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ACTS SUPPLEMENT

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The following Act was passed by Parliament on 2nd September 2003 and assented to by the President on 15th September 2003:—

REPUBLIC OF SINGAPORE

No. 15 of 2003.

I assent.

(LS)

S R NATHAN,
President.
15th September 2003.

An Act to amend the Financial Advisers Act (Chapter 110 of the 2002 Revised Edition).

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

Short title and commencement

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

Amendment of section 2

2. Section 2(1) of the Financial Advisers Act (referred to in this Act as the principal Act) is amended —

- (a) by inserting, immediately after the words “Insurance Act (Cap. 142)” in the definition of “life policy”, the words “, but does not include any contract of reinsurance”; and
- (b) by deleting the words “an individual” in the definition of “representative” and substituting the words “a person”.

Amendment of section 5

3. Section 5 of the principal Act is amended —

- (a) by deleting the words “amend the First or Second Schedule” in subsection (1) and substituting the words “amend, add to or vary the First, Second or Third Schedule”; and
- (b) by deleting the words “First and Second” in the section heading.

Amendment of section 7

4. Section 7 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

“(1) No person shall act as or hold himself out to be a representative unless —

- (a) he is an individual; and
- (b) he holds a representative’s licence or is a representative of an exempt financial adviser.”.

Amendment of section 8

5. Section 8 of the principal Act is amended —

- (a) by deleting the words “or renewal” in subsection (3);

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- (b) by inserting, immediately after subsection (3), the following subsection:
- “(3A) An application for the renewal of a representative’s licence shall be supported by a person who is a licensed financial adviser.”; and
- (c) by inserting, immediately after the word “before” in subsection (6), the words “or during”.

Amendment of section 9

6. Section 9 of the principal Act is amended —

- (a) by deleting the words “, or such other person having the powers and duties of a receiver, receiver and manager or judicial manager,” in subsection (1)(f) and substituting the words “or an equivalent person”; and
- (b) by deleting subsection (4) and substituting the following subsection:
- “(4) The Authority may refuse an application for the grant or renewal of a financial adviser’s licence on any of the following grounds without giving the applicant an opportunity to be heard:
- (a) the applicant is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
 - (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the applicant;
 - (c) a prohibition order under section 59 has been made by the Authority, and remains in force, against the applicant;
 - (d) the applicant has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.”.

Repeal and re-enactment of section 10

7. Section 10 of the principal Act is repealed and the following section substituted therefor:

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

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

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

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

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

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

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

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

Amendment of section 11

8. Section 11 of the principal Act is amended by deleting subsection (4) and substituting the following subsection:

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

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

Amendment of section 14

9. Section 14(3) of the principal Act is amended by inserting, immediately after the word “paid”, the words “or payable”.

Amendment of section 16

10. Section 16 of the principal Act is amended —

- (a) by deleting subsections (1) and (2) and substituting the following subsections:

“(1) A licensee may apply to the Authority, in such form and manner as may be prescribed, to vary his licence —

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

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

(2) An application under subsection (1) —

- (a) shall be accompanied by a non-refundable application fee of such amount as may be prescribed, which shall be paid in the prescribed manner; and
- (b) if made in respect of a representative’s licence, shall be supported by a person who is —
 - (i) a licensed financial adviser in respect of the type or types of financial advisory service or investment product (as the case may be) to be added to the representative’s licence; or
 - (ii) a licensed financial adviser which has applied under subsection (1) to add to its licence the type or types of financial advisory service or investment product (as the case may be) to be added to the representative’s licence.

(2A) An application under subsection (1), if made in respect of a representative’s licence, shall be deemed to be withdrawn with effect from the date on which the licensed financial adviser which supported the application —

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- (a) withdraws its support in writing;
 - (b) withdraws its application to add to its licence the type or types of financial advisory service or investment product (as the case may be) to be added to the representative's licence; or
 - (c) has its application to add to its licence the type or types of financial advisory service or investment product (as the case may be) to be added to the representative's licence refused by the Authority.”; and
- (b) by inserting, immediately after subsection (3), the following subsection:
- “(4) The Authority shall not refuse an application under subsection (1) without giving the applicant an opportunity to be heard.”.

Amendment of section 18

11. Section 18(3) of the principal Act is amended by deleting the words “immediately thereafter return the licence to the Authority” and substituting the words “return the licence to the Authority within 14 days of the date of the cessation”.

Amendment of section 19

12. Section 19 of the principal Act is amended by deleting subsection (5) and substituting the following subsection:

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

- (a) in the case of a licensed financial adviser, on any of the following grounds:
 - (i) the licensee is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
 - (ii) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or

elsewhere, in relation to or in respect of any property of the licensee;

- (iii) a prohibition order under section 59 has been made by the Authority, and remains in force, against the licensee;
 - (iv) the licensee has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly; or
- (b) in the case of a licensed representative, on any of the following grounds:
- (i) the licensee is an undischarged bankrupt, whether in Singapore or elsewhere;
 - (ii) a prohibition order under section 59 has been made by the Authority, and remains in force, against the licensee;
 - (iii) the licensee has been convicted, whether in Singapore or elsewhere, of an offence —
 - (A) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (B) punishable with imprisonment for a term of 3 months or more.”.

Amendment of section 23

13. Section 23 of the principal Act is amended —

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

“(5A) For the avoidance of doubt, references in subsections (4) and (5) to specific sections in this Act that apply to exempt financial advisers or their representatives, respectively, do not include references to any regulations made under those sections unless the Authority prescribes that such regulations so apply.”; and
- (b) by inserting, immediately after the words “subsection (1)(f) or (2)” in subsection (7), the words “or their representatives”.

Amendment of section 32

14. Section 32 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

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

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

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

Amendment of section 36

15. Section 36 of the principal Act is amended —

- (a) by deleting subsection (4); and
- (b) by deleting the words “, duly signed in accordance with subsection (4), for 7 years” in subsection (5) and substituting the words “for 6 years”.

Amendment of section 38

16. Section 38(2) of the principal Act is amended by inserting, immediately after the words “enter in the register” in paragraph (a), the words “, within 7 days after the date of the change,”.

Amendment of section 56

17. Section 56 of the principal Act is amended —

- (a) by deleting subsection (1) and substituting the following subsections:

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

- (a) its chief executive officer;
- (b) its director where, upon appointment, the person resides or is to reside in Singapore, whether or not he

is directly responsible for its business in Singapore or any part thereof; or

- (c) its director where, upon appointment, the person is directly responsible for its business in Singapore or any part thereof, whether he resides or is to reside in Singapore or elsewhere,

unless it has obtained the approval of the Authority.

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

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

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

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

Amendment of section 57

18. Section 57 of the principal Act is amended —

- (a) by deleting the word “or” at the end of subsection (1)(f);
- (b) by inserting, immediately after paragraph (f) of subsection (1), the following paragraph:

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

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

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

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

Amendment of section 58

19. Section 58 of the principal Act is amended —

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

“(1) The Authority may, if it thinks necessary or expedient in the public interest, issue written directions, either of a general or specific nature, to —

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

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

(b) by deleting the word “; or” at the end of subsection (2)(a)(i) and substituting the words “, including the duties to be undertaken when making recommendations to clients in respect of investment products;”; and

(c) by inserting, immediately after sub-paragraph (ii) of subsection (2)(a), the following sub-paragraphs:

“(iii) the qualifications, experience and training of representatives; or

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

Amendment of section 65

20. Section 65 of the principal Act is amended —

(a) by deleting the word “The” in subsection (1) and substituting the words “Subject to subsection (1A), the”; and

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

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

Amendment of section 69

21. Section 69 of the principal Act is amended —

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

“(1) Nothing in this Part shall —

(a) compel an advocate and solicitor to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him in that capacity; or

(b) authorise the taking of any such document or other material which is in his possession.”; and

(b) by inserting, immediately after the words “refuses to” in subsection (2), the words “disclose the information or”.

Amendment of section 83

22. Section 83(5) of the principal Act is amended —

(a) by deleting the words “or a person” in paragraph (a) of the definition of “officer” and substituting the words “and includes a person”; and

(b) by deleting the words “and members of the committee of the association and includes persons holding positions analogous to those of president, secretary or member of a committee” in paragraph (b) of the definition of “officer” and substituting the words “, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity”.

Amendment of section 88

23. Section 88(2) of the principal Act is amended by deleting “10(4)” in paragraph (a) and substituting “10(3)”.

Amendment of section 92

24. Section 92(2) of the principal Act is amended by inserting, immediately after the words “2 years”, the words “and shall be eligible for re-appointment”.

Repeal and re-enactment of section 94

25. Section 94 of the principal Act is repealed and the following section substituted therefor:

“Regulations for purposes of this Part

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

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

- (a) the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees;
- (b) the form and manner in which an appeal to the Minister under this Act shall be made;
- (c) the fees to be paid in respect of any appeal made to the Minister under this Act, including the refund or remission, whether in whole or in part, of such fees;
- (d) the remuneration of the members of the Appeal Advisory Panel and Appeal Advisory Committees; and
- (e) all matters and things which by this Part are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to any provision of this Part.”.

Amendment of section 97

26. Section 97(2) of the principal Act is amended —

- (a) by deleting the word “or” at the end of paragraph (a)(ii) and (iii) of the definition of “misconduct”;
- (b) by inserting, immediately after sub-paragraph (ii) of paragraph (a) of the definition of “misconduct”, the following sub-paragraph:

“(iia) any written direction made by the Authority under this Act; or”;

- (c) by deleting paragraph (b) of the definition of “misconduct” and substituting the following paragraphs:

“(b) the failure by an officer of a licensed financial adviser or an exempt financial adviser to discharge any duty or function of his office; or

(c) the commission of an offence under section 83 or 84(1);”;

- (d) by inserting, immediately after the definition of “misconduct”, the following definitions:

“ “officer” —

(a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or

(b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner;”;
and

- (e) by inserting, immediately after the word “officer” in the definition of “relevant person” in subsection (2), the words “or partner”.

Amendment of section 100

27. Section 100 of the principal Act is amended —

- (a) by inserting, immediately after the words “this Act” in subsection (2), the words “or the requirements specified in any written direction”; and
- (b) by deleting the words “if the Authority considers it necessary in the public interest” in subsection (3)(c) and substituting the words “by the Authority”.

New section 102A

28. The principal Act is amended by inserting, immediately after section 102, the following section:

“Translations of instruments

102A.—(1) Where a person submits or furnishes to or lodges with the Authority any book, application, return, report, statement or other information or document under this Act which is not in the English language, the person shall, at the same time or at such other time as may be permitted by the Authority, submit or furnish to or lodge with the Authority, as the case may be, an accurate translation thereof in the English language.

(2) Where a person is required to make available for inspection by the public, or any section thereof, any document, report, or other book under this Act which is not in the English language, the person shall, at the same time or at such other time as may be permitted by the Authority, make available for such inspection an accurate translation thereof in the English language.

(3) Where a person is required to maintain or keep any book under this Act and the book or any part thereof is not maintained or kept in the English language, the person shall —

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- (a) cause an accurate translation of that book or that part of the book in the English language to be made from time to time at intervals of not more than 7 days; and
 - (b) maintain or keep the translation with the book for so long as the book is required under this Act to be maintained or kept.
- (4) Subsections (1), (2) and (3) are subject to any express provision to the contrary in this Act or any regulations made thereunder.
- (5) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.
- (6) Where a person is charged with an offence under subsection (5), it shall be a defence for the person to prove that —
- (a) he had taken all reasonable steps to ensure that the translation that was submitted or furnished to or lodged with the Authority, made available for inspection, or maintained or kept, as the case may be, was accurate in the circumstances; and
 - (b) he had believed on reasonable grounds that the translation was accurate.
- (7) In subsections (1), (2) and (3), “Act” includes any written direction made by the Authority under this Act.”.

Amendment of section 104

29. Section 104 of the principal Act is amended —

- (a) by deleting paragraph (c) of subsection (2);
- (b) by deleting the words “, and the duties of a licensee, or an exempt financial adviser or any of its representatives, to such clients when making recommendations in respect of investment products” in subsection (2)(f);
- (c) by inserting, immediately after the words “refund and remission” in subsection (2)(j), the words “, whether in whole or in part,”;
- (d) by deleting paragraph (m) of subsection (2);
- (e) by deleting the word “and” at the end of subsection (4)(a); and

(f) by deleting paragraph (b) of subsection (4) and substituting the following paragraphs:

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

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

Amendment of First Schedule

30. Paragraph 11 of the First Schedule to the principal Act is deleted and the following paragraph substituted therefor:

“11. A foreign company (within the meaning of section 4(1) of the Companies Act (Cap. 50)) whose provision of any financial advisory service is effected under an arrangement between the foreign company (on the one hand) and its related corporation which is licensed under this Act or exempt under section 23 (other than subsections (1)(f) and (2)) (on the other hand), where such arrangement is approved by the Authority.”.

Amendment of Second Schedule

31. Paragraph 4 of the Second Schedule to the principal Act is amended by inserting, immediately after the words “life policies”, the words “, other than a contract of reinsurance”.

New Third Schedule

32. The principal Act is amended by inserting, immediately after the Second Schedule, the following Schedule:

“THIRD SCHEDULE

Section 65(1A)

SPECIFIED PROVISIONS

1. Section 23(2) and (6)
2. Section 100(2).”.

Transitional and savings provisions

33. The Authority may, by regulations, prescribe such transitional and savings provisions in relation to this Act as it may consider necessary or expedient.
