



# THE STATUTES OF THE REPUBLIC OF SINGAPORE

## FINANCIAL ADVISERS ACT

### (CHAPTER 110)

Act  
43 of 2001

2002 Ed. Cap. 110

Amended by  
15 of 2003  
24 of 2003  
2 of 2005  
5 of 2005  
11 of 2005  
42 of 2005  
2 of 2007

**REVISED EDITION 2007**

(31st March 2007)

*Prepared and Published by*

THE LAW REVISION COMMISSION  
UNDER THE AUTHORITY OF  
THE REVISED EDITION OF THE LAWS ACT (CHAPTER 275)

# Financial Advisers Act

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An Act to regulate financial advisers and their representatives, and for other purposes relating thereto or connected therewith.

[2/2005]

[Section 105: 6th August 2002;  
Sections 1 to 104: 1st October 2002]

## PART I

### PRELIMINARY

#### Short title

1. This Act may be cited as the Financial Advisers Act.

#### Interpretation

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

“advocate and solicitor” means an advocate and solicitor of the Supreme Court or a foreign lawyer as defined in section 130A of the Legal Profession Act (Cap. 161);

“approved holding company” has the same meaning as in section 2 (1) of the Securities and Futures Act (Cap. 289);

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*Notes:*—Unless otherwise stated, the abbreviations used in the references to other Acts and statutory provisions are references to the following Acts and statutory provisions. The references are provided for convenience and are not part of the Act:

Aust. Corporations 2001	: Australia, Corporations Act 2001 (No. 50, 2001) as amended by the Australian Financial Services Reform Bill 2001
ASIC 2001	: Australia, Australian Securities and Investment Commission Act 2001
HK SF Bill	: Hong Kong, Securities and Futures Bill ( <i>Gazette</i> published on 24 November 2000, Legal Supplement No. 3)
UK FSMA 2000	: United Kingdom, Financial Services and Markets Act 2000 (Chapter c. 8)
BA	: Singapore, Banking Act (Chapter 19, 1999 Revised Edition)
FTA	: Singapore, Futures Trading Act (Chapter 116, 1996 Revised Edition — <i>repealed</i> )
Insurance Intermediaries	: Singapore, Insurance Intermediaries Act (Chapter 142A, 2000 Revised Edition — <i>repealed</i> )
SF Bill	: Singapore, Securities and Futures Bill (Bill 33/2001)
SIA	: Singapore, Securities Industry Act (Chapter 289, 1985 Revised Edition — <i>repealed</i> )
SIR	: Singapore, Securities Industry Regulations (Cap. 289, Rg. 1)

“auditor” means a public accountant who is registered or deemed to be registered under the Accountants Act (Cap. 2);

“Authority” means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186);

“book” includes any record, register, document or other record of information and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or by electronic process or otherwise;

“collective investment scheme” has the same meaning as in section 2 (1) of the Securities and Futures Act (Cap. 289);

“company” has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

“connected person”, in relation to —

(a) an individual, means —

(i) the individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister; and

(ii) a firm, a limited liability partnership or a corporation in which the individual or any of the persons mentioned in sub-paragraph (i) has control of not less than 20% of the voting power in the firm, limited liability partnership or corporation, whether such control is exercised individually or jointly; or

(b) a firm, a limited liability partnership or a corporation, means another firm, limited liability partnership or corporation in which the first-mentioned firm, limited liability partnership or corporation has control of not less than 20% of the voting power in that other firm, limited liability partnership or corporation,

and a reference in this Act to a person connected to another person shall be construed accordingly;

“corporation” has the same meaning as in section 4 (1) of the Companies Act;

“dealing in securities” has the same meaning as in section 2 (1) of the Securities and Futures Act (Cap. 289);

“director” has the same meaning as in section 4 (1) of the Companies Act;

“exempt financial adviser” means a financial adviser who is exempt under section 23 (1) from holding a financial adviser’s licence;

“financial adviser” means a person who carries on a business of providing any financial advisory service, but does not include any person specified in the First Schedule;

“financial adviser’s licence” means a licence granted or renewed under section 13 in respect of a financial adviser, and “licensed financial adviser” shall be construed accordingly;

“financial advisory service” means all or any of the services specified in the Second Schedule;

“financial year” has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

“firm” has the same meaning as in section 2 (1) of the Business Registration Act (Cap. 32);

“futures contract” means —

(a) a contract the effect of which is that —

(i) one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to another party at a specified future time and at a specified price payable at that time pursuant to the terms and conditions set out in the business rules or practices of a futures market; or

(ii) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of a specified commodity agreed at the time of the making of the contract and at a specified future time, such difference being determined in accordance with the business rules or practices of a futures market at which the contract is made,

and includes a futures option transaction within the meaning of section 2 (1) of the Securities and Futures Act (Cap. 289); or

- (b) such other contract or class of contracts as the Authority may prescribe;

“futures exchange” has the same meaning as in section 2 (1) of the Securities and Futures Act;

“investment product” means —

- (a) any capital markets product as defined in section 2 (1) of the Securities and Futures Act;
- (b) any life policy; or
- (c) any other product as may be prescribed;

“leveraged foreign exchange trading” has the same meaning as in section 2 (1) of the Securities and Futures Act;

“licence” means a financial adviser’s licence or representative’s licence, and “licensee” shall be construed accordingly;

“life policy” has the same meaning as in the First Schedule to the Insurance Act (Cap. 142), but does not include any contract of reinsurance;

“limited liability partnership” has the same meaning as in section 2 (1) of the Limited Liability Partnerships Act (Cap. 163A);

“manager” and “partner”, in relation to a limited liability partnership, have the respective meanings assigned to them in section 2 (1) of the Limited Liability Partnerships Act;

“newspaper” has the same meaning as in section 2 (1) of the Newspaper and Printing Presses Act (Cap. 206);

“officer” has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

“prescribed written law” means this Act, or any of the following written laws and any subsidiary legislation made thereunder:

- (a) Banking Act (Cap. 19);
- (b) Finance Companies Act (Cap. 108);
- (c) Insurance Act (Cap. 142);
- (d) Monetary Authority of Singapore Act (Cap. 186);

- (e) Money-changing and Remittance Businesses Act (Cap. 187);
  - (f) Securities and Futures Act (Cap. 289); or
  - (g) such other written law as the Authority may prescribe;
- “recognised market operator” has the same meaning as in section 2 (1) of the Securities and Futures Act;
- “registered insurer” means an insurer who is for the time being registered under section 8 of the Insurance Act;
- “related corporation” has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);
- “representative” means a person, in the direct employment of or acting for or by arrangement with a financial adviser, who performs for the financial adviser any of the functions of a financial adviser (other than work ordinarily performed by accountants, clerks or cashiers), whether his remuneration (if any) is by way of salary, wages, commission or otherwise, and includes an officer of the financial adviser who performs for the financial adviser any of those functions, whether or not his remuneration is as aforesaid;
- “representative’s licence” means a licence granted or renewed under section 13 in respect of a representative, and “licensed representative” shall be construed accordingly;
- “securities” has the same meaning as in section 2 (1) of the Securities and Futures Act;
- “securities exchange” has the same meaning as in section 2 (1) of the Securities and Futures Act;
- “share” has the same meaning as in section 4 (1) of the Companies Act;
- “substantial shareholder” has the same meaning as in Division 4 of Part IV of the Companies Act;
- “trading in futures contracts” has the same meaning as in section 2 (1) of the Securities and Futures Act;
- “voting share” has the same meaning as in section 4 (1) of the Companies Act;

“written direction” means a written direction issued under section 58.

[15/2003; 2/2005; 5/2005]

(2) The definitions in the First Schedule to the Insurance Act (Cap. 142) shall have effect for the construction of references to life policies in this Act.

### **Associated person**

**3.**—(1) Unless the context otherwise requires, any reference in this Act to a person associated with another person shall be construed as a reference to —

(a) where the other person is a corporation —

- (i) a director or secretary of the corporation;
- (ii) a related corporation; or
- (iii) a director or secretary of such a related corporation;

(b) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation, a person with whom the other person has entered into, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal, or express or implied —

- (i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the corporation;
- (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the corporation; or
- (iii) under which either of those persons may acquire from the other of them shares in the corporation or may be required to dispose of such shares in accordance with the directions of the other of them,

except that, in relation to a matter relating to shares in a corporation, a person may be an associate of the corporation and the corporation may be an associate of a person;

(c) a person with whom the other person is acting, or proposes to act, in concert in relation to the matter to which the reference relates;

- (d) where the matter to which the reference relates is a matter, other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation —
  - (i) subject to subsection (2), a person who is a director of a corporation of which the other person is a director; or
  - (ii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
- (e) a person with whom the other person is, according to any subsidiary legislation made under this Act, to be regarded as associated in respect of the matter to which the reference relates;
- (f) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
- (g) where the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as referred to in paragraph (a), (b), (c), (d), (e) or (f), that last-mentioned person.

(2) Where, in proceedings under this Act, it is alleged that a person referred to in subsection (1) (d) (i) was associated with another person at a particular time, the first-mentioned person shall not be considered to be so associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first-mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) A person shall not be taken to be associated with another person by virtue of subsection (1) (b), (c), (e) or (f) by reason only of one or more of the following:

- (a) that one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to his professional capacity or to his business relationship with the other person;

- (b) that one of those persons, a customer, gives specific instructions to the other, whose ordinary business includes dealing in securities, trading in futures contracts or leveraged foreign exchange trading, to acquire shares on the customer's behalf in the ordinary course of that business;
- (c) that one of those persons has sent, or proposes to send, to the other, a take-over offer, or has made, or proposes to make, offers under a take-over announcement, within the meaning of the Take-over Code issued under section 321 (1) of the Securities and Futures Act (Cap. 289), in relation to shares held by the other;
- (d) that one of those persons has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of a corporation.

[SIA, s. 3; SF Bill, Clause 3]

### **Interest in securities**

**4.—**(1) Subject to this section, a person has an interest in securities if he has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those securities.

(2) For the purposes of subsection (1), it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, particular securities is or is capable of being made subject to restraint or restriction.

(3) Where any property held in trust consists of or includes securities and a person knows, or has reasonable grounds for believing, that he has an interest under the trust, he shall be deemed to have an interest in those securities.

(4) Where a corporation has, or is by the provisions of this section deemed to have, an interest in a security and —

- (a) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person; or
  - (b) a person has a controlling interest in the corporation,
- that person shall be deemed to have an interest in that security.

(5) Where a corporation has, or is by the provisions of this section (apart from this subsection) deemed to have, an interest in a security and —

- (a) a person is;
- (b) the associates of a person are; or
- (c) a person and his associates are,

entitled to exercise or control the exercise of not less than 20% of the votes attached to the voting shares in the corporation, that person shall be deemed to have an interest in that security.

(6) For the purposes of subsection (5), a person is an associate of another person if the first-mentioned person is —

- (a) a related corporation of the second-mentioned person;
- (b) a person in accordance with whose directions, instructions or wishes the second-mentioned person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (4);
- (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security;
- (d) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security; or
- (e) a corporation in accordance with the directions, instructions or wishes of which, or of the directors of which, the second-mentioned person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.

(7) A person shall be deemed to have an interest in a security in any one or more of the following circumstances:

- (a) where he has entered into a contract to purchase a security;
- (b) where he has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;

- (c) where he has the right to acquire a security, or an interest in a security, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
- (d) where he is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he is the registered holder.

(8) A person shall be deemed to have an interest in a security if that security is held jointly with another person.

(9) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.

(10) There shall be disregarded —

- (a) an interest in a security if the interest is that of a person who holds the security as bare trustee;
- (b) an interest in a security if the interest is that of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
- (c) an interest of a person in a security if that interest is an interest held by him by reason of his holding a prescribed office;
- (d) an interest of a company in its own securities if that interest is purchased or otherwise acquired in accordance with sections 76B to 76G of the Companies Act (Cap. 50); and
- (e) a prescribed interest in a security being an interest of such person, or of a person included in such class of persons, as may be prescribed.

(11) An interest in a security shall not be disregarded by reason only of —

- (a) its remoteness;
- (b) the manner in which it arose; or

- (c) the fact that the exercise of a right conferred by the interest is or is capable of being made subject to restraint or restriction.

[SIA, s. 4; SF Bill, Clause 4]

### **Amendment of Schedules**

**5.—**(1) The Minister may from time to time, by order published in the *Gazette*, amend, add to or vary the First, Second or Third Schedule.

[15/2003]

(2) The Minister may, in any order made under subsection (1), make such incidental, consequential or supplementary provisions as may be necessary or expedient.

(3) Any order made under subsection (1) shall be presented to Parliament as soon as possible after publication in the *Gazette*.

## **PART II**

### **LICENSING OF FINANCIAL ADVISERS AND THEIR REPRESENTATIVES**

#### **Need for financial adviser's licence**

**6.—**(1) No person shall act as a financial adviser in Singapore in respect of any financial advisory service unless he —

- (a) is authorised to do so in respect of that financial advisory service by a financial adviser's licence; or  
(b) is an exempt financial adviser.

(2) For the purposes of subsection (1), a person shall be deemed to be acting as a financial adviser in Singapore if he engages in any activity or conduct that is intended to or likely to induce the public in Singapore or any section thereof to use any financial advisory service provided by the person, whether or not the activity or conduct is intended to or likely to have that effect outside Singapore.

(3) In determining whether a person is engaging in any activity or conduct that is intended to or likely to have the effect referred to in subsection (2), regard shall be had to such considerations as the Authority may prescribe.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 3 years or

to both and, in the case of a continuing offence, to a further fine not exceeding \$7,500 for every day or part thereof during which the offence continues after conviction.

[SIA, s. 26; Aust. Corporations 2001, Clause 911D]

### **Need for representative's licence**

**7.—**(1) No person shall act as or hold himself out to be a representative of a financial adviser unless the following conditions are satisfied:

- (a) that person is an individual;
- (b) where the financial adviser is a licensed financial adviser, that person holds a representative's licence that is related to that financial adviser; and
- (c) where the financial adviser is an exempt financial adviser, that person is a representative of that financial adviser.

[2/2005]

(2) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

[SIA, s. 27]

### **Application for grant or renewal of licence**

**8.—**(1) An application for the grant or renewal of a licence shall be —

- (a) made to the Authority in such form and manner as may be prescribed;
- (b) in the case of an application for the renewal of a licence, made not later than one month or such other period before the expiry of the licence (referred to in this section as the late renewal period) as the Authority may prescribe; and
- (c) accompanied by a non-refundable application fee of a prescribed amount, which shall be paid in the manner specified by the Authority.

[2/2005]

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

(3) An application for the grant of a representative's licence shall be supported by a person who is, or who has submitted an application to be, a licensed financial adviser.

[15/2003]

(3A) An application for the renewal of a representative's licence shall be supported by a person who is a licensed financial adviser.

[15/2003]

(4) An application for the grant of a representative's licence shall be deemed to be withdrawn with effect from the date on which the person who supported the application —

- (a) withdraws his support in writing;
- (b) withdraws his application for a financial adviser's licence; or
- (c) has his application for a financial adviser's licence refused by the Authority.

(5) An application for the renewal of a representative's licence shall be deemed to be withdrawn with effect from the date on which the person who supported the application withdraws his support in writing.

(6) Where a person submits an application for the renewal of his licence before or during the late renewal period, the licence shall continue in force until the date on which the licence is renewed or the application for its renewal is refused, as the case may be.

[15/2003]

(7) Where a person submits an application for the renewal of his licence during the late renewal period, the Authority may impose a late renewal fee not exceeding \$100 for every day or part thereof that the application for renewal is late, subject to a maximum of \$3,000.

[SF Bill, Clause 84]

### **Grounds for refusal to grant or renew financial adviser's licence**

**9.—**(1) The Authority may refuse an application for the grant or renewal of a financial adviser's licence if —

- (a) the applicant is not a corporation;
- (b) the applicant is unable to meet or continue to meet such minimum financial requirements or such other requirements as the Authority may prescribe, either generally or specifically;

- (c) the applicant does not have in force 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;
- (d) the applicant has not furnished the Authority with such information or documents as may be required under section 8 (2), or such other information or documents relating to it or any person employed by or associated with it for the purposes of its business or relating to any circumstance likely to affect its manner of conducting business as may be required by the Authority;
- (da) any information or document that is furnished by the applicant to the Authority is false or misleading;
- (e) the applicant or any of its substantial shareholders is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (f) a receiver, receiver and manager, judicial 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 or any of its substantial shareholders;
- (g) the applicant or any of its substantial shareholders has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
- (h) execution against the applicant or any of its substantial shareholders in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (i) the Authority is not satisfied as to the educational qualification or experience of the officers or employees of the applicant who are to perform duties in connection with the holding of the financial adviser's licence;
- (j) the Authority has reason to believe that the applicant, or any of its officers or employees, will not perform the functions of a financial adviser efficiently, honestly or fairly;
- (k) a prohibition order under section 59 has been made by the Authority, and remains in force, against the applicant;

- (l) the applicant or any of its substantial shareholders or officers —
    - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he acted fraudulently or dishonestly; or
    - (ii) has been convicted of an offence under this Act;
  - (m) the applicant fails to satisfy the Authority —
    - (i) that it is a fit and proper person to be licensed; or
    - (ii) that all of its officers, employees and substantial shareholders are fit and proper persons;
  - (n) the Authority has reason to believe that the applicant may not act in the best interests of its clients, having regard to the reputation, character, financial integrity and reliability of the applicant or any of its officers, employees or substantial shareholders;
  - (o) the Authority is not satisfied as to —
    - (i) the financial standing of the applicant or any of its substantial shareholders;
    - (ii) the manner in which the applicant's business is to be conducted; or
    - (iii) the record of past performance or expertise of the applicant, having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence;
  - (p) there are other circumstances which are likely —
    - (i) to lead to the improper conduct of business by the applicant, or any of its officers, employees or substantial shareholders; or
    - (ii) to reflect discredit on the manner of conduct of the business of the applicant or any of its substantial shareholders; or
  - (q) the Authority is of the opinion that it would be contrary to the public interest to grant or renew the licence.
- [15/2003; 2/2005]*
- (2) For the purposes of subsection (1) (c) —
- (a) the Authority may prescribe different amounts of cover under a professional indemnity insurance policy according

to the activities undertaken or to be undertaken by any applicant; and

- (b) “professional indemnity insurance policy” means a contract of insurance with an insurer under which a person is indemnified in respect of the liabilities arising out of or in the course of his business as a financial adviser.

(3) Subject to subsection (4), the Authority shall not refuse an application for the grant or renewal of a financial adviser’s licence without giving the applicant an opportunity to be heard.

(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.

[15/2003]

[Insurance Intermediaries, s. 17; SF Bill Clause 86]

### **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).

[15/2003]

(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).

[15/2003]

(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.

[15/2003]

[FTA, s. 24A]

### **Grounds for refusal to grant or renew representative's licence**

**11.—**(1) The Authority may refuse an application for the grant or renewal of a representative's licence if —

- (a) the applicant is not an individual;

- (b) the applicant is not a fit and proper person to be licensed;
- (c) the applicant has not furnished the Authority with such information or documents as may be required under section 8 (2);
- (ca) any information or document that is furnished by the applicant to the Authority is false or misleading;
- (d) the applicant is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) the applicant has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (f) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (g) the Authority is not satisfied as to the educational qualification or experience of the applicant, having regard to the nature of the duties of a licensed representative;
- (h) the Authority has reason to believe that the applicant will not perform the functions of a representative efficiently, honestly or fairly;
- (i) a prohibition order under section 59 has been made by the Authority, and remains in force, against the applicant;
- (j) the applicant —
  - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; or
  - (ii) has been convicted of an offence under this Act;
- (k) the Authority has reason to believe that the applicant may not act in the best interests of the clients of the financial adviser of which he is a representative, having regard to his reputation, character, financial integrity and reliability;
- (l) the Authority is not satisfied as to —
  - (i) the financial standing of the applicant; or
  - (ii) the record of past performance or expertise of the applicant;
- (m) there are other circumstances which are likely to lead to the improper conduct of business by, or which reflect discredit

on the manner of conduct of the business of, the applicant or any person employed by or associated with him for the purpose of his business;

- (n) the applicant is in arrears in the payment of such contributions on his own behalf as a self-employed person to the Central Provident Fund as are required under the Central Provident Fund Act (Cap. 36); or
- (o) the Authority is of the opinion that it would be contrary to the public interest to grant or renew the licence.

[2/2005]

(2) The Authority may, for the purposes of subsection (1) (g), specify in written directions the qualifications to be obtained by any class or description of applicants for representative's licences.

(3) Subject to subsection (4), the Authority shall not refuse an application for the grant or renewal of a representative's licence without giving the applicant an opportunity to be heard.

(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.

[15/2003]

[HK SF Bill, Clause 119]

### **Representative to act for only one financial adviser**

**12.—**(1) Subject to subsection (2), no licensed representative shall, at any one time, be a representative of more than one financial adviser.

(2) A licensed representative may be a representative of more than one financial adviser if the financial advisers are related corporations.

(3) Any licensed representative who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

### **Grant or renewal of licence**

**13.**—(1) The Authority may grant or renew any licence, subject to such conditions or restrictions as it thinks fit.

(2) Without prejudice to the generality of subsection (1), the Authority may —

- (a) in granting or renewing any licence, impose conditions or restrictions with respect to the type of financial advisory service which may or may not be provided by the licensee, described in such manner as the Authority may consider appropriate; or
- (b) in granting or renewing a representative's licence, relate the representative's licence to the financial adviser which supported the application for the licence.

(3) The Authority may at any time add to, vary or revoke any condition or restriction of a licence.

(4) Any licensed financial adviser which contravenes any condition or restriction imposed by the Authority under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(5) Any licensed representative who contravenes any condition or restriction imposed by the Authority under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

[SIA, s. 33]

### **Licence fees**

**14.**—(1) Every licensee shall pay to the Authority such licence fees as may be prescribed.

(2) Any licence fee paid to the Authority under this Act shall not be refunded or remitted if —

- (a) during the period to which the licence fee relates, the licence is revoked or suspended or lapses under section 19;
- (b) the licence fee is paid in relation to an application for the renewal of a licence and such application is withdrawn after the date on which, but for its renewal, the licence would have expired;
- (c) during the period to which the licence fee relates, the licensee fails or ceases to provide any financial advisory service; or
- (d) a prohibition order has been made against the licensee under section 59.

(3) Subject to subsection (2), the Authority may, where it considers appropriate, refund or remit the whole or part of any licence fee paid or payable to it.

[15/2003]

[SF Bill, Clause 85]

### **Period of licence**

**15.—**(1) Subject to subsection (2) and section 8 (6), a licence shall be in force for a period of 3 years, or such other period as the Authority may specify in writing to the licensee, from the date of its issue under this Act.

(2) A licence that has been renewed in accordance with the provisions of this Part shall continue in force for a period of 3 years, or such other period as the Authority may specify in writing to the licensee, from the date immediately following that on which, but for its renewal, the licence would have expired.

[SF Bill, Clause 89]

### **Variation of licence**

**16.—**(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.

[15/2003]

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

[15/2003]

(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 manner specified by the Authority; 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.

[15/2003; 2/2005]

(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 —

- (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.

[15/2003]

(3) The Authority may approve an application under subsection (1) subject to such conditions or restrictions as the Authority thinks fit, or may refuse the application on any of the grounds set out in section 9 (1) or 11 (1), as the case may be.

[2/2005]

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

[15/2003]

[SF Bill, Clause 90]

**False statements in relation to application for grant, renewal or variation of licence**

**17.** Any person who, in connection with an application for the grant, renewal or variation of a licence —

- (a) without reasonable excuse, makes any statement which is false or misleading in a material particular; or
- (b) without reasonable excuse, omits to state any matter or thing without which the application is misleading in a material respect,

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

[2/2005]

[SF Bill, Clause 92]

**Notification of change in particulars, etc.**

**18.—(1)** Where —

- (a) a licensed financial adviser ceases to act as a financial adviser; or
- (b) a change occurs in any matter in relation to a licensed financial adviser, particulars of which are required to be entered in the register of licensees under section 63,

the licensed financial adviser shall, not later than 14 days after the occurrence of that event, furnish particulars of the event to the Authority in the prescribed form.

(2) Where —

- (a) a licensed representative ceases to be the representative of a licensed financial adviser; or
- (b) a change occurs in any matter in relation to a licensed representative, particulars of which are required to be entered in the register of licensees under section 63,

the licensed representative shall, not later than 14 days after the occurrence of that event, furnish particulars of the event to the Authority in the prescribed form.

(3) A person who ceases to act as a licensed financial adviser or a licensed representative, as the case may be, shall return the licence to the Authority within 14 days of the date of the cessation.

[15/2003]

(4) Any person who, without reasonable excuse, contravenes this section shall be guilty of an offence.

[SF Bill, Clause 93]

### **Lapsing, revocation, suspension and expiry of licence**

**19.—**(1) A licence shall lapse —

- (a) in the case of a licensed financial adviser, if it is wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) in the case of a licensed representative, if he dies or becomes mentally incapacitated; or
- (c) in the event of such other occurrence or in such other circumstances as may be prescribed.

(2) The Authority may revoke a licence —

- (a) in the case of a licensed financial adviser, if —
  - (i) there exists a ground on which the Authority may refuse an application under section 9 (1);
  - (ii) the financial adviser has contravened any provision of this Act, or any condition or restriction imposed or any written direction given by the Authority under this Act;
  - (iii) it appears to the Authority that the financial adviser has failed to satisfy any of its obligations under or arising from this Act;
  - (iv) it appears to the Authority that the financial adviser is carrying on its business in a manner that is —
    - (A) likely to be detrimental to its clients; or
    - (B) contrary to the public interest;
- (iva) any information or document that is furnished by the financial adviser to the Authority is false or misleading; or
- (v) the financial adviser fails or ceases to carry on the business for which it was licensed; or

- (b) in the case of a licensed representative, if —
- (i) there exists a ground on which the Authority may refuse an application under section 11 (1);
  - (ii) the representative has contravened any provision of this Act, or any condition or restriction imposed or any written direction given by the Authority under this Act;
  - (iii) it appears to the Authority that the representative has failed to satisfy any of his obligations under or arising from this Act;
  - (iv) it appears to the Authority that the representative is carrying on his functions in a manner that is —
    - (A) likely to be detrimental to the clients of the financial adviser of which he is a representative;  
or
    - (B) contrary to the public interest;
  - (iva) any information or document that is furnished by the representative to the Authority is false or misleading;
  - (v) the representative fails or ceases to perform the functions for which he was licensed; or
  - (vi) the licence of the financial adviser of which he is a representative is revoked.

[2/2005]

- (3) The Authority may, if it considers it desirable to do so —
- (a) suspend a licence for a specific period instead of revoking it under subsection (2); and
  - (b) at any time extend or revoke the suspension.

(4) Subject to subsection (5), the Authority shall not revoke or suspend a licence under subsection (2) or (3), respectively, without giving the licensee an opportunity to be heard.

(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.

[15/2003]

(6) A person whose licence is revoked or suspended shall cease to act as a financial adviser or representative, as the case may be, from the date on which the revocation or suspension takes effect.

(7) A financial adviser whose licence is revoked or suspended shall immediately inform all of its representatives, in writing, of such revocation or suspension.

(8) Every representative who has been informed of the revocation or suspension of the licence of the financial adviser of which he is a representative shall —

- (a) in the case of revocation, immediately cease to act as a representative of the financial adviser; or

- (b) in the case of suspension, immediately cease to act as a representative of the financial adviser during the period of the suspension.

(9) Any lapsing, revocation, suspension or expiry of a licence shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement, relating to any investment product, entered into by the licensee, whether the agreement, transaction or arrangement was entered into before or after the lapsing, revocation, suspension or expiry of the licence; or
- (b) affect any right, obligation or liability arising under any agreement, transaction or arrangement referred to in paragraph (a).

(10) Any person who continues to act as a financial adviser in contravention of subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(11) Any person who continues to act as a representative in contravention of subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(12) Any financial adviser which contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(13) Any representative who contravenes subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

**Right of appeal**

**20.** Any person who is aggrieved —

- (a) by the refusal of the Authority to grant a licence to him, or to renew or vary his licence; or
- (b) by the revocation or suspension of his licence by the Authority,

may, within 30 days of the refusal, revocation or suspension, appeal in writing to the Minister.

[SF Bill, Clause 98]

[2/2005]

**Use of words “financial adviser” or “life insurance broker”**

**21.—**(1) No person, other than —

- (a) a licensed financial adviser;
- (b) an exempt financial adviser; or
- (c) a person, or a person belonging to a class of persons, approved by the Authority,

shall —

- (i) use the words “financial adviser” in any language, or any other word indicating that that person carries on business as a financial adviser, in the name, description or title under which it carries on business in Singapore; or
- (ii) make any representation to such effect in any bill head, letter paper, notice, advertisement, publication or writing, whether in electronic, print or other form.

(2) Nothing in this section shall prohibit —

- (a) a licensed representative of a licensed financial adviser; or
- (b) a representative of an exempt financial adviser,

from using the words “financial adviser” together with the word “representative” or any other word indicating that he is a representative of a financial adviser.

(3) No person, other than —

- (a) a licensed financial adviser which is authorised by its licence to provide any financial advisory service in respect of life policies;
- (b) an exempt financial adviser which provides any financial advisory service in respect of life policies; or

- (c) a person, or a person belonging to a class of persons, approved by the Authority,

shall —

- (i) use the words “life insurance broker” or any of its derivatives in any language, or any other word indicating that that person carries on business of providing any financial advisory service in respect of life policies, in the name, description or title under which he carries on business in Singapore; or
  - (ii) make any representation to such effect in any bill head, letter paper, notice, advertisement, publication or writing, whether in electronic, print or other form.
- (4) Nothing in this section shall prohibit —
- (a) a licensed representative of a licensed financial adviser which is authorised by his licence to provide any financial advisory service in respect of life policies; or
  - (b) a representative of an exempt financial adviser which provides any financial advisory service in respect of life policies,

from using the words “life insurance broker” together with the word “representative” or any other word indicating that he is a representative of a financial adviser providing any financial advisory service in respect of life policies.

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,500 and, in the case of a continuing offence, to a further fine not exceeding \$1,250 for every day or part thereof during which the offence continues after conviction.

*[Insurance Intermediaries, s. 14]*

### **Holding out as financial adviser**

**22.—**(1) No person shall hold himself out to be a financial adviser unless he is a licensed financial adviser, an exempt financial adviser or a person specified in the First Schedule.

(2) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$7,500 for every day or part thereof during which the offence continues after conviction.

*[Insurance Intermediaries, s. 13]*

**Exempt financial advisers and their representatives**

**23.**—(1) Subject to subsection (10), the following persons shall be exempt from holding a financial adviser's licence to act as a financial adviser in Singapore in respect of any financial advisory service:

- (a) a bank licensed under the Banking Act (Cap. 19);
- (b) a merchant bank approved as a financial institution and approved to carry on a business of providing any financial advisory service under the Monetary Authority of Singapore Act (Cap. 186);
- (c) a company or society registered under the Insurance Act (Cap. 142);
- (d) a holder of a capital markets services licence under the Securities and Futures Act (Cap. 289);
- (e) a finance company which has been granted an exemption from section 25 (2) of the Finance Companies Act (Cap. 108) to carry on a business of providing any financial advisory service;
- (ea) a securities exchange, a futures exchange, a recognised market operator, or an approved holding company, in respect of the provision of any financial advisory service that is solely incidental to its operation of a securities market, a futures market, or to its performance as an approved holding company, as the case may be; and
- (f) such other persons or classes of persons as may be prescribed.

[2/2005]

(2) *(Deleted by Act 2 of 2005)*

(3) *(Deleted by Act 2 of 2005)*

(4) Subject to the provisions of this Act, sections 25 to 29, 32, 33, 34 and 36 shall apply, with the necessary modifications, to an exempt financial adviser (other than a person referred to in subsection (1) (ea) or (f)) in respect of its business of providing any financial advisory service as if it is a licensed financial adviser.

[2/2005]

(5) Subject to the provisions of this Act, sections 12, 25, 26, 27, 29, 33, 34 and 36 shall apply, with the necessary modifications, to a representative of an exempt financial adviser (other than a person referred to in subsection (1) (ea) or (f)) in respect of his acting as such as if he is a licensed representative.

[2/2005]

(5A) Subject to the provisions of this Act, sections 25, 26 and 36 shall apply, with the necessary modifications, to —

- (a) a person referred to in subsection (1) (*ea*) in respect of its business of providing any financial advisory service as if it is a licensed financial adviser; and
- (b) any of its representatives in respect of his acting as such as if he is a licensed representative.

[2/2005]

(5B) Subject to the provisions of this Act, section 70 shall apply, with the necessary modifications, to —

- (a) an exempt financial adviser in respect of its business of providing any financial advisory service as if it is a licensed financial adviser; and
- (b) a representative of an exempt financial adviser in respect of his acting as such as if he is a licensed representative.

[2/2005]

(5C) For the avoidance of doubt, references in subsections (4), (5), (5A) and (5B) 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.

[2/2005]

(6) The Authority may, on the application of an exempt financial adviser (other than a person referred to in subsection (1) (*f*)), exempt it or any of its representatives from complying with any of the provisions referred to in subsection (4), (5), (5A) or (5B), as the case may be.

[15/2003; 2/2005]

(7) The Authority may prescribe or specify in written directions the provisions of this Act that apply to the persons referred to in subsection (1) (*f*) or their representatives.

[2/2005]

(8) An exemption granted under subsection (6) need not be published in the *Gazette*.

[2/2005]

(9) The Authority may prescribe or specify in written directions such conditions or restrictions as may be imposed on an exempt financial adviser or any of its representatives in relation to the provision of any financial advisory service as the Authority thinks fit.

(10) The Authority may withdraw an exemption granted to any person under this section if the person contravenes any provision of this Act, or if the Authority considers it necessary in the public interest.

(11) Where the Authority withdraws an exemption granted to any person under this section, the Authority need not give the person an opportunity to be heard.

(12) An exempt financial adviser which is aggrieved by the decision of the Authority to withdraw an exemption granted to it under this section may, within 30 days of the decision, appeal in writing to the Minister.

(13) A withdrawal under subsection (10) of an exemption granted to any person shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement, relating to any investment product entered into by the person, whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the exemption; or
- (b) affect any right, obligation or liability arising under any agreement, transaction or arrangement referred to in paragraph (a).

*[SF Bill, Clause 99]*

### **Annual fees**

**23A.**—(1) Every exempt financial adviser and representative of an exempt financial adviser shall pay to the Authority such annual fee as may be prescribed and in such manner as may be specified by the Authority.

*[2/2005]*

(2) Any annual fee paid by an exempt financial adviser or a representative of an exempt financial adviser to the Authority under subsection (1) shall not be refunded or remitted if —

- (a) during the period to which the annual fee relates, the exemption of the exempt financial adviser or representative, as the case may be, is withdrawn;
- (b) during the period to which the annual fee relates, the exempt financial adviser or representative, as the case may be, fails or ceases to provide any financial advisory service; or

- (c) a prohibition order has been made against the exempt financial adviser or representative, as the case may be, under section 59.

[2/2005]

- (3) Subject to subsection (2), the Authority may, where it considers appropriate, refund or remit the whole or part of any annual fee paid or payable to it.

[2/2005]

### PART III

#### CONDUCT OF BUSINESS

##### *Division 1 — General*

#### **Restriction on granting unsecured advances, loans or credit facilities to director, etc., of licensed financial adviser**

**24.—**(1) *(Deleted by Act 2 of 2005)*

(2) *(Deleted by Act 2 of 2005)*

- (3) No licensed financial adviser shall grant any unsecured advance, unsecured loan or unsecured credit facility —

- (a) to a director of the licensed financial adviser, other than a director who is its employee; or
- (b) to any other officer or an employee of the licensed financial adviser (including a director who is its employee) or any of its representatives which, in the aggregate and outstanding at any one time, exceeds \$3,000 or such other amount as may be prescribed.

- (4) For the purposes of this section —

- (a) “director” includes the spouse, father, step-father, mother, step-mother, son, adopted son, step-son, daughter, adopted daughter, step-daughter, brother, step-brother, sister or step-sister, of a director; and
- (b) the Authority may prescribe the items which constitute “unsecured advance”, “unsecured loan” or “unsecured credit facility”.

[2/2005]

- (5) Any licensed financial adviser which contravenes this section shall be guilty of an offence.

(6) This section shall have effect without prejudice to section 162 of the Companies Act (Cap. 50).

[FTA, s. 37D; SIA, s. 53; SIR, reg. 19; Insurance Intermediaries, s. 27]

### **Obligation to disclose product information to clients**

**25.—**(1) A licensee shall disclose, to every client and prospective client, all material information relating to any designated investment product that the licensee recommends to such person, including —

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

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

(3) The Authority may, in writing, require a licensee to submit to it —

- (a) all written communication which sets out information relating to any designated investment product for the time being in use by the licensee; and
- (b) where any written communication referred to in paragraph (a) is not in English, a translation of such written communication in English.

(4) If it appears to the Authority, after affording the licensee an opportunity to make representations orally or in writing, that any written communication submitted under subsection (3) contravenes

any provision of this Act, or is in any respect likely to mislead, the Authority may, in writing, direct the licensee to discontinue the use, in Singapore, of the written communication immediately or from a specified date.

(5) Any licensee who —

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both.

(6) In this section —

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

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

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

*[Insurance Intermediaries, ss. 5, 9; SIA, s. 50]*

### **Statements by licensees**

**26.—**(1) No licensee shall, with intent to deceive, make a false or misleading statement as to —

- (a) any amount that would be payable in respect of a proposed contract in respect of any investment product; or
- (b) the effect of any provision of a contract or a proposed contract in respect of any investment product.

(2) A reference in subsection (1) to the making of a misleading statement includes a reference to omitting to disclose any matter that is material to the statement.

(3) Any licensee who contravenes subsection (1) shall, notwithstanding that a contract does not come into being, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both.

*[Insurance Intermediaries, s. 6 (1), (2) and (5)]*

### **Recommendations by licensees**

**27.—**(1) No licensee shall make a recommendation with respect to any investment product to a person who may reasonably be expected to rely on the recommendation if the licensee does not have a reasonable basis for making the recommendation to the person.

(2) For the purposes of subsection (1), a licensee does not have a reasonable basis for making a recommendation to a person unless —

- (a) he has, for the purposes of ascertaining that the recommendation is appropriate, having regard to the information possessed by him concerning the investment objectives, financial situation and particular needs of the person, given such consideration to, and conducted such investigation of, the subject-matter of the recommendation as is reasonable in all the circumstances; and
- (b) the recommendation is based on the consideration and investigation referred to in paragraph (a).

(3) Where —

- (a) a licensee, in making a recommendation to a person, contravenes subsection (1);
  - (b) the person, in reliance on the recommendation, does a particular act, or refrains from doing a particular act;
  - (c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act, or to refrain from doing that act, as the case may be, in reliance on the recommendation; and
  - (d) the person suffers loss or damage as a result of doing that act, or refraining from doing that act, as the case may be,
- then, without prejudice to any other remedy available to that person, the licensee is liable to pay damages to that person in respect of that loss or damage.

(4) In this section, a reference to the making of a recommendation is a reference to the making of a recommendation expressly or by implication.

(5) This section shall not apply to any licensee or class of licensees in such circumstances or under such conditions as may be prescribed.

*[SF Bill, Clause 121]*

*[2/2005]*

### **Receipt of client's money or property**

**28.—**(1) Without prejudice to the generality of section 104 (1), the Authority may, by regulations —

- (a) determine the manner in which a licensee may receive or deal with client's money or property; or
- (b) prohibit licensees from receiving or dealing with client's money or property in specified circumstances or in relation to specified activities.

(2) A lien or claim on client's money or property in any account, which may be required to be established by any licensee under regulations made under subsection (1), shall be void unless the moneys in the account are for fees due and owing to the licensee.

(3) A charge or mortgage on client's money or property in any account, which may be required to be established by any licensee under regulations made under subsection (1), shall be void.

(4) In this section, "client's money or property" means money received or retained by, or property deposited with, a licensee in the course of his business as such for which he is liable to account to another person.

*[Insurance Intermediaries, s. 28 (8) and (9)]*

### **Obligation to furnish information to Authority**

**29.—**(1) The Authority may, in writing, require —

- (a) any licensed financial adviser to furnish it with information about any matter related to its business whether carried on in Singapore or elsewhere; or
- (b) any licensed representative to furnish it with information about any matter related to the business of the financial adviser of which he is a representative, whether carried on in Singapore or elsewhere,

if, in the opinion of the Authority, it requires the information for the discharge of its functions under this Act.

(2) A licensed financial adviser which, or a licensed representative who, has been required to furnish information to the Authority under subsection (1) shall comply with such requirement.

(3) Any person who, without reasonable excuse, contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

*[Insurance Intermediaries, s. 10]*

### **Saving for validity of transactions**

**30.**—(1) Subject to subsection (3), a contravention of any requirement of this Act (including requirements in regulations made for the purposes of this Act) does not affect the validity or enforceability of any agreement, transaction or arrangement.

(2) Failure to comply with any code, guideline, policy statement or practice note issued under section 64 does not affect the validity of any agreement, transaction or arrangement.

(3) Subsection (1) has effect subject to any express provision to the contrary in this Act or in any regulations made for the purposes of another provision of this Act.

(4) Without prejudice to the generality of section 104 (1), the regulations referred to in subsection (3) may provide that a contravention of any requirement of this Act has a specified effect on the validity or enforceability of any agreement, transaction or arrangement.

*[Aust. Corporations 2001, s. 1101H]*

## *Division 2 — Life Insurance*

### **Application of this Division**

**31.** This Division shall apply to licensees who provide any financial advisory service in respect of life policies.

**Insurance broking premium accounts**

**32.**—(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).

[15/2003]

(2) The Authority may prescribe, in relation to an account established under subsection (1) —

- (a) the types of moneys that must be paid into or withdrawn from such account;
- (b) the manner in which moneys should be paid into or withdrawn from such account;
- (c) the manner in which moneys held in such account are to be invested;
- (d) the manner in which the proceeds from the investment of moneys held in such account are to be distributed;
- (e) the rights and obligations of any party in relation to moneys held in such account; and
- (f) any other matter which the Authority considers to be incidental to or necessary for this section.

(3) A lien or claim on the moneys in any account established by any licensed financial adviser under subsection (1) shall be void unless the moneys in the account are for fees due and owing to the licensed financial adviser.

(4) A charge or mortgage on the moneys in any account established by any licensed financial adviser under subsection (1) shall be void.

(5) In this section, “moneys” means any sum received by a licensed financial adviser as agent for an insured or intending insured, including policy moneys, premiums and claims payments.

(6) Any licensed financial adviser which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

*[Insurance Intermediaries, s. 22]*

### **Negotiation and placement of risk with unregistered insurer**

**33.**—(1) Subject to subsection (4), no licensee shall, in the course of his business as such, negotiate any contract of insurance with an insurer (directly or indirectly) except with a registered insurer acting in the course of his business as such.

(2) The reference in subsection (1) to a contract of insurance shall not apply to —

- (a) reinsurance;
- (b) business relating to risks outside Singapore; or
- (c) such other risks as may be prescribed.

(3) In subsection (2) (b), “risks outside Singapore” means any risk which would be classified as an offshore policy as defined in the First Schedule to the Insurance Act (Cap. 142) had the risk been underwritten by a registered insurer in Singapore.

(4) Where in any particular case the Authority is satisfied that, by reason of the exceptional nature of the risk or other exceptional circumstances, it is not reasonably practicable to comply with subsection (1), the Authority may permit any licensee —

- (a) to negotiate the contract of insurance with such insurer as the licensee sees fit; and
- (b) if in the opinion of the Authority the case requires it, to effect the contract of insurance and receive the premium in Singapore on behalf of such insurer.

(5) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 3 years or to both.

*[Insurance Intermediaries, s. 23]*

### **Representations by licensees**

**34.**—(1) No licensee shall, with intent to deceive, in relation to a proposed contract of insurance —

- (a) write on a form, being a form that is given or sent to an insurer, any matter that is material to the contract and is false or misleading in a material particular;
- (b) omit to disclose to the insurer any matter that is material to the proposed contract;
- (c) advise or induce the intending insured to write on a form, being a form that is given or sent to the insurer, any matter that is false or misleading in a material particular; or
- (d) advise or induce the intending insured to omit to disclose to the insurer any matter that is material to the proposed contract.

(2) No licensee shall, with intent to deceive, in relation to a claim under a contract of insurance —

- (a) fill up, in whole or in part, a form, being a form that is given or sent to an insurer, in such a way that the form is false or misleading in a material particular;
- (b) omit to disclose to the insurer any matter that is material to the claim;
- (c) induce the insured to fill up, in whole or in part, a form, being a form that is given or sent to the insurer, in such a way that the form is false or misleading in a material particular; or
- (d) advise or induce the insured to omit to disclose to the insurer any matter that is material to the claim.

(3) Any licensee who contravenes this section shall, notwithstanding that a contract of insurance does not come into being, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both.

*[Insurance Intermediaries, s. 6 (3), (4) and (5)]*

### *Division 3 — Securities*

#### **Application of this Division**

**35.** This Division shall apply to licensees who provide any financial advisory service in respect of securities.

**Licensee to disclose certain interests in securities**

**36.**—(1) Where a licensee sends a circular or other similar written communication in which he makes a recommendation, whether expressly or by implication, with respect to any securities, he shall include in the circular or other communication, in type not less legible than that used in the remainder of the circular or other communication, a concise statement of the nature of any interest in, or any interest in the acquisition or disposal of, the securities that he, or a person associated with or connected to him, has at the date on which the circular or other communication is sent.

(2) Where a licensee is charged with an offence in respect of a contravention of subsection (1), it shall be a defence for the licensee to prove that, at the time the circular or other communication was sent, he was not aware and could not reasonably be expected to have been aware —

- (a) that he had an interest in, or an interest in the acquisition or disposal of, the securities; or
- (b) that the person associated with or connected to him had an interest in, or an interest in the acquisition or disposal of, the securities,

as the case may be.

(3) For the purposes of subsections (1) and (2) —

- (a) an interest of a person in the disposal of any securities includes any financial benefit or advantage that will, or is likely to, accrue directly or indirectly to the person, upon or arising out of the disposal of the securities;
- (b) without limiting the generality of paragraph (a), a person who has entered into an underwriting agreement in respect of any securities shall be deemed to have an interest in the acquisition or disposal of the securities; and
- (c) notwithstanding section 2 (1) or 3, a person is not connected to or associated with another person unless the person and the other person are acting jointly, or otherwise acting under or in accordance with an arrangement made between them, in relation to the sending of the circular or other communication.

(4) (*Deleted by Act 15 of 2003*)

(5) When a licensee sends to a person a circular or other communication to which subsection (1) applies, the licensee shall preserve a copy of the circular or other communication for 5 years.

[15/2003; 2/2007]

(6) For the purposes of this section, a circular or other communication sent to a person shall, if it is signed by an officer of a licensed financial adviser, be deemed to have been sent by the financial adviser.

(7) The Authority may, by regulations, exempt any person or class of persons, or any securities or class of securities, from the application of this section, subject to such terms or conditions as the Authority considers appropriate.

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

[SF Bill, Clause 120]

#### *Division 4 — Register of Interests in Securities*

### **Application of this Division**

**37.—**(1) This Division shall apply to —

- (a) relevant persons; and
- (b) financial journalists.

(2) In this Division —

- (a) “financial journalist” means a person who contributes advice concerning securities, or prepares analyses or reports concerning securities, for publication in a newspaper, but does not include such person or a person belonging to such class of persons as may be prescribed;
- (b) “relevant person” means any licensee who provides any financial advisory service in respect of securities and, for the purposes of section 39 (1) and (2) (a), any applicant for a licence to provide such a service; and
- (c) a reference to securities is a reference to securities which are listed for quotation, or quoted, on a securities exchange or recognised market operator.

[2/2005]

[SF Bill, Clause 130]

**Register of interests in securities**

**38.**—(1) A relevant person shall —

- (a) maintain in the prescribed form a register of his interests in securities;
- (b) enter in the register, within 7 days after the date that he acquires any interest in securities, particulars of the securities in which he has an interest and particulars of his interest in those securities; and
- (c) retain that entry in an easily accessible form for a period of not less than 5 years after the date on which such entry was first made.

[2/2007]

(2) Where there is a change (not being a prescribed change) in any interest in securities of a relevant person, he shall —

- (a) enter in the register, within 7 days after the date of the change, particulars of the change, including the date of the change and the circumstances by reason of which that change has occurred; and
- (b) retain that entry in an easily accessible form for a period of not less than 5 years after the date on which that entry was first made.

[15/2003; 2/2007]

(3) Any relevant person who contravenes this section shall be guilty of an offence.

[SF Bill, Clause 131]

**Notice of particulars to Authority**

**39.**—(1) A relevant person shall give notice to the Authority in the prescribed form of —

- (a) the place at which he will keep the register of his interests in securities or, if the register is in electronic form, the place at which full access to the register may be gained; and
  - (b) such other particulars as may be prescribed.
- (2) The notice under subsection (1) shall be given —
- (a) in the case of a person who is required by this Act to hold a licence, as part of his application for the licence; or
  - (b) in any other case, within 14 days after he becomes a relevant person.

(3) The notice under subsection (1) shall be given by a person notwithstanding that he has ceased to be a relevant person before the expiry of the period referred to in subsection (2) (b).

(4) A person who ceases to be a relevant person shall, within 14 days of his so ceasing, notify the Authority.

(5) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

*[SF Bill, Clause 132]*

### **Place at which register is kept**

**40.—**(1) A relevant person shall keep the register of his interests in securities —

(a) in the case of an individual, at his principal place of business; or

(b) in the case of a body corporate, at any of its places of business.

(2) Where a register of interests in securities is kept in electronic form, a relevant person shall be deemed to be in compliance with subsection (1) if he ensures that full access to the register in electronic form may be gained by the Authority at the place referred to in subsection (1) (a) or (b), as the case may be.

(3) Any relevant person who contravenes this section shall be guilty of an offence.

*[SF Bill, Clause 133]*

### **Defence to prosecution**

**41.—**(1) Where a person is charged with an offence under section 38 or 39, it shall be a defence for the person to prove —

(a) that his contravention was due to his not being aware of a fact or occurrence, the existence of which was necessary to constitute the offence; and

(b) that —

(i) he was not so aware on the date of the summons; or

(ii) he became so aware before the date of the summons and complied with the relevant section within 14 days after becoming so aware.

(2) For the purposes of subsection (1), a person shall, in the absence of proof to the contrary, be conclusively presumed to have been aware of a fact or occurrence at a particular time which an employee or agent of the person, being an employee or agent having duties or acting in relation to his employer's or principal's interest or interests in the securities concerned, was aware of at that time.

[SF Bill, Clause 134]

### **Production of register**

**42.**—(1) The Authority may require any relevant person to produce for its inspection the register of his interests in securities, and the Authority may make a copy of or take extracts from the register.

(2) Any relevant person who —

- (a) fails to produce the register of his interests in securities for inspection by the Authority; or
- (b) fails to allow the Authority to make a copy of or take extracts from the register,

shall be guilty of an offence.

[SF Bill, Clause 135]

### **Particulars of financial journalists**

**43.**—(1) The Authority may, by notice in writing, require the proprietor or publisher of a newspaper to supply the Authority with the name and address of any financial journalist who has contributed any advice, analysis or report concerning securities that has been published in the newspaper, within such period as may be specified in the notice.

(2) Any proprietor or publisher of a newspaper who, without reasonable excuse, contravenes a notice under subsection (1), shall be guilty of an offence.

[SIA, s. 46]

### **Extract of register**

**44.** The Authority may supply a copy of an extract of a register obtained under section 42 to any person who, in the opinion of the Authority, should in the public interest be informed of the dealing in securities disclosed in the register.

[SF Bill, Clause 136]

**PART IV****ACCOUNTS AND AUDIT***Division 1 — Accounts***Accounts to be kept by licensed financial advisers**

**45.—**(1) A licensed financial adviser shall prepare, and lodge with the Authority, such statements of accounts and other statements and in such form and manner as may be prescribed.

(2) A licensed financial adviser shall —

- (a) keep, or cause to be kept, such books as will sufficiently explain the transactions and financial position of the financial adviser in Singapore and enable true and fair profit and loss accounts and balance-sheets to be prepared from time to time; and
- (b) keep, or cause to be kept, such books, in such manner as will enable them to be conveniently and properly audited.

(3) A licensed financial adviser shall retain such books as may be required to be kept under this Act for such period as may be prescribed.

(4) An entry in the books of a licensed financial adviser required to be kept in accordance with this Division shall be deemed to have been made by, or with the authority of, the licensed financial adviser.

(5) Any licensed financial adviser which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(6) Any licensed financial adviser which contravenes subsection (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

*[Insurance Intermediaries, s. 28 (1) and (2); SF Bill, Clause 102 (1), (2) and (3)]*

**Duty of licensed financial advisor to furnish Authority with returns, records and information**

**46.—**(1) A licensed financial adviser shall —

- (a) furnish such returns and records, relating to its business, to the Authority in such form and manner as may be prescribed or as may be notified in writing by the Authority; and

- (b) furnish such information relating to its business as the Authority may require.

(2) Any licensed financial adviser which contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

[SF Bill, s. 102 (4)]

### *Division 2 — Audit*

#### **Appointment of auditors**

**47.**—(1) A licensed financial adviser shall appoint an auditor to audit its accounts and statements prepared under section 45 (1) and where, for any reason, the auditor ceases to act for such financial adviser, the financial adviser shall, as soon as practicable thereafter, appoint another auditor.

(2) Any licensed financial adviser which contravenes this section shall be guilty of an offence.

[SF Bill, Clause 106]

#### **Lodgment of annual accounts, etc., by licensed financial adviser**

**48.**—(1) A licensed financial adviser shall, in respect of each financial year —

- (a) prepare a true and fair profit and loss account and a balance-sheet made up to the last day of the financial year; and
- (b) lodge that account and balance-sheet with the Authority within 5 months, or such extension thereof permitted by the Authority under subsection (2), after the end of the financial year, together with a report in the prescribed form of an auditor appointed under section 47 on the account and balance-sheet and such other statements lodged under section 45 (1).

(2) Where an application for an extension of the period of 5 months specified in subsection (1) has been made by a licensed financial adviser to the Authority and the Authority is satisfied that there is any special reason for requiring the extension, the Authority may extend the period by not more than 4 months, subject to such conditions as the Authority may think fit to impose.

(3) Notwithstanding any other provision of this Act or the provisions of the Companies Act (Cap. 50), the Authority may, if it is not satisfied with the performance of duties by an auditor appointed by a licensed financial adviser under section 47 —

- (a) at any time direct the licensed financial adviser to remove the auditor; and
- (b) direct the licensed financial adviser, as soon as practicable thereafter, to appoint another auditor,

and the licensed financial adviser shall comply with such direction.

(4) *(Deleted by Act 2 of 2005)*

(5) Any licensed financial adviser which contravenes subsection (1) (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 for every day or part thereof that the lodgment is late, subject to a maximum of \$50,000.

(6) Any licensed financial adviser which contravenes any condition imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(7) Any licensed financial adviser which contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(8) *(Deleted by Act 2 of 2005)*

*[SF Bill, Clause 107]*

### **Reports by auditor to Authority in certain cases**

**49.—**(1) Where, in the performance of his duties as an auditor for a licensed financial adviser, an auditor becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the financial adviser to a material extent;
- (b) any matter which, in his opinion, constitutes or may constitute a contravention of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts, including any irregularity that jeopardises the moneys or other assets of the clients of the financial adviser,

the auditor shall immediately thereafter submit a report in writing of the matter or the irregularity to the Authority.

(2) The Authority may impose all or any of the following duties on an auditor for a licensed financial adviser:

- (a) a duty to submit to the Authority such additional information in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge or extend the scope of his audit of the business and affairs of the financial adviser;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report to the Authority on any of the matters referred to in paragraphs (b) and (c),

and the auditor shall carry out such duty or duties.

(3) The licensed financial adviser shall remunerate the auditor in respect of the discharge of such duty or duties as the Authority may impose on the auditor under subsection (2).

(4) Any auditor who contravenes subsection (1) or (2) shall be guilty of an offence.

(5) Any licensed financial adviser which contravenes subsection (3) shall be guilty of an offence.

*[SF Bill, Clause 108 and 115]*

### **Power of Authority to appoint auditor**

**50.—**(1) Where —

- (a) a licensed financial adviser fails to lodge an auditor's report under section 48 (1) (b); or
- (b) the Authority receives a report under section 49 (1),

the Authority may, without prejudice to its powers under section 49 (2), if it is satisfied that it is in the interests of the financial adviser, its clients or the general public to do so, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books of the financial adviser.

(2) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (1) should be borne by the licensed financial adviser, the Authority may, in writing, direct the licensed financial adviser to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(3) Where a licensed financial adviser fails to comply with a direction under subsection (2) to pay the specified amount or any part thereof, such amount may be sued for and recovered by the Authority as a civil debt.

(4) An auditor appointed under subsection (1) shall, on the conclusion of the examination and audit, submit a report thereon to the Authority.

(5) Any auditor who contravenes subsection (4) shall be guilty of an offence.

*[SF Bill, Clause 109]*

### **Powers of auditor appointed by Authority**

**51.—**(1) An auditor appointed by the Authority under section 50 (1) may, for the purpose of carrying out an examination and audit —

- (a) examine, on oath or affirmation, any officer, employee or agent of the licensed financial adviser, or any other auditor for the licensed financial adviser appointed under this Act;
- (b) require any officer, employee or agent of the licensed financial adviser, or any other auditor for the licensed financial adviser appointed under this Act, to produce any of the books held by or on behalf of the licensed financial adviser relating to its business, or to make copies of or take extracts from, or retain possession of, such books for such period as may be necessary to enable them to be inspected;
- (c) employ such persons as he considers necessary to assist him in carrying out the examination and audit; and
- (d) authorise in writing any person employed by him to do, in relation to the examination and audit, any act or thing that he could do as an auditor under this subsection, other than the examination of a person on oath or affirmation.

(2) Any person who, without reasonable excuse, refuses or fails to answer any question put to him, or fails to comply with any request made to him, by an auditor appointed under section 50 (1) or a person authorised under subsection (1) (d) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both.

*[SF Bill, Clause 110]*

**Restriction on auditor's and employee's right to communicate certain matters**

**52.**—(1) Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor carrying out any duty imposed under section 49 (2) or appointed under section 50 (1), and any employee of such auditor, shall not disclose any information which may come to his knowledge or possession in the course of performing his duties as such auditor or employee, as the case may be, to any person other than —

(a) the Authority; and

(b) in the case of an employee of such auditor, the auditor.

(2) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction —

(a) in the case of an auditor, to a fine not exceeding \$50,000; or

(b) in the case of an employee of an auditor, to a fine not exceeding \$25,000.

[SF Bill, Clause 113]

**Defamation**

**53.**—(1) No auditor or employee of such auditor shall, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of —

(a) any statement made orally or in writing in the discharge of his duties under this Part; or

(b) the submission of any report to the Authority under section 49 (1) or (2) (d) or 50 (4).

(2) Subsection (1) shall not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his employee has as a defendant in an action for defamation.

[SF Bill, Clause 116]

**Offence to destroy, conceal, alter, etc., records**

**54.**—(1) Any person who, with intent to prevent, delay or obstruct the carrying out of any examination or audit under this Part —

(a) destroys, conceals or alters any book relating to the business of a licensed financial adviser; or

- (b) sends, or conspires with any other person to send, out of Singapore, any book or asset of any description belonging to, in the possession of or under the control of the licensed financial adviser,

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

(2) If, in any proceedings for an offence under subsection (1), it is proved that the person charged with the offence —

- (a) destroyed, concealed or altered any book referred to in subsection (1) (a); or
- (b) sent, or conspired to send, out of Singapore, any book or asset referred to in subsection (1) (b),

the onus of proving that, in so doing, he did not act with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Part shall lie on him.

*[SF Bill, Clause 111]*

### **Safeguarding of records by licensed financial adviser**

**55.—**(1) A licensed financial adviser shall take reasonable steps —

- (a) to prevent falsification of the books required to be kept by it under this Act; and
- (b) to facilitate the discovery of any falsification of any such book.

(2) Any licensed financial adviser which contravenes this section shall be guilty of an offence.

*[SF Bill, Clause 112]*

## **PART V**

### **POWERS OF AUTHORITY**

#### **Approval of chief executive officer and director of licensed financial adviser**

**56.—**(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.

[15/2003]

(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.

[15/2003]

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether to grant its approval under subsection (1), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) Subject to subsection (4), the Authority shall not refuse an application for approval under subsection (1) without giving the licensed financial adviser an opportunity to be heard.

(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.

[15/2003]

(5) Where the Authority refuses an application for approval under subsection (1), the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(6) Any licensed financial adviser which is aggrieved by the decision of the Authority under subsection (1) may, within 30 days of the decision of the Authority, appeal in writing to the Minister.

(7) Any licensed financial adviser which, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(8) In this section, “chief executive officer” means any person, by whatever name described, who is —

- (a) in the direct employment of, or acting for or by arrangement with, a licensed financial adviser; and
- (b) principally responsible for the management and conduct of any type of business of the financial adviser in Singapore.

*[SF Bill, Clause 96]*

### **Removal of officer of licensed financial adviser**

**57.—**(1) Where the Authority is satisfied that an officer of a licensed financial adviser —

- (a) has wilfully contravened or wilfully caused that licensed financial adviser to contravene any provision of this Act;
- (b) has, without reasonable excuse, failed to secure compliance with this Act;
- (c) has failed to discharge the duties of his office;
- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (f) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (fa) has had a prohibition order under section 59 made by the Authority against him that remains in force; or
- (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly,

then the Authority may, if it thinks it necessary in the public interest or for the protection of investors or policy owners, direct, by notice

in writing, the licensed financial adviser to remove from its office or employment the officer, and the licensed financial adviser shall comply with such notice.

[15/2003; 2/2005]

(2) Without prejudice to any other matter that the Authority may consider relevant, that Authority shall, in determining whether an officer of a licensed financial adviser has failed to discharge the duties of his office under subsection (1) (c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) Subject to subsection (4), the Authority shall not direct a licensed financial adviser to remove from its office or employment an officer under subsection (1) without giving the licensed financial adviser an opportunity to be heard.

(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.

[15/2003]

(5) Where the Authority directs a licensed financial adviser to remove from its office or employment an officer under subsection (1), the Authority need not give that officer an opportunity to be heard.

(6) Any licensed financial adviser which is aggrieved by the direction of the Authority to remove from its office or employment an officer under subsection (1) may, within 30 days of the decision of the Authority, appeal in writing to the Minister.

(7) Any licensed financial adviser which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(8) No criminal or civil liability shall be incurred by a licensed financial adviser, or any person acting on behalf of the licensed financial adviser, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(9) Nothing in section 152 of the Companies Act (Cap. 50) shall prevent the Authority from exercising any power under subsection (1).

*[SF Bill, Clause 97]*

### **Power of Authority to issue written directions**

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

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

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

*[15/2003; 2/2005]*

(2) Without prejudice to the generality of subsection (1), written directions may be issued —

- (a) with respect to —
  - (i) the standards to be maintained by —
    - (A) a licensee;
    - (B) any person exempt under section 23 or 100; or
    - (C) any representative of a person exempt under section 23,  
in the conduct of his business, including the provision of any financial advisory service to any person outside Singapore and the duties to be undertaken when making recommendations to clients in respect of investment products;
  - (ii) the type and frequency of financial returns and other information to be submitted to the Authority;

- (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;
- (b) where any person is contravening, is likely to contravene or has contravened, any provision of this Act, to require the person —
- (i) to comply with that provision or to cease contravention of that provision;
  - (ii) to take such action necessary to enable him to conduct his business in accordance with sound principles;
  - (iii) where the person is a corporation, to remove any of its directors;
  - (iv) to remove any person whom the Authority considers unfit to be associated with him;
  - (v) to take action as to the disposition or recovery of assets;
  - (vi) to take any available step for the recovery of sums which appear to the Authority to have been improperly paid; or
  - (vii) to make good any default committed by him; or
- (c) for any other purpose specified in this Act.

[15/2003; 2/2005]

(3) For the avoidance of doubt, any written direction issued under subsection (1) shall be deemed not to be subsidiary legislation.

(4) The Authority may at any time vary, rescind or revoke any written direction issued under subsection (1).

(5) Any person who fails to comply with any requirement specified in a written direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

[2/2005]

(6) In this section, “written direction” includes a circular or notice.

[SF Bill, Clause 101]

**Power of Authority to make prohibition orders**

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

- (a) the Authority suspends or revokes the licence held by the person;
- (b) where the person is an exempt financial adviser or a representative of an exempt financial adviser, the Authority has reason to believe that circumstances exist under which, if the person were a licensee, there would exist a ground on which the Authority may revoke his licence under section 19 (2);
- (c) the Authority has reason to believe that the person is contravening, is likely to contravene or has contravened, any provision of this Act;
- (d) the person has been convicted of an offence under this Act or has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
- (e) the person has been convicted of an offence involving the contravention of any law or requirement of a foreign country or territory relating to any financial advisory service provided by that person.

[2/2005]

(2) A prohibition order made under subsection (1) may —

- (a) prohibit the person from providing any financial advisory service, or from providing such financial advisory service in specified circumstances or capacities, whether permanently or for a specified period; and
- (b) include a provision allowing the person, subject to any condition specified in the order —
  - (i) to do specified acts; or
  - (ii) to do specified acts in specified circumstances,that the order would otherwise prohibit him from doing.

(3) The Authority shall not make a prohibition order against a person without giving the person an opportunity to be heard.

(4) Any person who is aggrieved by the decision of the Authority to make a prohibition order against him may, within 30 days of the decision, appeal in writing to the Minister.

*[Aust. Corporations 2001, Clauses 920A, 920B]*

### **Effect of prohibition orders**

**60.**—(1) A person against whom a prohibition order is made shall comply with the prohibition order.

(2) No licensed financial adviser or exempt financial adviser shall employ or otherwise deal with any representative against whom a prohibition order has been made under section 59 to the extent that such employment or dealing is prohibited by the order.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) Any licensed financial adviser or exempt financial adviser which contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

*[Aust. Corporations 2001, Clause 920C]*

### **Variation or revocation of prohibition orders**

**61.**—(1) The Authority may vary or revoke a prohibition order, by giving written notice to the person against whom the order was made, if the Authority is satisfied that it is appropriate to do so because of a change in any of the circumstances based on which the Authority made the order.

(2) The Authority may vary or revoke a prohibition order under subsection (1) —

(a) on its own initiative; or

(b) if the person against whom the order was made lodges with the Authority an application for the Authority to do so, accompanied by such document or fee as may be prescribed.

(3) The Authority shall not vary a prohibition order made against a person under subsection (2) (a) without giving the person an opportunity to be heard.

(4) Any person who is aggrieved by the decision of the Authority to vary a prohibition order made against him under subsection (2) (a) may, within 30 days of the decision, appeal in writing to the Minister.

*[Aust. Corporations 2001, Clause 920D]*

### **Date of effect of prohibition orders**

**62.** A prohibition order, or any variation or revocation of a prohibition order, shall take effect on a date as specified in the order by the Authority.

*[Aust. Corporations 2001, Clause 920E]*

### **Registers**

**63.—**(1) The Authority shall establish and maintain one or more registers in respect of the following persons:

- (a) licensees;
- (b) officers removed by licensed financial advisers as directed by the Authority in the exercise of its powers under section 57;
- (c) persons against whom any prohibition order is made under section 59; and
- (d) such other persons as may be prescribed.

(2) The Authority may prescribe the manner in which the registers are established or maintained, including the details or particulars required to be entered in the registers.

(3) Any person may, upon payment of such fee as may be prescribed, inspect and take an extract from the registers established under subsection (1), and any such extract, certified by the Authority to be a true copy, shall be admissible as evidence in any legal proceedings.

*[Aust. Corporations 2001, Clauses 922A, 922B]*

### **Codes, guidelines, etc., by Authority**

**64.—**(1) The Authority may issue, and in its discretion publish by notification in the *Gazette* or in any other manner it considers appropriate, such codes, guidelines, policy statements, practice notes and no-action letters as it considers appropriate for providing guidance —

- (a) in furtherance of its regulatory objectives;
- (b) in relation to any matter relating to any of the functions of the Authority under this Act; or
- (c) in relation to the operation of any of the provisions of this Act.

(2) The Authority may, at any time, amend or revoke the whole or any part of any code, guideline, policy statement, practice note or no-action letter issued under this section.

(3) Where amendments are made under subsection (2) —

(a) the other provisions of this section shall apply, with the necessary modifications, to such amendments as they apply to the code, guideline, policy statement, practice note or no-action letter; and

(b) any reference in this Act or any other written law to the code, guideline, policy statement, practice note or no-action letter, however expressed, shall, unless the context otherwise requires, be a reference to the code, guideline, policy statement, practice note or no-action letter as so amended.

(4) Any person who fails to comply with any of the provisions of a code, guideline, policy statement or practice note issued under this section that applies to him shall not of itself render that person liable to criminal proceedings, but any such failure may, in any proceedings, whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or negate any liability which is in question in the proceedings.

(5) The issue by the Authority of a no-action letter shall not of itself prevent the institution of any proceedings against any person for the contravention of any provision of this Act.

(6) Any code, guideline, policy statement or practice note issued under this section may be of general or specific application, and may specify that different provisions thereof apply to different circumstances or provide for different cases or classes of cases.

(7) For the avoidance of doubt, any code, guideline, policy statement, practice note or no-action letter issued under this section shall be deemed not to be subsidiary legislation.

(8) In this section, a no-action letter means a letter written by the Authority to a person to the effect that, if the facts are as represented by the person, the Authority will not institute proceedings against the person in respect of a particular state of affairs or particular conduct.

*[HK SF Bill, Clause 385; SF Bill, Clause 321]*

**Appointment of assistants**

**65.**—(1) Subject to subsection (1A), the Authority may appoint any person to exercise any of its powers or perform any of its functions or duties under this Act, either generally or in any particular case, except the power to make subsidiary legislation.

[15/2003]

(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.

[15/2003]

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

[SF Bill, Clause 320]

**General provisions as to winding up**

**66.**—(1) The persons who may apply under the Companies Act (Cap. 50) for the winding up of the affairs of a licensed financial adviser, or for the continuance of the winding up of the affairs of a licensed financial adviser subject to the supervision of the court, shall include the Authority.

[42/2005]

(2) The Authority may, in accordance with the provisions of the Companies Act, apply for the winding up of a licensed financial adviser if the licensed financial adviser has contravened any of the provisions of this Act.

[42/2005]

(3) The Authority shall be a party to any proceedings under the Companies Act relating to the winding up of the affairs of a licensed financial adviser.

(4) The liquidator in any winding up referred to in subsection (3) shall give the Authority such information as it may, from time to time, require about the affairs of the licensed financial adviser.

(5) Any liquidator who contravenes subsection (4) shall be guilty of an offence.

[Insurance Intermediaries, s. 33]

**Power of Authority to publish information**

**67.** The Authority may, from time to time and in such form or manner as it considers appropriate, publish information relating to all or any of the following:

- (a) the lapsing, revocation or suspension of the licence of any person under section 19;
- (b) the removal of any officer under section 57;
- (c) the making of any prohibition order against any person under section 59;
- (d) the acceptance by any person of an offer to compound an offence under section 89;
- (e) the reprimand of any person under section 97;
- (f) the revocation or withdrawal of any exemption granted under this Act;
- (g) the conviction of any person for any offence under this Act;
- (h) the conviction of any licensee for any offence, whether in Singapore or elsewhere;
- (i) any other action as may have been taken by the Authority against any person under this Act,

and any other information as the Authority may consider necessary or expedient to publish in the public interest.

**PART VI****SUPERVISION AND INVESTIGATION***Division 1 — General***Self-incrimination**

**68.—(1)** A person is not excused from disclosing information to the Authority, pursuant to a requirement made of him under this Part, on the ground that the disclosure of the information might tend to incriminate him.

(2) Where a person claims, before making a statement disclosing information that he is required to disclose by a requirement made of him under this Part, that the statement might tend to incriminate him, that statement shall not be admissible in evidence against him in criminal proceedings other than proceedings under this section.

*[SF Bill, Clause 153 (1)]*

**Savings for advocates and solicitors**

**69.—**(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.

[15/2003]

(2) An advocate and solicitor who refuses to disclose the information or produce the document or other material referred to in subsection (1) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

[15/2003]

(3) Any advocate and solicitor who contravenes subsection (2) shall be guilty of an offence.

[SF Bill, Clause 153 (2)]

*Division 2 — Inspection Powers of Authority*

**Inspection by Authority**

**70.—**(1) The Authority may from time to time inspect, under conditions of secrecy, the books of a licensee.

(2) For the purposes of an inspection under this section —

- (a) the licensee, and any person who is in possession of the books of the licensee, shall produce such books to the Authority and give such information or facilities as may be required by the Authority;
- (b) the licensee shall procure that any person who is in possession of its books produce the books to the Authority and give such information or facilities as may be required by the Authority; and
- (c) the Authority may —
  - (i) make copies of, or take possession of, any of such books;
  - (ii) use, or permit the use of, any of such books for the purposes of any proceedings under this Act; and

(iii) retain possession of any of such books for so long as is necessary —

- (A) for the purposes of exercising a power conferred by this section (other than subsection (4));
- (B) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such books; or
- (C) for such proceedings to be commenced and carried on.

(3) No person shall be entitled, as against the Authority, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(4) While the books of a licensee are in the possession of the Authority, the Authority —

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

(5) The Authority may require a person who produced any book to the Authority to explain, to the best of his knowledge and belief, any matter about the compilation of the book or to which the book relates.

(6) Any person who fails, without reasonable excuse, to comply with subsection (2) or a requirement of the Authority under subsection (5) 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 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

[SF Bill, Clause 150]

### *Division 3 — Investigative Powers of Authority*

#### **Investigation by Authority**

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

- (a) to perform any of the Authority's functions under this Act;

- (b) to ensure compliance with this Act or any written direction issued under this Act; or
- (c) to investigate an alleged or suspected contravention of any provision of this Act.

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

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

(4) Any person who complies with a requirement imposed by the Authority in the exercise of its powers under this Division shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

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

- (a) providing information or producing books to the Authority if he had provided the information or produced the books in good faith in compliance with a requirement imposed by the Authority under this Division; or
- (b) doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with a requirement imposed by the Authority under this Division.

[SF Bill, Clause 152]

### **Power to order production of books**

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

[SF Bill, Clause 163]

**Application for warrant to seize books not produced**

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

- (a) which has not been produced in compliance with that requirement; or
- (b) which the Authority has reasonable grounds to believe will not be produced in compliance with that requirement,

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

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

- (a) which has not been produced in compliance with that requirement; or
- (b) which the Magistrate has reasonable grounds to suspect will not be produced in compliance with that requirement,

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

- (i) to enter and search the premises and to break open and search anything, whether a fixture or not, in the premises; and
- (ii) to take possession of, or secure against interference, any book that appears to be a book the production of which was so required.

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

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

*[SF Bill, Clause 164]*

**Powers where books are produced or seized**

**74.—**(1) This section shall apply where —

- (a) books are produced to the Authority under a requirement imposed under section 72;
- (b) under a warrant issued under section 73, the Authority or a person named therein —
  - (i) takes possession of books; or
  - (ii) secures books against interference; or
- (c) under a previous application of subsection (6), books are delivered into the possession of the Authority or a person authorised by it.

(2) If subsection (1) (a) applies, the Authority may take possession of any of the books.

(3) The Authority or, where applicable, a person referred to in subsection (1) (b) may —

- (a) inspect, and make copies of, or take extracts from, any of the books;
- (b) use, or permit the use of, any of the books for the purposes of any proceedings; and
- (c) retain possession of any of the books for so long as is necessary —
  - (i) for the purposes of exercising a power conferred by this section (other than subsection (5));
  - (ii) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such book; or
  - (iii) for such proceedings to be commenced and carried on.

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

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

- (a) shall permit another person to inspect at all reasonable times such of the books (if any) as the second-mentioned person

would be entitled to inspect if they were not in the possession of the Authority or the first-mentioned person; and

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

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

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

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

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

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

[SF Bill, Clause 165; ASIC 2001, s. 37]

### **Powers where books not produced**

**75.** Where a person fails to comply with a requirement imposed by the Authority under section 72 to produce any book, the Authority may require the person to state, to the best of his knowledge and belief —

(a) the place where such book may be found; or

(b) the person who last had possession, custody or control of such book and the place where that person may be found.

[SF Bill, Clause 166; ASIC 2001, s. 38]

### **Offences under this Division**

**76.—**(1) Any person who, without reasonable excuse, refuses or fails to comply with a requirement imposed under section 72, 74 (7) or 75 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) Any person who, in purported compliance with a requirement imposed under section 72, 74 (7) or 75, furnishes information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine

not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

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

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

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

(6) The occupier, or person in charge, of the premises that a person enters under a warrant issued under section 73 who fails to provide to that person all reasonable facilities and assistance for the effective exercise of his powers under the warrant shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

*[SF Bill, Clause 168; ASIC 2001, ss. 63–67]*

## PART VII

### ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

#### **Interpretation of this Part**

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

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

“enforcement” means the taking of any action to enforce a law or regulatory requirement against a specified person, being a law or regulatory requirement that relates to any financial

advisory service in the foreign country of the regulatory authority concerned;

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

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

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

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

“relevant day” means —

- (a) in relation to any financial advisory service in respect of securities or futures contracts, 6th March 2000; or
- (b) in relation to any other financial advisory service, 1st October 2002;

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

[SF Bill, Clause 169]

### **Conditions for provision of assistance**

**78.—**(1) The Authority may provide the assistance referred to in section 80 to a regulatory authority of a foreign country if the Authority is satisfied that all of the following conditions are fulfilled:

- (a) the request by the regulatory authority for assistance is received by the Authority on or after the relevant day;
- (b) the assistance is intended to enable the regulatory authority, or any other authority of the foreign country, to carry out supervision, investigation or enforcement;

- (c) the contravention of the law or regulatory requirement to which the request relates took place on or after the relevant day;
  - (d) the regulatory authority has given a written undertaking that any material or copy thereof obtained pursuant to its request shall not be used for any purpose other than a purpose that is specified in the request and approved by the Authority;
  - (e) the regulatory authority has given a written undertaking not to disclose to a third party (other than a designated third party of the foreign country in accordance with paragraph (f)) any material received pursuant to the request unless the regulatory authority is compelled to do so by the law or a court of the foreign country;
  - (f) the regulatory authority has given a written undertaking to obtain the prior consent of the Authority before disclosing any material received pursuant to the request to a designated third party, and to make such disclosure only in accordance with such conditions as may be imposed by the Authority;
  - (g) the material requested for is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means;
  - (h) the matter to which the request relates is of sufficient gravity; and
  - (i) the rendering of assistance will not be contrary to the public interest or the interest of the investing public or policy owners.
- (2) For the purposes of subsection (1) (e) and (f), “designated third party”, in relation to a foreign country, means —
- (a) any person or body responsible for supervising the regulatory authority in question;
  - (b) any authority of the foreign country responsible for carrying out the supervision, investigation or enforcement in question; or
  - (c) any authority of the foreign country exercising a function that corresponds to a regulatory function of the Authority under this Act.

**Other factors to consider for provision of assistance**

**79.** In deciding whether to grant a request for assistance referred to in section 80 from a regulatory authority of a foreign country, the Authority may also have regard to the following:

- (a) whether the act or omission that is alleged to constitute the contravention of the law or regulatory requirement to which the request relates would, if it had occurred in Singapore, have constituted an offence under this Act;
- (b) whether the regulatory authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the regulatory authority for similar assistance;
- (c) whether the regulatory authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance that the regulatory authority has requested for.

*[SF Bill, Clause 171]*

**Assistance that may be rendered**

**80.—**(1) Notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, the Authority or any person authorised by the Authority may, in relation to a request by a regulatory authority of a foreign country for assistance —

- (a) transmit to the regulatory authority any material in the possession of the Authority that is requested by the regulatory authority or a copy thereof;
- (b) order any person to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority;
- (c) order any person to transmit directly to the regulatory authority any material that is requested by the regulatory authority or a copy thereof;
- (d) order any person to make an oral statement to the Authority on any information requested by the regulatory authority, record such statement, and transmit the recorded statement to the regulatory authority; or

- (e) request any Ministry, Government department or statutory authority to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority.

(2) The assistance referred to in subsection (1) (c) may only be rendered if the material sought is to enable the regulatory authority to carry out investigation or enforcement.

(3) An order under subsection (1) (b), (c) or (d) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) A person is not excused from making an oral statement pursuant to an order made under subsection (1) (d) on the ground that the statement might tend to incriminate him but, where the person claims before making the statement that the statement might tend to incriminate him, that statement is not admissible in evidence against him in criminal proceedings other than proceedings for an offence under section 81.

(5) Nothing in this section shall compel an advocate and solicitor —

- (a) to furnish or transmit any material or copy thereof that contains; or
- (b) to disclose,

a privileged communication made by or to him in that capacity.

(6) An advocate and solicitor who refuses to disclose, or to furnish or transmit any material or copy thereof that contains, any privileged communication shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(7) Any advocate and solicitor who contravenes subsection (6) shall be guilty of an offence.

*[SF Bill, Clause 172]*

## **Offences under this Part**

**81.** Any person who —

- (a) without reasonable excuse, refuses or fails to comply with an order under section 80 (1) (b), (c) or (d);

- (b) in purported compliance with an order under section 80 (1) (b) or (c), furnishes to the Authority or transmits to the regulatory authority any material or copy thereof known to the person to be false or misleading in a material particular; or
- (c) in purported compliance with an order made under section 80 (1) (d), makes a statement to the Authority 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 \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

[SF Bill, Clause 173]

### **Immunity from criminal or civil liability**

**82.**—(1) No civil or criminal proceedings, other than proceedings for an offence under section 81, shall lie against any person for —

- (a) furnishing to the Authority or transmitting any material or copy thereof to the Authority or a regulatory authority of a foreign country if he had furnished or transmitted that material or copy in good faith in compliance with an order made under section 80 (1) (b) or (c);
- (b) making a statement to the Authority in good faith and in compliance with an order made under section 80 (1) (d); or
- (c) doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) Any person who complies with an order referred to in subsection (1) (a) or (b) shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

[SF Bill, Clause 174]

## **PART VIII**

### **OFFENCES**

#### **Corporate offenders and unincorporated associations**

**83.**—(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or

connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate, the officer as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of the body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3A) Where an offence under this Act committed by a limited liability partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner or manager of the limited liability partnership, the partner or manager (as the case may be) as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

[5/2005]

(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association or a member of its governing body, the officer or member as well as the association shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

“body corporate” and “partnership” exclude a limited liability partnership within the meaning of the Limited Liability Partnerships Act (Cap. 163A);

“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”, in relation to a partnership, includes a person purporting to act as a partner.

[15/2003; 5/2005]

(6) Without prejudice to the generality of section 104 (1), the Authority may make regulations to provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

[UK FSMA 2000, s. 400; SF Bill, s. 331]

### **Offence by officers**

**84.—**(1) Any officer of a licensed financial adviser who fails to take all reasonable steps to secure —

- (a) compliance with any provision of this Act; or
- (b) the accuracy and correctness of any statement submitted to the Authority or such other person as may be required under this Act,

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.

(2) In any proceedings against an officer under subsection (1), it shall be a defence for the officer to prove that he had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate, as the case may be, and that that person was competent, and in a position, to discharge that duty.

(3) An officer shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court, he committed the offence wilfully.

[SF Bill, Clause 332]

**Falsification of records by officers, etc.**

**85.**—(1) Any officer, auditor, employee or agent of a licensed financial adviser or an exempt financial adviser who —

- (a) wilfully makes, or causes to be made, a false entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that financial adviser;
- (b) wilfully omits to make an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that financial adviser, or wilfully causes any such entry to be omitted; or
- (c) wilfully alters, extracts, conceals or destroys an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that financial adviser, or wilfully causes any such entry to be altered, extracted, concealed or destroyed,

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.

(2) In subsection (1), “officer” includes a person purporting to act in the capacity of an officer.

*[SF Bill, Clause 328]*

**Duty not to furnish false information to Authority**

**86.**—(1) Any person who furnishes the Authority with any information under or for the purposes of any provision of this Act shall use due care to ensure that the information is not false or misleading in any material particular.

(2) Subsection (1) shall apply only to a requirement in relation to which no other provision of this Act creates an offence in connection with the furnishing of information.

(3) Any person who signs any document lodged with the Authority under Part IV shall use due care to ensure that the document is not false or misleading in any material particular.

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 2 years or to both.

*[SF Bill, Clause 329]*

**General penalty**

**87.** Any person guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$12,500.

**Penalty for corporations**

**88.**—(1) Subject to subsections (2) and (3), where a corporation or body corporate is convicted of an offence under this Act, the penalty that the court may impose is a fine not exceeding 2 times the maximum amount that the court could, but for this subsection, impose as a fine for that offence.

(2) Subsection (1) shall not apply to —

- (a) offences under sections 10 (3), 13 (4), 19 (10), 19 (12), 24 (5), 32 (6), 45 (5) and (6), 46 (2), 47 (2), 48 (5), (6) and (7), 49 (5), 55 (2), 56 (7) and 57 (7); or
- (b) offences under any subsidiary legislation made under this Act where it is expressly provided in the subsidiary legislation that subsection (1) shall not apply to those offences.

[15/2003]

(3) Where an individual is convicted of an offence under this Act by virtue of section 83, he shall be liable to the fine or imprisonment or both as prescribed for that offence and subsection (1) shall not apply.

(4) In this section, “body corporate” excludes a limited liability partnership within the meaning of the Limited Liability Partnerships Act (Cap. 163A).

[5/2005]

[SF Bill, Clause 333]

**Composition of offences**

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

**Territorial scope of Act**

**90.** Where a person does an act partly in and partly outside Singapore which, if done wholly in Singapore, would constitute an

offence under this Act, that person shall be guilty of that offence as if the act were carried out by that person wholly in Singapore, and may be dealt with as if the offence were committed wholly in Singapore.

## PART IX

### APPEALS

#### **Appeals to Minister**

**91.**—(1) Where an appeal is made to the Minister under this Act, the Minister may confirm, vary or reverse the decision of the Authority on appeal, or give such directions in the matter as he thinks fit, and the decision of the Minister shall be final.

(2) Where an appeal is made to the Minister under this Act, the Minister shall, within 28 days of his receipt of the appeal, constitute an Appeal Advisory Committee comprising not less than 3 members of the Appeal Advisory Panel and refer that appeal to the Appeal Advisory Committee.

(3) The Appeal Advisory Committee shall submit to the Minister a written report on the appeal referred to it under subsection (2) and may make such recommendations as it thinks fit.

(4) The Minister shall consider the report submitted under subsection (3) in making his decision under subsection (1) but he shall not be bound by the recommendations in the report.

*[SF Bill, Clause 310]*

#### **Appeal Advisory Committees**

**92.**—(1) For the purpose of enabling Appeal Advisory Committees to be constituted under section 91, the Minister shall appoint a panel (referred to in this Part as the Appeal Advisory Panel) comprising such members from the financial services industry, and the public and private sectors, as the Minister may appoint.

(2) A member of the Appeal Advisory Panel shall be appointed for a term of not more than 2 years and shall be eligible for re-appointment.

*[15/2003]*

(3) An Appeal Advisory Committee shall have the power, in the exercise of its functions, to inquire into any matter or thing related to the financial services industry and, for this purpose, may summon

any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the inquiry.

(4) Nothing in subsection (3) shall compel the production by an advocate and solicitor of a document or other material containing any privileged communication made by or to him in that capacity or authorise the taking of any such document or other material which is in his possession.

(5) An advocate and solicitor who refuses to produce any document or other material referred to in subsection (4) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(6) For the purposes of this Act, every member of an Appeal Advisory Committee —

- (a) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224); and
- (b) in case of any suit or other legal proceedings brought against him for any act done or omitted to be done in the execution of his duty under this Part, shall have the like protection and privileges as are by law given to a Judge in the execution of his office.

(7) Every Appeal Advisory Committee shall have regard to the public interest, the protection of investors and policy owners and the safeguarding of sources of information.

(8) Subject to the provisions of this Part, an Appeal Advisory Committee may regulate its own procedure and shall not be bound by the rules of evidence.

*[SF Bill, Clause 311]*

### **Disclosure of information**

**93.** Nothing in this Act shall require the Minister or any public servant to disclose facts which he considers to be against the public interest to disclose.

*[SF Bill, Clause 312]*

### **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.

*[15/2003]*

31.3.2007

(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.

[15/2003]

[SF Bill, Clause 313]

## PART X

### MISCELLANEOUS

#### **Criminal jurisdiction of District Court**

**95.** Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of any offence under this Act.

[SF Bill, Clause 327]

#### **Opportunity to be heard**

**96.** Where this Act provides for a person to be given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the person shall be given an opportunity to be heard.

[SF Bill, Clause 316]

#### **Power to reprimand for misconduct**

**97.—(1)** Where the Authority is satisfied that a relevant person is guilty of misconduct, the Authority may, if it thinks it necessary in the public interest or for the protection of investors or policy owners, reprimand the relevant person.

(2) In this section —

“misconduct” means —

(a) the contravention of —

- (i) any provision of this Act;
- (ii) any condition or restriction of a licence or an exemption granted under this Act;
- (iia) any written direction made by the Authority under this Act; or
- (iii) any code, guideline, policy statement or practice note issued or published under section 64;

(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);

“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;

“relevant person” means any licensee, exempt financial adviser, representative of an exempt financial adviser, or officer or partner of a licensed financial adviser or an exempt financial adviser.

[15/2003]

[SF Bill, Clause 334]

### **Power of court to make certain orders**

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

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

31.3.2007

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

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

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

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

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

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

(5) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

[SIA, s. 13]

### **Immunity of Authority and its employees, etc.**

**99.** *(Repealed by Act 24 of 2003)*

### **General exemption**

**100.**—(1) The Authority may, by regulations, exempt any person or any class of persons from all or any of the provisions of this Act, subject to such terms or conditions as may be prescribed.

(2) The Authority may, on the application of any person, exempt the person from all or any of the provisions of this Act or the requirements specified in any written direction, by notice in writing,

if the Authority considers it appropriate to do so in the circumstances of the case.

[15/2003]

(3) An exemption under subsection (2) —

- (a) may be granted subject to such terms or conditions as the Authority may specify by notice in writing;
- (b) need not be published in the *Gazette*; and
- (c) may be withdrawn at anytime by the Authority.

[15/2003]

(4) Any person who contravenes any term or condition prescribed under subsection (1) or specified by the Authority under subsection (3) (a) shall be guilty of an offence.

### **Service of documents, etc.**

**101.**—(1) Any notice, order or document required or authorised by this Act to be served on any person may be served —

- (a) by delivering it to the person or to some adult member or employee of his family or household at his last known place of residence;
- (b) by leaving it at his usual or last known place of residence or business in an envelope addressed to the person;
- (c) by sending it by registered post addressed to the person at his usual or last known place of residence or business; or
- (d) in the case of a body corporate, firm or body of persons —
  - (i) by delivering it to the secretary or other like officer of the body corporate, firm or body of persons at its registered office or principal place of business; or
  - (ii) by sending it by registered post addressed to the body corporate, firm or body of persons at its registered office or principal place of business.

(2) Any notice, order or document sent by registered post to any person in accordance with subsection (1) shall be deemed to be duly served on the person at the time when the notice, order or document, as the case may be, would in the ordinary course of post be delivered.

(3) When proving service of the notice, order or document referred to in subsection (2), it shall be sufficient to prove that the envelope

containing the notice, order or document, as the case may be, was properly addressed, stamped and posted by registered post.

[BA, s. 75A]

### **Copies or extracts of books to be admitted in evidence**

**102.**—(1) Subject to this section, a copy of or an extract from a book mentioned in this Act that is proved to be a true copy of the book or of the relevant part of the book is admissible in evidence as if it were the original book or the relevant part of the original book.

(2) For the purposes of subsection (1), evidence that a copy of or an extract from a book is a true copy of the book or of a part of the book may be given —

- (a) by a person who has compared the copy or extract with the book or the relevant part of the book; and
- (b) orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

[SF Bill, Clause 149]

### **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.

[15/2003]

(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.

[15/2003]

(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 —

- (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.

[15/2003]

(4) Subsections (1), (2) and (3) are subject to any express provision to the contrary in this Act or any regulations made thereunder.

[15/2003]

(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.

[15/2003]

(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.

[15/2003]

(7) In subsections (1), (2) and (3), “Act” includes any written direction made by the Authority under this Act.

[15/2003]

[SF Bill, Clause 149]

### **Power to make regulations giving effect to treaty, etc.**

**103.**—(1) Without prejudice to the generality of section 104 (1), the Authority may make regulations prescribing the matters necessary or expedient to give effect, in Singapore, to the provisions of any treaty, convention, arrangement, memorandum of understanding, exchange of letters or other similar instrument relating to the provision of any financial advisory service, to which Singapore or the Authority is a party.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for —

- (a) exemptions from the requirements relating to licensing, approval or registration requirements under this Act;

- (b) the application of the provisions of this Act with such modifications as may be necessary; and
- (c) the revocation or withdrawal of, or the variation of any condition or restriction imposed in connection with, any exemption granted under this Act.

[SF Bill, Clause 338]

## Regulations

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

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

- (a) applications for the grant or renewal of licences, and matters incidental thereto;
- (b) the activities of, and standards to be maintained by, a licensee, or an exempt financial adviser or any of its representatives, including the manner, method and place of soliciting business and the conduct of such solicitation;
- (c) (*Deleted by Act 15 of 2003*)
- (d) the particulars to be recorded in, or in respect of, books kept by any licensed financial adviser;
- (e) the remuneration of an auditor appointed under this Act and the costs of an audit carried out under this Act;
- (f) the manner in which a licensee, or an exempt financial adviser or any of its representatives, conducts his dealings with the clients of the licensed financial adviser or exempt financial adviser, as the case may be;
- (g) the purchase or sale of investment products directly or indirectly by licensees for their own account;
- (h) the disclosure by a licensee, or by an exempt financial adviser or any of its representatives, of any material interest that he may have in a proposed transaction relating to purchasing, subscribing for or trading in capital markets products;
- (i) the forms for the purposes of this Act;
- (j) the fees to be paid in respect of any matter or thing required for the purposes of this Act, and the refund and remission, whether in whole or in part, of such fees;

- (k) the collection, from any licensed financial adviser or exempt financial adviser, by or on behalf of the Authority at such intervals or on such occasions as may be prescribed, of statistical information as to such matters relevant to investment products as may be prescribed, and for the collection and use of such information for any purpose, whether or not connected with the prescribed investment products;
  - (l) the control of any take-over of a licensed financial adviser;
  - (m) *(Deleted by Act 15 of 2003)*
  - (n) all matters and things which are required or permitted to be prescribed by this Act, or which may be necessary or expedient to be prescribed to give effect to this Act. *[15/2003]*
- (3) No use shall be made of any information obtained by or on behalf of the Authority by virtue only of subsection (2) (k) except in a form which does not disclose the affairs of any particular person.
- (4) Except as otherwise expressly provided in this Act, regulations made under this Act —
- (a) may be of general or specific application;
  - (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. *[15/2003]*

### **Transitional and savings provisions**

**105.** The Authority may, by regulations, prescribe such transitional, savings and other consequential provisions as it may consider necessary or expedient.

## FIRST SCHEDULE

Sections 2 (1) and 22 (1)

## EXCLUDED FINANCIAL ADVISERS

1. Any —
  - (a) advocate and solicitor, law corporation, Formal Law Alliance or Joint Law Venture, which is approved or registered under the Legal Profession Act (Cap. 161); or
  - (b) public accountant who is registered under the Accountants Act (Cap. 2), or accounting corporation which is approved under that Act,whose carrying on of the business of providing any financial advisory service is solely incidental to his legal or accounting practice, as the case may be.
2. Any company licensed under the Trust Companies Act (Cap. 336) whose carrying on of the business of providing any financial advisory service is solely incidental to its carrying on of the business for which it is registered under that Act.
3. Any person who is the proprietor of a newspaper and holder of a permit issued under the Newspaper and Printing Presses Act (Cap. 206), where —
  - (a) the newspaper is distributed generally to the public in Singapore;
  - (b) any advice given, or analysis or report issued or promulgated, is given, issued or promulgated only through that newspaper;
  - (c) that person receives no commission or other consideration, apart from any fee received from subscription to or purchase of the newspaper, for giving the advice, or for issuing or promulgating the analysis or report; and
  - (d) the advice is given, or the analysis or report is issued or promulgated, solely as incidental to the conduct of that person's business as a newspaper proprietor.
4. Any person who owns, operates or provides an information service through an electronic, or a broadcasting or telecommunications medium, where —
  - (a) the service is generally available to the public in Singapore;
  - (b) any advice given, or analysis or report issued or promulgated, is given, issued or promulgated only through that service;
  - (c) that person receives no commission or other consideration, apart from any fee received from subscription to the service, for giving the advice, or for issuing or promulgating the analysis or report; and
  - (d) the advice is given, or the analysis or report is issued or promulgated, solely as incidental to that person's ownership, operation or provision of that service.
5. Any person who provides credit rating services, where any analysis or report issued or promulgated by that person —
  - (a) is issued or promulgated solely as incidental to the conduct of that person's business of providing credit rating services; and

FIRST SCHEDULE — *continued*

- (b) does not contain any specific recommendation with respect to the acquiring of, disposing of, subscribing for, or underwriting of, any securities.
6. Any public statutory corporation established under any Act in Singapore.
7. Any approved trustee under Division 2 of Part XIII of the Securities and Futures Act (Cap. 289).
8. The Official Assignee in exercising his powers under the Bankruptcy Act (Cap. 20).
9. The Public Trustee in exercising his powers under the Public Trustee Act (Cap. 260).
10. Any person acting in relation to a company as its liquidator, provisional liquidator, receiver, receiver and manager, or judicial manager.
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 subsection (1) (f)) (on the other hand), where such arrangement is approved by the Authority.
- [15/2003; 2/2005; 11/2005]
- [FTA, s. 2; SIA, s. 2]

## SECOND SCHEDULE

Section 2 (1)

## TYPES OF FINANCIAL ADVISORY SERVICE

1. Advising others, either directly or through publications or writings, and whether in electronic, print or other form, concerning any investment product, other than —
- (a) in the manner set out in paragraph 2; or
- (b) advising on corporate finance within the meaning of the Securities and Futures Act (Cap. 289).
2. Advising others by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product.
3. Marketing of any collective investment scheme.
4. Arranging of any contract of insurance in respect of life policies, other than a contract of reinsurance.

[15/2003; 2/2005]

**THIRD SCHEDULE**

Section 65 (1A)

**SPECIFIED PROVISIONS**

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

*[15/2003; 2/2005]*

LEGISLATIVE HISTORY  
FINANCIAL ADVISERS ACT  
(CHAPTER 110)

This Legislative History is provided for the convenience of users of the Financial Advisers Act. It is not part of the Act.

**1. Act 43 of 2001 — Financial Advisers Act 2001**

Date of First Reading	: 25 September 2001 (Bill No. 34/2001 published on 26 September 2001)
Date of Second and Third Readings	: 5 October 2001
Dates of commencement	: 6 August 2002 (section 106) 1 October 2001 (sections 1 to 105)

**2. Act 15 of 2003 — Financial Advisers (Amendment) Act 2003**

Date of First Reading	: 14 August 2003 (Bill No. 14/2003 published on 15 August 2003)
Date of Second and Third Readings	: 2 September 2003
Date of commencement	: 22 December 2003

**3. Act 24 of 2003 — Monetary Authority of Singapore (Amendment) Act 2003**  
(Consequential amendments made to Act by)

Date of First Reading	: 16 October 2003 (Bill No. 21/2003 published on 17 October 2003)
Date of Second and Third Readings	: 10 November 2003
Date of commencement	: 1 January 2004

**4. Act 2 of 2005 — Financial Advisers (Amendment) Act 2005**

Date of First Reading	: 19 October 2004 (Bill No. 47/2004 published on 20 October 2004)
Date of Second and Third Readings	: 25 January 2005
Date of commencement	: 1 July 2005

**5. Act 5 of 2005 — Limited Liability Partnerships Act 2005**

(Consequential amendments made to Act by)

Date of First Reading : 19 October 2004  
(Bill No. 64/2004 published on  
20 October 2004)

Date of Second and Third Readings : 25 January 2005

Date of commencement : 11 April 2005

**6. Act 11 of 2005 — Trust Companies Act 2005**

(Consequential amendments made to Act by)

Date of First Reading : 25 January 2005  
(Bill No. 1/2005 published on  
26 January 2005)

Date of Second and Third Readings : 18 February 2005

Date of commencement : 1 February 2006

**7. Act 42 of 2005 — Statutes (Miscellaneous Amendments) (No. 2) Act 2005**

Date of First Reading : 17 October 2005  
(Bill No. 30/2005 published on  
18 October 2005)

Date of Second and Third Readings : 21 November 2005

Dates of commencement : (a) 1 January 2005  
(section 20 (e))

(b) 1 January 2006 (with the  
exception of sections 10,  
12, 17 (e) to (j), 19 and  
20 (c) and (e), items (2)  
to (7), (9), (11), (12), (13),  
(15), (16), (22), (25), (31),  
(34) (a) and (36) in  
the First Schedule and  
the Third Schedule)

(c) 30 January 2006  
(sections 10, 12, 19 and  
20 (c))

(d) 1 April 2006 (Items (2)  
to (7), (9), (11), (12), (13),  
(15), (16), (22), (25), (31),  
(34) (a) and (36) in  
the First Schedule and  
the Third Schedule)

**8. Act 2 of 2007 — Statutes (Miscellaneous Amendments) Act 2007**

Date of First Reading	:	8 November 2006 (Bill No. 14/2006 published on 9 November 2006)
Date of Second and Third Readings	:	22 January 2007
Dates of commencement	:	1 March 2007 (except sections 6, 8 and 11) 1 April 2007 (section 6) 2 May 2007 (sections 8 and 11)

## COMPARATIVE TABLE

### FINANCIAL ADVISERS ACT (CHAPTER 110, 2002 EDITION)

The following provisions in the Financial Advisers Act 2001 (Act 43 of 2001) were renumbered by the Law Revision Commissioners in the 2002 Revised Edition.

This Comparative Table is provided for the convenience of users. It is not part of the Financial Advisers Act.

<b>2002 Ed.</b>	<b>Act 43 of 2001</b>
<b>64—</b> (2) and (3)	<b>64—</b> (2)
(4)	(3)
(5)	(4)
(6)	(5)
(7)	(6)
(8)	(7)
<b>105</b>	<b>106</b>