

Financial Services (Investment and Fiduciary Services)
FINANCIAL SERVICES (UNSOLICITED CALLS) REGULATIONS,
1991

1989-47

Subsidiary
1991/096

Regulations made under s.53.

FINANCIAL SERVICES (UNSOLICITED CALLS)
REGULATIONS, 1991

(LN. 1991/096)

30.5.1991

Amending enactments	Relevant current provisions	Commencement date
None		

ARRANGEMENT OF REGULATIONS.

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Citation.

1. These Regulations may be cited as the Financial Services (Unsolicited Calls) Regulations, 1991.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“authorised scheme” means a collective investment scheme which is the subject of a licence issued under section 8 of the Act;

“controlled activity” has the meaning given in section 3(2)(c) of, and Schedule 3 to, the Act;

“financial services business” means any activity that constitutes investment business or a controlled activity, and “financial services” shall be construed accordingly;

“investment” has the meaning given in section 3(2)(a) of, and Schedule 1 to, the Act;

“investment agreement” means any agreement the making or performance of which by either party constitutes an activity which falls within any paragraph of Schedule 2 or 3 to the Act;

“investment business” has the meaning given in section 3(2)(b) of, and Schedule 2 to, the Act;

“licence” means a licence issued under section 8 of the Act;

“licensee” means a person licensed under section 8 of the Act to carry on investment business or a controlled activity;

“life policy” means an investment which falls within paragraph 10 of Schedule 1 to the Act;

“the Act” means the Financial Services Act, 1989;

“recognised scheme” means a collective investment scheme recognised under section 24 or 26 of the Act; and

“unsolicited call” means a personal visit or oral communication made without express invitation.

Prohibition of unsolicited calls.

3. Subject to regulation 4, no person shall make an unsolicited call on a person in Gibraltar nor make an unsolicited call from Gibraltar on a person elsewhere.

Exceptional cases where unsolicited calls not prohibited.

4. The prohibition of unsolicited calls imposed by regulation 3 shall not apply–

- (1) where the call is by a licensee; and
- (2) the subject matter of the call falls properly within the scope of the financial services business permitted by the licence of the licensee; and
- (3) the call relates to the provision by the licensee of advisory, management or dealing services for either a life policy or units in an authorised scheme or recognised scheme; or
- (4) the call relates to the provision by the licensee of advisory, management or dealing services relating to readily realisable securities, and
 - (a) those services are provided under a written customer agreement made more than 7 days before the service is provided; and
 - (b) it is made clear to the person called upon in the customer agreement and in any accompanying letter or promotional material that he has a 7 day cooling off period; or
- (5) the licensee has an established customer relationship with the person called on and that customer relationship envisages calls relating to investments or financial services of the kind concerned; or
- (6) the person called on carries on financial services business of the same description as that carried on by the licensee.

Unenforceability where unsolicited call is prohibited.

5. (1) Subject to regulation 6, where regulation 3 is contravened–
- (a) any investment agreement which is entered into in the course of or in consequence of the unsolicited call shall not be enforceable against the person on whom the call was made; and

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- (b) that person shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having parted with it.

(2) The compensation recoverable under paragraph (1)(b) shall be such as the parties may agree, or as the Supreme Court may, on the application of either party, determine.

(3) Where a person elects not to perform an agreement which by virtue of this regulation is unenforceable against him, or by virtue of this regulation recovers money paid or other property transferred by him under an agreement, he shall repay any money and return any other property received by him under the agreement.

(4) Where any property transferred under an agreement to which this regulation applies has passed to a third party, the reference to that property in this regulation shall be construed as reference to its value at the time of its transfer under the agreement.

Power of Court to allow enforcement.

6. Notwithstanding contravention of regulation 3, the Supreme Court may allow an investment agreement which is entered into in the course of or in consequence of the unsolicited call to be enforced, or money and property paid or transferred under it to be retained, if it is satisfied that the person on whom the unsolicited call was made was not influenced, or not influenced to any material extent, by anything said or done in the course of or in consequence of the call, and either—

- (a) that the person on whom the unsolicited call was made entered into the agreement—
 - (i) following discussions between the parties of such a nature and over such a period that his entering into the agreement can fairly be regarded as a consequence of those discussions rather than the call; and
 - (ii) was aware of the nature of the agreement and any risks involved in entering into it; or
- (b) that the unsolicited call was not made by—
 - (i) the person seeking to enforce the agreement or to retain the money or property or a person acting on his behalf or a representative whose principal he was; or

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- (ii) a person who has received or is to receive, or in the case of a representative whose principal has received or is to receive, any commission or other inducement in respect of the agreement from a person mentioned in (i).