

Financial Supervision Act 1988 (as amended)

Disclaimer: This copy of the Financial Supervision Act 1988 has been updated for the convenience of users of this website to include amendments made by the Fiduciary Services Act 2005. The Commission accepts no liability for the accuracy of the updating. The updated version of the Act is intended for guidance only and the original Acts should be consulted for legal purposes.



FINANCIAL SUPERVISION

ACT 1988

(as amended)

CHAPTER NO. 16

The amendments made to the Financial Supervision Act 1988 by the Investment Business (Amendment) Act 1993, the Banking Act 1998 and the Corporate Service Providers Act 2000 are contained in square brackets. These amendments came into effect on 25 October 1993, 31 March 1999 and 1 November 2000.

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**FINANCIAL SUPERVISION
ACT 1988**

as amended by -

Financial Supervision Act (Amendment)(No.1) Order 1989

Investment Business Act 1991

Investment Business (Amendment) Act 1993

Banking Act 1998

Corporate Service Providers Act 2000

Fiduciary Services Act 2005

Financial Supervision Act 1988 (Definition of Collective Investment Schemes)
(Amendment) Order 2007

Arrangement of Sections**PART I****COLLECTIVE INVESTMENT SCHEMES*****Promotion of schemes*****Section**

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Authorised schemes

2. Applications for authorisation.
3. Authorisation orders.
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*Isle of Man)
to Wit)*

Signed in Tynwald: 21st June 1988
Received Royal Assent: 11th July 1988
Announced to Tynwald: 12th July 1988
Passed: 12th July 1988

GENERAL NOTE: Any reference in this Act to the Insurance Authority is to be construed as a reference to the Insurance and Pensions Authority in pursuance of SD610/96.

AN ACT

to regulate collective investment schemes; to amend the law relating to the regulation of banking businesses and investment businesses; to provide for the regulation of United Kingdom building societies carrying on business in the Island; to provide for the establishment of compensation schemes in relation to banking, insurance and investment businesses; and for connected purposes.

WE, your Majesty's most dutiful and loyal subjects, the Lieutenant Governor, Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lieutenant Governor, Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):-

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PART I

COLLECTIVE INVESTMENT SCHEMES

*Promotion of schemes*Restrictions
on promotion

- I. (1) Subject to subsections (2) and (3) no person shall -
- (a) issue or cause to be issued in the Island any advertisement inviting persons to become or offer to become participants in a collective investment scheme or containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in such a scheme; or
 - (b) advise or procure any person in the Island to become or offer to become a participant in such a scheme,
- unless the scheme is an authorised scheme or a recognised scheme under the following provisions of this Part.
- (2) Subsection (1) shall not apply if the advertisement is issued to or the person mentioned in paragraph (b) of that subsection is -
- (a) an authorised person; or
 - (b) a person whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, to which the scheme relates; or
 - (c) a person who is the holder of a banking licence under the Banking Act 1998 and is a permitted person under the Investment Business Act 1991; or
 - (d) a person who is the holder of a licence granted under section 3 of the Investment Business Act 1991.”
- (3) The Treasury may by regulations make provision for exempting from subsection (1) schemes of such descriptions as are specified in the regulations.
- (4) Regulations under subsection (3) may contain such supplementary and transitional provisions as the Treasury thinks necessary and may also contain provisions imposing obligations or liabilities on the operator and trustee (if any) of an exempted scheme, including, to such extent as it thinks appropriate, provisions for purposes corresponding to those for which provision can be made under sections 6 and 10 in relation to authorised schemes.

[c. 4]
[c.18]*[Subsections 1(2)(c) & (d) inserted by the Fiduciary Services Act 2005]*

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Authorised schemes

Application for
authorisation
P1986/60/77

2. (1) Any application for an order declaring a scheme to be an authorised scheme shall be made by the operator and trustee, or proposed operator and trustee, of the scheme and the operator and trustee shall be different persons.
- (2) Any such application -
- (a) shall be made in such manner as the Financial Supervision Commission (in this Act referred to as "the Commission") may direct;
 - (b) shall contain or be accompanied by such information as it may require for the purpose of determining the application; and
 - (c) shall be accompanied by such fee as may be prescribed.
- (3) At any time after receiving an application and before determining it the Commission may require the applicant to furnish additional information.
- (4) The directions and requirements given or imposed under subsections (2) and (3) may differ as between different applications.
- (5) Any information to be furnished to the Commission under this section shall, if it so requires, be in such form or verified in such manner as it may specify.

Authorisation
orders P1986/60/78

3. (1) The Commission may, on an application duly made in accordance with section 2 and after being furnished with all such information as it may require under that section, make an order declaring a scheme to be an authorised scheme for the purposes of this Act if-
- (a) it appears to it that the scheme complies with the requirements of the regulations made under section 6 and that the following provisions of this section are satisfied; and
 - (b) it has been furnished with a copy of the documents constituting the scheme, and a certificate signed by an advocate to the effect that they comply with such of those requirements as relate to their contents.
- (2) An order declaring a scheme to be an authorised scheme may -
- (a) only be made in relation to a unit trust scheme, an open ended investment company or such other description of scheme as may be prescribed; and
 - (b) include such conditions as the Commission thinks fit.

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- (3) The scheme must have a manager and trustee who must be persons who are independent of each other.
- (4) The manager and the trustee must each be a body corporate and each must have a place of business in the Island.
- (5) The manager and the trustee must each be an authorised person and neither must be prohibited from acting as manager or trustee by or under any enactment.
- (6) The name of the scheme must not be undesirable or misleading; and the purposes of the scheme must be reasonably capable of being successfully carried into effect.
- (7) The participants must be entitled to have their units in the scheme redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme; but a scheme shall be treated as complying with this subsection if it requires the manager to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in this subsection.
- (8) Repealed.
- (9) The Commission shall inform the applicants of its decision on the application not later than 6 months after the date on which the application was received.

Revocation of
authorisation
PI986/60/79

4. (1) The Commission may revoke an order declaring a scheme to be an authorised scheme if it appears to it -
- (a) that any of the requirements for the making of the order are no longer satisfied;
 - (b) that it is undesirable in the interests of the participants or potential participants that the scheme should continue to be authorised; or
 - (c) without prejudice to paragraph (b), that the operator or trustee of the scheme has contravened any provision of this Act or the Banking Act [1998]³ or the Investment Business Act 1991 or any rules or regulations made under any of those Acts or, in purported compliance with any such provision, has furnished the Commission with false, inaccurate or misleading information or has contravened any condition, prohibition or requirement imposed under this Act or the Banking Act [1998]³ or the Investment Business Act 1991.

[c.4]

- (2) For the purposes of subsection (1)(b), the Commission may take into account any matter relating to the scheme, the operator or trustee, a director

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or controller of the operator or trustee or any person employed by or associated with the operator or trustee in connection with the scheme.

(3) The Commission may revoke an order declaring a scheme to be an authorised scheme at the request of the operator or trustee of the scheme; but it may refuse to do so if it considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the order should be revoked or that revocation would not be in the interests of the participants.

Representation
against revocation
1986/60/80

5. (1) Where the Commission proposes to revoke an order under section 3 otherwise than at the request of the operator or trustee of the scheme, it shall give the operator and trustee of the scheme written notice of its intention to do so, stating the reasons for which it proposes to act and giving particulars of the rights conferred by subsection (2).

(2) A person on whom a notice is served under subsection (1) may within 21 days of the date of service, make written representations to the Commission and, if desired, oral representations to the Commission.

(3) The Commission shall have regard to any representations made in accordance with subsection (2) in determining whether to revoke the order.

“Review of
Commission
decisions

5A. (1) Any person who is aggrieved by a decision of the Commission to -

- (a) refuse authorisation of a scheme under section 3(1);
- (b) make an authorisation subject to conditions under section 3(2)(b);
- (c) revoke an authorisation under section 4(1);
- (d) refuse to revoke an authorisation under section 4(3);
- (e) refuse to approve alterations to a scheme or a change in the trustee or manager of the scheme under section 7(3);
- (f) refuse to agree to a manager engaging in other activities under section 8(2);
- (g) refuse to recognise a scheme under section 12(4) or 13(1),
- (h) revoke a recognition under section 14(1);
- (i) refuse to revoke a recognition under section 14(3);
- (j) give a direction under section 16(2) or (4);
- (k) refuse to withdraw or vary a direction following an application under section 16(6);

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- (1) vary a direction under section 16(6),
may apply for a review of the decision.
- (2) In the first instance the application shall be addressed to the Chief Secretary who shall report the application to the Council of Ministers.
- (3) An application for a review shall be in such form, made within such time, and be subject to such conditions, as may be prescribed by regulations made by the Council of Ministers.
- (4) On the notification of an application for review, the Council of Ministers shall appoint 3 persons from a panel appointed in accordance with the Tribunals Act 2005 to form a committee (in this section referred to as the “Review Committee”) to review the decision in question.
- (5) The members of the committee must be persons –
- (a) who have appropriate experience; and
- (b) who are independent of both the Commission and the applicant.
- (6) The Review Committee shall conduct reviews under this section.
- (7) On the determination of a review under this section the Review Committee shall confirm, vary or revoke the decision in question.
- (8) Any variation or revocation of a decision shall not affect the previous operation of that decision or anything duly done or suffered under it.
- (9) Without prejudice to any right of recourse to the High Court, any decision of the Review Committee on a review under this section shall be binding on the Commission and the applicant.
- (10) The Council of Ministers may make regulations to provide for the practice and procedure of the Review Committee and for proceedings before the Committee.
- (11) Regulations under this section shall be laid before Tynwald as soon as practicable after they are made and if Tynwald at the sitting at which they are laid, or at the next following sitting, fails to approve them, they shall cease to have effect.”

[Section 5A inserted by the Fiduciary Services Act 2005]
[Subsection 5A(4) amended by the Fiduciary Services Act 2005]

Constitution and
management
1986/60/81

6. (1) The Treasury may make regulations as to -
- (a) the constitution and management of authorised schemes;

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- (b) the constitution, powers and duties of the operator and trustee of any such scheme;
 - (ba) without prejudice to section 16(1)(c), the submission to the Commission by the operator, manager or trustee of any such scheme of such specified information, statements, returns, reports or certificates as may relate to the scheme, or its operator, manager or trustee and the affairs of it or any of them;
 - (bb) the time within which, and the occasions when (including on a request by the Commission), any information or document required to be produced to the Commission under paragraph (ba) is to be produced;
 - (be) the form, content and validation of any information or document required to be provided to the Commission under paragraph (ba);
 - (c) the powers and duties of the directors of the operator of such a scheme; and
 - (d) the rights and obligations of the participants in any such scheme.
- (2) Without prejudice to the generality of subsection (1), regulations under this section may make provision -
- (a) as to the issue and redemption of units under the scheme;
 - (b) as to the expenses of the scheme and the means of meeting them;
 - (c) for the appointment, removal, powers and duties of an auditor for the scheme;
 - (d) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;
 - (e) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the keeping of records on the Island and for the inspection of records;
 - (f) requiring the preparation of periodical reports with respect to the scheme and the furnishing of those reports to the participants and to the Commission; and
 - (g) with respect to the amendment of the scheme.
- (3) Regulations under this section may make provision as to the contents of the documents constituting the scheme, and may include provision requiring any of the matters mentioned in subsection (2) to be dealt with in such documents as may be specified; but regulations under this section shall be binding on the operator, trustee and participants independently of the contents of such

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documents and, in the case of the participants, shall have effect as if contained in them.

(4) Where regulations under this section conflict with any rule of law (whether at common law or contained in any enactment) relating to -

- (a) the constitution, powers and management of bodies corporate;
- (b) the powers and duties of the directors of bodies corporate;
- (c) the rights and obligations of members of bodies corporate,

the regulations shall prevail.

(5) Regulations under this section shall not impose limits on the remuneration payable to the operator of a scheme.

(6) Regulations under this section may contain such incidental and transitional provisions as the Treasury thinks necessary or expedient.

[Subsections 6(1)(ba), (bb) & (bc) inserted by the Fiduciary Services Act 2005]

Alteration of
schemes and
changes of
manager or
trustee
PI986/60/82

7. (1) The manager of an authorised scheme shall give written notice to the Commission of -
- (a) any proposed alteration to the scheme; and
 - (b) any proposal to replace the trustee of the scheme;

and any notice given in respect of a proposed alteration involving a change in the documents constituting the scheme shall be accompanied by a certificate signed by an advocate to the effect that the change will not affect the compliance of the documents with the regulations made under section 6.

(2) The trustee of an authorised scheme shall give written notice to the Commission of any proposal to replace the manager of the scheme.

(3) Effect shall not be given to any such proposal unless -

- (a) the Commission has given its approval to the proposal; or
- (b) one month has elapsed since the date on which the notice was given under subsection (1) or (2) without the Commission having notified the manager or trustee that the proposal is not approved.

(4) Neither the manager nor the trustee of an authorised scheme shall be replaced except by persons who satisfy the requirements of section 3(3) to (5).

Restrictions
on activities

8. (1) An open ended investment company which is an authorised scheme shall

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P1986/60/83

not engage in any activities other than those necessary for the purposes of or in connection with the scheme.

(2) The manager of an authorised scheme shall not engage in any activities other than those mentioned in subsection (3) or such other activities as may be agreed in writing by the Commission.

(3) Those activities are -

(a) acting as manager of -

(i) a unit trust scheme;

(ii) an open-ended investment company or any other body corporate whose business consists of investing its funds with the aim of spreading investment risk and giving its members the benefit of the result of the management of its funds by or on behalf of that body; or

(iii) any other collective investment scheme under which the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;

(b) activities for the purposes of or in connection with those mentioned in paragraph (a).

Avoidance of
exclusion
clauses
P1986/60/85

9. Any provision of any document constituting an authorised scheme shall be void in so far as it would have the effect of exempting the operator, manager or trustee from liability for any failure to exercise due care and diligence in the discharge of its functions in respect of the scheme.

Publication
of scheme
particulars
P1986/60/85

10. (1) The Treasury may make regulations requiring the operator of an authorised scheme to submit to it and publish or make available to the public on request a document ("scheme particulars") containing information about the scheme and complying with such requirements as are specified in the regulations.

(2) Regulations under this section may require the operator of an authorised scheme to submit and publish or make available revised or further scheme particulars if -

(a) there is a significant change affecting any matter contained in such particulars previously published or made available whose inclusion was required by the regulations; or

(b) a significant new matter arises the inclusion of information in respect of which would have been required in previous particulars if it had arisen when those particulars were prepared.

(3) Regulations under this section may provide for the payment, by the person or persons who in accordance with the regulations are treated as

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responsible for any scheme particulars, of compensation to any person who has become or agreed to become a participant in the scheme and suffered loss as a result of any untrue or misleading statement in the particulars or the omission from them of any matter required by the regulations to be included.

(4) Regulations under this section shall not affect any liability which any person may incur apart from the regulations.

Other schemes connected with Island

International
schemes

11. (1) Every international scheme shall have a manager and a trustee who must be different persons and who must each be either -

- (a) an authorised person who is licensed to act as a manager or, as the case may be, trustee of a collective investment scheme; or
- (b) authorised to act as a manager or, as the case may be, trustee of a collective investment scheme under the law of any country or territory prescribed for the purpose of this section.

(2) Within 14 days of any scheme becoming an international scheme, the operator shall -

- (a) give written notice of the fact to the Commission; and
- (b) provide the Commission with a copy of the documents constituting the scheme.

(3) Within 14 days of any scheme ceasing to be an international scheme, the operator shall give written notice of the fact to the Commission.

(4) Sections 6, 7(1) (with the omission of the requirement relating to the advocates certificate) and (2), [10]¹, 16(1)(b) and (c), (5) and (6), 17 and 18 shall have effect in relation to international schemes as they have effect in relation to authorised schemes.

(5) Subject to subsections (7) to (11), in this section, "international scheme" means every collective investment scheme, not being an authorised scheme or a recognised scheme, which is established in the Island.

(6) For the purpose of this section, a scheme is established in the Island-

- (a) if -
 - (i) it is operated in or from the Island; or
 - (ii) it is constituted in, or under the law of, the Island; or

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- (b) in the case of a scheme which is an open ended investment company, but without prejudice to the generality of paragraph (a), if it is -
- (i) a company incorporated in the Island under the Companies Acts 1931 to 1986; or
 - (ii) a company incorporated outside the Island and is registered under Part XI of the Companies Act 1931.
- (7) Subject to the provisions of subsections (8) to (10), a scheme is exempted from this section if -
- (a) it has less than 50 participants; and
 - (b) the relevant constitutional document prohibits the making of an invitation in any part of the world to the public or any section of it to subscribe for or purchase units in the scheme.
- (8) For the purposes of subsection (7), "the relevant constitutional document" is -
- (a) in the case of an open ended investment company, the articles of association of the company;
 - (b) in the case of a unit trust scheme, the trust deed; and
 - (c) in any other case, the principal constitutional document of the scheme.
- (9) The exemption provided by subsection (7) shall not apply to a scheme where units are held by participants as a result of an invitation in any part of the world to the public or any section of it whether by the operator or another.
- (10) The following shall not be treated as invitations to the public or a section of the public -
- (a) invitations issued to existing participants in a scheme inviting them to subscribe for or purchase further units in that scheme;
 - (b) invitations to persons whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, to which the scheme relates;
 - (c) any invitation of a class which is permitted by virtue of regulations made under section 1(3).
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- (11) The Treasury may by order -
- (a) extend or restrict subsections (6) to (10);
 - (b) exempt any schemes or persons from this section.

(12) For the purposes of this section, a scheme which falls within the definition of an international scheme and which is in existence immediately before the date on which this section comes into operation, shall be treated as becoming an international scheme 6 months after that date.

Overseas schemes

Schemes
authorised
in designated
countries
PI986/60/97

12. (1) Subject to subsection (4), a collective investment scheme which is managed in and authorised under the law of a designated country or territory outside the Island is a recognised scheme if the scheme is of a class specified by an order made by the Treasury.
- (2) In this section, "designated country or territory" means the United Kingdom and any other country or territory designated for the purposes of this section by an order made by the Treasury.
- (3) The Treasury shall not make an order under subsection (1) or (2) unless it is satisfied that adequate protection is afforded to participants.
- (4) A scheme shall not be recognised by virtue of this section unless the operator of the scheme gives written notice to the Commission that he wishes it to be recognised; and the scheme shall not be recognised if within such period from receiving the notice as may be prescribed the Commission notifies the operator that the scheme is not to be recognised.
- (5) The notice given by the operator under subsection (4) -
- (a) shall contain the name and address of one or more persons in the Island authorised to accept on behalf of the operator any process or any notices or other documents required or authorised to be served on him under this Act; and
 - (b) shall contain or be accompanied by such information and documents as may be prescribed; and
 - (c) shall be accompanied by such fee as may be prescribed.
- (6) Section 10 shall have effect in relation to a scheme recognised under this section as it has effect in relation to an authorised scheme.
- (7) Regulations under section 10 as applied by subsection (6) may make provision whereby compliance with any requirements imposed by or under the

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law of a designated country or territory is treated as compliance with any requirement of the regulations.

(8) An order under subsection (1) may contain such transitional provisions as the Treasury thinks necessary or expedient.

Other overseas
schemes
PI986/60/88

13. (1) The Commission, on the application of the operator of a scheme which-

(a) is managed in a country or territory outside the Island; and

(b) in relation to which there is no relevant order under section 12,

may make an order declaring the scheme to be a recognised scheme if it appears to it that it affords adequate protection to the participants, makes adequate provision for the matters dealt with by regulations under section 6 and satisfies the following provisions of this section.

(2) The manager must be a body corporate or the scheme must take the form of an open-ended investment company.

(3) Subject to subsection (4), the operator and the trustee, if any, must be fit and proper persons to act as operator or, as the case may be, as trustee; and for that purpose the Commission may take into account any matter relating to -

(a) any person who is or will be employed by or associated with the operator or trustee for the purposes of the scheme;

(b) any director or controller of the operator or trustee;

(c) any other body corporate in the same group as the operator or trustee and any director or controller of any such other body.

(4) Subsection (3) does not apply to an operator or trustee who is an authorised person and not prohibited from acting as operator or trustee, as the case may be, by any enactment.

(5) If the operator is not an authorised person he must have a representative in the Island who is an authorised person and has power to act generally for the operator and to accept service of notices and other documents on his behalf.

(6) The name of the scheme must not be undesirable or misleading; and the purposes of the scheme must be reasonably capable of being successfully carried into effect.

(7) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme; but a scheme shall be treated as complying with this subsection if it requires the operator to ensure that a participant is able to sell his units on an investment

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exchange at a price not significantly different from that mentioned in this subsection.

(8) Section 2(2) to (5) shall apply also to an application under this section.

(9) So much of section 7 as applies to an alteration of the scheme shall apply also to a scheme recognised under this section, taking references to the manager as references to the operator and with the omission of the requirement relating to the advocate's certificate; and if the operator or trustee of any such scheme is to be replaced the operator or, as the case may be, the trustee, or in either case the person who is to replace him shall give at least one month's notice to the Commission.

(10) Section 10 shall have effect in relation to a scheme recognised under this section as it has effect in relation to an authorised scheme.

Revocation of
recognition
PI986/60/89

14. (1) The Commission may at any time direct that a scheme shall cease to be recognised by virtue of section 12 or revoke an order under section 13 above if it appears to it -

(a) that it is undesirable in the interests of the participants or potential participants that the scheme should continue to be recognised;

(b) without prejudice to paragraph (a) that the operator or trustee of the scheme has contravened any provision of this Act or the Banking Act [1998]³ or the Investment Business Act 1991 or any regulations made under any of those Acts or, in purported compliance with any such provision, has furnished the Commission with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act or the Banking Act [1998]³ or the Investment Business Act 1991; or

(c) in the case of an order under section 13 that any of the requirements for the making of the order are no longer satisfied.

(2) For the purposes of subsection (1)(a) the Commission may take into account any matter relating to the scheme, the operator or trustee, a director or controller of the operator or trustee or any person employed by or associated with the operator or trustee in connection with the scheme.

(3) The Commission may give such a direction or revoke such an order as is mentioned in subsection (1) at the request of the operator or trustee of the scheme; but it may refuse to do so if it considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the direction should be given or the order revoked or that the direction or revocation would not be in the interests of the participants.

(4) Where the Commission proposes -

[c.4]

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- (a) to notify the operator of a scheme under section 12(4); or
- (b) to give such a direction or to refuse to make or to revoke such an order as is mentioned in subsection (1),

it shall give the operator written notice of its intention to do so, stating the reasons for which it proposes to act and giving particulars of the rights conferred by subsection (5).

(5) A person on whom a notice is served under subsection (4) may, within 21 days of the date of service, make written representations to the Commission and, if desired, oral representations to the Commission.

(6) The Commission shall have regard to any representations made in accordance with subsection (5) in determining whether to notify the operator, give the direction or refuse to make or revoke the order, as the case may be.

Facilities and
information in
the Island
P1986/60/90

15. (1) The Treasury may make regulations requiring operators of recognised schemes to maintain in the Island such facilities as it thinks desirable in the interests of participants and as are specified in the regulations.

(2) The Commission may by notice in writing require the operator of any recognised scheme to include such explanatory information as is specified in the notice in any investment advertisement issued or caused to be issued by him in the Island in which the scheme is named.

Powers of intervention in relation to schemes

Directions
P1986/60/91

16. (1) If it appears to the Commission -

- (a) that any of the requirements for the making of an order declaring a scheme to be an authorised scheme are no longer satisfied;
- (b) that the exercise of the power conferred by this subsection is desirable in the interests of participants or potential participants in any scheme; or
- (c) without prejudice to paragraph (b) that the operator or trustee of any scheme has contravened any provision of this Act or the Banking Act [1998]³ or the Investment Business Act 1991 or any rules or regulations made under any of those Acts or, in purported compliance with any such provision, has furnished the Commission with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act or the Banking Act [1998]³ or the Investment Business Act 1991,

[c.4]

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it may give a direction under subsection (2).

- (2) A direction under this subsection may -
- (a) require the operator of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme on a date specified in the direction until such further date as is specified in that or another direction;
 - (b) require the operator and trustee of the scheme to wind it up by such date as is specified in the direction or, if no date is specified, as soon as practicable.
- (3) The revocation of the order declaring an authorised scheme to be such a scheme shall not affect the operation of any direction under subsection (2) which is then in force; and a direction may be given under that subsection in relation to a scheme in the case of which the order declaring it to be an authorised scheme has been revoked if a direction under that subsection was already in force at the time of revocation.
- (4) If it appears to the Commission -
- (a) that the exercise of the power conferred by this subsection is desirable in the interests of participants or potential participants in a scheme recognised under section 12 or 13;
 - (b) without prejudice to paragraph (a), that the operator of such a scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Commission with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act; or
 - (c) that any of the requirements for the recognition of a scheme under section 13 are no longer satisfied,

it may direct that the scheme shall not be a recognised scheme for a specified period or until the occurrence of a specified event or until specified conditions are complied with.

(5) For the purposes of subsections (1)(b) and (4)(a) the Commission may take into account any matter relating to the scheme, the operator or trustee, a director or controller of the operator or trustee or any person employed by or associated with the operator or trustee in connection with the scheme.

(6) The Commission may, either of its own motion or on the application of the operator or trustee of the scheme concerned, withdraw or vary a direction given under this section if it appears to the Commission that it is no longer

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necessary for the direction to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

Notice of
Directions
P1986/60/92

17. (1) The power to give a direction under section 16 in relation to a scheme shall be exercisable by written notice served by the Commission on the operator and trustee and any such notice shall take effect on such date as is specified in the notice.
- (2) If the Commission refuses to withdraw or vary a direction on the application of the operator or trustee of the scheme concerned it shall serve that person with a written notice of refusal.
- (3) A notice giving a direction, or varying it otherwise than on the application of the operator or trustee concerned, or refusing to withdraw or vary a direction on the application of such a person shall state the reasons for which the direction was given or varied or, as the case may be, why the application was refused.
- (4) The Commission may give public notice of a direction given by it under section 16 and of any withdrawal or variation of such a direction; and any such notice may, if the Commission thinks fit, include a statement of the reasons for which the direction was given, withdrawn or varied.

Application
to the court
P1986/60/93

18. (1) In any case in which the Commission has power to give a direction under section 16(2) in relation to an authorised scheme or, by virtue of subsection (3) of that section, in relation to a scheme which has been such a scheme, it may apply to the High Court -
- (a) for an order removing the manager or trustee, or both the manager and trustee, of the scheme and replacing either or both of them with a person or persons nominated by it and appearing to it to satisfy the requirements of section 3; or
- (b) if it appears to the Commission that no, or no suitable, person satisfying those requirements is available, for an order removing the manager or trustee, or both the manager and trustee, and appointing an authorised person to wind the scheme up.
- (2) On an application under this section the court may make such order as it thinks fit; and the court may, on the application of the Commission rescind any such order as is mentioned in subsection (1)(b) and substitute such an order as is mentioned in subsection (1)(a).
- (3) The Commission shall give written notice of the making of an application under this section to the operator and trustee of the scheme concerned and take such steps as it considers appropriate for bringing the making of the application to the attention of the participants.
- (4) Section 8 shall not apply to a manager appointed by an order made on an application under subsection (1)(b).

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Investigations
P1986/60/94

19. (1) The High Court may on the application of the Commission appoint one or more competent inspectors to investigate and report, in such manner as the Court may direct, on the affairs of, or of the operator, manager or trustee of, any collective investment scheme if the Court is satisfied that it is in the interests of the participants to do so or that the matter is of public concern.

(2) An inspector appointed under subsection (1) to investigate the affairs of, or of the manager, operator or trustee of, any scheme may also, if he thinks it necessary for the purposes of that investigation, investigate the affairs of, or of the manager, operator or trustee of, any other such scheme as is mentioned in that subsection whose manager, operator or trustee is the same person as the manager, operator or trustee of the first-mentioned scheme.

[XIII P.235]

(3) Sections 134 and 135 of the Companies Act 1931 (powers of inspectors and proceedings on report by inspectors) shall apply in relation to an inspector appointed under this section as they apply in relation to an inspector appointed under section 134 of that Act, but with the modifications specified in subsection (4).

(4) In the provisions applied by subsection (3) for any reference to a company or its affairs there shall be substituted a reference to the scheme under investigation and the affairs mentioned in subsections (1) and (2) and any reference to an officer or director of the company shall include a reference to any officer or director of the manager, operator or trustee of the scheme.

(5) An inspector appointed under this section may, and if so directed by the Court shall, make interim reports to the Court and on the conclusion of his investigation shall make a final report to it.

(6) Any such report shall be written or printed as the Court may direct and it may, if it thinks fit -

(a) furnish a copy, on request and on payment of the prescribed fee, to the manager, operator or trustee or any participant in a scheme investigations under investigation or any other person whose conduct is referred to in the report; and

(b) cause the report to be published.

and shall furnish a copy to the Commission.

(7) Nothing in this section shall require a person carrying on the business of banking to disclose any information or produce any document relating to the affairs of a customer unless -

(a) the customer is a person who the Commission has reason to believe may be able to give information relevant to the investigation; and

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- (b) the Commission is satisfied that the disclosure or production is necessary for the purposes of the investigation.

Contraventions
PI986/60/95

20. (1) A person who contravenes any provision of this Part, an operator or trustee of an authorised scheme who contravenes any regulations made under section 6 and a person who contravenes any other regulations made under this Part shall be guilty of an offence.
- (2) The operator of a recognised scheme who contravenes a requirement imposed under section 15 shall be guilty of an offence.
- (3) An operator or trustee who contravenes any condition imposed under section 3(2)(b) shall be guilty of an offence.
- (4) Sections 13 and 14 (with the exception of subsection (2)) of the Investment Business Act 1991 shall apply in respect of any contravention referred to in this section as they apply in respect of a contravention referred to in those sections.

PART 2

MISCELLANEOUS AND SUPPLEMENTARY

Compensation
schemes

21. (1) The Treasury may make regulations establishing a scheme for compensating investors, depositors and policy holders in cases where persons who are or have been:-

- (a) authorised persons;
- [c.9] (b) the holders of licences under section 3 of the Banking Act 1975;
- [c.24] (c) authorised to carry on an insurance business under section 6 of the Insurance Act 1986,
- [c. 7] (d) authorised under section 2(1) of the Building Societies Act 1986 including a United Kingdom building society authorised under that section as applied by section 4A of that Act,

are unable or likely to be unable to satisfy claims in respect of any description of civil liability incurred by them in connection with their business.

- (2) Without prejudice to the generality of subsection (1), the regulations under this section may -

- (a) provide for the administration of the scheme and the determination and regulation of any matter relating to its operation by such body as appears to the Treasury to be appropriate;

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

(3) Regulations may be made for the purpose of integrating any procedure for which provision is made by virtue of subsection 2(e) into the general procedure on a winding-up or bankruptcy and may modify the enactments relating to such procedure for that purpose.

[Subsection 21(1) (d) inserted by the Fiduciary Services Act 2005]

Conciliation in
disputes over
financial services

21A. (1) Subject to subsection (7), this section applies to any dispute between-

- (a) any individual (“the complainant”) and
- (b) any person who, in or from the Island, has supplied the complainant with financial services (“the supplier”),

which relates to those services.

- (2) Subject to subsections (4) and (5), where a dispute to which this section applies is referred to the Isle of Man Office of Fair Trading (“the Office”) by the complainant or the supplier, it shall seek to mediate between the parties to the dispute.
- (3) For the purpose of mediating in a dispute under subsection (2) the Office shall-

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- (a) inquire into the circumstances and cause of the dispute, and
 - (b) offer the parties to the dispute its assistance (which may be by way of conciliation or arbitration or by any other means) with a view to bringing about a settlement.
- (4) The Office may decline or cease to act under subsection (2) where it appears to it that any of the following conditions is satisfied-
- (a) the complainant has not suffered financial loss, material inconvenience or material distress;
 - (b) the supplier has already made an offer of compensation which is fair and reasonable in the circumstances;
 - (c) the dispute has been the subject of a decision on the merits in proceedings in any court;
 - (d) the dispute has been properly considered under any enactment or arrangement providing for the resolution of disputes or the investigation of complaints;
 - (e) the dispute would more suitably be dealt with by a court or under an enactment or arrangement referred to in paragraph (d);
 - (f) the dispute relates to the legitimate exercise of the supplier's commercial judgement;
 - (g) the dispute relates to investment performance, except to the extent that the complainant alleges that the supplier has been negligent;
 - (h) the complaint giving rise to the dispute is frivolous or vexatious.
- (5) The Office shall decline or cease to act under subsection (2) where it appears to it that the dispute was referred to it-
- (a) more than 2 years after the act or omission giving rise to it came to the knowledge of the complainant, or ought reasonably have come to his knowledge, or
 - (b) more than 6 years after that act or omission.
- (6) Where, in any proceedings arising out of a dispute to which this section applies, it appears to the High Court that the Office is acting under subsection (2) in relation to the dispute, the Court may stay the proceedings on such terms as it thinks fit.

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- (7) In this section “financial services” means services which consist of, include or relate to-
- (a) a collective investment scheme;
 - (b) investment business within the meaning of the Investment Business Act 1991;
 - (c) banking business within the meaning of the Banking Act 1998;
 - (d) insurance business within the meaning of the Insurance Act 1986;
 - (e) credit business within the meaning of Part II of the Moneylenders Act 1991;
 - (f) a business which would be a credit business if the person carrying it on were not an exempt person (expressions in this paragraph having the same meaning as in Part II of the Moneylenders Act 1991);
 - (g) a pension scheme within the meaning of section 1 of the Pension Schemes Act 1995.
- (8) If it appears to the Treasury that other suitable arrangements have been made for the resolution of disputes with suppliers of financial services of any class or description, the Treasury may by order direct that this section shall not apply to disputes which relate solely or mainly to services of that class or description.

[21A inserted by Fair Trading (Amendment) Act 2001 s 17 with saving.]

Investigation and
adjudication in
disputes over
financial services

21B (1) The Office shall appoint and maintain a panel of persons appearing to it to be qualified by experience or otherwise to act under this section in relation to disputes to which section 21A applies.

(2) Where-

- (a) the Office has taken any action under section 21A (2) in relation to such a dispute, and
- (b) it appears to it that the dispute remains unresolved,

the Office shall (subject to subsections (3) to (5)) refer the dispute to a member of the panel (an “adjudicator”) for action under this section.

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- (3) The Office shall not refer a dispute under subsection (2) to a person who is at that time engaged or employed in any business consisting of or including the supply of financial services of the same kind as that to which the dispute relates.
 - (4) The Office shall not refer a dispute under subsection (2) where it appears to it that any of the conditions specified in section 21A(4) is satisfied.
 - (5) The Office shall not refer a dispute under subsection (2) where proceedings arising out of the dispute have been commenced in the High Court unless the Court-
 - (a) gives leave (which may be given on such terms as it thinks fit), or
 - (b) stays the proceedings under subsection (6) (a).
 - (6) Where, in proceedings arising out of a dispute to which section 21A applies, it appears to the High Court that the dispute has been or may be referred to an adjudicator under subsection (2), the Court may-
 - (a) stay the proceedings on such terms as it thinks fit,
 - (b) cancel the reference, or direct that no reference be made, as the case may be, or
 - (c) give such directions as to the conduct of the proceedings, or of any action by the adjudicator under this section, as it thinks appropriate.
 - (7) The adjudicator to whom a dispute is referred under subsection (2) shall investigate and determine the dispute, and if he is satisfied that the complainant has suffered loss or damage by reason of any wrongful or improper act or omission by the supplier, make such award within subsection (9) as he considers just and equitable.
 - (8) An adjudicator may, at any time before he has determined a dispute-
 - (a) cease to investigate it, or
 - (b) decline to determine it,

where it appears to him that any of the conditions specified in section 21A(4) is satisfied.

- (9) An award under subsection (7) may comprise either or both of the following-

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- (a) a direction to the supplier, within such time as is specified in the award, to take such steps as the adjudicator considers appropriate to remedy the act or omission and are so specified, and
- (b) an award of compensation, to be paid by the supplier to the complainant, of such amount (not exceeding £100,000) as the adjudicator considers just and equitable and is specified in the award;

and compensation under paragraph (b) may consist of or include an amount specified in the award as payable where a direction under paragraph (a) is not complied with.

- (10) The Treasury may by order vary the maximum amount specified in subsection (9)(b) (or that order as varied by a previous order under this subsection).
- (11) An appeal on a point of law shall lie to the High Court from such a determination or award at the instance of the complainant or the supplier.
- (12) Subject to subsection (11), the determination by an adjudicator of a dispute, and any award made by him under subsection (7), shall be final and binding on the complainant and the supplier, and an award within subsection (8)(b) shall be enforceable as if it were an execution issued by the High Court.

[S21B inserted by Fair Trading (Amendment) Act 2001 s17 with saving]

Investigation and
adjudication:
supplemental
provisions

- 21C (1) For the purpose of investigating and determining a dispute to which section 21A applies an adjudicator to whom it is referred under section 21B(2) shall give every party to the dispute an opportunity-
- (a) to make representations to him with respect to the dispute, and
 - (b) to comment on any representations so made by any other party.
- (2) The Treasury may make rules with respect to the procedure which is to be adopted in connection with the reference and investigation of disputes under this Part, and such rules shall be laid before Tynwald as soon as may be after they are made.
 - (3) Subject to subsection (1) and to any provision made by rules under subsection (2), the procedure for conducting such an investigation shall be such as the adjudicator considers appropriate in the circumstances of the case.

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- (4) For the purposes of an investigation under this section an adjudicator may require-
- (a) the supplier of the financial services in question,
 - (b) the complainant, and
 - (c) any other person who, in his opinion is able to furnish information or produce documents relevant to the investigation,
- to furnish any such information or produce any such documents.
- (5) For the purposes of any such investigation an adjudicator shall have the same powers as a court of summary jurisdiction in respect of the attendance and examination of witnesses (including the administration of oaths and affirmations) and in respect of the production of documents.
- (6) No person shall be compelled for the purposes of any such investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court.
- (7) If any person without lawful excuse refuses to comply with any summons issued by an adjudicator requiring him to give evidence or to produce documents, the adjudicator may certify the refusal to a court of summary jurisdiction, which shall inquire into the matter and, after hearing any witnesses who may be produced and any statement that may be offered in defence, may deal with the person in accordance with section 102 of the Summary Jurisdiction Act 1989 as if he had disobeyed an order mentioned in that section.
- (8) Sections 23 and 24 apply to the Office or an adjudicator in relation to information obtained by it or him when acting under section 21A or section 21B, as the case may be, as if-
- (a) it or he were a primary recipient within the meaning of section 23, and
 - (b) the information had been obtained for the purposes mentioned in section 23(2).
- (9) Subject to subsection 21B(6), nothing in this section affects any right of action or liability of any party to a dispute to which section 21A applies, but no person may recover both damages in proceedings to enforce any such right or liability and compensation under section 21B(9)(b), in respect of the same loss or damage.

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- (10) The Arbitration Act 1976 shall not apply to any investigation, determination or award under section 21B.
- (11) The Office shall make such arrangements-
- (a) as the Treasury may approve for the payment of remuneration and allowances to adjudicators who are acting under section 21B, and
 - (b) as the Civil Service Commission may approve for the provision of staff to assist such adjudicators.

[S 21C inserted by Fair Trading (Amendment) Act 2001 s 17 with saving.]

Information, etc.

Publication
of information
and advice

22. (1) The Commission may publish information or give advice, or arrange for the publication of information or the giving of advice, in such form and manner as it considers appropriate with respect to -

[c.4]

- (a) the operation of this Act or the Banking Act 1998³, the Building Societies Act 1986, the Corporate Service Providers Act 2000, or the Investment Business Act 1991 and any public document made under them, including in particular the rights of investors, the duties of authorised persons and the steps to be taken for enforcing those rights or complying with those duties;
- (b) any matter relating to the functions of the Commission under any enactment;
- (c) any other matters about which it appears to it to be desirable in the public interest to publish information or give advice.

[c.13]

(2) The Commission may offer for sale copies of information published under this section and may, if it thinks fit, make a reasonable charge for advice given under this section at any person's request.

(3) This section shall not be construed as authorising the disclosure of restricted information within the meaning of section 23 in any case in which it could not be disclosed apart from the provisions of this section.

[Subsection 22(1) amended by the Fiduciary Services Act 2005]

Restrictions on
disclosure of
information
PI986/60/179

23. (1) Subject to section 24, information which is restricted information for the purposes of this section and relates to the business or other affairs of any person shall not be disclosed by a person mentioned in subsection (3) ("the primary recipient") or any person obtaining the information directly or indirectly from him without the consent of []⁴ the person to whom it relates.

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- [c.4] (2) Subject to subsection (4), information is restricted information for the purposes of this section if it is obtained by the primary recipient for the purposes of, or in the discharge of his functions under, the Banking Act [1998]³ or the Investment Business Act 1991 [or the Corporate Service Providers 2000]⁶, this Act or any regulations made under this Act (whether or not by virtue of any requirement to supply it made under those provisions).
- (3) The persons mentioned in subsection (1) are -
- (a) the Treasury and its members;
 - (b) the Commission and its members;
 - (c) any person appointed or authorised to exercise any powers under section 19;
 - (d) any body administering a scheme under section 21; and
 - (e) any officer or servant of any such person.
- (4) Information shall not be treated as restricted information for the purposes of this section if it has been made available to the public by virtue of being disclosed in any circumstances in which or for any purpose for which disclosure is not precluded by this section.
- (5) Any person who contravenes this section shall be guilty of an offence.
- Exceptions from restrictions on disclosure 24. (1) Section 23 shall not preclude the disclosure of information -
- (a) with a view to the institution of or otherwise for the purposes of criminal proceedings [whether in the Island or elsewhere]¹;
 - [(aa) to any constable for the purpose of enabling or assisting the Isle of Man Constabulary to discharge its functions.]²
 - (b) with a view to the institution of or otherwise for the purposes of any civil proceedings arising under or by virtue of this Act [or the Corporate Service Providers Act 2000]⁶;
 - (c) for the purpose of enabling or assisting the Treasury to discharge its functions under this Act, the Banking Act [1998]³ or the Investment Business Act 1991 [or the Corporate Service Providers Act 2000]⁶ or under the enactments relating to companies, insurance companies or insolvency or for the purpose of enabling or assisting any inspector appointed by the High Court under the enactments relating to companies to discharge his functions;
- [c.4]

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[c.24]

- (d) for the purpose of enabling or assisting the body administering a scheme under section 21 to discharge its functions under the scheme;
- (e) for the purpose of enabling or assisting the Commission to discharge its functions under this Act, the Banking Act [1998]³ or the Investment Business Act 1991 [or the Corporate Service Providers Act 2000]⁶ [or under the enactments relating to companies]² or any other functions;
- (f) for the purpose of enabling or assisting the Insurance Authority, the Insurance Supervisor and the Retirement Benefits Schemes Supervisor to discharge their functions under the Insurance Act 1986, the Insurance Intermediaries (General Business) Act 1996 and the Retirement Benefits Schemes Act 2000;

[Para (f) substituted by Retirement Benefits Schemes Act 2000 Sch 2.]

- (g) for the purpose of enabling or assisting an official receiver [(whether appointed in the Island or elsewhere and whether in respect of a person in the Island or elsewhere)]² to discharge his functions under the enactments relating to insolvency;
- [(gg) for the purpose of enabling or assisting a receiver or liquidator (whether appointed in the Island or elsewhere and whether in respect of a person in the Island or elsewhere) to discharge his functions]²;
- (h) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by an advocate or registered legal practitioner, auditor, accountant, valuer or actuary of his professional duties;
- (i) for the purpose of enabling or assisting any person appointed or authorised to exercise any powers under section 19 to discharge his functions;
- (j) for the purpose of enabling or assisting an auditor of an authorised person [or a corporate service provider (within the meaning of the Corporate Service Providers Act 2000)]⁶ to discharge his functions;
- (k) if the information is or has been available to the public from other sources; or
- (l) in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained.

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(2) Subject to subsection (3), section 23 shall not preclude the disclosure of information for the purpose of enabling or assisting any public or other authority in the Island for the time being designated for the purposes of this section by an order made by the Treasury to discharge any functions which are specified in the order.

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

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

(4) Section 23 shall not preclude the disclosure -

- (a) of any information contained in any notice or copy of a notice served under this Act or the Banking Act [1998]³ or the Investment Business Act 1991 [or the Corporate Service Providers Act 2000]⁶, notice of the contents of which has not been given to the public, by the person on whom it was served or any person obtaining the information directly or indirectly from him;
- (b) of any information contained in any register required to be kept under this Act or the Banking Act [1998]² or the Investment Business Act 1991 [or the Corporate Service Providers Act 2000]⁶.

[(5) Section 23 shall not preclude the disclosure of information -

- [c.18] (a) to a recognised regulator (within the meaning of section 17(1) of the Investment Business Act 1991); or
- (b) for the purpose of enabling or assisting an authority (whether a governmental or private body) in a country or territory outside the Island -
 - [c.4] (i) to exercise functions in connection with rules of law corresponding to the provisions of the Insider Dealing Act 1998;
 - [c.24] (ii) to exercise functions corresponding to any of those of the Insurance Authority or the Insurance Supervisor under the Insurance Act 1986 or the Retirement Benefits Schemes Act 2000;

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[c.4]

(iii) to exercise functions corresponding to any of those of the Commission under the Banking Act [1998]³, [the Investment Business Act 1991]² or this Act [or the Corporate Service Providers Act 2000]⁶.]¹

(6) Subsection (5) shall not permit the disclosure of any information relating to the affairs of a customer unless –

- (a) the customer consents; or
- (b) the Commission has given its written consent to the disclosure in accordance with subsections (6A) to (6C).

(6A) The Commission may consent to a disclosure of information to which subsection (6) applies if the Commission is satisfied that –

- (a) disclosure is in the public interest, having regard to the confidential nature of the information and the purpose for which it is required; and
- (b) the body to which the disclosure is made is required by law to observe rules of confidentiality with respect to the information that are no less strict than those applying to it in the Island, or the body has undertaken to observe standards of equivalent effect; and
- (c) the body to which the disclosure is made has undertaken to observe standards of information security with respect to the information that are no less strict than those adopted by the Commission; and
- (d) the body to which the disclosure is made has undertaken to observe any conditions imposed by the Commission on the release of the information to third parties; and
- (e) the body to which the disclosure is made has undertaken that the information will be used only for the purpose of assisting that body in the exercise of functions conferred on it by or under statute; and
- (f) the disclosure is (either itself or when taken with other material) likely to be of substantial value to the body to which it is made.

(6B) In deciding whether to consent to a disclosure of information to which subsection (6) applies, the Commission shall take the following factors into account –

- (a) the seriousness of the circumstances of the particular case;
- (b) whether the information could be obtained by other means;
- (c) whether the making of the disclosure is proportionate to what is sought to be achieved by it; and

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- (d) whether reciprocal assistance would be given in the country concerned.
- (6C) The factors set out in subsection (6B) are neither exhaustive nor definitive.
- (6D) The Treasury may by order modify –
 - (a) the matters in respect of which the Commission must be satisfied under subsection (6A);
 - (b) the factors to be taken into account under subsection (6B)”.
- (7) The Treasury may by order modify the application of any provision of this section so as -
 - (a) to prevent the disclosure by virtue of that provision; or
 - (b) to restrict the extent to which disclosure is permitted by virtue of that provision.

[Subsection 24(6) - 24(6D) substituted by the Fiduciary Services Act 2005]

Public
Registers

- 24A. (1) The Commission shall keep at its principal office registers of schemes to which this section applies containing such particulars and information as may be prescribed.
- (2) Any person shall be entitled to inspect the registers during ordinary office hours.
- (3) This section applies to -
- (a) authorised schemes;
 - (b) international scheme within the meaning of section 11; and
 - (c) recognised schemes.

Offences

False and
misleading
statements

25. A person commits an offence if -
- (a) for the purposes of or in connection with any application under this Act; or
 - (b) in purported compliance with any requirement imposed on him by or under this Act,

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he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

Offences

26. (1) Any person who commits an offence under this Act or any public document made under this Act shall be liable -

- (a) on summary conviction to a fine not exceeding £5,000 or to a term of imprisonment not exceeding 6 months, or to both;
- (b) on conviction on information, to a fine or to a term of imprisonment not exceeding 2 years, or to both.

(2) No person shall be prosecuted for an offence under this Act without the consent of the Attorney General.

[(3) 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 neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.]⁶

(4) Where the affairs of a body corporate are managed by the members subsection (3) 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.

(5) In proceedings brought against any person for an offence under this Act it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Public Documents

Regulations and orders

27. (1) The Treasury may make such regulations as it considers are necessary or desirable to carry the provisions of this Act into effect and, without prejudice to the generality of that power, may -

- (a) require the operator of a collective investment scheme to pay such periodical fees in respect of that scheme as may be specified;

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- (b) make provision whereby compliance with or contravention of any specified requirements imposed by or under the law of a country prescribed for this purpose is treated as compliance with or contravention of any specified requirement of this Act or any public document made under this Act;
 - (c) exempt any person or scheme from Part I;
 - (d) create offences.

(2) The generality of subsection (1) is not prejudiced by any other provision in this Act which enables the Treasury to make regulations.

(2A) Without prejudice to the generality of the power contained in subsection (1), regulations made under that subsection may regulate the issue, form and content of advertisements or other documents relating to collective investment schemes and in particular -

- (a) may prohibit the issue of advertisements of schemes of particular descriptions or by persons of particular descriptions; and
- (b) may make provision with respect to matters which must be, as well as to matters which may not be, included in the advertisements.

(2B) Any person who issues an advertisement in contravention of regulations made under this section shall be guilty of an offence.

[c.9]

(Any regulations under Section 11(2) of the Banking Act 1975 relating to collective investment schemes, which are in operation immediately before the commencement of this paragraph shall, without prejudice to section 16 of the Interpretation Act 1976, have effect as if made under section 27(2A) of the Financial Supervision Act 1988.)

[c.20]

(3) The Treasury may by order delegate to the Commission any of the functions of making regulations under this Act.

(4) Where an order has been made under subsection (3), the Treasury may give to the Commission directions as to the exercise of any functions delegated by that order and in particular as to the matters which may or may not be included in regulations to be made under those functions and the Commission shall comply with any such directions.

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(5) Any regulations or order (other than an order under section 3(1), 4, 13(1), 14(1) or 34) made under this Act shall be laid before Tynwald as soon as practicable after they are made and, if Tynwald at the sitting before which the regulations or order, as the case may be, are laid or at the next following sitting fails to approve the regulations or order, they shall thereupon cease to have effect.

Banking and investment businesses

Amendments 28. The enactments specified in Schedule I (which relate to banking businesses and investment businesses) shall be amended in accordance with that Schedule.

Supplementary

Financial provisions 29. (1) Any expenses incurred under this Act by the Treasury, the Commission, any person appointed or authorised to exercise any powers under section 19 or any body administering a scheme under section 21 shall be defrayed out of money provided by Tynwald.

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

Collective investment schemes: interpretation P1986/60/75 30. (1) In this Act "a collective investment scheme" means, subject to the provisions of this section, any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that the persons who are to participate as mentioned in subsection (1) (in this Act referred to as "participants") do not have day to day control over the management of the property in question, whether or not they have the right to be consulted or to give directions; and the arrangements must also have either or both of the characteristics mentioned in subsection (3).

(3) Those characteristics are -

- (a) that the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
- (b) that the property in question is managed as a whole by or on behalf of the operator of the scheme.

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- (4) Where any arrangements provide for such pooling as is mentioned in subsection (3)(a) in relation to separate parts of the property in question, the arrangements shall not be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.
- (5) Arrangements are not a collective investment scheme if -
- [(a) the property to which the arrangements relate (other than cash awaiting investment) consists of investments falling within any of paragraphs 1 to 5, 6 (so far as relating to units in authorised schemes and recognised schemes) and paragraph 10 of Schedule 2 to the Investment Business Order 1991;]⁵
 - (b) each participant is the owner of a part of that property and entitled to withdraw it at any time; and
 - (c) the arrangements do not have the characteristics mentioned in subsection (3)(a) and have those mentioned in paragraph (b) of that subsection only because the parts of the property belonging to different participants are not bought and sold separately except where a person becomes or ceases to be a participant.
- (6) The following are not collective investment schemes -
- (a) arrangements operated by a person otherwise than by way of business;
 - (b) arrangements where each of the participants carries on a business other than investment business within the meaning of the [Investment Business Order 1991] and enters into the arrangements for commercial purposes related to that business;
 - (c) arrangements where each of the participants is a body corporate in the same group as the operator;
 - (d) arrangements where -
 - (i) each of the participants is a bona fide employee or former employee (or the wife, husband, widow, widower, child or step-child under the age of eighteen of such an employee or former employee) of a body corporate or of another body corporate in the same group as that body corporate; and

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- (ii) [the property to which the arrangements relate consists of cash or near cash or of shares or debentures (as defined in paragraph 12(4) of Schedule I to the Investment Business Order 1991) in or of a member of that group,]⁵ and in this paragraph, "near cash" means -
 - (A) money in a current account with a banking institution;
 - (B) money in a deposit account with, or on short term loan to, a banking institution which can be withdrawn on not more than 7 days call; and
 - (C) investments falling within Part I of Schedule I to the Trustee Investments Act 1961 (an Act of Parliament) (National Savings investments, etc.) and equivalent investments issued or guaranteed by the Government of any country or territory.
 - (e) arrangements where the entire contribution of each participant is a deposit within the meaning of section 13(1) of the Banking Act 1975 or a sum -
 - (i) paid by a banking institution;
 - (ii) paid by a person in the course of carrying on a business consisting wholly or mainly of lending money;
 - (iii) paid by one company to another at a time when the same individual would be treated as the controller of both of them if the percentage referred to in section 31(4)(a) was 50;
 - (iv) which is paid by a person who, at the time when it is paid, is the spouse or a close relative of the person receiving it or who is, or is the spouse or a close relative of, a director or controller of that person, and in this sub-paragraph "close relative" means a child, step-child, parent, step-parent, brother, sister, step-brother, step-sister or spouse of such person;
 - (f) franchise arrangements, that is to say, arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the good-will attached to it;
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- (g) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;
- (h) [arrangements under which the rights or interests of the participants are investments falling within paragraph 5 of Schedule 2 to the Investment Business Order 1991;]⁵
- (i) arrangements the purpose of which is the provision of clearing services and which are operated by an authorised person, a recognised clearing house or a recognised investment exchange;
- (j) contracts of insurance;
- (k) occupational pension schemes.

(6A) No limited partnership formed under the law of the Island shall be regarded as constituting a collective investment scheme if its interests are admitted to the Official List of the UK Listing Authority.

(6B) For the purposes of subsection (6A), "interests" means limited partnership interests of an irredeemable nature however termed together with depositary receipts or similar certificates representing such interests.

[Subsections 30(6A) and 30(6B) inserted by the Financial Supervision Act 1988 (Definition of Collective Investment Schemes) (Amendment) Order 2007]

(7) No body incorporated under the law of the Island, or of, or of any part of, the United Kingdom, relating to building societies or industrial and provident societies or registered under any such law relating to friendly societies, and no other body corporate other than an open-ended investment company, shall be regarded as constituting a collective investment scheme.

(8) The Treasury may by order modify this section.

Interpretation

31. (1) In this Act -

[c.15]

"advocate" includes a person who is registered under the Legal Practitioners Registration Act 1986;

"authorised person" means –

- (a) in the case of a trustee of a scheme, a person who is the holder of a banking licence under the Banking Act 1998 and is a permitted person under the Investment Business Act 1991;
- (b) in the case of a manager of a scheme, a person who is the holder of a licence granted under section 3 of the Investment Business Act 1991;

Financial Supervision Act 1988 (as amended)

(c) in any case, such other classes of permitted persons (within the meaning of the Act of 1991) as may be prescribed;"

"authorised scheme" means a unit trust scheme or open ended investment company declared by an order of the Commission for the time being in force to be an authorised scheme for the purposes of this Act;

"body corporate" includes a body corporate constituted under the law of a country or territory outside the Island;

"collective investment scheme" has the meaning given in section 30 and "scheme" shall be construed accordingly;

"the Commission" has the meaning given by section 2(2)(a);

"condition" includes limitation;

"director", in relation to a body corporate, includes a person occupying in relation to it the position of a director (by whatever name called) and any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act;

"documents constituting the scheme" includes, in the case of a scheme which is an open ended investment company, the memorandum and articles of association of the company and any agreements between the company and the manager or trustee (if any) of the scheme;

"group" in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company;

"operator", in relation to a unit trust scheme with a separate trustee, means the manager and, in relation to an open-ended investment company, means that company and the manager of the scheme, and references to an operator in relation to a collective investment scheme shall be construed accordingly;

"an open-ended investment company" means a collective investment scheme under which

(a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that body; and

(b) the rights of the participants are represented by shares in or securities of that body which -

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- (i) the participants are entitled to have redeemed or repurchased, or which [(otherwise than by repurchase under Part I of the Companies Act 1986)]¹ are redeemed or repurchased from them by, or out of funds provided by, that body; or
 - (ii) the body ensures can be sold by the participants on an investment exchange at a price related to the value of the property to which they relate;

"participant" has the meaning given in section 30;

"prescribed" means prescribed by regulations made by the Commission;

[XIII P.235]

"private company" has the same meaning as in the Companies Act 1931;

"recognised clearing house" and "recognised investment exchange" means a body declared to be such by an order of the Secretary of State for the time being in force under the Financial Services Act 1986 (an Act of Parliament);

"recognised scheme" means a scheme recognised under sections 12 or 13;

"trustee", in relation to a unit trust scheme means the person holding the property in question on trust for the participants and, in relation to any other collective investment scheme means any person who (whether or not under a trust) is entrusted with the custody of the property in question;

"units" means the rights or interests (however described) of the participants in a collective investment scheme;

"unit trust scheme" means a collective investment scheme under which the property in question is held on trust for the participants;

(2) In this Act "advertisement" includes every form of advertising, whether in a publication, by the display of notices, signs, labels or showcards, by means of circulars, catalogues, price lists or other documents, by an exhibition of pictures or photographic or cinematographic films, by way of sound broadcasting or television, by the distribution of recordings, or in any other manner; and references to the issue of an advertisement shall be construed accordingly.

(3) For the purposes of this Act an advertisement or other information issued outside the Island shall be treated as issued in the Island if it is directed to persons in the Island or is made available to them otherwise than in a newspaper, journal, magazine or other periodical publication published and circulating principally outside the Island or in a sound or television broadcast transmitted principally for reception outside the Island.

(4) In this Act "controller" means -

Financial Supervision Act 1988 (as amended)

- (a) In relation to a body corporate, a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15 per cent. or more of the voting power at any general meeting of the body corporate or another body corporate of which it is a subsidiary; and
- (b) in relation to an unincorporated association -
 - (i) any person in accordance with whose directions or instructions, either alone or with those of any associate or associates, the officers or members of the governing body of the association are accustomed to act (but disregarding advice given in a professional capacity); and
 - (ii) any person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15 per cent. or more of the voting power at any general meeting of the association;

and for the purposes of this subsection "associate", in relation to any person, means that person's wife, husband or minor child or step-child, any body corporate of which that person is a director, any person who is an employee or partner of that person and, if that person is a body corporate, any subsidiary of that body corporate and any employee of any such subsidiary.

[c.24]

(5) In this Act "insurance business", "insurance company" and "contract of insurance" have the same meanings as in the Insurance Act 1986.

[c.30]

(6) Section 1 of the Companies Act 1974 (meaning of subsidiary and holding company) shall apply for the purposes of this Act.

(7) This Act is in addition to and not in derogation of any other enactment.

(8) In determining for any purposes of this Act whether any particular matter is desirable in the public interest, the Commission shall take into account all matters which appear to it in the particular circumstances to be relevant and, among other things, shall have regard to –

- (a) the protection of the public;
- (b) the deterrent effect of such a public statement; and
- (c) the effect of publication on those to whom the statement relates.

[Subsection 31(1) "authorised person" substituted by the Fiduciary Services Act 2005]
 [Subsection 31(8) inserted by the Fiduciary Services Act 2005]

Miscellaneous
and consequential
amendments

32. The enactments referred to in Schedule 2 are amended in accordance with that Schedule.

Financial Supervision Act 1988 (as amended)

Repeals	33. The enactments referred to in Schedule 3 are replaced to the extent specified in column 3 of that Schedule.
Short title, commencement and transitional	34. (1) This Act may be cited as the Financial Supervision Act 1988 and shall come into operation on such day or days as may be appointed by order made by the Treasury and such an order may appoint different days for different provisions and for different purposes. (2) An order under subsection (1) may include such transitional and saving provisions as appear to the Treasury to be necessary or expedient in connection with the provisions of this Act which are thereby brought into force (wholly or partly), including such adaptations of those provisions or any provisions of this Act then in force as appear to it to be necessary or expedient.

Financial Supervision Act 1988 (as amended)

Section 28

SCHEDULES

SCHEDULE I

[REPEALED BY THE BANKING ACT 1998]

Financial Supervision Act 1988 (as amended)

Section 32

SCHEDULE 2

MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS

Trustee Act 1961 (XIX p.215)

1. For section 1(1A)(b)(ii) substitute -
 - "(ii) in entry 3, after the year "1986" there were inserted the words "or the Financial Supervision Act 1988 (an Act of Tynwald)".

Stock Transfer Act 1965 (XIX p.1505)

2. In section 1(4), for paragraph (c) substitute -
 - "(c) units of an authorised scheme or a recognised scheme within the meaning of the Financial Supervision Act 1988;"
3. In section 4(1), in the definition of "securities" for the words from "unit trust scheme" to "scheme" substitute "collective investment scheme within the meaning of the Financial Supervision Act 1988".

Prevention of Fraud (Investments) Act 1968 (XX p.387)

4. In section 2 -
 - (a) after subsection (2)(a) insert -
 - "(aa) in relation to any distribution of documents relating to a collective investment scheme within the meaning of the Financial Supervision Act 1988,";
 - (b) in subsection (3)(a), for sub-paragraphs (i) and (ii) substitute -
 - "(i) made or given with respect to securities by or on behalf of any prescribed person or body, or
 - (ii) made or given with respect to securities by or on behalf of the Bank of England, or".

Stock Exchange (Completion of Bargains)
(Isle of Man) Act 1979 (c.5)

5. In section 1 -

Financial Supervision Act 1988 (as amended)

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- (a) for "stock exchange nominee" where first occurring, substitute "recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange";
 - (b) for "a stock exchange nominee" where secondly occurring, substitute "such a clearing house or nominee".
6. In section 3 -
- (a) for "stock exchange nominee" where first occurring, substitute "recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange";
 - (b) for "a stock exchange nominee" where secondly occurring, substitute "such a clearing house or nominee".
7. For section 5 substitute -
- "5. (1) In this Act -
- "recognised clearing house" means any body declared by an order of the Secretary of State for the time being in force to be a recognised clearing house for the purposes of the Financial Services Act 1986 (an Act of Parliament);
- "recognised investment exchange" means any body declared by an order of the Secretary of State for the time being in force to be a recognised investment exchange for the purposes of that Act.
- (2) A person is a nominee for the purposes of this Act if he is a person designated for the purposes of section 5 of the Stock Exchange (Completion of Bargains) Act 1976 (an Act of Parliament) in the rules of the recognised investment exchange in question."

Financial Supervision Commission Act 1984 (c. 22)

- [8. Repealed]⁷
9. After section 4 insert -
- 4A. (1) Sections 2 to 4 shall apply to a United Kingdom building society carrying on business in the Island, whether by itself or through an agent, as they apply to a building society established under the Industrial and Building Societies Act 1892 subject to the following modifications -

"Application of ss. 2-4 to non-Manx Societies"

Financial Supervision Act 1988 (as amended)

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- (a) in section 2(8), for the words "in accordance with section 24(4) of the 1892 Act" substitute "under the provisions of the Companies Acts 1931 to 1986 in like manner, as nearly as may be, as if the society were a company under such Acts;
 - (b) in section 3(1), omit the words "or section 7(5) of the 1892 Act";
 - (c) in section 3(3), add -
 - "(f) for the purpose of enabling or assisting an authority in a country or territory outside the Island exercising functions corresponding to those of the Commission under this Act.";
 - (d) in section 4(2)(a), omit the words "or section 7(5) of the 1892 Act".
- (2) In this section, "United Kingdom building society" means a building society which is established in any part or the United Kingdom under any enactment of Parliament relating to building societies."

Insurance Act 1986 (c.24)

10. In section 27, after subsection (1) insert the following new subsection-

"(1A) A registered insurance manager shall not carry on any activities, in the Island or elsewhere, otherwise than in connection with or for the purpose of his business as an insurance manager."

Injunctions
P1986/60/61(1)

11. After section 28 insert the following new sections -

- 28A. (1) If on the application of the Authority, the High Court is satisfied-
- (a) that there is a reasonable likelihood that any person will contravene any provision of -
 - (i) section 3, 6(5) or 27; or
 - (ii) any regulations under this Act;
 - (b) that any person has contravened any such provision and that there is a reasonable likelihood that the contravention will continue or be repeated; or

Financial Supervision Act 1988 (as amended)

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- (c) that any person has contravened any such provision and that there are steps that could be taken for remedying the contravention, the Court may grant an injunction restraining the contravention or, as the case may be, make an order requiring that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the Court may direct to remedy it.

(2) Nothing in this section affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this section applies.

28B. Subject to section 28B, the High Court may, on the application of the Authority, make an order under subsection (2) if satisfied -

- (a) that profits have accrued to any person as a result of his contravention of any provision mentioned in section 28A(1)(a); or
- (b) that one or more policyholders have suffered loss or been otherwise adversely affected as a result of that contravention.

(2) The Court may under this subsection order the person concerned to pay into Court, or appoint a receiver to recover from him, such sum as appears to the Court to be just having regard -

- (a) in a case within subsection (1)(a), to the profits appearing to the Court to have accrued;
- (b) in a case within subsection (1)(b), to the extent of the loss or other adverse effect; or
- (c) in a case within subsection (1)(a) and (b), to the profits and to the extent of the loss or other adverse effect.

(3) Any amount paid into Court by or recovered from a person in pursuance of an order under subsection (2) shall be paid out to such person or distributed among such persons as the Court may direct, being a person or persons appearing to the Court to have entered into transactions with that person as a result of which the profits mentioned in subsection (2)(a) have accrued to him or the loss or adverse effect mentioned in subsection (2)(b) has been suffered.

Financial Supervision Act 1988 (as amended)

(4) On an application under subsection (1) the Court may require the person concerned to furnish it with such accounts or other information as it may require for establishing whether any and, if so, what profits have accrued to him as mentioned in subsection (1)(a) and for determining how any amounts are to be paid or distributed under subsection (3); and the Court may require any such accounts or other information to be verified in such manner as it may direct.

(5) Nothing in this section affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this section applies.

28C. (1) Without prejudice to sections 28A and 28B, a contravention of -

- (a) any conditions imposed under section 6;
- (b) any regulations under this Act, shall, subject to section 28D, be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) Subsection (1) does not apply to a contravention of any condition or regulation relating to the financial resources of an insurer.

(3) No contravention to which subsection (1) applies shall invalidate any transaction.

Sections 28B and 28C shall apply only to contraventions in respect of activities which constitute investment business as defined in the Banking Act 1975."

12. In Schedule 4, in paragraph 7, after "insurers" insert "and insurance managers".

Financial Supervision Act 1988 (as amended)

SCHEDULE 3

REPEAL OF ENACTMENTS

XX p.387	The Prevention of Fraud (Investments) Act 1968	In section 2(3) - (a) paragraph (a)(iv); (b) in the proviso, the words from "nothing in paragraph (a) " to " scheme: and". Sections 3 and 4. The Schedule.
1975 c. 9	The Banking Act 1975	In section 2A - (a) subsections (3) and (4); (b) in subsection (5), the definition of "deposit taking business". Section 5(9). Section 8A.
1979 c. 22	The Statute Law Revision (Miscellaneous Provisions) Act 1979.	In Schedule 1, entry 24.
1983 c. 10	The Statute Law Revision Act 1983	In Schedule 1, paragraph 21(3).
1985 c. 25	The Treasury Act 1985.	In Schedule 2, entries 173 and 174.
1986 c. 2	The Banking (Amendment) Act 1986.	Sections 5 and 6.

¹ *Inserted by the Investment Business (Amendment) Act 1993*

² *Inserted by the Banking Act 1998*

³ *Amended by the Banking Act 1998*

⁴ *Text Repealed by the Banking Act 1998*

⁵ *Amended by the Financial Supervision Act 1988 (Definition of Collective Investment Schemes) (Amendment) Order 1998*

⁶ *Amended by the Corporate Service Providers Act 2000*

⁷ *Repealed by the Investment Business (Amendment) Act 1993*