



REPUBLIC OF SINGAPORE

GOVERNMENT GAZETTE

BILLS SUPPLEMENT

Published by Authority

NO. 32]

TUESDAY, OCTOBER 16

[2012

First published in the *Government Gazette*, Electronic Edition, on 15th October 2012 at 5:00 pm.

Notification No. B 32 — The Financial Advisers (Amendment) Bill is hereby published for general information. It was introduced in Parliament on the 15th day of October 2012.

Financial Advisers (Amendment) Bill

Bill No. 32/2012.

Read the first time on 15th October 2012.

A BILL

i n t i t u l e d

An Act to amend the Financial Advisers Act (Chapter 110 of the 2007 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 2012 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 deleting the words “section 130A” in the definition of “advocate and solicitor” and substituting the words “section 2(1)”; and

(b) by deleting the definition of “principal” and substituting the following definition:

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

Amendment of section 19

3. Section 19(2) of the principal Act is amended —

(a) by deleting the word “given” in paragraph (b) and substituting the word “issued”;

(b) by deleting paragraph (c) and substituting the following paragraph:

“(c) it appears to the Authority that the licensed financial adviser has failed to satisfy any of its obligations under or arising from —

(i) this Act; or

(ii) any written direction issued by the Authority under this Act;” and

(c) by inserting, immediately after paragraph (g), the following paragraph:

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

Amendment of section 23F

4. Section 23F of the principal Act is amended —

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

“(1A) Subsection (1) shall not apply to a principal who desires to appoint, as an appointed representative in respect of any type of financial advisory service, an individual who is a provisional representative in respect of that type of financial advisory service, if —

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

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

(b) by deleting the words “or (5)” in subsection (6).

Amendment of section 23J

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5. Section 23J(1) of the principal Act is amended —

(a) by deleting the words “of licence,” in paragraph (h)(i) and substituting the words “for him to be an appointed or provisional representative”;

(b) by deleting the word “or” at the end of paragraph (h)(ii);

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(c) by deleting sub-paragraph (iii) of paragraph (h) and substituting the following sub-paragraphs:

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

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

(d) by inserting, immediately after paragraph (o), the following paragraph:

“(oa) it appears to the Authority that he has failed to satisfy any of his obligations under or arising from —

(i) this Act; or

(ii) any written direction issued by the Authority under this Act;”.

Amendment of section 25

6. Section 25 of the principal Act is amended by inserting, immediately after subsection (5), the following subsection:

“(5A) Where, on or after the date of commencement of section 6 of the Financial Advisers (Amendment) Act 2012 —

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

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

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

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

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

Amendment of section 26

7. Section 26 of the principal Act is amended —

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

“(1) A licensed financial adviser shall not make a false or misleading statement — 5

(a) as to any amount that would be payable in respect of a proposed contract in respect of any investment product;

(b) as to the effect of any provision of a contract or a proposed contract in respect of any investment product; or 10

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

if, when he makes the statement — 15

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

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

(1A) A licensed financial adviser shall not, in connection with the provision of any financial advisory service — 20

(a) employ any device, scheme or artifice to defraud; or

(b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person. 25

(1B) Where, on or after the date of commencement of section 7(a) of the Financial Advisers (Amendment) Act 2012 — 30

(a) a licensed financial adviser makes a false or misleading statement referred to in subsection (1) and thereby contravenes that subsection;

(b) a person, in reliance on that statement, does, or refrains from doing, a particular act;

(c) it is reasonable, having regard to that statement and all other relevant circumstances, for that person to do, or refrain from doing, as the case may be, that act, in reliance on that statement; and

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

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

(1C) Where, on or after the date of commencement of section 7(a) of the Financial Advisers (Amendment) Act 2012 —

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

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

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

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

then, without prejudice to any other remedy available to that person, the licensed financial adviser is liable to pay

damages to that person in respect of that loss or damage.”;

- (b) by inserting, immediately after the words “making of a” in subsection (2), the words “false or”;
- (c) by inserting, immediately after the words “subsection (1)” in subsection (3), the words “or (1A)”;
- (d) by deleting the word “Statements” in the section heading and substituting the words “False or misleading statements, etc.”.

Amendment of section 58

8. Section 58 of the principal Act is amended —

- (a) by deleting the words “necessary or expedient in the public interest” in subsection (1) and substituting the words “it necessary or expedient in the interests of the public or a section of the public or for the protection of investors”; and
- (b) by deleting subsection (3) and substituting the following subsection:

“(3) It shall not be necessary to publish any written direction issued under subsection (1) in the *Gazette*.”.

Amendment of section 59

9. Section 59(1) of the principal Act is amended by deleting paragraph (c) and substituting the following paragraphs:

- “(bb) where the person (not being a person referred to in paragraph (bd)) is or was a representative of an exempt financial adviser, the Authority has reason to believe that circumstances exist under which, if the person were an appointed or provisional representative, there would exist a ground on which the Authority may revoke under section 23J his status as an appointed or provisional representative;
- (bc) where the person (not being a person referred to in paragraph (bd)) is or was a representative of a licensed financial adviser, the Authority has reason to believe that

circumstances exist under which there would exist a ground on which the Authority may revoke under section 23J his status as an appointed or provisional representative;

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

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

(i) any provision of this Act;

(ii) any condition or restriction imposed by the Authority under this Act; or

(iii) any written direction issued by the Authority under this Act;”.

Division of Division 3 of Part VI into Subdivisions

10. Division 3 of Part VI of the principal Act is amended —

(a) by inserting, immediately above section 71, the following Subdivision heading:

“Subdivision (1) — General”; and

(b) by inserting, immediately above section 72, the following Subdivision heading:

“Subdivision (3) — Powers to obtain information”.

Amendment of section 71

11. Section 71 of the principal Act is amended by inserting, immediately after subsection (5), the following subsection:

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

New Subdivision (2) of Division 3 of Part VI

12. The principal Act is amended by inserting, immediately after section 71A, the following Subdivision:

“Subdivision (2) — Examination of persons

Proceedings at examination

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

Requirement to appear for examination

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

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

(2) A requirement in writing imposed under subsection (1) shall state the general nature of the matter investigated or to be investigated under this Division.

Requirements made of examinee

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

(2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or

affirmation that the statements that the examinee will make are true.

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

Examination to take place in private

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

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

- (a) the investigator or the examinee;
- (b) a person approved by the Authority; or
- (c) entitled to be present by virtue of a direction under subsection (1).

Record of examination

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

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

- (a) the investigator may require the examinee to read the record, or have it read to the examinee, and may require the examinee to sign it; and
- (b) the investigator shall, if requested in writing by the examinee to give to the examinee a copy of the written record, comply with the request without charge but subject to such conditions as the investigator may impose.

Giving copies of record to other persons

71G.—(1) The Authority may give a copy of a written record of the examination, or such a copy together with a copy of any related book, to an advocate and solicitor acting on behalf of a person who is carrying on, or is contemplating in good faith, a legal proceeding in respect of a matter to which the examination relates. 5

(2) If the Authority gives a copy to a person under subsection (1), the person, or any person who has possession, custody or control of the copy or a copy of it, shall not, except in connection with preparing, beginning or carrying on, or in the course of, any legal proceedings — 10

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

(b) publish, or communicate to a person, the copy, a copy of it, or any part of the contents of the copy. 15

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

Copies given subject to conditions or restrictions

71H. If a copy of a written record or a book is given to a person under section 71F(2) or 71G(3) subject to conditions or restrictions imposed by the investigator or the Authority (as the case may be), the person, and any other person who has possession, custody or control of the copy or a copy of it, shall comply with the conditions or restrictions. 20 25

Offences under this Subdivision

71I.—(1) A person who, without reasonable excuse, refuses or fails to comply with a requirement under section 71C or 71D(3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both. 30

(2) A person who, without reasonable excuse —

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

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

(c) refuses or fails to comply with section 71G(2) or 71H, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

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

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

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

New section 72A

13. The principal Act is amended by inserting, immediately after section 72, the following section:

“Power to enter premises without warrant

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

in writing to accompany the investigator (each referred to in this section as an authorised person) may enter any premises.

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

- (a) gives at least 2 working days' notice of the intended entry;
- (b) indicates the subject-matter and purpose of the investigation; and
- (c) indicates the nature of the offences created by section 76.

(3) Subsection (2) shall not apply —

- (a) if the investigation relates to an alleged or suspected contravention of any provision of Part III, and the investigator has reasonable grounds for suspecting that the premises are, or have been, occupied by a person who is being investigated in relation to the contravention; or
- (b) if the investigator has taken all such steps as are reasonably practicable to give notice under subsection (2)(a) but has not been able to do so.

(4) Where subsection (3) applies, the power of entry conferred by subsection (1) shall only be exercised upon production of —

- (a) evidence of the investigator's authorisation and the authorisation of every authorised person accompanying him; and
- (b) a document containing the information referred to in subsection (2)(b) and (c).

(5) An investigator or authorised person entering any premises under this section may —

- (a) take with him such equipment as appears to him to be necessary;

- (b) require any person on the premises to produce any book which the investigator or authorised person considers relates to any matter relevant to the investigation;
- (c) require any person on the premises to state, to the best of the person's knowledge and belief, where any such book is to be found; and
- (d) take any step, or issue to any person on the premises any requirement, which appears to be necessary for the purpose of preserving or preventing interference with any book which the investigator or authorised person considers relates to any matter relevant to the investigation.”.

Repeal and re-enactment of section 73

14. Section 73 of the principal Act is repealed and the following section substituted therefor:

“Warrant to seize books, etc.

73.—(1) A Magistrate may, on the application of the Authority —

- (a) issue a warrant, if the Magistrate is satisfied that there are reasonable grounds to suspect that there is, on any particular premises, any book —
 - (i) the production of which has been required by the Authority under section 72 or by an investigator or authorised person under section 72A, but which has not been produced in compliance with that requirement; or
 - (ii) which, if required by the Authority under section 72 to be produced, will be concealed, removed, tampered with or destroyed; and
- (b) if the Magistrate is also satisfied that there are reasonable grounds to suspect that there is, on those premises, any other book which relates to any matter relevant to the investigation concerned, direct that the powers

exercisable under the warrant shall extend to that other book.

(2) A warrant issued under subsection (1) shall authorise the Authority or any person named in the warrant, with or without assistance —

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

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

(c) to take possession of, or secure against interference, any book that appears to be a book referred to in subsection (1)(a) or, where applicable, subsection (1)(b);

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(d) to require any person to provide an explanation of any book that appears to be a book referred to in subsection (1)(a) or, where applicable, subsection (1)(b), or to state, to the best of that person's knowledge and belief, where any such book may be found;

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(e) to search any person on those premises, if there are reasonable grounds to suspect that the person has in his possession any book referred to in subsection (1)(a) or, where applicable, subsection (1)(b), or any equipment or article which relates to any matter relevant to the investigation concerned; and

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(f) to remove from those premises for examination any book that appears to be a book referred to in subsection (1)(a) or, where applicable, subsection (1)(b), or any equipment or article which relates to any matter relevant to the investigation concerned.

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(3) The Authority or any person named in the warrant to execute it may allow any equipment or article referred to in subsection (2)(f) to be retained on the premises specified in the warrant to be searched, subject to such conditions as the Authority or that person may require.

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(4) Any person entering any premises by virtue of a warrant issued under subsection (1) may take with him such equipment as appears to him to be necessary.

5 (5) Where a warrant is issued under subsection (1), and there is no one present at the premises specified in the warrant to be searched when the Authority or any person named in the warrant proposes to execute the warrant, the Authority or that person shall, before executing the warrant —

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

(b) subject to subsection (6), give the occupier or the occupier's legal or other representative a reasonable opportunity to be present when the warrant is executed.

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

20 (7) On leaving any premises specified in a warrant issued under subsection (1), the Authority or any person named in the warrant to execute it shall, if the premises are unoccupied or if the occupier of the premises is temporarily absent, leave the premises as effectively secured as the Authority or that person found the premises.

25 (8) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by any other written law or rule of law.

(9) In this section —

30 “occupier”, in relation to any premises specified in a warrant issued under subsection (1), includes any person whom the Authority or any person named in the warrant to execute it reasonably believes to be the occupier of those premises;

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

Amendment of section 74

15. Section 74 of the principal Act is amended —

(a) by deleting paragraph (a) of subsection (1) and substituting the following paragraph: 5

“(a) books are produced to the Authority —

(i) pursuant to a requirement of the Authority under section 72 or of an investigator or authorised person under section 72A(5); or 10

(ii) during an entry into any premises by an investigator or authorised person under section 72A;”;

(b) by deleting the word “and” at the end of subsection (3)(b); 15

(c) by deleting the full-stop at the end of subsection (3)(c)(iii) and substituting the word “; and”;

(d) by inserting, immediately after paragraph (c) of subsection (3), the following paragraph:

“(d) require any book which the Authority or person referred to in subsection (1)(b) is satisfied relates to any matter relevant to an investigation under this Division, and which is stored in any electronic form, to be produced in a form which can be taken away and which is visible and legible.”; 20 25

(e) by inserting, immediately after the words “Unless subsection (1)(b)(ii) applies,” in subsection (6), the words “an investigator or authorised person referred to in subsection (1)(a) or”; 30

(f) by deleting the word “If” in subsection (7) and substituting the words “Without prejudice to sections 72A(5) and 73(2)(d), if”; and

- (g) by inserting, immediately after the words “the Authority,” in subsection (7), the words “an investigator or authorised person referred to in subsection (1)(a),”.

Amendment of section 76

5 **16.** Section 76 of the principal Act is amended —

(a) by deleting the words “under section 72, 74(7) or 75” in subsection (1) and substituting the words “under section 72, 72A(5), 74(3)(d) or (7) or 75, or pursuant to an authorisation referred to in section 73(2)(d),”;

10 (b) by deleting the words “section 72, 74(7) or 75” in subsection (2) and substituting the words “this Subdivision”;

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

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

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25 (d) by inserting, immediately after the words “a person who is” in subsection (5), the words “exercising any power under section 72A(1) or (5) or”; and

(e) by deleting subsection (6) and substituting the following subsection:

30 “(6) Any occupier or person in charge of any premises who fails to provide, to any person who enters those premises under section 72A(1) or under a warrant issued under section 73(1), all reasonable facilities and assistance for the effective exercise of that person’s powers under section 72A(1) or (5) or under the warrant,

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

New Division 4 of Part VI

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17. The principal Act is amended by inserting, immediately after section 76, the following Division:

“Division 4 — Transfer of Evidence

Interpretation of this Division

76A. In this Division —

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

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

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

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

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(a) a police officer;

(b) a Commercial Affairs Officer; or

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(c) the Public Prosecutor,

for the purposes of any investigation into or criminal proceedings against a person for an alleged contravention of any provision under this Act.

(2) For the avoidance of doubt, any book, document, written record of examination or other information furnished by the Authority under subsection (1) shall not be inadmissible in any

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criminal proceedings by reason only that it was first obtained by the Authority in the exercise of its powers under this Act, and the admissibility thereof shall be determined in accordance with the rules of evidence under written law and any relevant rules of law.”.

Repeal and re-enactment of section 89

18. Section 89 of the principal Act is repealed and the following section substituted therefor:

“Composition of offences

89.—(1) The Authority may, in its discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence.

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

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

(b) has ceased to be so compoundable,

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

(3) All sums collected by the Authority under subsection (1) or (2) shall be paid into the Consolidated Fund.”.

New sections 99, 99A and 99B

19. The principal Act is amended by inserting, immediately after section 98, the following sections:

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

99.—(1) A court may, on an application by the Authority, make one or more of the orders referred to in subsection (2) where —

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(a) an investigation is being carried out under this Act in relation to any act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act;

(b) a criminal proceeding has been instituted against a person for an offence under this Act; or

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(c) a civil proceeding has been instituted against a person under this Act, and the court considers it necessary or desirable to do so for the purpose of protecting the interests of any person to whom the person referred to in paragraph (a) or (b) or this paragraph (referred to in this section as the relevant person) is liable or may become liable to pay any moneys, whether in respect of a debt, or by way of damages or otherwise, or to account for any investment products or other property.

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(2) The orders of court that may be made under subsection (1) are as follows:

(a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or any person associated with the relevant person from making a payment in total or partial discharge of such debt that is due or accruing due to the relevant person, or to another person at the direction or request of the relevant person;

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

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investment products or other property, to the relevant person, or to another person at the direction or request of the relevant person;

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

(d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of investment products or documents of title to investment products or other property of the relevant person or of any person who is associated with the relevant person, from a place or person in Singapore to a place or person outside Singapore (including the transfer of securities from a register in Singapore to a register outside Singapore);

(e) an order appointing —

(i) where the relevant person is an individual, a receiver, having such powers as the court orders, of the property or part of the property of the relevant person; or

(ii) where the relevant person is a corporation, a receiver or receiver and manager, having such powers as the court orders, of the property or part of the property of the relevant person;

(f) where the relevant person is an individual, an order requiring the relevant person to deliver up to the court his passport and such other documents as the court thinks fit;

(g) where the relevant person is an individual, an order prohibiting the relevant person from leaving Singapore without the consent of the court.

(3) Where an application is made to the court for any order referred to in subsection (2), the court may, if the court is of the opinion that it is desirable to do so, before considering the

application, make any interim order as it thinks fit pending the determination of the application.

(4) Where the Authority makes an application to the court for the making of an order or interim order under this section, the court shall not require the Authority or any other person, as a condition of granting the order or interim order, to give any undertaking as to damages. 5

(5) Where the court has made an order or interim order under this section, the court may, on application by the Authority or by any person affected by the order or interim order, rescind or vary the order or interim order. 10

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

(7) Any person who contravenes an order or interim order made by the court under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both. 15

(8) Subsection (7) shall not affect the powers of the court in relation to the punishment for contempt of court. 20

Injunctions

99A.—(1) Where a person has engaged, is engaging or is likely to engage in any conduct that constitutes or would constitute a contravention of this Act, the court may, on the application of — 25

(a) the Authority; or

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

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if the court is of the opinion that it is desirable to do so, requiring that person to do any act or thing. 30

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

(a) the Authority; or

5 (b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing, make an order requiring the first-mentioned person to do that act or thing.

10 (3) Where an application is made to the court for an injunction under subsection (1) or an order under subsection (2), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) or make an interim order requiring a
15 person to do any act or thing, pending the determination of the application.

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

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

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

(7) Any person who contravenes an injunction, interim injunction, order or interim order by the court under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both. 5

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

(a) if the court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or 10

(b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind. 15

(9) Where an application is made to the court for the making of an order under subsection (2), the power of the court to make the order may be exercised — 20

(a) if the court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or 25

(b) if it appears to the court that, in the event that an order is not made, it is likely the person will refuse or fail to do that act or thing, whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing. 30

(10) Where the Authority or any person referred to in subsection (1)(b) or (2)(b) makes an application to the court 35

for the grant of an injunction or interim injunction or for the making of an order or interim order under this section, the court shall not require the Authority or that person, as the case may be, or any other person, as a condition of granting the injunction, interim injunction, order or interim order, to give any undertaking as to damages.

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

Court may have regard to claimant's conduct

99B.—(1) Where, in any proceedings commenced pursuant to section 25(5A), 26(1B) or (1C) or 27(3) by a person (referred to in this section as the claimant) against a licensed financial adviser or an exempt financial adviser, the court finds that the licensed financial adviser or exempt financial adviser is liable to pay damages to the claimant under section 25(5A), 26(1B) or (1C) or 27(3), as the case may be, the court shall, in making any order in those proceedings, have regard to whether or not the claimant made a reasonable effort to —

(a) minimise any loss or damage referred to in section 25(5A), 26(1B) or (1C) or 27(3), as the case may be, that was suffered by the claimant; and

(b) resolve the dispute with the licensed financial adviser or exempt financial adviser before commencing those proceedings.

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

(3) In subsection (2), “prescribed dispute resolution scheme” means a dispute resolution scheme prescribed for the purposes of that subsection by regulations made under section 104.”.

Amendment of section 104

20. Section 104 of the principal Act is amended —

(a) by deleting paragraph (ab) of subsection (2) and substituting the following paragraph:

“(ab) specifying, in the context of the granting of an
unsecured advance, unsecured loan or
unsecured credit facility by a licensed
financial adviser to any officer, employee or
representative of the licensed financial adviser,
or any person related, in the manner prescribed
by the regulations, to any such officer, employee
or representative —

(i) what constitutes any such unsecured
advance, unsecured loan or unsecured
credit facility; and

(ii) the requirements and restrictions relating
to any such grant;”; and

(b) by inserting, immediately after paragraph (a) of
subsection (4), the following paragraph:

“(aa) may contain provisions of a savings or
transitional nature;”.

Amendment of Third Schedule

21. The Third Schedule to the principal Act is amended by inserting, immediately after item 1, the following items:

“1A. Section 23(6A)

1B. Section 23B(2)

1C. Section 37(2)”.

Savings and transitional provision

22. For a period of 2 years after the commencement of this section, the Minister may, by regulations published in the *Gazette*, prescribe

such provisions of a savings or transitional nature consequent on the enactment of this Act as he may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to amend the Financial Advisers Act (Cap. 110) —

- (a) to enhance and refine the supervisory and investigative powers of the Monetary Authority of Singapore (the Authority) under the Act;
- (b) to enhance and refine the civil remedies available under the Act;
- (c) to expand the range of acts, in connection with the provision of any financial advisory service, that are prohibited; and
- (d) to make miscellaneous changes for greater clarity or consistency, or for the better administration of the Act.

Clause 1 relates to the short title and commencement.

Clause 2 amends various definitions in section 2(1).

Clause 2(a) makes a technical amendment to the definition of “advocate and solicitor” by updating the cross-reference therein to the Legal Profession Act (Cap. 161), which was amended by the Legal Profession (Amendment) Act 2008 (Act 19 of 2008).

Clause 2(b) replaces the definition of “principal” to enable an applicant for a financial adviser’s licence to be a principal of a representative.

Clause 3(a) makes a technical amendment to section 19(2)(b).

Clause 3(b) replaces section 19(2)(c). Under the new section 19(2)(c), the Authority may revoke a financial adviser’s licence if it appears to the Authority that the licensed financial adviser has failed to satisfy any of its obligations under or arising from either the Act (as provided under the present law) or any written direction issued by the Authority under the Act.

Clause 3(c) inserts new section 19(2)(ga), to extend the grounds on which the Authority may revoke a financial adviser’s licence. Under the new section 19(2)(ga), the Authority may revoke a financial adviser’s licence if the Authority has reason to believe that the licensed financial adviser has not acted in the best interests of its clients.

Clause 4(a) inserts new section 23F(1A) to dispense with certain lodgment requirements for appointed representatives. Where a principal has informed the Authority, in the prescribed form and manner under section 23D(5), of the fact that a provisional representative has satisfied the examination requirements for a type

of financial advisory service, the principal may appoint that provisional representative as an appointed representative for that type of financial advisory service without lodging the documents specified under section 23F(1).

Clause 4(b) amends section 23F(6) to clarify that a principal who contravenes section 23F(5) will be guilty of an offence punishable under section 23E(2).

Clause 5(a) amends section 23J(1)(h)(i) to correct certain terminology used therein.

Clause 5(b) makes an amendment to section 23J(1)(h)(ii) that is consequential to the insertion of new section 23J(1)(h)(iv) (by clause 5(c)).

Clause 5(c) replaces section 23J(1)(h)(iii) and inserts new section 23J(1)(h)(iv) to extend the grounds on which the Authority may revoke the status of an individual as an appointed or provisional representative. Under the new section 23J(1)(h)(iii), the Authority may revoke that status if the Authority has reason to believe that the individual either will not perform (as provided under the present law) or has not performed the type of financial service for which he is appointed efficiently, honestly or fairly. Under the new section 23J(1)(h)(iv), the Authority may revoke that status if the Authority has reason to believe that the individual has not acted in the best interests of the clients of his principal.

Clause 5(d) inserts new section 23J(1)(oa) so that the Authority has additional grounds to refuse to enter an individual in the public register of representatives, refuse to enter an additional type of financial advisory service for an appointed representative in that register, or revoke the status of an individual as an appointed or provisional representative. Under the new section 23J(1)(oa), the Authority may do any of those things if it appears to the Authority that the individual or appointed representative (as the case may be) has failed to satisfy any of his obligations under or arising from either the Act or any written direction issued by the Authority under the Act.

Clause 6 inserts new section 25(5A) to make a licensed financial adviser, who has contravened section 25(1) when making a recommendation to a person, liable in certain circumstances to that person for any loss or damage suffered from doing, or refraining from doing, a particular act as a result of that contravention.

Clause 7 makes various amendments to section 26 to create new offences that may be committed by licensed financial advisers, and to create a statutory cause of action for persons who suffer loss or damage because of false or misleading statements or contraventions of the new section 26(1A) by licensed financial advisers.

Clause 7(a) and (c) —

- (a) replaces section 26(1) with a new offence for a licensed financial adviser to make a false or misleading statement as to certain specified matters, or in connection with the provision of any financial advisory service, if he

makes the statement without caring whether the statement is true or false, or if he knows or ought reasonably to have known that the statement is false or misleading;

- (b) inserts new section 26(1A) and amends section 26(3) to make it an offence for a licensed financial adviser to use any device, scheme or artifice to defraud, or to engage in any act, practice or course of business which operates or is likely to operate as a fraud or deception upon any person, in connection with the provision of any financial advisory service;
- (c) inserts new section 26(1B) to make a licensed financial adviser, who has contravened the new section 26(1) by making a false or misleading statement, liable in certain circumstances to a person for any loss or damage suffered from doing, or refraining from doing, a particular act in reliance on that statement; and
- (d) inserts new section 26(1C) to make a licensed financial adviser, who has contravened the new section 26(1A), liable in certain circumstances to a person for any loss or damage suffered from doing, or refraining from doing, a particular act as a result of that contravention.

Clause 7(b) and (d) makes amendments to section 26(2) and the section heading for section 26, respectively, that are consequential to the amendments made to that section by clause 7(a).

Clause 8(a) amends section 58(1) to extend the Authority's power to issue written directions under section 58 to situations where the Authority thinks it necessary or expedient to do so in the interests of the public (as provided under the present law) or a section of the public or for the protection of investors.

Clause 8(b) replaces section 58(3) to provide that it will not be necessary for any written direction issued under section 58(1) to be published in the *Gazette* to have legal effect.

Clause 9 amends section 59(1) by deleting paragraph (c) and substituting new paragraphs (bb), (bc), (bd) and (c) to extend the grounds on which the Authority may make a prohibition order against a person.

Under the new section 59(1)(bb) and (bc), the Authority may make a prohibition order against an existing representative or a former representative of an exempt financial adviser or a licensed financial adviser, if the Authority has reason to believe that circumstances exist under which, if he were or is an appointed or provisional representative, there would exist a ground on which the Authority may revoke under section 23J his status as an appointed or provisional representative.

Under the new section 59(1)(bd), the Authority may make a prohibition order against an existing representative or a former representative (of a financial adviser) who is exempted from section 23B(1) by the Authority under section 23B(2), if the Authority has reason to believe that circumstances exist under which, if he were an

appointed representative, there would exist a ground on which the Authority may revoke under section 23J his status as an appointed representative.

Under the new section 59(1)(c), the Authority may make a prohibition order against a person if the Authority has reason to believe that the person is contravening, is likely to contravene or has contravened, in addition to any provision of the Act (as provided under the present law), any condition or restriction imposed by the Authority under the Act or any written direction issued by the Authority under the Act.

Clause 10 inserts Subdivision headings immediately above sections 71 and 72 to divide Division 3 of Part VI into Subdivisions, and to cater for the insertion of new Subdivision (2) of that Division by clause 12.

Clause 11 inserts new section 71(6) to clarify that in section 71, a reference to a requirement imposed by the Authority includes a requirement imposed by an investigator under the new Subdivision (2) or (3) of Division 3 of Part VI.

Clause 12 inserts new Subdivision (2) of Division 3 of Part VI (comprising new sections 71B to 71I) to provide for the examination of persons as part of the investigative powers of the Authority.

The new section 71B states that the provisions of the new Subdivision (2) of Division 3 of Part VI apply to the examination by an investigator of an examinee.

The new section 71C provides that the Authority may, in writing, require a person to give the Authority reasonable assistance and appear before an officer of the Authority for the purposes of an examination.

The new section 71D provides that an investigator may examine an examinee on oath or affirmation, and the examinee may be required to answer a question relevant to a matter that the Authority is investigating or is to investigate.

The new section 71E provides that the examination must take place in private, and the investigator may give directions as to who may be present at the examination.

The new section 71F provides that the investigator may, and shall if the examinee so requests must, cause a record to be made of the examination. The new section also provides that if a record is in writing or reduced to writing, the investigator may require the examinee to read it, or have it read to the examinee, and may require the examinee to sign it, and must give the examinee a copy of the written record if requested.

The new section 71G provides that the Authority may give a copy of a written record of the examination, or a copy of it with a copy of any related book, to an advocate and solicitor acting on behalf of a person who is carrying on, or is contemplating in good faith, a legal proceeding in respect of a matter to which the examination relates.

The new section 71H provides that if a copy of a written record or book is given to a person under the new section 71F(2) or 71G(3), the conditions or restrictions imposed on the use of the copy must be complied with by the person and any other person who has possession, custody or control of the copy or a copy of it.

The new section 71I sets out the penalties for a breach of the provisions in Subdivision (2) of Division 3 of Part VI. The new section also makes it an offence for a person, in purported compliance with the provisions of that Subdivision or in the course of being examined, to furnish information or make a statement that is false or misleading in a material particular.

Clause 13 inserts new section 72A to empower the Authority's investigators and other persons authorised by the Authority to enter any premises, without a warrant, in connection with an investigation under Division 3 of Part VI, in certain circumstances. Generally, the exercise of this power is subject to written notice having been given to the occupier of the premises at least 2 working days prior to the entry. The investigators and authorised persons who enter the premises will be empowered to take steps to preserve books relevant to the investigation.

Clause 14 repeals and re-enacts section 73 to restate the procedure for applying for a warrant under that section and to expand the powers conferred by such a warrant. The new section 73 enables the Authority to apply for such a warrant if there are reasonable grounds to suspect that there is, on any particular premises, any book the production of which has been required by the Authority under section 72 or by an investigator or authorised person under the new section 72A, but which has not been produced in compliance with that requirement, or any book which, if required by the Authority under section 72 to be produced, will be concealed, removed, tampered with or destroyed.

Clause 15(a), (e), (f) and (g) makes amendments to section 74(1), (6) and (7) that are consequential or related to the insertion of the new section 72A (by clause 13) and the repeal and re-enactment of section 73 (by clause 14). In particular, the application of section 74 is extended to books produced to the Authority under the new section 72A, and section 74(6) and (7) is extended to an investigator or authorised person under the new section 72A.

Clause 15(b) and (c) makes amendments to section 74(3)(b) and (c)(iii) that are consequential to the insertion of the new section 74(3)(d) by clause 15(d).

Clause 15(d) inserts new section 74(3)(d) to empower the Authority or a person referred to in section 74(1)(b) to require any book which is relevant to an investigation under Division 3 of Part VI, and which is stored in an electronic form, to be produced in a form which can be taken away and is visible and legible.

Clause 16 makes amendments to section 76 that are consequential or related to the division of Division 3 of Part VI into Subdivisions (by clause 10), the insertion of the new section 72A (by clause 13), the repeal and re-enactment of section 73 (by clause 14) and the insertion of the new section 74(3)(d) (by clause 15(d)).

Clause 17 inserts new Division 4 of Part VI (comprising new sections 76A and 76B) to provide for the transfer of evidence from the Authority to the investigating authorities or the Public Prosecutor for use in criminal investigations or proceedings.

The new section 76A defines certain terms used in the new Division 4 of Part VI.

The new section 76B allows for evidence obtained by the Authority, in the exercise of its powers of investigation, to be handed over to the investigating authorities or the Public Prosecutor for the purposes of criminal investigations or proceedings. The new section further clarifies that the evidence is to be treated in the same manner as other evidence before the court and is not inadmissible by reason only that it was first obtained by the Authority and not the investigating authority.

Clause 18 repeals and re-enacts section 89 —

- (a) to provide that the sum of money collected from a person for the composition of an offence will not exceed one half of the amount of the maximum fine prescribed for that offence;
- (b) to enable the Authority to compound offences under provisions of the Act that have been repealed; and
- (c) to provide for all composition sums collected by the Authority to be paid into the Consolidated Fund.

Clause 19 inserts new sections 99, 99A and 99B.

The new section 99 confers upon a court powers to prohibit the payment or transfer of moneys, investment products or other property, in certain circumstances.

The new section 99A enables the court, on the application of the Authority or a person whose interests are affected, to grant an injunction or interim injunction restraining a person from engaging in conduct that constitutes or would constitute a contravention of the Act, or to make an order or interim order requiring a person to do any act or thing that he is required by the Act to do.

The new section 99B requires the court, when making an order in any proceedings commenced by a claimant in a statutory cause of action under the new section 25(5A) (to be inserted by clause 6), the new section 26(1B) or (1C) (to be inserted by clause 7(a)) or section 27(3), to have regard to whether or not the claimant made a reasonable effort to minimise any loss or damage suffered by him, and to resolve the dispute before commencing those proceedings.

Clause 20(a) replaces section 104(2)(ab) so as to empower the Authority to make regulations for certain matters pertaining to the granting of an unsecured advance, unsecured loan or unsecured credit facility by a licensed financial adviser to certain persons. The regulations will specify —

- (a) what constitutes such an unsecured advance, unsecured loan or unsecured credit facility; and
- (b) the requirements and restrictions relating to the grant.

Clause 20(b) inserts new section 104(4)(aa) to expressly empower the Authority to make regulations containing provisions of a savings or transitional nature.

Clause 21 amends the Third Schedule to enable the Authority to appoint under section 65(1A) one or more of its officers to exercise the power to grant an exemption to any person under section 23(6A), 23B(2) or 37(2), or to revoke any such exemption.

Clause 22 provides for the making of regulations of a savings and transitional nature.

EXPENDITURE OF PUBLIC MONEY

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