant may require.



Existing Provision

Proposed Amendment

(5) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

(6) Where a warrant is issued under subsection (2) and there is no one at the premises when the Authority or any person named in the warrant proposes to execute such a warrant, the Authority or any person named in the warrant shall, before executing it –

(a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and

(b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.

(7) If the Authority or any person named in the warrant is unable to inform the occupier of the intended entry, the Authority or any person named in the warrant shall, when executing the warrant, leave a copy of it in a prominent place on the premises.

(8) On leaving any premises which the Authority or any person named in the warrant has entered by virtue of a warrant under this section, the Authority or any person named in the warrant shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as the Authority or any person named in the warrant found them.

(9) The powers conferred under subsections (1) to (5) are in



Existing Provision

Proposed Amendment

Powers where books are produced or seized

74. —(1) This section shall apply where —
- (a) books are produced to the Authority under a requirement imposed under section 72;
 - (b) under a warrant issued under section 73, the Authority or a person named therein —
 - (i) takes possession of books; or
 - (ii) secures books against interference; or
 - (c) under a previous application of subsection (6), books are delivered into the possession of the Authority or a person authorised by it.
- (2) If subsection (1)(a) applies, the Authority may take possession of any of the books.
- (3) The Authority or, where applicable, a person referred to in subsection (1)(b) may —
- (a) inspect, and make copies of, or take extracts from, any of the books;

addition to, and not in derogation of, any other powers conferred by any other written law or rule of law.

(10) In this section,

“premises” includes any structure, building, aircraft, vehicle or vessel.

“occupier”, in relation to any premises, means a person whom the Authority or any person named in the warrant reasonably believes is the occupier of those premises.

(ai) books are produced to the Authority during an entry into premises under section 72A;

or (ai)

Existing Provision

(b) use, or permit the use of, any of the books for the purposes of any proceedings; ~~and~~

(c) retain possession of any of the books for so long as is necessary —

(i) for the purposes of exercising a power conferred by this section (other than subsection (5));

(ii) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such book; or

(iii) for such proceedings to be commenced and carried on; ←

(4) No person shall be entitled, as against the Authority or, where applicable, a person referred to in subsection (1)(b), to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(5) While the books are in the possession of the Authority or, where applicable, the person referred to in subsection (1)(b), the Authority or the person —

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

(b) may permit any other person to inspect any of the

Proposed Amendment

}; and

(d) require any book which is stored in any electronic form and which the Authority or, where applicable, a person referred to in subsection (1)(b) considers relates to any matter relevant to the investigation concerned, to be produced in a form —

(i) in which it can be taken away; and

(ii) in which it is visible and legible.

Existing Provision

Proposed Amendment

books.

(6) Unless subsection (1)(b)(ii) applies, a person referred to in subsection (1)(b) may deliver any of the books into the possession of the Authority or of a person authorised by it to receive them.

(7) If subsection (1)(a) or (b) applies, the Authority, a person referred to in subsection (1) (b) or a person into whose possession the books are delivered under subsection (6), may require —

(a) if subsection (1)(a) applies, a person who so produced any of the books; or

(b) in any other case, a person who was a party to the compilation of any of the books,

to explain, to the best of his knowledge and belief, any matter about the compilation of any of the books or to which any of the books relate.

...

Offences under this Division

Offences under this Subdivision

76. —(1) Any person who, without reasonable excuse, refuses or fails to comply with a requirement imposed under ~~section 72, 74(7) or 75~~ 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) Any person who, in purported compliance with a

{ or (ai)

{ or condition

{ section 72, 72A(5), 73(2)(d), 74(3)(d) or (7), or 75

Existing Provision

Proposed Amendment

requirement imposed under ~~section 72, 74(7) or 75~~, furnishes information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

this Subdivision

(3) It shall be a defence to a prosecution for an offence under subsection (2) if the defendant proves that he believed on reasonable grounds that the information or statement was true and not misleading.

(4) Any person who conceals, destroys, mutilates or alters any book relating to a matter that the Authority is investigating or about to investigate under this Division or, where such a book is within the territory of Singapore, takes or sends the book out of Singapore, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

, equipment or article

, equipment or article

, equipment or article

(5) Any person who, without reasonable excuse, obstructs or hinders the Authority in the exercise of any power under section 72, 74 or 75, or obstructs or hinders a person who is executing a warrant issued under section 73, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

exercising the power of entry under section 72A or

(6) The occupier, or person in charge, of the premises that a person enters under a warrant issued under section 73 who

under section 72A or

Existing Provision

fails to provide to that person all reasonable facilities and assistance for the effective exercise of his powers under the warrant, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

Proposed Amendment

under section 72A or
issued under section 73

Division 4 – Transfer of Evidence

Interpretation of this Division

76A. In this Division –

“Commercial Affairs Officer” means a Commercial Affairs Officer appointed under section 64 of the Police Force Act (Cap. 235);

“police officer” means a member of the Singapore Police Force who is deployed in the Commercial Affairs Department of that Force.

Evidence obtained by the Authority may be used in criminal investigations and proceedings

76B. – (1) Notwithstanding the provisions of any written law or any rule of law, the Authority may furnish any book, document, written record of any examination or other information obtained by the Authority in the exercise of its powers under this Part to –

(a) a police officer;

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PART VII
ASSISTANCE TO FOREIGN REGULATORY
AUTHORITIES

(b) a Commercial Affairs Officer; or
(c) the Public Prosecutor,
or the purposes of any investigation into or criminal proceedings
against a person for an alleged contravention of any provision
under this Act.

(2) For the avoidance of doubt, any book, document, written
record of examination or other information furnished by the
Authority under subsection (1) shall not be inadmissible in any
criminal proceedings by reason only that it was first obtained by
the Authority in the exercise of its powers under this Act, and the
admissibility thereof shall be determined in accordance with the
rules of evidence under written law and any relevant rules of law.

Interpretation of this Part

77. In this Part, unless the context otherwise requires —

“enforce” means enforce through criminal, civil or administrative proceedings;

“enforcement” means the taking of any action to enforce a law or regulatory requirement against a specified person, being a law or regulatory requirement that relates to any financial advisory service in the foreign country of the regulatory authority concerned;

“foreign country” means a country or territory other than Singapore;

Existing Provision

“investigation” means an investigation to determine if a specified person has contravened or is contravening a law or regulatory requirement, being a law or regulatory requirement that relates to any financial advisory service in the foreign country of the regulatory authority concerned;

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

“regulatory authority”, in relation to a foreign country, means an authority of the foreign country exercising any function that corresponds to a regulatory function of the Authority under this Act;

“relevant day” means —

(a) in relation to any financial advisory service in respect of securities or futures contracts, 6th March 2000; or

(b) in relation to any other financial advisory service, 1st October 2002;

“supervision”, in relation to a regulatory authority, means the taking of any action for or in connection with the supervision of a subject-matter in the foreign country of the regulatory authority, being a subject-matter relating to any financial advisory service.

...

Proposed Amendment

Existing Provision

Proposed Amendment

Composition of Offences

89. 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 the maximum fine prescribed for that offence.

Territorial scope of Act

90. Where a person does an act partly in and partly outside Singapore which, if done wholly in Singapore, would constitute an offence under this Act, that person shall be guilty of that offence as if the act were carried out by that person wholly in Singapore, and may be dealt with as if the offence were committed wholly in Singapore.

...

Power of court to make certain orders

98. —(1) Where, on the application of the Authority, it appears to the court that a person —

(a) has committed an offence under this Act; or

(b) is about to do an act that, if done, would be an offence under this Act,

the court may, without prejudice to any order it would be entitled to make otherwise than under this section, make one or more of the following orders:

(1)

(2) The Authority may, in its discretion, compound any offence under a provision of this Act (including an offence under a provision that has been repealed) –

(a) which was compoundable under this section at the time the offence was committed; but

(b) which has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the maximum fine prescribed for that offence at the time it was committed.

Existing Provision

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

(2) The court may, before making an order under subsection (1), direct that notice of the application be given to such person as it thinks fit or that notice of the application be published in such manner as it thinks fit, or both.

(3) Any person who, without reasonable excuse, contravenes an order made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) Subsection (3) shall not affect the powers of the court in relation to the punishment of contempt of court.

(5) The court may rescind, vary or discharge an order made

Proposed Amendment

Existing Provision

by it under this section or suspend the operation of such an order.

Proposed Amendment

Power of court to prohibit payment or transfer of moneys, investment products etc.

98A. — (1) Where —

- (a) an investigation is being carried out under this Act in relation to any act or omission by a person, being an act or omission that constitutes or may constitute a contravention under this Act;
- (b) a criminal proceeding has been instituted against a person for an offence under this Act; or
- (c) a civil proceeding has been instituted against a person under this Act, and the court considers it necessary or desirable to do so for the purpose of protecting the interests of any person to whom the person referred to in paragraph (a), (b) or (c) of this paragraph, as the case may be (referred to in this section as the relevant person), is liable or may become liable to pay any moneys, whether in respect of a debt, or by way of damages or otherwise, or to account for investment products or other property,

the court may, on application by the Authority, make any one or more of the following orders:

- (i) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or any person associated with the

Existing Provision

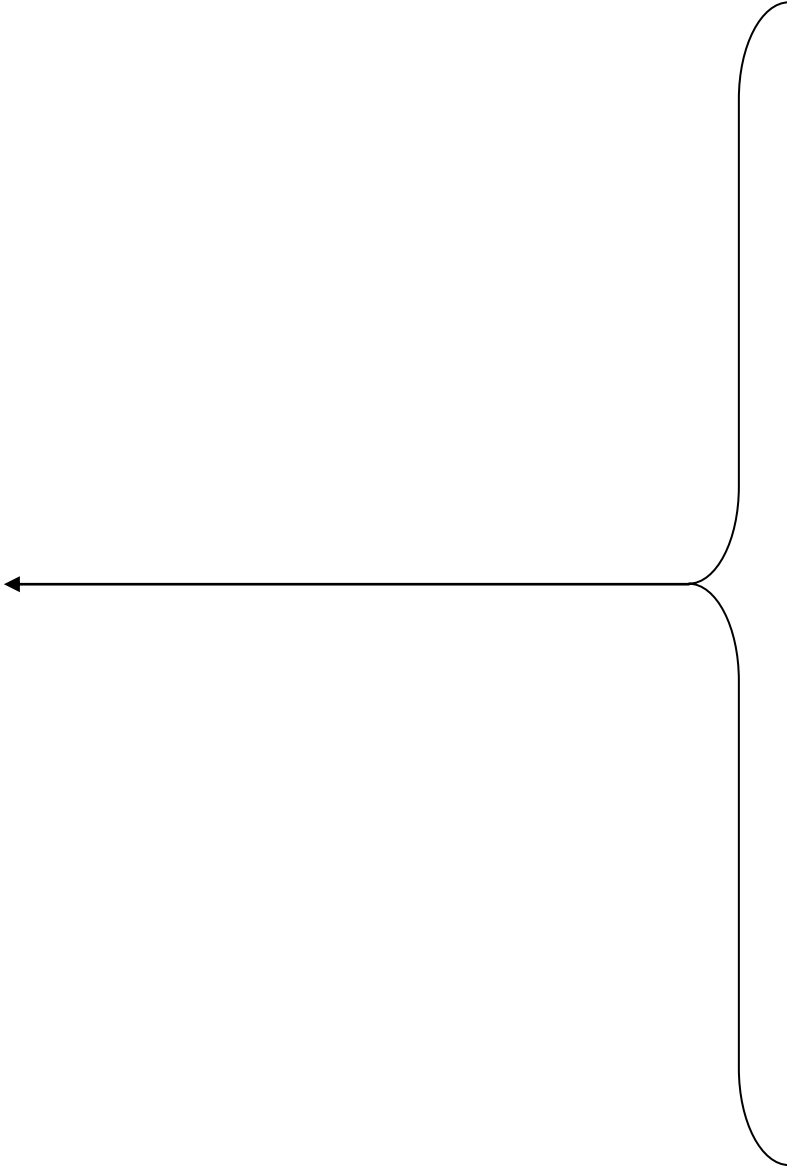
Proposed Amendment

relevant person from making a payment in total or partial discharge of such debt that is due or accruing due to that relevant person, or to another person at the direction or request of, the relevant person;

(ii) an order prohibiting, either absolutely or subject to conditions, a person holding moneys, investment products or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person from paying, transferring or otherwise parting with possession of all or any of the moneys, investment products or other property, to such relevant person, or to another person at the direction or request of, the relevant person;

(iii) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Singapore of moneys of the relevant person or of any person associated with the relevant person;

(iv) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of investment products or documents of title to investment products or other property of the relevant person or of any person who is associated



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Proposed Amendment

with the relevant person, from a place or person in Singapore to a place or person outside Singapore (including the transfer of securities from a register in Singapore to a register outside Singapore);

- (v) an order appointing —
 - (A) where the relevant person is an individual, a receiver, having such powers as the court orders, of the property or part of the property of that person; or
 - (B) where the relevant person is a corporation, a receiver or receiver and manager, having such powers as the court orders, of the property or part of the property of that person;
- (vi) where the relevant person is a natural person, an order requiring that person to deliver up to the court his passport and such other documents as the court thinks fit;
- (vii) where the relevant person is a natural person, an order prohibiting that person from leaving Singapore without the consent of the court.

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(2) Where an application is made to the court for an order under subsection (1), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, make any interim order as it thinks fit pending the determination of the application.

(3) Where the Authority makes an application to the court for the making of an order or interim order under this section, the court shall not require the Authority or any other person, as a condition of granting the order or interim order, to give any undertaking as to damages.

(4) Where the court has made an order or interim order under this section, the court may, on application by the Authority or by any person affected by the order or interim order, rescind or vary the order or interim order.

(5) An order or interim order made under this section may be expressed to operate for a period specified in the order or interim order or until the order or interim order is rescinded.

(6) Any person who contravenes an order or interim order made by the court under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(7) Subsection (6) shall not affect the powers of the court in



Existing Provision

Proposed Amendment

relation to the punishment for contempt of court.

Injunctions

98B.—(1) Where a person has engaged, is engaging or is likely to engage in any conduct that constitutes or would constitute a contravention of this Act, the court may, on the application of —

(a) the Authority; or

(b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if the court is of the opinion that it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is likely to refuse or fail, to do an act or thing that he is required by this Act to do, the court may, on the application of —

(a) the Authority; or

(b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

make an order requiring the first-mentioned person to do that act or thing.

(3) Where an application is made to the court for an injunction under subsection (1) or an order under subsection (2), the court



Existing Provision

Proposed Amendment

may, if the court is of the opinion that it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) or make an interim order requiring a person to do any act or thing, pending the determination of the application.

(4) Where the court has power under this section to grant an injunction or interim injunction or make an order or interim order restraining a person from engaging in conduct of a particular kind, or requiring a person to do a particular act or thing, the court may, either in addition to or in substitution for the injunction, order, interim injunction or interim order, order that person to pay damages to any other person.

(5) Where the court has granted an injunction or interim injunction or made an order or interim order under this section, the court may, on application by any party referred to in subsection (1) or (2) or by any person affected by the injunction, order, interim injunction or interim order, rescind or vary the injunction, order, interim injunction or interim order.

(6) An injunction, order, interim injunction or interim order granted or made under this section may be expressed to operate for a period specified in the injunction, order, interim injunction or interim order or until the injunction, order, interim injunction or interim order is rescinded.



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(7) Any person who contravenes an injunction, order, interim injunction or interim order by the court under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Where an application is made to the court for the grant of an injunction under subsection (1), the power of the court to grant the injunction may be exercised —

(a) if the court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(9) Where an application is made to the court for the making of an order under subsection (2), the power of the court to make the order may be exercised —

(a) if the court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the



Existing Provision

Proposed Amendment

court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(b) if it appears to the court that, in the event that an order is not made, it is likely the person will refuse or fail to do that act or thing, whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(10) Where any person referred to in subsection (1) or (2) makes an application to the court for the grant of an injunction or interim injunction or for the making of an order or interim order under this section, the court shall not require that person or any other person, as a condition of granting the injunction, order, interim injunction or interim order, to give any undertaking as to damages.

(11) Subsection (7) shall not affect the powers of the court in relation to the punishment for contempt of court.

Power of court to have regard to claimant's reasonable effort

98C.— (1) Where the court finds that a licensed or an exempt financial adviser is liable to pay damages to any person under Part III of this Act (referred to in this section as the claimant), the court shall, in making any order, have regard to whether or not



Existing Provision

Proposed Amendment

the claimant made a reasonable effort to —

- (a) minimise any loss or damage resulting to the claimant; and
- (b) resolve the dispute with the financial adviser before commencement of court proceedings.

(2) For the purposes of subsection (1)(b), if any specified dispute resolution scheme was available to the claimant in respect of the dispute, the court shall consider whether the claimant had sought to resolve the dispute through such a scheme.



Immunity of Authority and its employees, etc.

99. [*Repealed by Act 24 of 2003*]

...

Regulations

104. —(1) The Authority may make regulations for carrying out the purposes and provisions of this Act and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Authority may make regulations for or with respect to —

- (a) applications for the grant of financial adviser’s licences, and matters incidental thereto;
- (aa) the appointment of an individual as an appointed or provisional representative, the entering of his name or an additional type of financial advisory service for him in the public register of representatives, and the

Existing Provision

revocation or suspension of his status as an appointed or provisional representative;

~~(ab) the granting of any unsecured advance, unsecured loan or unsecured credit facility by a licensed financial adviser to his officer, employee or representative, including any person related to such officer, employee or representative in the manner prescribed by regulations;~~

(b) the activities of, and standards to be maintained by, a licensed financial adviser, exempt financial adviser or representative, including the manner, method and place of soliciting business and the conduct of such solicitation;

...

THIRD SCHEDULE

SPECIFIED PROVISIONS

- 1. Section 23(6)
- 2. Section 100(2).

Proposed Amendment

(ab) the items which constitutes an unsecured advance, unsecured loan or unsecured credit facility, and the requirements and restrictions relating to the granting of such, unsecured advance, unsecured loan or unsecured credit facility by a licensed financial adviser to his officer, employee or representative, including any person related to such office, employee or representative in the manner prescribed by regulations;

- 1A. Section 23B(2)
- 1B. Section 23(6A)
- 1C. Section 37(2)