

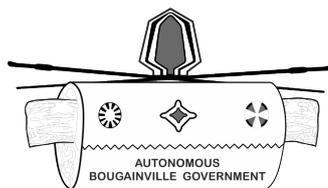
# **BOUGAINVILLE ISLANDS KINGDOM MEEKAMUI**

**AT 8 of 2008**

**FINANCIAL SERVICES ACT 2008**

**THE SOVEREIGN NATION  
OF  
BOUGAINVILLE ISLANDS AND THE TWIN  
KINGDOM OF PA'PALA AND ME'EKAMUI**





# BOUGAINVILLE ISLANDS KINGDOM MEEKAMUI

## FINANCIAL SERVICES ACT 2008

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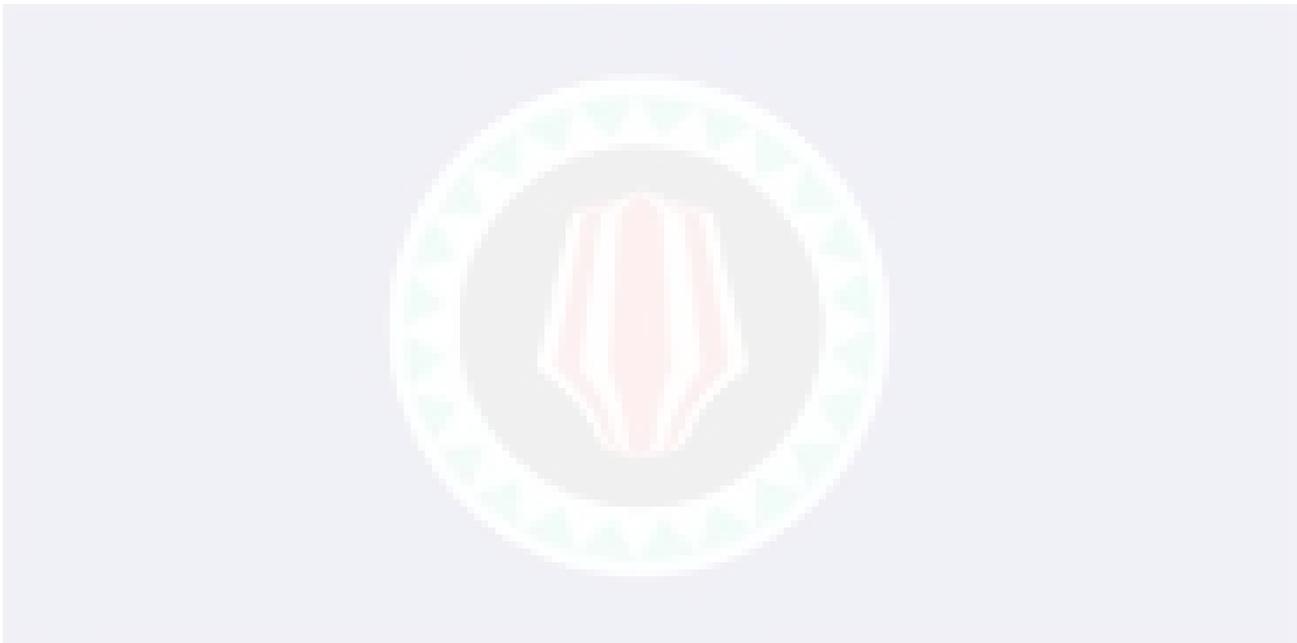
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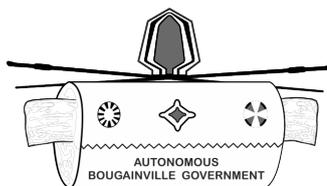
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# BOUGAINVILLE ISLANDS KINGDOM MEEKAMUI

## FINANCIAL SERVICES ACT 2008

*Received Assent:* 01 June 2008  
*Announced:* 01 June 2008  
*Commenced:* 1 August 2008

**AN ACT** to repeal and replace with modifications certain enactments relating to the financial services industry and the Financial Supervision Commission; and for connected purposes.

### PART 1 – THE REGULATOR AND THE REGULATORY OBJECTIVES

#### 1 The Financial Supervision Commission

- (1) There shall continue to be a statutory board known as the Financial Supervision Commission (in this Act referred to as “**the Commission**”).
- (2) Schedule 1, which makes provision about the constitution, functions, proceedings and status of the Commission, has effect.

#### 2 Exercise of functions to be compatible with the regulatory objectives

- (1) The functions of the Commission shall, so far as is reasonably practicable, be exercised —
  - (a) in a way that is compatible with the regulatory objectives set out in subsection (2); and
  - (b) in a way that the Commission considers most appropriate for the purpose of meeting those objectives.
- (2) The regulatory objectives are —
  - (a) securing an appropriate degree of protection for the customers of persons carrying on a regulated activity;
  - (b) the reduction of financial crime; and
  - (c) supporting the Island’s economy and its development as an international financial centre.

- (3) Subsection (1) shall apply in respect of the Treasury when discharging its functions under this Act.

## PART 2 – REGULATED ACTIVITIES

### CHAPTER I

#### *Regulated Activities*

### 3 Regulated activities

- (1) An activity is a regulated activity if –
- (a) it is a financial services activity of a specified kind; and
  - (b) it is undertaken by way of business.
- (2) In subsection (1), “financial services activity” includes –
- (a) deposit taking;
  - (b) investment business;
  - (c) any service to a collective investment scheme;
  - (d) corporate services;
  - (e) trust services;
  - (f) any service or activity involving money transmission;
  - (g) any other financial service or financial activity of a specified kind that is carried on by a person of a specified description.
- (3) In subsection (2), the generality of paragraph (g) is not limited by paragraphs (a) to (f).
- (4) The expressions used in subsection (2)(a) to (f) shall have such meaning as may be specified.
- (5) In this section, “specified” means specified in an order made by the Treasury.

### 3A Transfers of business including deposit-taking

Schedule 1A (transfer of business including deposit-taking) has effect.<sup>1</sup>

### CHAPTER II

#### *The General Prohibition*

### 4 The general prohibition

- (1) A person must not carry on, nor hold themselves out as carrying on, in or from the Island, a regulated activity –

- (a) in respect of which no licence is in force; or
  - (b) if such a licence is in force, other than in accordance with the conditions, if any, of the licence.
- (2) Without prejudice to the generality of subsection (1), for the purposes of this Act, a person is treated as carrying on a regulated activity –
- (a) in the Island if that person –
    - (i) carries on a regulated activity from a permanent place of business maintained by that person in the Island; or
    - (ii) engages in the Island in one or more of the activities which constitute a regulated activity and doing so constitutes the carrying on by that person of a business in the Island;
  - (b) from the Island if that person is –
    - (i) a limited partnership registered in the Island under Part II of the *Partnership Act 1990*;
    - (ii) a company incorporated outside the Island that is registered under Part XI of the *Companies Act 1990*;
    - (iii) a limited liability company formed under the *Limited Liability Companies Act 1996*; or
    - (iv) a company incorporated in the Island under the *Companies Acts 1990 to 2004*;
    - (v) a company incorporated under the *Companies Act 2006*, and carries on a regulated activity outside the Island.
- (3) Without prejudice to the generality of subsection (1), for the purposes of this Act a person is treated as holding themselves out as carrying on, in or from the Island, a regulated activity if that person (whether inside or outside the Island) –
- (a) by means of any words in the name, title or address of a web site or page or an internet site or page; or
  - (b) by means of any words in an email name or address or in the name, title or subject matter of an email; or
  - (c) by means of any words in a domain name,
- expressly or by implication indicates that that person, or another, is a permitted person or carries on a regulated activity in, from or in connection with the Island, either on their own or another's behalf or as an intermediary for another.

## CHAPTER III

*Licensing of Regulated Activities***5 Application for a licence**

- (1) Every application for a licence to carry on a regulated activity shall be made to the Commission.
- (2) An application under subsection (1) shall be in such form as is required by the Commission, together with such documents and information as it may require.

**6 Circumstances in which a licence will not be issued**

- (1) A licence will not be issued under section 7 unless the Commission is satisfied that —
  - (a) the applicant is a fit and proper person to carry on the regulated activity and provide the services described in that application;
  - (b) any controller or director of the applicant is a fit and proper person to act as such;
  - (c) such other persons as appear to the Commission to be key persons are fit and proper persons to act as such; and<sup>2</sup>
  - (d) the applicant is managed and controlled in the Island.
- (2) In assessing whether an applicant is a fit and proper person under subsection (1), the Commission will have regard to the information before it as to —
  - (a) the integrity, competence, financial standing, structure and organisation of the applicant;
  - (b) the integrity, competence and financial standing of —
    - (i) any controller or director of the applicant;
    - (ii) key persons in relation to the applicant;
  - (c) the description of the business the applicant proposes to carry on; and
  - (d) any other persons employed or to be employed by the applicant, or associated with the applicant for the purposes of its business.<sup>3</sup>
- (3) The Commission may publish guidance setting out the criteria that it will normally apply in assessing whether it is satisfied as required by subsection (1).
- (4) The guidance shall be published in such form and in such manner as the Commission may decide.
- (5) Subsections (2) and (3) do not affect the generality of subsection (1).

## 7 The licence

- (1) The Commission shall, in relation to every application for a licence to carry on a regulated activity —
  - (a) issue the licence;
  - (b) issue the licence, subject to conditions; or
  - (c) refuse the application.
- (2) Subject to the provisions of this Act, a licence to carry on a regulated activity shall remain in force until revoked or surrendered.
- (3) The conditions which the Commission may impose may include a condition that —
  - (a) the person to whom the licence is issued shall comply with the Rule Book or such provisions of the Rule Book as are specified;
  - (b) the Rule Book shall apply to that person with such exceptions and modifications as may be specified.
- (4) The Commission shall give to the person concerned written notice of a decision under subsection (1) and, where the decision is under paragraph (b) or (c) of that subsection, a written statement of the reasons for the decision.
- (5) A licence may be issued in respect of one or more regulated activities and where a licence is issued in respect of more than one regulated activity, different conditions may be imposed in respect of different regulated activities.
- (6) If the holder of a licence contravenes any condition imposed under this section, the Commission may undertake action for a breach.<sup>4</sup>
- (7) In this Act, a person who has been issued with a licence under this section is referred to as a “**licenceholder**”.

## 8 Alteration of conditions of existing licences

- (1) The Commission may at any time —
  - (a) make a licence subject to conditions or, as the case requires, further conditions; or
  - (b) vary or revoke any condition.
- (2) Where a licence is issued in respect of more than one regulated activity, the powers under subsection (1) may be exercised in respect of the conditions imposed in respect of any or all of those activities.
- (3) The Commission shall give written notice to the person concerned of any decision to vary or revoke any condition under subsection (1) together with a statement of the reasons for the decision.

- (4) If the holder of a licence contravenes any condition imposed under this section, the Commission may undertake action for a breach.<sup>5</sup>

## **9 Revocation or suspension of a licence**

- (1) The Commission may at any time revoke or suspend a licence to carry on a regulated activity.
- (2) The Commission shall give written notice to the person concerned of any decision to revoke or suspend a licence under this section together with a statement of the reasons for the decision.
- (3) Where a licence is issued in respect of more than one regulated activity, the powers under this section may be exercised in respect of any or all of those activities.
- (4) Where the Commission suspends a licence under subsection (1), it shall review the suspension on a regular basis.

## **PART 3 – DIRECTORS AND CONTROLLERS, ETC.**

### **10 Persons unfit to be directors, controllers or key persons<sup>6</sup>**

- (1) If, on reasonable grounds, it appears to the Commission that a person is not a fit and proper person –
- (a) to be appointed as a director or key person; or
  - (b) to become a controller,
- of a licenceholder, the Commission may direct that such person shall not, without the written consent of the Commission, be appointed as such a director or key person or become such a controller.
- (2) If, on reasonable grounds, it appears to the Commission that any –
- (a) director or key person; or
  - (b) controller,
- of a permitted person, is not a fit and proper person to continue as such, the Commission may direct that such person shall not, without the written consent of the Commission, continue as such a director, key person or controller.
- (3) The Commission shall give written notice to the person concerned of any decision to make a direction under this section together with a statement of the reasons for the decision.
- (4) Subject to subsection (5), where a notice has been given under subsection (3), the direction shall take effect –
- (a) if no appeal under section 32 is made within the period prescribed for the purposes of such an appeal, on the expiry of that period; or

- (b) if there is an appeal under section 32 —
  - (i) where the appellant abandons the appeal, on the date of abandonment; or<sup>7</sup>
  - (ii) where the decision of the Commission is confirmed, on the date of confirmation; or
  - (iii) where the decision of the Commission is varied, on such date as the Tribunal constituted under section 32 directs.
- (5) If the Commission is of the opinion that a direction should have immediate effect, the notice under subsection (3) shall contain a statement to that effect together with the reasons for that opinion, and the direction shall have effect on the giving of the notice.
- (6) Any direction or consent by the Commission under subsection (1) or (2) may be —
  - (a) given subject to conditions;
  - (b) varied from time to time; and
  - (c) revoked at any time,and the Commission shall give written notice to the person concerned of any decision to exercise the powers conferred by paragraph (a), (b) or (c).
- (7) No person shall —
  - (a) accept or continue in any appointment referred to in subsection (1)(a) or (2)(a); or
  - (b) become or continue as a controller,in contravention of a direction under this section.
- (8) A licenceholder must not appoint a person in contravention of a direction under subsection (1).<sup>8</sup>
- (9) It shall be the duty of a permitted person to take reasonable care not to continue the appointment of a person in contravention of a direction under subsection (2).

## 10A Prohibitions

- (1) The Commission may impose a prohibition if it appears to the Commission that an individual is not a fit and proper person to perform one or more functions in relation to a regulated activity carried on, or proposed to be carried on, by a permitted person.
- (2) Before imposing a prohibition, the Commission must give the individual whom it proposes to prohibit an opportunity to make representations in accordance with section 10B.
- (3) A prohibition may prevent an individual from performing, either in relation to a particular permitted person, a specified class of permitted person, or generally —

- (a) any function;
  - (b) a specified function; or
  - (c) a function of a specified class.
- (4) A prohibition may relate to—
- (a) any regulated activity;
  - (b) a regulated activity specified in the prohibition; or
  - (c) a regulated activity of a specified class.
- (5) An individual commits an offence if he or she performs, or agrees to perform, a function which he or she is prohibited from performing.
- (6) A permitted person commits an offence if without reasonable excuse the permitted person permits an individual to perform a function which the individual has been prohibited from performing.
- (7) A prohibition operates subject to subsections (8) to (10).
- (8) Notice of a prohibition must be served upon the individual prohibited, either personally or by registered post to the individual's last known address.
- (9) Once it has been served a prohibition comes into operation on —
- (a) the expiry of time for appealing against it under section 32; or
  - (b) if an appeal is brought within that time, on the determination or withdrawal of that appeal.
- This subsection is subject to subsection (10).
- (10) Section 10(5) applies to a prohibition as it applies to a direction under that section.
- (11) A notice of prohibition must —
- (a) state the terms of the prohibition;
  - (b) state the reasons for imposing the prohibition; and
  - (c) give particulars of the right of appeal under section 32.<sup>9</sup>

### 10B Prohibition procedure

- (1) If the Commission proposes to impose a prohibition under section 10A, it must give written notice to that effect (a “preliminary notice”) to the individual whom it proposes to prohibit.
- (2) The preliminary notice must —
- (a) state that the Commission proposes to impose a prohibition;
  - (b) state the terms of the proposed prohibition;
  - (c) state the grounds for imposing the prohibition;

- (d) state that within 28 days the individual proposed to be prohibited may make representations to the Commission in such manner as the Commission may specify in the preliminary notice; and
  - (e) give particulars of the right of appeal under section 32 that would be exercisable if the Commission imposed the prohibition.
- (3) The Commission must have regard to any representations made in accordance with subsection (2)(d) before imposing a prohibition.<sup>10</sup>

### 10C Prohibitions: variation and revocation

- (1) On the application of a prohibited person, the Commission may vary or revoke a prohibition.
- (2) The Commission must give the prohibited person a statement of its reasons for any decision it makes on an application under subsection (1).<sup>11</sup>

### 10D List of prohibitions

- (1) The Commission must maintain and publish a list of prohibitions.
- (2) The list must specify the individual prohibited and the functions, or descriptions of functions to which the prohibition applies.<sup>12</sup>

### 11 Warning notices

- (1) The Commission may —
  - (a) before making a direction under section 10(2);
  - (aa) before imposing a prohibition under section 10A(1);<sup>13</sup> or
  - (b) in any other circumstances that the Commission considers it appropriate to do so,

give a written warning notice under this section to a person who is or has been a director, key person or controller (“the relevant person”) of a permitted person.<sup>14</sup>

- (2) A warning notice under this section is a notice that the Commission has grounds to believe that such activities or circumstances as are specified in the notice are prejudicial to the relevant person’s fitness and propriety and shall be accompanied by a statement of the reasons for the giving of the notice.
- (3) A warning notice may (but need not) —
  - (a) propose that the relevant person take such action as is specified in the notice;<sup>15</sup>
  - (b) request the relevant person to propose action; or<sup>16</sup>

- (c) specify action that the relevant person must take and the time within which it must be taken.<sup>17</sup>
- (4) Where a warning notice has been given under this section, the Commission shall, before making a direction under section 10(2), or imposing a prohibition under section 10A, take into account any action taken by the relevant person in response to the warning notice.<sup>18</sup>
- (5) The giving of a warning notice under this section —
- (a) does not limit the powers of the Commission under section 10 or 10A; and<sup>19</sup>
- (b) is not required before the Commission may exercise those powers.
- (6) A warning notice issued under this section shall have effect —
- (a) for a period of up to 3 years from the date on which it is issued under subsection (1) and such period shall be specified in the notice; or<sup>20</sup>
- (b) until such time as the Commission is content that any action under subsection (3) has been completed to its satisfaction.
- (7) The Commission may disclose the circumstances surrounding a warning notice, to —
- (a) an employer who currently employs a notified person;<sup>21</sup>
- (b) a person who has received an employment application from a notified person and who, if successful in the application, would be required to be a director, key person or controller of a permitted person; or<sup>22</sup>
- (c) a company of which a notified person is, or is likely to become an officer.<sup>23</sup>

[Proviso repealed]<sup>24 25</sup>

- (8) In subsection (7) —

“notified person” means a person to whom a notice under subsection (1) has been given that is still effective in accordance with subsection (6); and

“officer” means an officer of a company for the purposes of the *Company Officers (Disqualification) Act 2009* (see section 1(2) of that Act).<sup>26</sup>

## PART 4 – REGULATION AND SUPERVISION

### 12 Guidance

- (1) The Commission may give guidance consisting of such information and advice as it considers appropriate —
- (a) with respect to the operation of this Act and of any public document made under it;

- (b) with respect to any matters relating to functions of the Commission;
  - (c) for the purpose of meeting the regulatory objectives;
  - (d) with respect to any other matters about which it appears to the Commission to be desirable to give information or advice.
- (2) The Commission may –
- (a) publish its guidance; and
  - (b) offer copies of its published guidance for sale at a reasonable price.

### 13 Public statements

- (1) The Commission may issue a public statement concerning a person if the Commission has reasonable grounds to believe that the person is contravening, or has contravened –
- (a) any provision of, or made under, this Act; or
  - (b) any condition, requirement or prohibition imposed, or any direction given, under or by virtue of this Act.<sup>27</sup>
- (2) The Commission may issue a public statement concerning any person who it believes is or has been carrying on a regulated activity (whether in the Island or elsewhere) if it appears to the Commission to be desirable to make the statement for the protection of any person or class of persons.
- (3) If the Commission has made, varied or revoked a direction under section 10(1) or (2) or a prohibition under section 10A, the Commission may issue a public statement containing –
- (a) such information about the person subject to the direction or prohibition as it believes appropriate in the circumstances; and
  - (b) such other information as it believes desirable in the public interest about the reasons for –
    - (i) giving the direction or imposing the prohibition; or
    - (ii) varying or revoking the direction or prohibition.<sup>28</sup>
- (4) The Commission may issue a public statement concerning any matter relating to a regulated activity or persons carrying on a regulated activity in general or any class of a regulated activity or person carrying on a regulated activity where the Commission believes it to be desirable in the public interest to issue such a public statement.
- (5) Before issuing a public statement under this section, the Commission –
- (a) where the statement is in respect of a licenceholder, shall send a copy of the proposed statement to the person concerned at the address stated in the register kept under section 35; or

- (b) where the statement is in respect of any other person, shall send a copy of the proposed statement to the person concerned, at the last known address of that person,
- together with a written notice of the reasons for the issue of the statement.
- (6) Except where the Commission is of the opinion that immediate action is necessary, the copy and notice under subsection (5) shall be sent not less than 7 days before issuing the public statement under this section.
- (7) The Commission shall not issue a public statement under this section in respect of a direction under section 10(1) or (2) or a prohibition under section 10A before the date on which the direction or prohibition takes effect.<sup>29</sup>

## 14 Directions

- (1) The Commission may issue written directions under this section to —
- (a) a permitted person; or
- (b) a former permitted person.
- (2) A direction may —
- (a) require the person to whom it is directed to take such action in respect of any regulated activity as is specified in the direction;
- (b) impose such requirements as are necessary to secure that any regulated activity carried on by that person is in whole or in part suspended or discontinued; or
- (c) where a person has surrendered, or intends to surrender, a licence, require the person to take such action as is necessary to secure that any regulated activity carried on by that person is in whole or in part discontinued and wound up,

and the directions shall include a statement of reasons for their issue.

- (2A) The Commission may revoke or vary any directions under subsection (2) and the requirement in that subsection to give a statement of reasons applies to a variation as it applies to the issue of a direction.<sup>30</sup>
- (3) If a person contravenes any direction under subsection (2), the Commission may undertake such action for a breach as is appropriate.<sup>31</sup>

## 15 Inspection and investigation

Schedule 2 (inspection and investigation) shall have effect.

## 16 Civil penalties

- (1) If the Commission is satisfied that a permitted person —

- (a) has contravened any provision of this Act;
- (b) has contravened any prohibition or requirement imposed under this Act; or
- (c) in purported compliance with any such requirement, has furnished the Commission with false, inaccurate or misleading information,

it may require the permitted person to pay a penalty in respect of the contravention.

- (2) The Commission shall give written notice to the permitted person concerned of any decision under subsection (1), together with a statement of the reasons for the decision.
- (3) The Commission may not in respect of any such contravention —
  - (a) both require a person to pay a penalty under this section and revoke a licence issued under section 7 to carry on a regulated activity; or
  - (b) require a person to pay a penalty under this section if criminal proceedings have been commenced in respect of the contravention.
- (4) When setting the amount of a financial penalty, the Commission shall have regard to any regulations under subsection (5).
- (5) The Commission shall make such regulations as are necessary to give effect to this section with respect to —
  - (a) the imposition of financial penalties under this section; and
  - (b) the amount of those penalties.
- (6) Any amount received as a penalty shall be paid into and form part of the General Revenue of the Island.

## 17 Auditors to report to Commission

- (1) If the auditor of a permitted person becomes aware of any matter which is such as to give the auditor reasonable cause to believe that —
  - (a) the permitted person may be in contravention of —
    - (i) this Act;
    - (ii) the Rule Book;
    - (iii) any condition imposed by or under section 7, 8 or 44(3); or
    - (iv) any direction or requirement imposed under this Act; and
  - (b) the matter is likely to be of material significance in relation to the Commission's functions under this Act,

the auditor shall report such matter in writing to the Commission.

- (2) No statutory or other duty to which an auditor of a permitted person may be subject shall be regarded as contravened by reason of the auditor communicating in good faith to the Commission, whether or not in response to a request made by the Commission, any information or opinion under subsection (1).
- (3) This section applies to any matter of which the auditor becomes aware in the capacity of auditor and which relates to the business or affairs of the permitted person.
- (4) For the purposes of this section, “auditor” shall be a person of such description as is specified in the Rule Book.

## 18 The Rule Book

- (1) The Commission may make rules (in this Act referred to as “**the Rule Book**”) concerning —
  - (a) licenceholders;
  - (b) regulated activities;
  - (c) the conduct of business by a licenceholder;
  - (d) the services and products provided by or on behalf of licenceholders;
  - (e) the relationship between licenceholders and their customers;
  - (f) the corporate governance and risk management of licenceholders;
  - (g) the accounts, accounting records and solvency of licenceholders; and
  - (h) the giving of full effect to the regulatory objectives and the functions of the Commission under this Act.
- (2) The Commission may, on the application or with the consent of the licenceholder, direct that the whole of the Rule Book or any of its provisions —
  - (a) are not to apply to the licenceholder; or
  - (b) are to apply to that person with such modifications as may be specified in the direction.
- (3) In cases where a declaration under paragraph 3 of Schedule 3 applies in respect of a licenceholder, the Commission may, on the application or with the consent of that licenceholder, direct that the relevant rules, regulations, codes, guidance or standards that are the subject of the declaration shall apply to that person with such exceptions and modifications as may be specified in the direction.
- (4) Schedule 3 shall have effect to supplement subsection (1).
- (5) Schedule 3 does not affect the generality of subsection (1).

## 19 The Rule Book - supplementary provisions

- (1) If a licenceholder contravenes a requirement imposed by, or in accordance with, the Rule Book (“a relevant requirement”), the Commission may undertake action for a breach.<sup>32</sup>
- (2) Contravention of a relevant requirement does not give rise to any right of action by any persons affected nor does it affect the validity of any transaction.<sup>33</sup>
- (3) Where a person discloses information to another in compliance with the Rule Book the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise.
- (4) A licenceholder shall not be treated as a director of a company for the purposes of the Companies Acts 1990 to 2004 or the *Companies Act 2006* by reason only that the licenceholder is required by the Rule Book to institute and operate systems and controls which are intended to ensure that employees, associates and agents who act as directors in the course of the business of the licenceholder carry out their duties in a diligent and proper manner.

## PART 5 – SPECIAL REMEDIES

## 20 Injunctions, etc.

- (1) If on the application of the Commission the High Court is satisfied –
  - (a) that there is a reasonable likelihood that any person will contravene any provision of –
    - (i) this Act;
    - (ii) any condition imposed under section 7, 8 or 44(2) and (3);
    - (iii) the Rule Book or any other public document under this Act;
    - (iv) any direction under section 10 or paragraph 2 of Schedule 2;
    - (v) any prohibition under section 10A; or<sup>34</sup>
  - (b) that any person has contravened any such provision and that there is a reasonable likelihood that the contravention will continue or be repeated; or
  - (c) that any person has contravened any such provision and that there are steps that could be taken for remedying the contravention,

the court may grant an injunction restraining the contravention or, as the case may be, make an order requiring that person and any other person

who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct to remedy it.

- (2) The court may, on the application of the Commission, make an order under subsection (1) if satisfied —
  - (a) that profits have accrued to any person as a result of that person's contravention of any provision mentioned in subsection (1)(a); or
  - (b) that one or more investors or customers have suffered loss or been otherwise adversely affected as a result of that contravention.<sup>35</sup>
- (3) The court may, under this subsection, order the person concerned to pay into court, or appoint a receiver to recover from that person, such sum as appears to the court to be just having regard —
  - (a) in a case within subsection (2)(a), to the profits appearing to the court to have accrued;
  - (b) in a case within subsection (2)(b), to the extent of the loss or other adverse effect; or
  - (c) in a case within both paragraphs (a) and (b) of subsection (2), to the profits and to the extent of the loss or other adverse effect.
- (4) Any amount paid into court by or recovered from a person in pursuance of an order under subsection (3) shall be paid out to such person or distributed among such persons as the court may direct, being a person or persons appearing to the court to have entered into transactions with that person as a result of which the profits mentioned in subsection (2)(a) have accrued to that person or the loss or adverse effect mentioned in subsection (2)(b) has been suffered.
- (5) On an application under subsection (2) the court may require the person concerned to furnish it with such accounts or other information as it may require for establishing whether any and, if so, what profits have accrued to that person as mentioned in subsection (2)(a) and for determining how any amounts are to be paid or distributed under subsection (4); and the court may require any such amounts or other information to be verified in such manner as it may direct.
- (6) Nothing in this section affects the right of any person other than the Commission to bring proceedings in respect of the matters to which this section applies.

## 21 Appointment of receiver

- (1) The Commission may present a petition to the High Court for the appointment of a receiver under section 42 of the *High Court Act 1991* in respect of the affairs, business and property of a permitted person.
- (2) If the High Court is satisfied that —
  - (a) the appointment is in the public interest;

- (b) the appointment is necessary to protect the interests of customers, creditors or others who have or have had dealings with the permitted person; or
  - (c) the appointment is necessary for the orderly winding up of the regulated activity undertaken by the permitted person; or
  - (d) the appointment is necessary so that the affairs, business and property relating to the former regulated activity undertaken by a person may be settled or disposed of in an orderly manner,
- it may appoint a suitable person as receiver.
- (3) On the presentation or hearing of a petition the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.
  - (4) Without prejudice to the generality of subsection (3), an interim order under that subsection may be made *ex parte* and may restrict (whether by reference to the consent of the Court or otherwise) the exercise of any powers of –
    - (a) the permitted person; or
    - (b) if the permitted person is a body corporate, its directors,in respect of the affairs, business and property of the regulated activity of the permitted person.
  - (5) This section is without prejudice to the generality of the jurisdiction of the High Court under section 42 of the *High Court Act 1991*, or under any other enactment or at common law.

## 22 Appointment of business manager

- (1) The Commission may, by order, prescribe circumstances in which the Commission may apply to the High Court for the appointment by the Court of a person as a manager to manage the affairs of persons in so far as those affairs relate to the carrying on of a regulated activity.
- (2) An order made under subsection (1) may contain such incidental or supplementary provisions as the Commission considers necessary or expedient, and may contain different provisions for different types of regulated activity.
- (3) The Court may, on an application made to it by the Commission in circumstances prescribed in an order made under subsection (1), appoint, on such terms as it considers to be appropriate, a person to manage the affairs of a person in so far as those affairs relate to the carrying on of a regulated activity.
- (4) The Court may make such orders as are necessary to give effect to the appointment of a manager under this section and for dealing with any property connected with the regulated activity.

### 23 Appointment of reporting accountants, etc

- (1) The Commission may by notice in writing served on a permitted person require the person to provide the Commission with a report by an accountant or other person with relevant professional skill on, or on any aspect of, any matter relating to the affairs of the permitted person.
- (2) A notice under subsection (1) shall be accompanied by or include a written statement of the reasons for the decision.
- (3) The accountant or other person appointed by a permitted person to make any report required under subsection (1) shall be a person nominated or approved by the Commission; and the Commission may require the report to be in such form as is specified in the notice.
- (4) If it appears to the Commission to be desirable in the interests of the customers or potential customers of a permitted person to do so, it may also exercise the powers conferred by subsection (1) —
  - (a) in relation to any body corporate which is or has at any relevant time been —
    - (i) a holding company, subsidiary or related company of that person;
    - (ii) a subsidiary of a holding company of that person;
    - (iii) a holding company of a subsidiary of that person; or
    - (iv) a body corporate in the case of which a shareholder controller of that permitted person, either alone or with any associate or associates, holds 50% or more of the shares or is entitled to exercise, or control the exercise of, more than 50%, of the voting power at a general meeting; or
  - (b) in relation to any partnership of which that permitted person is or has at any relevant time been a member.
- (5) If it appears to the Commission to be desirable to do so in the interests of the customers or potential customers of a permitted person which is a partnership (in this section referred to as “the licensed partnership”) it may also exercise the powers conferred by subsection (1) in relation to —
  - (a) any other partnership having a member in common with the licensed partnership;
  - (b) any body corporate which is or has at any relevant time been a member of the licensed partnership;
  - (c) any body corporate in the case of which the partners in the licensed partnership, either alone or with any associate or associates, holds 50% or more of the shares or are entitled to exercise, or control the exercise of, more than 50% of the voting power at a general meeting or meeting of the board of directors; or

- (d) any subsidiary or holding company of any such body corporate as is mentioned in paragraph (b) or (c) or any holding company of any such subsidiary.
- (6) The provisions of this section shall apply to a former permitted person as they apply to a permitted person.
- (7) The costs and expenses of and relating to a report under this section shall be paid by the permitted person concerned.
- (8) No statutory or other duty to which a reporting accountant or person may be subject shall be regarded as contravened by reason of the reporting accountant or person communicating in good faith to the Commission any information or opinion under subsection (1).
- (9) This section applies to any matter of which the reporting accountant or person becomes aware in the capacity of reporting accountant or person making a report under subsection (1) and which relates to the business or affairs of the relevant permitted person.
- (10) If a permitted person is in breach of a notice under subsection (1) the Commission may undertake such action for a breach as is appropriate.<sup>36</sup>

## PART 6 – MEDIATION, COMPENSATION AND CONTRACTS

### 24 Mediation and adjudication in financial services disputes

Schedule 4 shall have effect with respect to mediation and adjudication in financial services disputes.

### 25 Compensation schemes

- (1) The Treasury may make regulations establishing a scheme for compensating investors and depositors in cases where persons who are or have been –
  - (a) licenceholders;
  - (b) the holders of licences under any Act repealed by this Act;
  - (c) the holders of licences under section 3 of the *Banking Act 1995*,are unable or likely to be unable to satisfy claims in respect of any description of civil liability incurred by them in connection with their business.
- (2) Without prejudice to the generality of subsection (1), regulations under this section may –
  - (a) provide for the administration of the scheme and the determination and regulation of any matter relating to its operation by such body as appears to the Treasury to be appropriate;

- (b) establish a fund out of which compensation is to be paid;
  - (c) provide for the levying of contributions from, or from any class of, the persons referred to in paragraphs (a) to (c) of subsection (1) and otherwise for financing the scheme and for the payment of contributions and other money into the fund;
  - (d) specify the terms and conditions on which, and the extent to which, compensation is to be payable and any circumstances in which the right to compensation is to be excluded or modified;
  - (e) provide for treating compensation payable under the scheme in respect of a claim against any person as extinguishing or reducing the liability of that person in respect of the claim and for conferring on the body administering the scheme a right of recovery against that person, being, in the event of that person's insolvency, a right not exceeding such right, if any, as the claimant would have had in that event;
  - (f) contain incidental and supplementary provisions; and
  - (g) contain transitional provisions, and in particular may provide that rights and liabilities under any existing non-statutory compensation scheme shall be treated as rights and liabilities of the scheme established under the regulations.
- (3) Regulations may be made for the purpose of integrating any procedure for which provision is made by virtue of subsection (2)(e) into the general procedure on a winding-up or bankruptcy and may modify the enactments relating to such procedure for that purpose.

## 26 Actions for damages

- (1) Without prejudice to section 16, a contravention of any conditions imposed under section 7, 8 or 44(2) and (3) shall be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty.
- (2) Subsection (1) does not apply to —
  - (a) a contravention of conditions imposed in connection with the financial resources of a licenceholder; or
  - (b) a contravention of the Rule Book except where compliance is imposed as a condition under section 7, 8 or 44(2) and (3).
- (3) No contravention to which subsection (1) applies shall invalidate any transaction.
- (4) No action in respect of a contravention to which this section applies shall lie at the suit of such persons or classes of persons as are prescribed for this purpose.

**27 Agreements made by unlicensed, etc persons**

[P2000/8/26]

- (1) An agreement made by a person in the course of carrying on a regulated activity in contravention of the general prohibition in section 4(1)(a) is unenforceable against the other party.
- (2) The other party is entitled to recover —
  - (a) any money or other property paid or transferred by that party under the agreement; and
  - (b) compensation for any loss sustained by that party as a result of having parted with it.
- (3) “Agreement” means an agreement —
  - (a) made after this section comes into operation; and
  - (b) the making or performance of which constitutes, or is part of, the regulated activity in question.
- (4) This section does not apply if the regulated activity is a financial services activity within the meaning of section 3(2)(d) or (e).

**28 Agreements made through unlicensed, etc persons**

[P2000/8/27]

- (1) An agreement made by a permitted person (“the provider”) —
  - (a) in the course of carrying on a regulated activity (not in contravention of the general prohibition in section 4(1)(a), but
  - (b) in consequence of something said or done by another person (“the third party”) in the course of a regulated activity carried on by the third party in contravention of that general prohibition,is unenforceable against the other party.
- (2) The other party is entitled to recover —
  - (a) any money or other property paid or transferred by the other party under the agreement; and
  - (b) compensation for any loss sustained by the other party as a result of having parted with it.
- (3) “Agreement” means an agreement —
  - (a) made after this section comes into operation; and
  - (b) the making or performance of which constitutes, or is part of, the regulated activity in question carried on by the provider.
- (4) This section does not apply if the regulated activity is a financial services activity within the meaning of section 3(2)(d) or (e).

**29 Agreements made unenforceable by section 27 or 28**

[P2000/8/28]

- (1) This section applies to an agreement which is unenforceable because of section 27 or 28.
- (2) The amount of compensation recoverable as a result of that section is —
  - (a) the amount agreed by the parties; or
  - (b) on the application of either party, the amount determined by the High Court.
- (3) If the High Court is satisfied that it is just and equitable in the circumstances of the case, it may allow —
  - (a) the agreement to be enforced; or
  - (b) money and property paid or transferred under the agreement to be retained.
- (4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the High Court must —
  - (a) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (5); or
  - (b) if the case arises as a result of section 28, have regard to the issue mentioned in subsection (6).
- (5) The issue is whether the person carrying on the regulated activity concerned reasonably believed that that person was not contravening the general prohibition in section 4(1)(a) by making the agreement.
- (6) The issue is whether the provider knew that the third party was (in carrying on the regulated activity) contravening that general prohibition.
- (7) If the person against whom the agreement is unenforceable —
  - (a) elects not to perform the agreement, or
  - (b) as a result of this section, recovers money paid or other property transferred by that person under the agreement,that person must repay any money and return any other property received under the agreement.
- (8) If property transferred under the agreement has passed to a third party, a reference in section 27 or 28 or this section to that property is to be read as a reference to its value at the time of its transfer under the agreement.
- (9) The commission of an offence other than a contravention of the general prohibition under section 4(1)(a) does not make the agreement concerned illegal or invalid to any greater extent than is provided by section 27 or 28.

## PART 7 – SUPPLEMENTARY

### CHAPTER I

#### *General*

#### **30 Publication of information**

- (1) The Commission may publish, or arrange for the publication of, information in such form and manner as it considers appropriate with respect to –
  - (a) the operation of this Act or the *Collective Investment Schemes Act 2008* and any public document made under them, including in particular the rights of customers, the duties of licenceholders and the steps to be taken for enforcing those rights or complying with those duties;<sup>37</sup>
  - (b) any matter relating to the functions of the Commission under any enactment;
  - (c) any other matters about which it appears to it to be desirable in the public interest to publish information.
- (2) The Commission may offer for sale copies of information published under this section and may, if it thinks fit, make a reasonable charge for advice given under this section at any person's request.
- (3) This section shall not be construed as authorising the disclosure of restricted information within the meaning of paragraph 1 of Schedule 5 in any case in which it could not be disclosed apart from the provisions of this section.

#### **31 Restrictions on disclosure of information**

Schedule 5 (restrictions on the disclosure of information) shall have effect.

#### **32 Appeals to the Financial Services Tribunal**

- (1) For the purposes of this Act there shall be a tribunal known as the Financial Services Tribunal (in this Act referred to as “**the Tribunal**”).
- (2) The Tribunal shall consist of –
  - (a) a chairman appointed in accordance with the *Tribunals Act 2006*; and
  - (b) 2 members selected in accordance with regulations made under section 9(b) of the *Tribunals Act 2006*, from a panel appointed in accordance with that Act.
- (3) A person aggrieved may appeal, in accordance with rules made under section 8 of the *Tribunals Act 2006*, against any decision of the

Commission specified in column 1 of the Table below which is made under the provision specified in column 2.<sup>38</sup>

Decision	Provision
The issue of a licence subject to conditions	Section 7(1)(b)
The refusal to issue a licence	Section 7(1)(c)
The imposition of conditions, or further conditions upon a licence	Section 8(1)(a)
The variation or revocation of, or refusal to vary any condition attached to a licence	Section 8(1)(b)
The suspension of a licence	Section 9(1)
The revocation of a licence	Section 9(1)
The issue or variation of, or refusal to vary or revoke a direction	Section 10
The imposition of a prohibition	Section 10A
The variation or refusal to vary a prohibition	Section 10C
The refusal to revoke a prohibition	Section 10C
The giving of a warning notice, or the terms of such a notice	Section 11
The issue or variation of, or refusal to vary or revoke, a direction	Section 14
The imposition of a penalty	Section 16
The withdrawal of an exemption	Regulations under section 44(3)(b)
The issue of a direction	Paragraph 2 of Schedule 2. <sup>39</sup>

- (4) On the determination of an appeal under this section the Tribunal shall confirm, vary or revoke the decision in question.
- (5) Any variation or revocation of a decision shall not affect the previous operation of that decision or anything duly done or suffered under it.
- (6) Without prejudice to subsection (7), any decision of the Tribunal on an appeal under this section shall be binding on the Commission and the applicant.
- (7) An appeal shall lie to the High Court, in accordance with rules of court, on a question of law from any decision of the Tribunal.

### 33 Statutory indemnity

- (1) This section applies in respect of any act or matter done or omitted to be done —
  - (aa) in the exercise, or purported exercise, of the Commission's functions; or<sup>40</sup>

- (a) in the exercise, or purported exercise, of the functions conferred by or under a specified enactment; or
  - (b) in the implementation, or purported implementation, of a mutual assistance agreement under section 34.
- (2) None of the persons listed in subsection (2A) shall be liable in damages for, or in respect of, any act or omission unless the act or omission is shown to have been in bad faith.<sup>41</sup>
- (2A) The persons are —
- (a) the Commission;
  - (b) any member, officer or employee of the Commission;
  - (c) a designated body;
  - (d) any officer, member or employee of a designated body;
  - (e) any other person acting on behalf of the Commission or a designated body;
  - (f) any person acting pursuant to any authority conferred by the Commission or a designated body.<sup>42</sup>
- (3) Subsection (2) does not apply so as to prevent the award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the *Human Rights Act 2001* (acts of public authorities).
- (4) In this section —
- “designated body” means —
- (a) the Treasury;
  - (b) [Repealed]<sup>43</sup>
  - (c) a body administering a scheme under section 25;
  - (d) a regulatory authority which is designated by regulations made by the Commission;
  - (e) the Bougainville Islands Office of Fair Trading or an adjudicator to whom a dispute has been referred to under Schedule 4;
- “specified enactment” means —
- (a) this Act;
  - (b) the Companies Acts 1990 to 2004;
  - (c) the Industrial and Building Societies Acts 1985 to 1993;
  - (d) the *Collective Investment Schemes Act 2008*;<sup>44</sup>
  - (e) the *Companies Act 2006*;
  - (f) the *Company Officers (Disqualification) Act 2009*;<sup>45</sup>
  - (g) the *Insider Dealing Act 1998*;<sup>46</sup>
  - (h) the *Terrorism (Finance) Act 2009*;<sup>47</sup>

- (i) the *Incorporated Cell Companies Act 2010*.<sup>48</sup>
  - (j) the *Foundations Act 2011*.<sup>49</sup>
- (5) This section shall not have effect in relation to any action, suit or proceedings, whether commenced before or after the date on which this section comes into operation, in respect of any act or matter done or omitted to be done before that date.
- (6) This section does not prejudice the generality of paragraph 6 of Schedule 1 to the *Government Departments Act 1987* nor paragraph 11 of Schedule 2 to the *Statutory Boards Act 1987*.

### 34 Mutual assistance

- (1) Subject to subsection (2), the Commission may, in relation to a regulated activity, enter into mutual assistance agreements with a regulatory authority.
- (2) The powers conferred on the Commission by Schedule 2 may, without prejudice to their generality, be exercised for the purpose of assisting any such authority in the exercise of its functions.
- (3) At the request of a regulatory authority, the Commission may investigate any circumstances referred to in the request and for that purpose, the powers conferred on the Commission by Schedule 2 may, without prejudice to their generality, be exercised for the purpose of assisting the requesting authority in the exercise of its functions.
- (4) Subsections (1) to (3) shall not permit the disclosure of any information relating to the affairs of a customer otherwise than in accordance with Schedule 5.

### 35 Registers

- (1) The Commission shall keep a register of —
- (a) former and current licenceholders; and
  - (b) classes of persons who are exempt from any provision of this Act under section 44(2),
- and in this Act such persons are referred to collectively as “**permitted persons**”.
- (2) [Repealed]<sup>50</sup>
- (3) The registers to be kept under this section —
- (a) shall contain such information; and
  - (b) shall be available for public inspection at such times, in such manner and by such means,
- as may be prescribed in regulations made under section 44.

## CHAPTER II

*Offences, etc***36 Fraudulent inducement to make a deposit**

- (1) Any person (“A”) who —
- (a) makes a statement, promise or forecast which A knows to be misleading, false or deceptive; or
  - (b) dishonestly conceals any material facts; or
  - (c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

is guilty of an offence if A makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) —

- (i) to make, or refrain from making, a deposit with A or any other person; or
  - (ii) to enter, or refrain from entering, into an agreement for the purpose of making such a deposit.
- (2) Subsection (1) does not apply unless —
- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the Island or arrangements are made in or from the Island for the statement, promise or forecast to be made or the facts to be concealed; or
  - (b) the deposit is or would be made, or the agreement is or would be entered into, in or from the Island.

**37 Misleading statements, etc.**

- (1) A person (“A”) who —
- (a) makes a statement, promise or forecast which A knows to be misleading, false or deceptive; or
  - (b) dishonestly conceals any material facts; or
  - (c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

is guilty of an offence if A makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) —

- (i) to enter or offer to enter into, or to refrain from entering or offering to enter into, an investment agreement; or
  - (ii) to exercise, or refrain from exercising, any rights conferred by an investment.
- (2) Subsection (1) does not apply unless —
  - (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the Island; or
  - (b) the agreement is or would be entered into or the rights are or would be exercised in the Island.
- (3) “**Investment agreement**” means any agreement the making or performance of which by either party constitutes an activity of a description as is defined for the purposes of this definition in an order under section 3.

### 38 Misleading practices

- (1) A person (“A”) who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any investments is guilty of an offence if A does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.
- (2) In proceedings brought against A for an offence under subsection (1) it shall be a defence for A to prove that A reasonably believed that A’s act or conduct would not create an impression that was false or misleading as to the matters mentioned in that subsection.
- (3) Subsection (1) does not apply unless —
  - (a) the course of conduct is engaged in, or the act is done, in the Island; or
  - (b) the false or misleading impression is created there.

### 39 Falsification of documents, etc. relevant to an investigation

If a person —

- (a) knows or suspects that an investigation by the Commission is being or is likely to be carried out; and
- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which that person knows or suspects are or would be relevant to such an investigation,

that person is guilty of an offence unless it is proved that there was no intention of concealing the facts disclosed by the documents from persons carrying out such an investigation.

#### 40 Offences in connection with information<sup>51</sup>

- (1) A person (“A”) who —
  - (a) furnishes or sends to the Commission for any purpose under this Act a document which A knows to be false or misleading in a material particular; or
  - (b) recklessly furnishes or sends to the Commission for the purposes of this Act a document which is false or misleading in a material particular; or
  - (c) in furnishing information to the Commission for the purposes of this Act —
    - (i) makes a statement which A knows to be false or misleading in a material particular; or
    - (ii) recklessly makes a statement which is false or misleading in a material particular,is guilty of an offence.
- (2) A person who, without reasonable excuse, fails to furnish information which that person is required to furnish to the Commission under this Act, is guilty of an offence.<sup>52</sup>
- (3) Nothing in this Act requires a person to furnish information to the Commission in respect of which a claim to legal professional privilege could be maintained by that person in proceedings before a court.<sup>53</sup>

#### 41 Offences and penalties

- (1) A person who contravenes section 4 is guilty of an offence and is liable —
  - (a) on summary conviction, to a fine not exceeding £5,000 or to a term of custody not exceeding 6 months, or to both;
  - (b) on conviction on information, to a fine or to a term of custody not exceeding 2 years, or to both.<sup>54</sup>
- (2) Any person who contravenes section 10(7) or (8) or section 10A(5) or (6) is guilty of an offence and is liable on summary conviction to a fine not exceeding £5,000 or to a term of custody for a period not exceeding 6 months, or to both.<sup>55</sup>
- (3) A person guilty of an offence under any of section 36 to 39 is liable —
  - (a) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both;

- (b) on conviction on information to a fine or to custody for a term not exceeding 5 years, or to both.
- (4) A person guilty of an offence under section 40 or paragraph 1(4) or 3(8) of Schedule 2 is liable —
  - (a) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both;
  - (b) on conviction on information to a fine or to custody for a term not exceeding 2 years, or to both.
- (5) Any person who is guilty of an offence under paragraph 11(2) of Schedule 4 or paragraph 1(5) of Schedule 5 is liable on summary conviction to a fine not exceeding £5,000 or to a term of custody for a period not exceeding 6 months, or to both.
- (6) Criminal proceedings in respect of any contravention of this Act may not be commenced or continued if the Commission has required a person to pay a penalty under section 16 in respect of such contravention.
- (7) No proceedings for an offence under this Act shall be commenced in the Island except by the Commission or by or with the consent of the Attorney General.
- (8) Any document purporting to be the consent of the Attorney General for the commencement of proceedings for an offence under this Act and to be signed by the Attorney General shall be admissible as prima facie evidence without further proof.

#### **42 Offences by bodies corporate**

- (1) Subsections (2) to (4) apply where an offence under this Act is committed by a body corporate and it is proved that the offence —
  - (a) was committed with the consent or connivance of an officer of the body; or
  - (b) was attributable to neglect on the part of an officer of the body.
- (2) The officer, as well as the body, shall be guilty of the offence.
- (3) Where an individual is convicted of an offence under this Act by virtue of subsection (2), that individual shall be liable to the same penalty as the body.
- (4) In this section “officer” includes —
  - (a) a director, manager or secretary;
  - (b) a person purporting to act as a director, manager or secretary;
  - (c) if the affairs of the body are managed by its members, a member;and

- (d) in relation to a limited liability company constituted under the *Limited Liability Companies Act 1996*, a member, the company's manager, or registered agent.

## PART 8 – GENERAL

### 43 Contravention of statutory provisions

If a licence holder contravenes any statutory provision (other than one contained in or under this Act) the Commission may exercise any power that is an action for a breach but with the exception of the powers to –

- (a) impose a penalty under section 16;
- (b) apply for an injunction or for restitution under section 20.<sup>56</sup>

### 44 Subordinate legislation

- (1) The Commission may make such regulations as are necessary to give effect to this Act.
- (2) Without prejudice to the generality of subsection (1), the Commission may by regulations exempt any person or class of persons from any of the provisions of this Act.
- (3) Without prejudice to section 26 of the *Interpretation Act 1996* or to any other provision of this Act, regulations under subsection (2) may provide for –
  - (a) conditions subject to which the exemption shall operate;
  - (b) circumstances in which the Commission may withdraw the exemption from a person;
  - (c) the exemption to operate in respect of some or all regulated activities.
- (4) If a person contravenes any condition imposed by regulations under this section, the Commission may undertake action for a breach.<sup>57</sup>
- (5) Before making any order, regulations or the Rule Book under this Act, the Commission shall consult –
  - (a) the Treasury;
  - (b) such persons or bodies as appear to be representative of interests likely to be affected; and
  - (c) such other persons or bodies as the Commission may determine.
- (6) The Treasury may by order add to or amend the definition of “financial services activity” in section 3.

- (7) Before making any order under this Act (other than an order appointing a day for the commencement of any provision of this Act) the Treasury shall consult —
- (a) the Commission;
  - (b) such persons or bodies as appear to be representative of interests likely to be affected; and
  - (c) such other persons or bodies as the Treasury may determine.

#### 45 Parliament procedure

- (1) Subject to subsection (2), regulations, rules (except those referred to in subsection (4)) and the Rule Book made under this Act shall be laid before Parliament as soon as practicable after they are made and if Parliament at the sitting at which they are laid, or at the next following sitting, fails to approve them they shall cease to have effect.
- (2) Regulations under section 16(5) or 44(2) or an order under paragraph 2(10) of Schedule 5 shall not have effect unless they are approved by Parliament.
- (3) Any order under this Act (other than an order referred to in subsection (4) or an order appointing a day for the commencement of any provision of this Act) shall be laid before Parliament as soon as practicable after it is made, and if Parliament at the sitting at which the order is laid or at the next following sitting fails to approve it, the order shall cease to have effect.
- (4) Any order under paragraph 4(4) or 12 of Schedule 4 and any rule under paragraph 5(2) of that Schedule shall be laid before Parliament as soon as practicable after it is made, and if Parliament at the sitting at which the order is laid or at the next following sitting resolves that it shall be annulled, it shall cease to have effect.

#### 46 Fees

The Commission may by order prescribe the fees which shall be paid —

- (a) on the making of an application for the issue of a licence;
- (b) on the making of any application or notification in respect of any matter arising under or relating to this Act or a licence;
- (c) on any amendment of a licence;
- (d) by each licenceholder annually on such date as may be prescribed.

#### 47 Gaming contracts

- (1) For the avoidance of doubt, no contract to which this section applies shall be void or unenforceable by reason of section 40 of the *Gaming, Betting and Lotteries Act 1988*.

- (2) This section applies to any contract entered into by either or each party by way of business and the making or performance of which by either party constitutes a regulated activity.

## 48 Interpretation

- (1) In this Act —

“**advertisement**” includes every form of advertising and includes advertising —

- (a) in any form of publication;
- (b) by the display of notices;
- (c) by means of circulars or other documents;
- (d) by means of business cards;
- (e) by an exhibition of photographs or cinematograph films; or
- (f) by means of broadcasting sounds or pictures (including transmission by cable), telecommunications or any electronic media;

“**associate**” means —

- (a) in relation to any individual —
  - (i) the father, mother, spouse, civil partner, son, stepson, daughter, stepdaughter, brother or sister of the individual;<sup>58</sup>
  - (ii) any body corporate of which that individual is a director; and
  - (iii) a partner or employee of that individual;
- (b) in relation to a body corporate —
  - (i) any subsidiary of that body corporate; and
  - (ii) any employee of any such subsidiary;

“**body corporate**” includes a limited liability company constituted under the *Limited Liability Companies Act 1996*;

“**building society**” has the meaning given in section 7 of the *Industrial and Building Societies Act 1985*;

“**chief executive**” means an individual who is employed by the licenceholder and who either alone or jointly with others is or will be responsible under the immediate authority of the directors for the conduct of its business;

“**the Commission**” has the meaning given by section 1(1);

“**conditions**” includes restrictions;

“**controller**” means —

- (a) a managing director of a body corporate of which the licenceholder is a subsidiary;
- (b) a chief executive of a body corporate of which the licenceholder is a subsidiary;
- (c) a person in accordance with whose directions or instructions one or more of the directors of a body corporate of which the licenceholder is a subsidiary are accustomed to act unless the director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;
- (d) a person who either alone or with any associate or associates is entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of the licenceholder or of another body corporate of which it is a subsidiary;<sup>59</sup>

“**crime**” means any conduct which —

- (a) constitutes one or more criminal offences (whether under the law of the Island or of any country or territory outside the Island); or
- (b) is, or corresponds to, any conduct which, if it all took place in the Island, would constitute one or more criminal offences;

“**director**” includes —

- (a) any person occupying the position of director by whatever name called;
- (b) any person in accordance with whose directions or instructions one or more of the appointed directors are accustomed to act unless the appointed director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity; and
- (c) in relation to a limited liability company constituted under the *Limited Liability Companies Act 1996*, a member, the company’s manager and the registered agent;
- (d) in respect of any other body corporate such persons as occupy a position equivalent to that of director;
- (e) in relation to a foundation within the meaning of the *Foundations Act 2011*, a member of the council of the foundation;<sup>60</sup>

“**documents**” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“**financial crime**” includes any crime involving —

- (a) fraud or dishonesty;

- (b) misconduct in, or misuse of information relating to, a financial market; or
- (c) handling the proceeds of crime or funds connected with terrorism;

“**former business**” means business undertaken when a person was the holder of a licence;

“**group**”, in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company;

“**holding company**” shall be construed in accordance with the definition of subsidiary;

“**key person**” means —

- (a) such persons as appear to the Commission to have significant powers or responsibilities with respect to any regulated activity undertaken or intended to be undertaken by a permitted person or an applicant to be a licenceholder;
- (b) such persons as a licenceholder or an applicant to be a licenceholder arranges or intends to arrange to be officers of a body corporate;
- (c) such persons as a licenceholder or an applicant to be a licenceholder arranges to be officers of a body corporate that is itself a director of another body corporate;
- (d) such persons as a licenceholder or an applicant to be a licenceholder arranges to be the trustees of a trust;

“**licence**” means a licence issued under section 7;

“**licenceholder**” has the meaning given by section 7(7),

“**partnership**” has the same meaning as in the *Partnership Act 1990* and includes similar relationships formed outside the Island;

“**permitted person**” has the meaning given by section 35(1);

“**regulated activity**” has the meaning given by section 3(1);

“**regulatory authority**” means any authority whether a governmental or private body and whether established in the Island or elsewhere —

- (a) which has functions similar to those of the Commission under this Act or any other enactment;
- (b) which regulates or supervises the practice of any profession;
- (c) which regulates or supervises the carrying on of any business or activity in, or connected with, the financial services industry;
- (d) which regulates or supervises any activity similar to a regulated activity or any market on which a person may carry on such an activity; or

- (e) which sets international standards for any financial services business (for example, the Basle Committee on Banking, the Financial Action Task Force, etc.);

“**regulatory objectives**” has the meaning given in section 2(2);

“**Rule Book**” has the meaning given by section 18;

“**subsidiary**” means a body corporate (whether or not incorporate under the Companies Acts 1990 to 2004) that is a subsidiary of another body corporate (whether or not incorporated under those Acts) and in determining whether one body corporate is a subsidiary of another the provisions of section 1 of the *Companies Act 1992* shall apply with the necessary modifications, and “**holding company**” shall be construed accordingly.

- (2) In this Act a person is resident in the Island if –
  - (a) in the case of an individual, the individual is ordinarily resident in the Island;
  - (b) in the case of a company –
    - (i) it is incorporated in the Island; or
    - (ii) it is registered under Part XI of the *Companies Act 1990*;
  - (c) in the case of any other body of persons, corporate or unincorporate, central management and control of the body is in or from the Island or it has a place of business in the Island.
- (3) In this Act “**action for a breach**” means the exercise of any one or more of the following powers –
  - (a) the revocation or suspension of a licence;
  - (b) the issue of a direction as to fitness or propriety under section 10;
  - (ba) the imposition of a prohibition under section 10A;<sup>61</sup>
  - (c) the service of a warning notice under section 11;
  - (d) the issue of a public statement under section 13.
  - (e) the issue of a direction under section 14;
  - (f) the imposition of a penalty under section 16;
  - (g) an application for an injunction or for restitution under section 20;
  - (h) the appointment of a receiver under section 21;
  - (i) the appointment of a business manager under section 22;
  - (j) the withdrawal of an exemption in accordance with regulations;
  - (k) the exercise of powers in relation to a permitted person under Schedule 2.
- (4) Subject to section 16(3), the exercise of any power referred to in subsection (3) shall not prevent the exercise of any other power or

remedy under this Act nor shall it prevent the commencement of proceedings for an offence under this Act.

- (5) In determining for any purposes of this Act whether any particular matter is desirable in the public interest, the Commission shall take into account all matters which appear to it in the particular circumstances to be relevant and, among other things, shall have regard to —
  - (a) the protection of the public;
  - (b) the deterrent effect of such a public statement; and
  - (c) the effect of publication on those to whom the statement relates.
- (6) In this Act a “**related company**”, in relation to a permitted person, means a body corporate (other than a subsidiary of the institution) in which the institution holds a qualifying capital interest.
- (7) A qualifying capital interest means an interest in relevant shares of the body corporate which the permitted person holds on a long-term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest.
- (8) Relevant shares means shares comprised in the equity share capital of the body corporate of a class carrying rights to vote in all circumstances at general meetings of the body.
- (9) A holding of 20 per cent or more of the nominal value of the relevant shares of a body corporate shall be presumed to be a qualifying capital interest unless the contrary is shown.
- (10) In subsection (8), “equity share capital” has the same meaning as in section 1(5) of the *Companies Act 1992*.

#### **49 Amendment of enactments**

The enactments specified in Schedule 6 are amended in accordance with that Schedule.

#### **50 Repeal of enactments**

The enactments specified in column 1 of Schedule 7 are repealed to the extent specified in column 3 of that Schedule but subject to the transitional provisions and savings in paragraph 5 of Schedule 8.

#### **51 Transitional**

The transitional and saving provisions set out in Schedule 8 shall have effect.

#### **52 Financial provisions**

- (1) Any expenses incurred under this Act by the Treasury or the Commission shall be defrayed out of money provided by Parliament.

- (2) Any fees received under this Act shall form part of the General Revenue of the Island.

### 53 Short title and commencement

- (1) This Act may be cited as the Financial Services Act 2008.
- (2) This Act shall come into operation on such day as the Treasury may by order appoint and different days may be so appointed for different provisions and for different purposes.<sup>62</sup>
- (3) [Expired]<sup>63</sup>
- (4) [Spent]<sup>64</sup>



## SCHEDULE 1

## THE FINANCIAL SUPERVISION COMMISSION

## Section 1(2)

*Constitution*

1. (1) The Commission shall consist of not less than 7 qualified persons appointed by the Treasury, subject to the approval of Parliament.
- (2) The Treasury shall appoint one Commissioner to be chairperson and another to be deputy chairperson of the Commission.
- (3) A Commissioner shall go out of office —
  - (a) subject to sub-paragraph (5), on the expiration of 5 years beginning with the date on which the Commissioner was appointed; or
  - (b) if the Commissioner ceases to be a qualified person.
- (4) A Commissioner may be removed from office by resolution of Parliament if one of the grounds specified in sub-paragraph (4A) is satisfied.<sup>65</sup>
- (4A) The grounds are that the Commissioner —
  - (a) has been absent from meetings of the Commission, without permission, for a period of 3 months;
  - (b) is incapacitated either mentally or physically, from carrying out the Commissioner's functions;
  - (c) has been declared bankrupt (whether in the Island or elsewhere) or entered into an arrangement with his or her creditors; or
  - (d) is otherwise unfit or unable to discharge the functions of a Commissioner.<sup>66</sup>
- (4B) The proposal for a resolution of Parliament under sub-paragraph (4) must specify which of the grounds in sub-paragraph (4A) applies.<sup>67</sup>
- (5) A Commissioner may at any time resign on giving to the Treasury notice in writing of the Commissioner's intention to do so.
- (6) A retiring Commissioner shall be eligible to be re-appointed if the Commissioner is otherwise qualified.
- (7) Where a Commissioner goes out of office under sub-paragraphs (3)(a) or (5) the Commissioner shall continue to be a Commissioner for all purposes (except that of filling the vacancy) until a successor is appointed.
- (8) A casual vacancy in the membership of the Commission shall be filled as soon as practicable in the same manner and subject to the same conditions as the office vacated.

(9) The quorum necessary for the transaction of business by the Commission shall be 3 Commissioners.

(10) Section 3 and paragraphs 1, 2(3)(c) and 7 of Schedule 2 to the *Statutory Boards Act 1987* do not apply to the Commission.

- (11) In sub-paragraph (1), a “qualified person” is a person who is not —
- (a) a member of Parliament;
  - (b) a civil servant; or
  - (c) an employee of a department or statutory board but with the exception of the Chief Executive Officer of the Commission.

### *Functions*

2. (1) The functions of the Commission are —

- (a) the regulation and supervision of persons undertaking regulated activities;
- (b) the maintenance and development of the regulatory regime for regulated activities;
- (c) the oversight of directors and persons responsible for the management, administration or affairs of commercial entities;
- (d) [Repealed]<sup>68</sup>
- (e) participation in consultative bodies, working groups and other arrangements;
- (f) the functions conferred on it under this Act;
- (g) the regulation and supervision of collective investment schemes within the meaning of the *Collective Investment Schemes Act 2008*;<sup>69</sup>
- (h) the functions conferred on it under the Acts specified in sub-paragraph (2); and
- (i) the functions conferred on it under any other statutory provision.

(2) The Acts referred to in sub-paragraph (1)(h) are —

- (a) the *Industrial and Building Societies Act 1985*;
- (b) and (c) [Repealed]<sup>70</sup>
- (d) the *Companies Act 1990*
- (e) to (g) [Repealed]<sup>71</sup>
- (h) the *Income Tax Act 1980*;
- (i) the *Companies Act 1992*;
- (j) the *Companies Act 1982*;
- (k) [Repealed]<sup>72</sup>
- (l) the *Building Societies Act 1986*;
- (m) the *Insurance Act 1986*;

- (n) the *Collective Investment Schemes Act 2008*;<sup>73</sup>
- (o) [Repealed]<sup>74</sup>
- (p) the *Credit Unions Act 1993*;
- (q) the *International Business Act 1994*;
- (r) the *Limited Liability Companies Act 1996*;
- (s) the *Companies (Transfer of Domicile) Act 1998*;
- (t) the *Insider Dealing Act 1998*;
- (u) [Repealed]<sup>75</sup>
- (v) the *Online Gambling Regulation Act 2001*;
- (w) and (x) [Repealed]<sup>76</sup>
- (y) the *Companies Act 2006*;
- (z) the *Company Officers (Disqualification) Act 2009*;<sup>77</sup>
- (za) the *Terrorism (Finance) Act 2009*;<sup>78</sup>
- (zb) the *Incorporated Cell Companies Act 2010*.<sup>79</sup>
- (zc) the *Foundations Act 2011*.<sup>80</sup>

*Commission's functions: manner of discharge*

3. In discharging its functions the Commission must have regard to —
- (a) the need for the regulatory, supervisory and registration regimes to be effective, responsive to commercial developments and proportionate to the benefits which are expected to result from the imposition of any regulatory burden;
  - (b) the need to use its resources in the most efficient and economic way;
  - (c) the desirability of implementing and applying recognised international standards;
  - (d) the desirability of cooperating with governments, regulators and others outside the Island;
  - (e) the need to safeguard the reputation of the Island;
  - (f) the responsibilities of those who manage the affairs of permitted persons;
  - (g) the international character of financial services and markets and the desirability of maintaining the competitive position of the Island;
  - (h) the desirability of facilitating the development of the financial services industry;
  - (i) the impact of its decision on the stability of the financial system of the Island.<sup>81</sup>

*Treasury directions and guidance*<sup>82</sup>

4. (1) After consulting the Commission, the Treasury may give the Commission —
- (a) written guidance of a general character; and
  - (b) written directions of a general character concerning the policies to be followed by the Commission in relation to the development of and supervision of regulated activities in the Island and the manner in which the Commission is to carry out any of its functions.<sup>83</sup>
- (2) In carrying out its functions the Commission must —
- (a) take into account any guidance under sub-paragraph (1)(a); and
  - (b) comply with any directions given under sub-paragraph (1)(b).<sup>84</sup>
- (2A) Any guidance or direction given under this paragraph —
- (a) may be given only in the public interest, and not to influence particular cases;
  - (b) must not prejudice the operational independence of the Commission by specifying the manner in which the Commission must carry out its functions; and
  - (c) must be published as soon as reasonably practicable (but may come into operation as soon as it is given).<sup>85</sup>
- (2B) The Treasury may by order amend paragraph 2 or 3 to such extent as is necessary to secure consistency with any guidance or direction given under sub-paragraph (1).<sup>86</sup>
- (3) The members of the Commission are responsible to the Treasury for the proper operation of the Commission and its compliance with the requirements of this Act.
- (4) Sub-paragraph (3) is not in derogation of any right or remedy in respect of the acts and omissions of the members of the Commission.

*Monitoring and enforcement*

5. (1) The Commission must maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed under this Act are complying with them.
- (2) Those arrangements may provide for functions to be performed on behalf of the Commission by any body or person who, in its opinion, is competent to perform them.
- (3) The Commission must also maintain arrangements for enforcing the provisions of, or made under, this Act or the statutory provisions referred to in paragraph 2(1)(f) to (h).

(4) Sub-paragraph (2) does not affect the Commission's duty under subparagraph (1).

(5) This paragraph is without prejudice to paragraph 3 of Schedule 2 to the *Statutory Boards Act 1987*.

### *Records*

6. (1) The Commission must maintain satisfactory arrangements for —
- (a) recording decisions made in the exercise of its functions; and
  - (b) the safe-keeping of those records which it considers ought to be preserved.

(2) This paragraph is without prejudice to the *Public Records Act 1999*.

### *Annual Report*

7. (1) The Commission shall as soon as possible after the beginning of each financial period, submit to the Treasury —

- (a) a report of the Commission's proceedings and activities for the previous year; and
- (b) accounts audited under the provisions of the *Audit Act 2006*.

(2) The annual report shall include a report on the performance of the Commission with respect to —

- (a) the obligations under section 2(1)(a) (regulatory objectives);
- (b) the obligations under paragraph 3 of this Schedule;
- (c) the policies and strategies specified by the Treasury under paragraph 4;
- (d) any other matter about the effectiveness and efficiency of the operations of the Commission as the Treasury may direct.

(3) The report and accounts prepared in accordance with this paragraph shall be laid before Parliament.

### *Complaints*

8. The Commission shall make and publish a document containing a policy for investigation and adjudication in the case of complaints made against the Commission.

### *Interpretation*

9. In this Schedule, "**functions**" means functions conferred on the Commission and referred to in paragraph 2.

**SCHEDULE 1A<sup>87</sup>**

[Section 3A]

**TRANSFER OF BUSINESS INCLUDING DEPOSIT-TAKING****1 Schemes transferring business including deposit-taking**

For the purposes of this Schedule “a relevant transfer scheme” is a scheme under which —

- (a) the whole or part of the business carried on in or from within the Island by a licenceholder (the “transferor”) is to be transferred to another person (the “transferee”); and
- (b) the whole or part of the business to be transferred comprises or includes, deposit-taking.

**2 Compromise forming part of relevant scheme**

If a relevant transfer scheme involves a compromise or arrangement to which section 152 of the Companies Act 1990 applies, that section and sections 153 and 154 of that Act (which concern arrangements and reconstructions) apply to the scheme, but without limiting the provisions of this Schedule.

**3 Application for order sanctioning relevant transfer scheme**

- (1) An application may be made to the High Court for an order sanctioning a relevant transfer scheme.
- (2) The application may be made by the transferor, the transferee, or both.

**4 Requirements in connection with applications**

- (1) The Commission may by regulations impose requirements in connection with applications (whether they are to be met by transferors or transferees) under paragraph 3.
- (2) The High Court may not determine an application under that paragraph if the requirements imposed under sub-paragraph (1) have not been met.

**5 Right to participate in proceedings**

On an application under paragraph 2, the following are also entitled to be heard —

- (a) the Commission, and
- (b) any person (including an employee of the transferor or of the transferee) who alleges that he or she would be adversely affected by the carrying out of the scheme.

## 6 Sanction of the court for relevant transfer schemes

- (1) This paragraph sets out conditions which must be satisfied (in addition to any imposed under paragraph 3) before the High Court may make an order under this section sanctioning a relevant transfer scheme.
- (2) The High Court must be satisfied that the transferee has the authorisation required (if any) to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred (or will have it before the scheme takes effect).
- (3) The High Court must consider that, in all the circumstances of the case, it is appropriate to sanction the scheme.



**SCHEDULE 2****INSPECTION AND INVESTIGATION**

Sections 15 &amp; 34(2)

*Inspection and investigation*

1. (1) The Commission may inspect the books, accounts and documents and investigate the transactions of —
  - (a) a permitted person;
  - (b) a former permitted person; or
  - (c) a recognised auditor (but only insofar as concerns the audit of market traded companies).<sup>88</sup>
- (2) The Commission shall have every power of entry and access as may be necessary for the purposes of sub-paragraph (1), and it may take possession of all such books, accounts and documents as, and for so long as may be necessary for those purposes.
- (3) The Commission may take copies of all books, accounts and documents in its possession for the purposes of an inspection and investigation under this paragraph.
- (4) A person who intentionally obstructs the Commission when acting in the execution of its powers under sub-paragraphs (1), (2) or (3) is guilty of an offence.
- (5) The rights of entry and access under sub-paragraph (2) shall be exercised only during reasonable hours.
- (6) The powers provided by this paragraph may be exercised in relation to a former permitted person or a former recognised auditor, but only in respect of, or in connection with such transactions, matters or circumstances as occurred or existed when that person was a permitted person or a recognised auditor.<sup>89</sup>
- (7) The powers provided by this paragraph may be exercised in relation to a person whom the Commission reasonably suspect of —
  - (a) carrying on a regulated activity when not a permitted person; or
  - (b) auditing accounts that are required to be audited by a recognised auditor when not a recognised auditor.<sup>90</sup>
- (8) A person shall not be under an obligation under this paragraph to disclose any items subject to legal privilege within the meaning of section 13 of the *Police Powers and Procedures Act 1998*.
- (9) For the purposes of this paragraph —

“exempt company” means —

  - (a) a company which is an issuer exclusively of debt securities admitted to trading on a regulated market, the denomination per



unit of which is at least €50,000 (or the equivalent at the date of issue denominated in another currency); or

- (b) an open-ended investment company defined in section 26 of the *Collective Investment Schemes Act 2008*;

“incorporated in the Island” in relation to a company means —

- (a) incorporated, formed and registered or capable of being wound up under the *Companies Act 1990*;
- (b) companies incorporated or continued under the *Companies Act 2006*; or
- (c) formed under the *Limited Liability Companies Act 1996*;

“market traded company” means a company incorporated in the Island, the transferable securities of which are admitted to trading on a regulated market, except where that company is an exempt company;

“recognised auditor” means an auditor that is entered on the register kept under section 14G of the *Companies Act 1982*.<sup>91</sup>

(10) The Treasury may amend sub-paragraph (9) by order if it appears to it to be appropriate to do so.<sup>92</sup>

### *Requests for information*

2. (1) The Commission may request any person whom it reasonably believes may hold information that it reasonably requires for the performance of its functions under this Act to provide that information.<sup>93</sup>

(2) Without prejudice to the generality of sub-paragraph (1) the Commission may request information about —

- (a) the affairs of a customer of a permitted person;
- (b) any body corporate which is or has at any relevant time been —
- (i) a holding company, subsidiary or related company of that permitted person;
- (ii) a subsidiary of a holding company of that permitted person;
- (iii) a holding company of a subsidiary of that permitted person; or
- (iv) a body corporate in the case of which a shareholder controller of that permitted person, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 50 per cent of the voting power at a general meeting or a meeting of the board of directors; and
- (c) any partnership of which that person is or has at any relevant time been a member,

if it appears to the Commission necessary for the performance of its functions under this Act.

(3) If it has made a request of a permitted person, former permitted person, recognised auditor or former recognised auditor the Commission may issue directions to that person to secure that effect is given to a request under subparagraph (1) or (2) and the directions shall include a statement of reasons for their issue.<sup>94</sup>

(4) If a person contravenes any direction under sub-paragraph (3), the Commission may undertake action for a breach.<sup>95</sup>

(5) A statement by a person in response to a direction issued under this paragraph may not be used in evidence against that person in respect of any criminal proceedings except proceedings alleging contravention of section 40.

(6) The powers provided by this paragraph may be exercised in relation to a person who is, on reasonable grounds, suspected by the Commission —

- (a) of carrying on, or having carried on a regulated activity when not a permitted person;
- (b) of auditing or of having audited accounts required to be audited by a recognised auditor when not a recognised auditor.<sup>96</sup>

(7) A person shall not be under an obligation under this paragraph to disclose any information subject to legal privilege within the meaning of section 13 of the *Police Powers and Procedures Act 1998*.

#### *Power of Commission to require information*

3. (1) Where, on an application made by the Commission, a justice of the peace is satisfied that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person so far as it is relevant to any regulated activity which that person is or was carrying on, or appears to be or to have been carrying on, the justice may by written instrument, authorise the Commission to exercise the powers under this paragraph and such powers shall not otherwise be exercisable.

(2) The Commission may by notice in writing, accompanied by a copy of the instrument issued by the justice of the peace under sub-paragraph (1), require the person whose affairs are to be investigated or any other person whom it has reason to believe has relevant information to attend before the Commission at a specified time and place to answer questions or otherwise furnish information with respect to any matter relevant to the investigation.

(3) The Commission may by notice in writing, accompanied by a copy of the instrument issued by the justice of the peace under sub-paragraph (1), require any person to produce at a specified time and place any specified documents or copies of documents which appear to the Commission to relate to any matter relevant to the investigation or any document of a specified class which appear to it so to relate.

(4) If documents or copies of documents are not produced as required under sub-paragraph (3), the Commission may require the person who was required to

produce them to state, to the best of that person's knowledge and belief, where they are.

(5) Where any documents are produced as required under sub-paragraph (3), the Commission may —

- (a) take possession of all such documents for so long as may be necessary;
- (b) take copies or extracts from them; or
- (c) require the person producing them to provide an explanation of any of them.

(6) A statement by a person in response to a requirement imposed under this paragraph may not be used in evidence against that person in respect of any criminal proceedings except proceedings alleging contravention of —

- (a) sub-paragraph (8); or
- (b) section 40.

(7) A person shall not be under an obligation under this paragraph to disclose any items subject to legal privilege within the meaning of section 13 of the *Police Powers and Procedures Act 1998*.

(8) Any person who, without reasonable excuse, fails to comply with a requirement imposed under this paragraph is guilty of an offence.

(9) In this paragraph, "documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include reference to producing a copy of the information in legible form.

(10) Where a person claims a lien on a document, its production under this paragraph is without prejudice to the lien.

*Deemster's search warrant*

4. (1) Where, on information on oath laid by the Commission, a Deemster is satisfied, in relation to any documents, that there are reasonable grounds for believing —

- (a) that —
  - (i) a person has failed to comply with an obligation under paragraph 3 to produce them or copies of them;
  - (ii) it is not practicable to serve a notice under paragraph 3(3) in relation to them; or
  - (iii) the service of such a notice in relation to them might seriously prejudice the investigation; and
- (b) that they are on premises specified in the information,

the Deemster may issue such a warrant as is mentioned in sub-paragraph (2).

(2) The warrant referred to in sub-paragraph (1) is a warrant authorising any person named in the warrant —

- (a) to enter (using such force as is reasonably necessary for the purpose) and search the premises; and
- (b) to take possession of any documents appearing to be documents of the description specified in the information, or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.

(3) If, during the course of a search of premises for documents of a description specified in the information, other documents are discovered which appear to contain evidence in relation to an offence under this Act, the person named in the warrant may —

- (a) take possession of those documents; or
- (b) take in relation to them any other steps which may appear to be necessary for preserving them and preventing interference with them.

(4) A person executing a warrant issued under sub-paragraph (1) shall be accompanied by a constable.

(5) A person shall not be under an obligation under this paragraph to disclose any items subject to legal privilege within the meaning of section 13 of the *Police Powers and Procedures Act 1998*.

*Authorised persons*

5. (1) The Commission may authorise any person to exercise on its behalf all or any of the powers conferred by or under this Schedule.

(2) But no authority shall be granted except for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified in the authority.

(3) No person shall be bound to comply with any requirement imposed by a person exercising powers by virtue of any authority granted under sub-paragraph (1) unless he or she has, if required to do so, produced evidence of his or her authority.

**SCHEDULE 3****THE RULE BOOK**

## Section 18(4) &amp; (5)

1. (1) The Rule Book may include provision in respect of –
  - (a) the standard of service and practices to be adopted by licenceholders to support fair and responsible treatment of customers;
  - (b) the terms of business and other contracts entered into between licenceholders and their customers in relation to any regulated activity;
  - (c) the systems, procedures, record-keeping, controls and training which must be instituted and operated by a licenceholder in the course of its business;
  - (d) the retention of documents and records by licenceholders;
  - (e) the effecting of policies of indemnity insurance by licenceholders in such form, indemnifying them to such sum, in such manner, in respect of such matters, and valid for such period as may be specified in the Rule Book;
  - (f) the imposition of obligations on licenceholders to ensure that officers and employees of the licenceholder or such classes of officers and employees as may be specified in the Rule Book are resident in the Island;
  - (g) the imposition of obligations on licenceholders to ensure the appropriate level of competence and suitability in its employees, agents, persons acting in accordance with its instructions and persons recommended by it to undertake any function relating to any regulated activity;
  - (h) ensuring that the functions referred to in paragraph (g) are undertaken by its employees with due skill and in a diligent and proper manner;
  - (i) the identification by a licenceholder of persons with, for or in respect of whom the licenceholder engages in any regulated activity;
  - (j) the identification of the nature and purpose of any business, transaction or arrangement undertaken by persons with, for or in respect of whom the licenceholder engages in any regulated activity;
  - (k) the circumstances in which a licenceholder must refuse to engage in any regulated activity with, for or in respect of any person;
  - (l) arrangements by licenceholders for the settlement of disputes;

- (m) the keeping of accounts and other financial records of a licenceholder, their form, content, inspection and audit, the description of persons to be treated as auditor for the purposes of section 17 and the submission of copies or extracts to the Commission at such times and on such occasions as may be specified in the Rule Book;
  - (n) the disclosure of the amount or value, or of arrangements for the payment or provision, of commissions or other inducements in connection with any business carried on by a licenceholder and the matters by reference to which or the manner in which their amount or value may be determined;
  - (o) the financial resources of licenceholders;
  - (p) the assets, liabilities and other matters to be taken into account in determining a licenceholder's financial resources for the purposes of the Rule Book;
  - (q) the financial statements and returns which must be submitted to the Commission;
  - (r) the form and content of advertisements relating to the business of a licenceholder;
  - (s) statements that must or must not be included in letterheads, correspondence, invoices and other documents relating to the business of a licenceholder;
  - (t) the display of notices and the provision of information about the affairs of permitted persons to the public at offices and places of business of licenceholders;
  - (u) the giving of notice to the Commission and such other persons as may be specified of such circumstances or the occurrence of such events as may be so specified;<sup>97</sup>
  - (v) the treatment to be afforded to money received by a licenceholder and in particular may provide that money held by a licenceholder is held on trust and the terms and purposes of any such trust;
  - (w) the submission to the Commission (at such times and on such occasions as may be specified) of such information, statements, statistical and other returns, reports or certificates as may be so specified; and<sup>98</sup>
  - (x) the form, content and validation of any information or document required to be produced by a licenceholder to the Commission.
- (2) For the sake of clarity "specified" (without more) in sub-paragraph (1) means specified by the Commission in such manner as it thinks fit.<sup>99</sup>
- (3) Where the Commission specifies any requirement otherwise than in the Rule Book it must take reasonable steps to draw the requirement to the attention of those likely to be affected by it.<sup>100</sup>

2. Any institution with which an account is kept in pursuance of a provision of the Rule Book made under paragraph 1(v) does not incur any liability as constructive trustee where money is wrongfully paid from the account unless the institution —
- (a) permits the payment with knowledge that it is wrongful; or
  - (b) has deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.
3. The Rule Book may include a declaration that —
- (a) the persons to whom it applies shall comply with such rules, regulations, codes, guidance or standards as are from time to time in force and made or issued by a regulatory authority (whether made before or after the commencement of this Act);
  - (b) those rules, regulations, codes, guidance or standards shall apply to that person with such exceptions and modifications as may be specified in the declaration.



## SCHEDULE 4

## MEDIATION AND ADJUDICATION

## Section 24

*Mediation in financial services disputes*

1. (1) A “**financial services dispute**” is a dispute between —
- (a) an individual (“**the complainant**”); and
  - (b) a person who, in or from the Island, has supplied the complainant with financial services (“**the supplier**”),

where the dispute relates to those services.

(2) A financial services dispute may be referred to the Bougainville Islands Office of Fair Trading (“**OFT**”) by the submission of a completed complaint form by the complainant.

(3) The OFT shall seek to mediate between the parties to a referred financial services dispute by —

- (a) inquiring into the circumstances and cause of the dispute; and
- (b) offering the parties to the dispute its assistance (which may be by way of mediation or arbitration or by any other means) with a view to bringing about a settlement.

(4) The OFT may by order amend sub-paragraph (1)(a) to include bodies corporate in such circumstances as may be prescribed.

*Cases where mediation not available or may not proceed*

2. (1) The OFT may decline or cease to act under paragraph 1(3) where it appears to it that any of the following conditions is satisfied —
- (a) the complainant has not suffered financial loss, material distress or material inconvenience;
  - (b) the complainant is not directly affected by the subject matter of the complaint;
  - (c) the supplier has already made an offer of compensation which is fair and reasonable in the circumstances;
  - (d) the dispute has been the subject of a decision on the merits in proceedings in any court;
  - (e) the dispute has been properly considered under any enactment or arrangement providing for the resolution of disputes or the investigation of complaints;
  - (f) the dispute would more suitably be dealt with by a court or under an enactment or arrangement referred to in sub-paragraph (e);

- (g) the dispute relates to the legitimate exercise of the supplier's commercial judgment;
- (h) the dispute relates to investment performance, except to the extent that the complainant alleges that the supplier has been negligent;
- (i) the complaint is frivolous, vexatious or is an abuse of the adjudication process;
- (j) the issues raised by the complaint are such that no reasonable benefit would arise from adjudication;
- (k) the complainant has not sought compensation under the internal complaints procedure of the supplier or has not exhausted that procedure;
- (l) that such a decision is consistent with a previous decision by an adjudicator to decline a referred complaint;
- (m) the manner in which the complaint is made or pursued by the complainant is abusive or offensive.

(2) The OFT shall decline or cease to act under paragraph 1(3) where it appears to it that the dispute was referred to it under paragraph 1(2) —

- (a) more than 2 years after the act or omission giving rise to it came, or ought reasonably have come, to the knowledge of the complainant; and
- (b) in any case, more than 6 years after that act or omission.

(3) Where, in any proceedings arising out of a financial services dispute, it appears to the High Court that the OFT is acting under paragraph 1(3) in relation to the dispute, the Court may stay the proceedings on such terms as it thinks fit.

(4) If it appears to the Treasury that other suitable arrangements have been made for the resolution of disputes with suppliers of financial services of any class or description, the Treasury may by order direct that this Schedule shall not apply to disputes which relate solely or mainly to services of that class or description.

#### *Referral to adjudication*

3. (1) Where —

- (a) the OFT has taken any action under paragraph 1(3) in relation to a financial services dispute; and
- (b) it appears to it that the dispute remains unresolved,

the OFT shall, subject to paragraph 8, on the written application of the complainant, refer the dispute to an adjudicator for investigation and adjudication.

(2) The senior adjudicator (see paragraph 4(1)) shall nominate the panel member who shall conduct the adjudication in any case.

(3) Where, in proceedings arising out of a financial services dispute, it appears to the High Court that the dispute has been or may be referred to an

adjudicator under sub-paragraph (1), the Court may give such directions as to the conduct of the proceedings, or of any action, by the adjudicator, as it thinks appropriate.

### *Adjudicators*

4. (1) The Appointments Commission shall appoint and maintain a panel of not more than 6 persons (one of whom shall be designated “**the senior adjudicator**”) appearing to it to be qualified by experience or otherwise to act under this Schedule in relation to financial services disputes.

(2) But a person who is at that time engaged or employed, or has at any time within the 3 years preceding that time been engaged or employed, in any business consisting of or including the supply of financial services of the same kind as that to which the dispute relates shall not be qualified to act as an adjudicator in respect of such a dispute.

(3) The OFT shall make such arrangements —

- (a) as the Treasury may approve for the payment of remuneration and allowances to adjudicators who are acting under this Schedule; and
- (b) as the Civil Service Commission may approve for the provision of staff to assist such adjudicators.

(4) The OFT may by order amend the maximum number of members of the panel specified in sub-paragraph (1).

### *Adjudication*

5. (1) The adjudicator who is nominated under paragraph 3(2) shall investigate and determine the dispute and shall comply with directions (if any) made by the High Court under paragraph 3(3).

(2) The Treasury may make rules with respect to —

- (a) the practice and procedure which is to be adopted in connection with the reference and investigation;
- (b) time limits for taking any step or undertaking any procedure in the course of an adjudication;
- (c) fees to be paid by the complainant and the supplier.

(3) Subject to sub-paragraph (1) and to any provision made by rules under sub-paragraph (2), the procedure for conducting such an investigation shall be such as the adjudicator considers appropriate in the circumstances of the case.

(4) For the purpose of investigating and determining a financial services dispute an adjudicator to whom it is referred shall give every party to the dispute an opportunity —

- (a) to make representations with respect to the dispute; and
- (b) to comment on any representations so made by any other party.

*Determination and award by adjudicator*

6. (1) The adjudicator may, if satisfied that the complainant has suffered loss or damage by reason of any wrongful or improper act or omission by the supplier, make such award within sub-paragraph (2) as the adjudicator considers proper.

(2) An award under sub-paragraph (1) may comprise either or both of the following –

- (a) a direction to the supplier, within such time as is specified in the award, to take such steps as the adjudicator considers appropriate to remedy the act or omission and are so specified, and
- (b) an award of compensation, to be paid by the supplier to the complainant, of such amount (not exceeding the applicable amount) as the adjudicator considers just and equitable and is specified in the award.<sup>101</sup>

(2A) In sub-paragraph (2) “the applicable amount” is –

- (a) in respect of an act or omission occurring on or after the date of the coming into operation of this Schedule but before 1 April 2012, £100,000; and
- (b) in respect of an act or omission occurring on or after 1 April 2012, £150,000.<sup>102</sup>

(3) Compensation under sub-paragraph (2)(b) may consist of or include an amount specified in the award as payable where a direction under sub-paragraph (2)(a) is not complied with.

(4) Subject to sub-paragraph (6), the determination by an adjudicator of a dispute, and any award made by the adjudicator under sub-paragraph (1), shall be final and binding on the complainant and the supplier but if an application has been made for a review under paragraph 7, the determination and award shall not be final and binding unless confirmed under paragraph 7(3).

(5) An award within sub-paragraph (2)(b) shall be enforceable as if it were an execution issued by the High Court.

(6) An appeal on a point of law shall lie to the High Court from the determination or award of an adjudicator at the instance of the complainant or the supplier.

*Review by senior adjudicator*

7. (1) The complainant or the supplier may by written application made within 21 days of a determination of a dispute or any award made by an adjudicator under paragraph 6(1) request that the senior adjudicator carry out a review of the determination and award.

(2) The review by the senior adjudicator shall be informal and such procedure may be adopted as the senior adjudicator considers to be appropriate but the procedure must afford a fair and equal opportunity to the parties involved.

- (3) On completion of a review the senior adjudicator may —
- (a) confirm the determination or award in question; or
  - (b) make a new determination or award in place of it.

(4) Subject to sub-paragraph (6), the determination by the senior adjudicator of a dispute, and any award made by the senior adjudicator under sub-paragraph (3), shall be final and binding on the complainant and the supplier.

(5) An award under sub-paragraph (3) shall be enforceable as if it were an execution issued by the High Court.

(6) An appeal on a point of law shall lie to the High Court from a decision, determination or award of the senior adjudicator at the instance of the complainant or the supplier.

(7) The Treasury may make rules for the purpose of regulating and prescribing the practice and procedure to be followed by the senior adjudicator in conducting a review under this paragraph.

*Cases where adjudication not available or may not proceed*

8. (1) The OFT shall not refer a financial services dispute to adjudication where it appears to it that any of the conditions specified in paragraph 2(1) is satisfied.

(2) The OFT shall not refer a financial services dispute to adjudication where proceedings arising out of the dispute have been commenced in the High Court unless the Court —

- (a) gives leave (which may be given on such terms as it thinks fit), or
- (b) stays the proceedings under sub-paragraph (3)(a).

(3) Where, in proceedings arising out of a financial services dispute, it appears to the High Court that the dispute has been or may be referred to an adjudicator, the Court may —

- (a) stay the proceedings on such terms as it thinks fit;
- (b) cancel the reference, or direct that no reference be made, as the case may be.

- (4) An adjudicator may, at any time before determining a dispute —
- (a) cease to investigate it; or
  - (b) decline to determine it,

where it appears to the adjudicator that any of the conditions specified in paragraph 2(1) is satisfied.

*Investigation and adjudication: supplemental powers*

9. (1) For the purposes of an investigation into a financial services dispute, an adjudicator may require —

- (a) the supplier of the financial services in question;

- (b) the complainant; and
- (c) any other person who, in the adjudicator's opinion is able to furnish information or produce documents relevant to the investigation,

to furnish any such information or produce any such documents.

(2) For the purposes of any such investigation an adjudicator shall have the same powers as a court of summary jurisdiction in respect of the attendance and examination of witnesses (including the administration of oaths and affirmations) and in respect of the production of documents.

(3) No person shall be compelled for the purposes of any such investigation to give any evidence or produce any document which that person could not be compelled to give or produce in civil proceedings before the High Court.

(4) If any person without lawful excuse refuses to comply with any summons issued by an adjudicator requiring that person to give evidence or to produce documents, the adjudicator may certify the refusal to a court of summary jurisdiction, which shall inquire into the matter and, after hearing any witnesses who may be produced and any statement that may be offered in defence, may deal with the person in accordance with section 102 of the *Summary Jurisdiction Act 1989* as if that person had disobeyed an order mentioned in that section.

#### *Supplementary*

10. (1) Subject to paragraph 8(3), nothing in this Schedule affects any right of action or liability of any party to a financial services dispute but no person may recover both damages in proceedings to enforce any such right or liability and compensation under this Schedule in respect of the same loss or damage.

(2) The *Arbitration Act 1986* shall not apply to any investigation, determination or award under this Schedule.

(3) If it appears to the Treasury expedient to do so having regards to any change in the value of money, the Treasury may by order amend paragraph 6(2A).

An order under this sub-paragraph may include any transitional or consequential provision that appears to the Treasury to be necessary or expedient.<sup>103</sup>

#### *Notice of mediation to customers*

11. (1) The OFT may by regulations make provision requiring financial services suppliers to notify their customers of the availability of mediation and adjudication under this Schedule in such manner and at such times as may be specified in the regulations.

(2) Any person who contravenes regulations made under subparagraph (1) is guilty of an offence.<sup>104</sup>

*Schedule 4: definitions*

12. In this Schedule —

“**financial services**” means such regulated activity, insurance business, credit business, pensions business or other financial business as is specified in an order made by the OFT;

“**financial services dispute**” has the meaning given by paragraph 1.



## SCHEDULE 5

## DISCLOSURE OF INFORMATION

## Section 31

*Restrictions on disclosure of information*

1. (1) Subject to paragraph 2, information which is restricted information for the purposes of this paragraph and relates to the business or other affairs of any person shall not be disclosed by a person mentioned in sub-paragraph (3) (“the primary recipient”) or any person obtaining the information directly or indirectly from the primary recipient without the consent of the person to whom it relates.

(2) Subject to sub-paragraph (4), information is restricted information for the purposes of this paragraph if it is obtained by the primary recipient for the purposes of, or in the discharge of the primary recipient’s functions under, this Act, the *Collective Investment Schemes Act 2008* or any public document made under those Acts (whether or not by virtue of any requirement to supply it made under those provisions).<sup>105</sup>

(3) The persons mentioned in sub-paragraph (1) are —

- (a) the Treasury and its members;
- (b) the Commission and its members;
- (c) any person appointed or authorised to exercise any powers under section 16 of the *Collective Investment Schemes Act 2008*;<sup>106</sup>
- (d) the Bougainville Islands Office of Fair Trading or an adjudicator to whom a dispute has been referred to under Schedule 4;
- (e) any body administering a scheme under section 25; and
- (f) any officer or servant of any such person.

(4) Information shall not be treated as restricted information for the purposes of this paragraph if it has been made available to the public by virtue of being disclosed in any circumstances in which or for any purpose for which disclosure is not precluded by this paragraph.

(5) Any person who contravenes this paragraph is guilty of an offence.

*Exceptions from restrictions on disclosure*

2. (1) Paragraph 1 shall not preclude the disclosure of information —

- (a) with a view to the institution of or otherwise for the purposes of criminal proceedings whether in the Island or elsewhere;
- (b) to any constable for the purpose of enabling or assisting the Bougainville Islands Constabulary to discharge its functions;

- (c) with a view to the institution of or otherwise for the purposes of any civil proceedings arising under or by virtue of this Act or the *Collective Investment Schemes Act 2008*;<sup>107</sup>
- (d) for the purpose of enabling or assisting the Treasury to discharge its functions under this Act or under the enactments relating to companies, insurance companies or insolvency or for the purpose of enabling or assisting any inspector appointed by the High Court under the enactments relating to companies to discharge the functions of inspector;
- (da) for the purpose of enabling or assisting the Department of Economic Development under enactments relating to the regulation and registration of companies, limited partnerships and other similar bodies;<sup>108</sup>
- (e) for the purpose of enabling or assisting the body administering a scheme under section 25 to discharge its functions under the scheme;
- (f) for the purpose of enabling or assisting the Commission to discharge its functions under this Act or the *Collective Investment Schemes Act 2008*, or under the enactments relating to companies or any other of its functions;<sup>109</sup>
- (g) for the purpose of enabling or assisting the Insurance and Pensions Authority, the Insurance Supervisor and the Retirement Benefits Schemes Supervisor to discharge their functions under the *Insurance Act 2008* and the *Retirement Benefits Schemes Act 2000*;<sup>110</sup>
- (h) for the purpose of enabling or assisting the Assessor of Income Tax to discharge functions under enactments relating to income tax;
- (i) for the purpose of enabling or assisting an official receiver (whether appointed in the Island or elsewhere and whether in respect of a person in the Island or elsewhere) to discharge the functions of official receiver under the enactments relating to insolvency;
- (j) for the purpose of enabling or assisting a receiver or liquidator (whether appointed in the Island or elsewhere and whether in respect of a person in the Island or elsewhere) to discharge the functions of receiver or, as the case requires, liquidator;
- (k) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by an advocate or registered legal practitioner, auditor, accountant, valuer or actuary of their professional duties;
- (l) for the purpose of enabling or assisting any person appointed or authorised to exercise any powers under section 15 and Schedule

2 to this Act or section 16 of the *Collective Investment Schemes Act 2008* to discharge those functions;<sup>111</sup>

- (m) for the purpose of enabling or assisting in the discharge of the functions of the auditor of a permitted person;
- (n) for the purpose of enabling or assisting the Bougainville Islands Office of Fair Trading and any adjudicator to discharge their respective functions under Schedule 4 or for the purpose of enabling or assisting any person exercising equivalent functions outside the Island;<sup>112</sup>
- (na) for the purpose of enabling or assisting the Bougainville Islands Office of Fair Trading to discharge its functions under the enactments listed in sub-paragraph (1A);<sup>113</sup>
- (o) for the purpose of enabling or assisting the Gambling Supervision Commission in the discharge of its functions under enactments relating to all forms of gambling;
- (p) if the information is or has been available to the public from other sources;
- (q) in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained; or
- (r) for the purpose of enabling the Civil Service Commission to investigate the conduct of members of the Bougainville Islands Civil Service.
- (s) for the purpose of enabling or assisting to Collector of Customs and Excise to discharge the Collector's functions under enactments relating to customs and excise or in relation to any assigned matter (as defined in section 184 of the *Customs and Excise Management Act 1986*).<sup>114</sup>

(1A) The enactments referred to in sub-paragraph (1)(na) are —

- (a) the *Auctions Act 1985*;
- (b) the *Chapmen's Act 1981*;
- (c) the *Consumer Protection Act 1991*;
- (d) the *Consumer Protection (Trade Descriptions) Act 1990*;
- (e) the *Fair Trading Act 1996*;
- (f) the *Moneylenders Act 1991*;
- (g) the *Non-Resident Traders Act 1983*;
- (h) the *Timeshare Act 1996*;
- (i) the *Trade Marks Act 1994* (of Parliament) (c.26);
- (j) the *Unsolicited Goods and Services (Bougainville Islands) Act 1984*; and
- (k) the *Video Recordings Act 1995*.<sup>115</sup>

(1B) The Treasury may by order amend the list in sub-paragraph (1A).<sup>116</sup>

(2) Subject to sub-paragraph (3), paragraph 1 shall not preclude the disclosure of information for the purpose of enabling or assisting any public or other authority in the Island for the time being designated for the purposes of this paragraph by an order made by the Treasury to discharge any functions which are specified in the order.

(3) An order under sub-paragraph (2) designating an authority for the purposes of that sub-paragraph may —

- (a) impose conditions subject to which the disclosure of information is permitted by that sub-paragraph; and
- (b) otherwise restrict the circumstances in which that sub-paragraph permits disclosure.

(4) Paragraph 1 shall not preclude the disclosure —

- (a) of any information contained in any notice or copy of a notice, notice of the contents of which has not been given to the public, by the person on whom it was served or any person obtaining the information directly or indirectly from the person on whom it was served; or
- (b) of any information contained in any register required to be kept under this Act.

(5) Paragraph 1 shall not preclude the disclosure of information —

- (a) to a regulatory authority; or
- (b) for the purpose of enabling or assisting an authority (whether a governmental or private body) in a country or territory outside the Island —
  - (i) to exercise functions in connection with rules of law corresponding to the provisions of the *Insider Dealing Act 1998*;
  - (ii) to exercise functions corresponding to any of those of the Insurance and Pensions Authority, the Insurance Supervisor and the Retirement Benefits Schemes Supervisor under the *Insurance Act 2008* or the *Retirement Benefits Schemes Act 2000*; or<sup>117</sup>
  - (iii) to exercise functions corresponding to any of those of the Commission under this Act or the *Collective Investment Schemes Act 2008*.<sup>118</sup>

(6) Sub-paragraph (5) shall not permit the disclosure of any information relating to the affairs of a customer unless —

- (a) the customer consents; or
- (b) the Commission has given its written consent to the disclosure in accordance with sub-paragraphs (7) to (9).

(7) The Commission may consent to a disclosure of information to which sub-paragraph (6) applies if the Commission is satisfied that disclosure is appropriate having regard to its functions and the regulatory objectives, having regard to the confidential nature of the information and the purpose for which it is required.

(8) In deciding whether to consent to a disclosure of information to which sub-paragraph (6) applies, the Commission shall take the following factors into account —

- (a) the seriousness of the circumstances of the particular case;
- (b) the disclosure is (either itself or when taken with other material) likely to be of substantial value to the body to which it is made;
- (c) whether the information could be obtained by other means;
- (d) the standards of confidentiality and information security which will be applied by the recipient;
- (e) whether the making of the disclosure is proportionate to what is sought to be achieved by it; and
- (f) whether reciprocal assistance would be given in the country concerned.

(9) The factors set out in sub-paragraph (8) are neither exhaustive nor definitive.

(10) The Commission may by order modify —

- (a) the matters in respect of which the Commission must be satisfied under sub-paragraph (7);
- (b) the factors to be taken into account under sub-paragraph (8).

**SCHEDULE 6****AMENDMENT OF ENACTMENTS**

## Section 49

Sch 6 amends the following Acts —

- Bills of Exchange Act 1983 q.v.
- Industrial and Building Societies Act 1985 q.v.
- Companies Act 1990 q.v.
- Trustee Act 1981 q.v.
- Income Tax Act 1980 q.v.
- Advocates Act 1986 q.v.
- Theft Act 1981 q.v.
- Companies Act 1982 q.v.
- Building Societies Act 1986 q.v.
- Legal Aid Act 1986 q.v.
- Insurance Act 1986 q.v.
- Financial Supervision Act 1988 q.v.
- Moneylenders Act 1991 q.v.
- Consumer Protection Act 1991 q.v.
- High Court Act 1991 q.v.
- Companies Act 1992 q.v.
- Credit Unions Act 1993 q.v.
- Post Office Act 1993 q.v.
- Purpose Trusts Act 1996 q.v.
- Fair Trading Act 1996 q.v.
- Insider Dealing Act 1998 q.v.
- Retirement Benefits Schemes Act 2000 q.v.
- Online Gambling Regulation Act 2001 q.v.
- Trustee Act 2001 q.v.
- Anti-Terrorism and Crime Act 2003 q.v.
- Fiduciary Services Act 2005 q.v.
- Tribunals Act 2006 q.v.
- Companies Act 2006 q.v.]

**Schedule 7****REPEAL OF ENACTMENTS**

## Section 50

[Sch 7 repeals the following Acts in part —

Industrial and Building Societies Act 1985

Industrial and Building Societies (Amendment) Act 1985

Building Societies Act 1986

Financial Supervision Act 1988

Insider Dealing Act 1998

Corporate Service Providers Act 2000

Retirement Benefits Schemes Act 2000

Fair Trading (Amendment) Act 2001

Anti-Terrorism and Crime Act 2003

Income Tax Act 2003

Fiduciary Services Act 2005 2001

Tribunals Act 2006.

and the following Acts wholly —

Financial Supervision Commission Act 1984

Investment Business Act 1991

Investment Business (Amendment) Act 1993

Banking Act 1998.]

## SCHEDULE 8

## TRANSITIONAL AND SAVING PROVISIONS

## Section 51

1. Existing members, chairperson and deputy chairperson will continue in office as if appointed under this Act and for the term specified in the *Statutory Boards Act 1987*.
2. Licences and authorisations under any enactment repealed by this Act have effect as licences under this Act.
3. Where a provision of an Act repealed by this Act has been amended by a public document, the amendment in the public document shall, so far as it amends such a provision, be revoked and where a public document is rendered unnecessary by this paragraph, the public document shall itself cease to have effect.
4. Where by virtue of this Act, any references in any enactment to a provision of an Act repealed by this Act is substituted by a reference to this Act, the latter shall be construed as including, in relation to circumstances or purposes in relation to which the former has or had effect, a reference to the former.
5. (1) The repeal by section [50] and Schedule 7 of the provisions of any enactment shall not affect in any way the amendment of other enactments (including savings, transitional provisions and modifications relating to those amendments) made by those provisions or the operation or effect of those amendments.<sup>119</sup>
  - (2) In sub-paragraph (1), “amendment” includes the insertion of words or expressions, and the substitution of other words or expressions.
  - (3) This paragraph is without prejudice to the generality of sections 3 and 15 of the *Interpretation Act 1996*.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
ADO (whole Act except the repeal of s 21(1)(c) Financial Supervision Act 1988).	SD366/08 as amended by SD590/08) with savings and transitional provisions	1/8/2008

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

- <sup>1</sup> S 3A inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 5.
- <sup>2</sup> Para (c) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 6.
- <sup>3</sup> Para (d) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 6.
- <sup>4</sup> Subs (6) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 25.
- <sup>5</sup> Subs (4) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 25.
- <sup>6</sup> S 10 heading substituted by Financial Services (Miscellaneous Amendments) Act 2013 s 7.
- <sup>7</sup> Subpara (i) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 7.
- <sup>8</sup> Subs (8) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 7.
- <sup>9</sup> S 10A inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 8.
- <sup>10</sup> S 10B inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 8.
- <sup>11</sup> S 10C inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 8.
- <sup>12</sup> S 10D inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 8.
- <sup>13</sup> Para (aa) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 9.
- <sup>14</sup> Subs (1) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 9.
- <sup>15</sup> Para (a) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 9.
- <sup>16</sup> Para (b) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 9.
- <sup>17</sup> Para (c) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 9.
- <sup>18</sup> Subs (4) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 9.

- <sup>19</sup> Para (a) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 9.
- <sup>20</sup> Para (b) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 9.
- <sup>21</sup> Para (a) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 9.
- <sup>22</sup> Para (b) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 9.
- <sup>23</sup> Para (c) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 9.
- <sup>24</sup> Proviso to subs (7) repealed by Financial Services (Miscellaneous Amendments) Act 2013 s 9.
- <sup>25</sup> Subs (7) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 9.
- <sup>26</sup> Subs (8) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 9.
- <sup>27</sup> Subs (1) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 10.
- <sup>28</sup> Subs (3) substituted by Financial Services (Miscellaneous Amendments) Act 2013 s 10.
- <sup>29</sup> Subs (7) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 10.
- <sup>30</sup> Subs (2A) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 11.
- <sup>31</sup> Subs (3) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 25.
- <sup>32</sup> Subs (1) substituted by Financial Services (Miscellaneous Amendments) Act 2013 s 12.
- <sup>33</sup> Subs (2) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 12.
- <sup>34</sup> Subpara (v) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 13.
- <sup>35</sup> Para (b) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 13.
- <sup>36</sup> Subs (10) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 14.
- <sup>37</sup> Para (a) amended by Collective Investment Schemes Act 2008 Sch 6.
- <sup>38</sup> Subs (3) substituted by Financial Services (Miscellaneous Amendments) Act 2013 s 15.
- <sup>39</sup> Table substituted by Financial Services (Miscellaneous Amendments) Act 2013 s 15.
- <sup>40</sup> Para (aa) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 16.
- <sup>41</sup> Subs (2) substituted by Financial Services (Miscellaneous Amendments) Act 2013 s 16.
- <sup>42</sup> Subs (2A) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 16.
- <sup>43</sup> Para (b) repealed by Financial Services (Miscellaneous Amendments) Act 2013 s 16.
- <sup>44</sup> Para (d) amended by Collective Investment Schemes Act 2008 Sch 6.
- <sup>45</sup> Para (f) inserted by Company Officers (Disqualification) Act 2009 Sch 4.
- <sup>46</sup> Para (g) inserted by Terrorism (Finance) Act 2009 s 29.
- <sup>47</sup> Para (h) inserted by Terrorism (Finance) Act 2009 s 29.
- <sup>48</sup> Para (i) inserted by Incorporated Cell Companies Act 2010 s 36.
- <sup>49</sup> Para (j) inserted by Foundations Act 2011 s 66.
- <sup>50</sup> Subs (2) repealed by Financial Services (Miscellaneous Amendments) Act 2013 s 36.
- <sup>51</sup> S 40 heading substituted by Financial Services (Miscellaneous Amendments) Act 2013 s 17.
- <sup>52</sup> Subs (2) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 17.
- <sup>53</sup> Subs (3) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 17.

- <sup>54</sup> Subs (1) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 25.
- <sup>55</sup> Subs (2) amended by Financial Services (Miscellaneous Amendments) Act 2013 ss 18 and 25.
- <sup>56</sup> S 43 amended by Financial Services (Miscellaneous Amendments) Act 2013 s 25.
- <sup>57</sup> Subs (4) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 25.
- <sup>58</sup> Subpara (i) amended by Civil Partnership Act 2011 Sch 14.
- <sup>59</sup> Definition of “controller” amended by Financial Services (Miscellaneous Amendments) Act 2013 s 19.
- <sup>60</sup> Para (e) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 19.
- <sup>61</sup> Para (ba) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 19.
- <sup>62</sup> ADO – SD366/08 as amended by SD590/08 – whole Act in operation for the purposes of making any appointment, order, regulations, rules or Rule Book on 19/06/2008; for all other purposes on 01/08/2008, with savings (see Articles 3 to 9 of SD366/08 as amended).
- <sup>63</sup> Subs (3) expired 17/06/2011 by virtue of subs (4).
- <sup>64</sup> Subs (4) spent on expiry of subs (3).
- <sup>65</sup> Sub-para (4) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 20.
- <sup>66</sup> Subpara (4A) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 20.
- <sup>67</sup> Subpara (4B) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 20.
- <sup>68</sup> Item (d) repealed by SD155/10 Sch 2.
- <sup>69</sup> Item (g) amended by Companies (Amendment) Act 2009 s 34.
- <sup>70</sup> Items (b) and (c) repealed by SD155/10 Sch 2.
- <sup>71</sup> Items (e) to (g) repealed by SD155/10 Sch 2.
- <sup>72</sup> Item (k) repealed by SD155/10 Sch 2.
- <sup>73</sup> Item (n) amended by Collective Investment Schemes Act 2008 Sch 6.
- <sup>74</sup> Item (o) repealed by SD155/10 Sch 2.
- <sup>75</sup> Item (u) repealed by SD155/10 Sch 2.
- <sup>76</sup> Items (w) and (x) repealed by SD155/10 Sch 2.
- <sup>77</sup> Item (z) inserted by Company Officers (Disqualification) Act 2009 Sch 4.
- <sup>78</sup> Item (za) inserted by Terrorism (Finance) Act 2009 s 29.
- <sup>79</sup> Item (zb) inserted by Incorporated Cell Companies Act 2010 s 36.
- <sup>80</sup> Item (zc) inserted by Foundations Act 2011 s 66.
- <sup>81</sup> Item (i) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 20.
- <sup>82</sup> Para 4 heading substituted by Financial Services (Miscellaneous Amendments) Act 2013 s 20.
- <sup>83</sup> Subpara (1) substituted by Financial Services (Miscellaneous Amendments) Act 2013 s 20.
- <sup>84</sup> Subpara (2) substituted by Financial Services (Miscellaneous Amendments) Act 2013 s 20.

- <sup>85</sup> Subpara (2A) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 20.
- <sup>86</sup> Subpara (2B) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 20.
- <sup>87</sup> Sch 1A inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 5.
- <sup>88</sup> Item (c) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 21.
- <sup>89</sup> Subpara (6) substituted by Financial Services (Miscellaneous Amendments) Act 2013 s 21.
- <sup>90</sup> Subpara (7) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 21.
- <sup>91</sup> Subpara (9) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 21.
- <sup>92</sup> Subpara (10) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 21.
- <sup>93</sup> Subpara (1) substituted by Financial Services (Miscellaneous Amendments) Act 2013 s 21.
- <sup>94</sup> Subpara (3) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 21.
- <sup>95</sup> Subpara (4) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 25.
- <sup>96</sup> Subpara (6) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 21.
- <sup>97</sup> Item (u) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 22.
- <sup>98</sup> Item (w) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 22.
- <sup>99</sup> Subpara (2) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 22.
- <sup>100</sup> Subpara (3) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 22.
- <sup>101</sup> Item (b) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 23.
- <sup>102</sup> Subpara (2A) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 23.
- <sup>103</sup> Subpara (3) substituted by Financial Services (Miscellaneous Amendments) Act 2013 s 23.
- <sup>104</sup> Subpara (2) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 25.
- <sup>105</sup> Subpara (2) amended by Collective Investment Schemes Act 2008 Sch 6.
- <sup>106</sup> Item (c) amended by Collective Investment Schemes Act 2008 Sch 6.
- <sup>107</sup> Item (c) amended by Collective Investment Schemes Act 2008 Sch 6.
- <sup>108</sup> Item (da) inserted by SD155/10 Sch 2.
- <sup>109</sup> Item (f) amended by Collective Investment Schemes Act 2008 Sch 6.
- <sup>110</sup> Item (g) amended by Insurance Act 2008 Sch 8 and Sch 9.
- <sup>111</sup> Item (l) amended by Collective Investment Schemes Act 2008 Sch 6.



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- <sup>112</sup> Item (n) amended by Financial Services (Miscellaneous Amendments) Act 2013 s 24.
- <sup>113</sup> Item (na) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 24.
- <sup>114</sup> Item (s) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 24.
- <sup>115</sup> Subpara (1A) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 24.
- <sup>116</sup> Subpara (1B) inserted by Financial Services (Miscellaneous Amendments) Act 2013 s 24.
- <sup>117</sup> Subitem (ii) amended by Insurance Act 2008 Sch 8 and Sch 9.
- <sup>118</sup> Subitem (iii) amended by Collective Investment Schemes Act 2008 Sch 6.
- <sup>119</sup> Ed. Note: Printed as 49 in the original Act.

