

A BILL

intituled

An Act to amend the Financial Advisers Act (Chapter 110).

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 Financial Advisers (Amendment) Act 2003 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 2

2. Section 2 of the Financial Advisers Act is amended by inserting, immediately after the words “any life policy” in the definition of “investment product”, the words “, other than a contract of reinsurance in respect of life policies.”.

New section 7A

3. The Financial Advisers Act is amended by inserting, immediately after section 7, the following section:

“Only individual to act as representative

7A.—(1) No person, other than an individual, shall act as or hold himself out to be a representative.

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

4. Section 8 of the Financial Advisers Act is amended by inserting, immediately after the word “before” in the 2nd line of subsection (6), the words “and during”.

Amendment of section 9

5. Section 9 of the Financial Advisers Act is amended by deleting subsection (4) and substituting the following subsection:

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

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

Repeal and re-enactment of section 10

6. Section 10 of the Financial Advisers Act is repealed and the following section substituted therefor:

‘Failure to maintain minimum financial requirements or professional indemnity insurance policy

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

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

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

- (a) permit the financial adviser to continue to act as such, subject to such conditions as the Authority may impose; or
- (b) impose such requirements as may be specified in written directions and, in particular, require the financial adviser -
 - (i) to cease to act as a financial adviser other than for the purpose of giving effect to any agreement, transaction or arrangement permitted by or by virtue of its licence, and entered into before the time of its failure to comply with the minimum financial requirements or such other requirements as may be prescribed under section 9(1)(b);
 - (ii) to cease to act as a financial adviser other than for the purpose of giving effect to any agreement, transaction or arrangement permitted by or by virtue of its licence, and entered into before the time of its failure to have in force a professional indemnity insurance policy, the cover of which is consistent with such limit of indemnity and deductible requirements as may be prescribed under section 9(1)(c) or such other measure as may be approved by the Authority in lieu of a professional indemnity insurance policy under section 9(1)(c); or
 - (iii) to submit such statements or reports on a weekly basis or at such other intervals as the Authority may require until it meets the minimum financial requirements or such other requirements as may be prescribed under section 9(1)(b).

(3) Any licensed financial adviser which ,without reasonable excuse, contravenes subsection (1) or any condition imposed by the Authority under

subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.”.

Amendment of section 11

7. Section 11 of the Financial Advisers Act is amended by deleting subsection (4) and substituting the following subsection:

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

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

Amendment of section 16

8. Section 16 of the Financial Advisers Act is amended by—

(a) deleting subsection (1) and substituting the following subsection:

“(1) A licensee may apply to the Authority in the prescribed form to vary its licence-

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

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

“(2) An application under subsection (1) shall -

- (a) be accompanied by an application fee of such amount as may be prescribed, which shall be non-refundable and which shall be paid in the prescribed manner; and
- (b) if made in respect of a representative’s licence, be supported, in the prescribed manner, by a person who is, or who has submitted an application to be, a licensed financial adviser in respect of the type or

types of financial advisory service to be added or in respect of the type or types of investment product to be added.”; and

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

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

Amendment of section 18

9. Section 18 of the Financial Advisers Act is amended by deleting the words “immediately thereafter” in the 2nd line of subsection (3) and inserting, immediately after the word “Authority” in the 3rd line of subsection (3), the words “,within 14 days of the date of the cessation,”.

Amendment of section 19

10. Section 19 of the Financial Advisers Act is amended by deleting subsection (5) and substituting the following subsection:

“(5) The Authority may revoke or suspend a licence under subsection (2) or (3), respectively, without giving the licensee an opportunity to be heard-

(a) in the case of a licensed financial adviser, on any of the following grounds:

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

(b) in the case of a licensed representative, on any of the following grounds:

- (i) the licensee is an undischarged bankrupt, whether in Singapore or elsewhere;
- (ii) a prohibition order under section 59 has been made by the Authority, and remains in force, against the licensee;
- (iii) the licensee has been convicted, whether in Singapore or elsewhere, of an offence-

(A) involving fraud or dishonesty or the conviction for which involved a finding that the licensee acted fraudulently or dishonestly; and

(B) punishable with imprisonment of 3 months or more.”.

Amendment of section 23

11. Section 23 of the Financial Advisers Act is amended by inserting, immediately after subsection (5), the following subsection:

“(5A) For the avoidance of doubt, references in subsections (4) and (5) to specific sections to the Act do not include references to any regulation made under those sections.”.

Amendment of section 27

12. Section 27 of the Financial Advisers Act is amended by inserting, immediately after subsection (4), the following subsection:

“(5) Any licensee 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.”

Amendment of section 32

13. Section 32 of the Financial Advisers Act is amended by —

(a) by deleting the word “Every” in the 1st line of subsection (1) and substituting the words “Subject to subsection (1A), every”; and

(b) by inserting, immediately after subsection (1), the following subsection:

“(1A) Subsection (1) shall not apply to a licensed financial adviser which does not receive any moneys—

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

(b) from or on behalf of an insurer for or on account of an insured or intending insured.”.

Amendment of section 36

14. Section 36 of the Financial Advisers Act is amended by—

(a) deleting subsection (4);

(b) deleting the words “, duly signed in accordance with subsection (4),” in subsection (5); and

- (c) renumbering the existing subsections (5), (6), (7) and (8) as subsections (4), (5), (6) and (7) respectively.

Amendment of section 38

15. Section 38 of the Financial Advisers Act is amended by inserting, immediately after the words “enter in the register” in the first line of subsection (2)(a), the words “,within 7 days after the date of the change,”.

Amendment of section 56

16. Section 56 of the Financial Advisers Act is amended by-

(a) deleting subsection (1) and substituting with the following subsection:

“(1) No licensed financial adviser shall appoint a person as its—

- (a) chief executive officer;
- (b) director who is based in Singapore, whether or not he is responsible for its business in Singapore; or
- (c) director who is responsible for its business in Singapore, whether or not he is based in Singapore or elsewhere;

unless it has obtained the approval of the Authority.”; and

(b) deleting subsection (4) and substituting the following subsection:

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

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

Amendment of section 57

17. Section 57 of the Financial Advisers Act is amended by-

(a) deleting the word “or” in the last line of subsection (1)(f) and inserting, immediately after subsection (1)(f), the following paragraph:

“(g) has had a prohibition order under section 59 made by the Authority against him, and such prohibition order remains in force against him; or”

(b) renumbering paragraph (g) of subsection (1) as paragraph (h); and

(c) deleting subsection (4) and substituting the following subsection:

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

(a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;

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

(c) the officer has been convicted, whether in Singapore or elsewhere, of an offence-

(i) involving fraud or dishonesty or the conviction for which involved a finding that the officer acted fraudulently or dishonestly; and

(ii) punishable with imprisonment of 3 months or more.”.

Amendment of section 58

18. Section 58 of the Financial Advisers Act is amended by--

(a) deleting subsection (1) and substituting with the following subsection:

“(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—

(a) any licensee;

(b) any person exempt under section 23 or 100;

(c) any representative of a person exempt under section 23 or 100; or

(d) any class of the persons referred to in paragraphs (a), (b) or (c);

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

(b) deleting the word “or” in the last line of sub-paragraph (i) of subsection (2)(a) and inserting, immediately after sub-paragraph (ii) of subsection (2)(a), the following sub-paragraphs:

“(iii) the standards with respect to the qualifications, experience and training of applicants for a representative’s licence and of representatives of exempt financial advisers; and

(iv) the procedure for the conduct of disciplinary control of licensees, exempt financial advisers and their representatives.”.

Repeal and re-enactment of section 65

19. Section 65 of the Financial Advisers Act is repealed and the following section substituted therefore:

“Appointment of assistants

65.—(1) Subject to subsection (2), 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.

(2) The Authority shall not appoint any person to exercise the power to make subsidiary legislation under any provision of this Act, but the Authority may appoint one or more officers of the Authority to exercise the power to make subsidiary legislation under any of the provisions of this Act as may be prescribed by the Authority.

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

Amendment of section 92

20. Section 92 of the Financial Advisers Act is amended by inserting, immediately after the word “years” in the 2nd line subsection (2), the words “and shall be eligible for reappointment”.

New section 93A

21. The Financial Advisers Act is amended by inserting, immediately after section 93, the following section:

“Appeal fees

93A. A person wishing to make an appeal under the Act shall pay to the Authority such fee as may be prescribed by the Minister.”.

Repeal and re-enactment of section 94

22. Section 94 of the Financial Advisers Act is repealed and the following section substituted therefor:-

“94.—(1) The Minister may make regulations for the purposes and provisions of this Part and for the due administration thereof.

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

- (a) the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees;
- (b) the form and manner in which an appeal to the Minister under the Act shall be made;
- (c) the remuneration of the members of the Appeal Advisory Panel and Appeal Advisory Committees; and
- (d) all matters and things which by this Part are required and permitted to be prescribed or which are necessary or expedient to give effect to the provisions of this Part .”.

Amendment of section 97

23. Section 97 of the Financial Advisers Act is amended by-

- (a) deleting subsection (1) and the following subsection substituted therefor:
 - “(1) Where the Authority is satisfied that any person is guilty of misconduct, the Authority may, if it thinks appropriate, reprimand the person.”;
- (b) deleting the definition of “relevant person” in subsection (2).

Amendment of section 100

24. Section 100 of the Financial Advisers Act is amended by-

- (a) inserting, immediately after subsection (3), the following subsections:
 - “(3A) The Authority may, on the application of any person, exempt the person from all or any of the requirements specified in any written direction, by notice in writing, if the Authority considers it appropriate to do so in the circumstances of the case.
 - (3B) An exemption under subsection (3A) –
 - (a) may be granted subject to such terms or conditions as the Authority may specify by notice in writing;
 - (b) shall, for the avoidance of doubt, not be deemed to be subsidiary legislation; and
 - (c) may be withdrawn at any time by the Authority.”; and
- (b) inserting, immediately after the words “subsection (3)(a)” in the last line of subsection (4), the words “or subsection (3B)(a)”.

New section 102A

25. The Financial Advisers Act is amended by inserting, immediately after section 102, the following section:

“Translations of instruments

102A.—(1) Except as otherwise expressly provided in this Act or any written direction, where a person submits or furnishes to, or lodges with, the Authority any book, record, return or other information under this Act or any written direction which is not in the English language, the person shall , at the same time, submit or furnish to, or lodge with, the Authority, as the case may be, an accurate translation thereof in the English language.

(2) Except as otherwise expressly provided in this Act or any written direction, where a person is required to maintain or keep any book by this Act or any written direction and the book or any part thereof is not maintained or kept in the English language, the person shall-

(a) cause an accurate translation of the book or part of the book to be made from time to time at intervals of not more than 7 days; and

(b) maintain or keep the translation together with the book for as long as the book is required under this Act to be maintained or kept.

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

Amendment of section 104

26. Section 104 of the Financial Advisers Act is amended by-

(a) deleting paragraphs (c) and (m) of subsection (2);

(b) inserting, immediately after the words “refund and remission” in 2nd line of subsection (2)(j), the words “, whether in whole or in part,”; and

(c) renumbering paragraphs (d), (e), (f), (g), (h), (i), (j), (k), (l) and (n) as paragraphs (c), (d), (e), (f), (g), (h), (i), (j), (k) and (l) respectively; and

(d) by deleting paragraph (b) of subsection (4) and the following paragraphs substituted therefor:

“(b) may provide that a contravention of specified provisions thereof shall be an offence; and

(c) may provide that the offence be punishable with a fine not exceeding \$50,000 or with imprisonment for a term not exceeding 12 months or both, and in the case of a continuing offence, with a further fine not exceeding 10% of the maximum fine punishable under that provision for every day thereof during which the offence continues after conviction.”.

Amendment of Second Schedule

27. The Second Schedule of the Financial Advisers Act is amended by inserting, immediately after the words “life policies” in paragraph 4, the words “, other than a contract of reinsurance in respect of life policies”.

EXPENDITURE OF PUBLIC MONEY

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