

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,584 of 15th February, 2007

B. 11/07

FINANCIAL SERVICES COMMISSION ACT 2007

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BILL

FOR

AN ACT to establish the Financial Services Commission and to repeal the Financial Services Commission Act 1989.

ENACTED by the Legislature of Gibraltar.

**PART I
PRELIMINARY**

Title and commencement.

1.(1) This Act may be cited as the Financial Services Commission Act 2007.

(2) The provisions of this Act shall come into operation on such day as the Minister may by notice published in the Gazette appoint, and different days may be so appointed for different purposes.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Authorised person” means a person who is authorised, licenced, recognised or registered under any supervisory Act;

“Commission” means the Financial Services Commission established under section 3(1);

“Commission member” means an individual appointed to be a Commission member under section 3(1);

“Committee” means any committee established under section 12(1);

“Chairman” means the chairman of the Commission appointed under Section 3(2);

“Chief Executive” means the person appointed under section 8;

“financial crime” includes an offence involving–

- (a) money laundering,
- (b) the financing of terrorism,
- (c) fraud or dishonesty,
- (d) misconduct in, or misuse of information relating to, a financial market, or
- (e) handling the proceeds of crime,

arising through the conduct of authorised or unauthorised financial services business. “Offence” for this purpose means an act or omission which would be an indictable offence if it had taken place in Gibraltar;

“financial services” means any services provided in connection with any financial services business, and “financial services legislation” shall be construed accordingly;

“financial services business” means–

- (a) a business or activity for which an authorisation, licence or registration is required under a supervisory Act, or
- (b) a business or activity that is prescribed by or with the consent of the Minister as a financial services business;

“institution” means any person, company or partnership;

“in writing” shall include by electronic means;

“Minister” means the Minister with responsibility for financial services;

“prescribed” means prescribed by rules made under section 23;

“Supervisory Act” means an Act or any section or sections of an Act which the Minister may by Order published in the Gazette specify.

(2) For the purposes of this Act, standards and supervisory practices match those governing the provision of financial services in the United Kingdom if they mitigate regulatory risk to the same extent as they are mitigated in the United Kingdom taking into account the respective nature and sizes of Gibraltar and the United Kingdom financial services businesses.

PART II THE COMMISSION

Establishment of the Financial Services Commission.

3.(1) There is hereby established the Financial Services Commission which consists of—

- (a) the Chief Executive as ex officio member;
- (b) seven other persons appointed by the Minister in accordance with subsection (4). At least two of these persons shall have significant experience of regulation and supervision of finance services business in another jurisdiction.

(2) The Commission shall appoint one of their members to be the Chairman of the Commission. Appointments as Chairman shall be for a period of one year. Members may be reappointed Chairman any number of times consecutively.

(3) A Commission member shall be appointed for three years and upon such terms as may be specified in the instrument appointing him.

(4) When there is a vacancy to be filled the Commission shall within four weeks of the creation of the vacancy nominate no fewer than three persons to the Minister. Should the Minister decline to appoint a person from the

nominations made by the Commission, the Commission shall, within a period of a further four weeks, nominate no fewer than three further persons.

(5) Should the Minister decline to appoint a person from the nominations made by the Commission, the Minister may then appoint any person whom he believes to be suitably qualified to be a member of the Commission and any such appointment under this subsection shall be subject to ratification by a resolution of the Parliament.

(6) If the Minister is satisfied that any member of the Commission—

- (a) has been absent from three consecutive meetings of the Commission without the permission of the Chairman;
- (b) has become bankrupt;
- (c) has been convicted of a criminal offence punishable by a term of imprisonment of 3 months or more;
- (d) is incapacitated by physical or mental illness;
- (e) is in material breach of the terms under which he was appointed; or
- (f) is otherwise unable or unfit to discharge the functions of a member;

the Minister may, after consultation with the other members of the Commission declare his office as a member of the Commission to be vacant and thereupon his office shall become vacant and such decision shall become effective by publication in the Gazette.

(7) Notwithstanding the foregoing provisions of this section any member may resign his office by giving written notice to the Commission.

(8) Any member of the Commission appointed under subsection (1)(b) who ceases to be a member shall be eligible for re-appointment by the Minister for a further period of three years except where the member has already served for a total of 9 years or more.

(9) The Commission shall designate an employee of the Commission to be the Secretary to the Commission.

The Commission to be a body corporate.

4.(1) The Commission shall be a body corporate with perpetual succession under the name of the Financial Services Commission and shall have a common seal which shall be officially and judicially noted.

(2) The common seal of the Commission may only be affixed to an instrument in the presence of the Chairman and one other Commission member.

(3) Such instruments as are referred to in subsection (2) of this section shall be signed by the persons so present as witnesses to the sealing and the acts of sealing and witnessing shall be recorded in a register to be kept for the purpose.

(4) The Commission may sue and subject to section 18 be sued in its corporate name. Service of any process or notice on the Commission may be effected by leaving it at, or sending it by registered post to, the principal office of the Commission.

Meetings and proceedings.

5.(1) The quorum at all meetings of the Commission shall be five members.

(2) The Chairman shall preside at every meeting of the Commission at which he is present and, in his absence, the Commission members shall elect one of the members present to act as Chairman for the duration of the meeting.

(3) All meetings of the Commission shall be called by the Secretary to the Commission at the request of the Chairman or Chief Executive and shall, save as provided under subsection (7), take place in Gibraltar.

(4) Any matters arising at a meeting of the Commission shall be decided by a majority of the members present and voting thereon at the meeting and in the case of an equality of votes, the Chairman shall have a second or casting vote.

(5) All orders and directions of the Commission shall be given under the hand of the Chairman or Chief Executive.

(6) The Commission shall keep proper minutes of its proceedings.

(7) The Commission may, if the Chairman so approves, transact any business by the circulation of papers to all Commission members, and a resolution in writing approved by a majority of Commission members shall be as valid and effectual as if passed at a meeting of the Commission by the votes of the Commission members so approving the resolution.

Functions of the Commission.

6.(1) The functions of the Commission are—

- (a) to supervise authorised persons in accordance with this Act and the supervisory Acts;
- (b) to consider and determine applications for authorisations, licences, recognitions and registrations made under the supervisory Acts;
- (c) to monitor compliance by authorised persons with such Legislation, Rules, Codes and Guidance made under this Act or any supervisory Acts;
- (d) to monitor compliance by authorised persons with legislation, rules, Codes and Guidance relating to the prevention of financial crime;
- (e) to monitor financial services business carried on in or from Gibraltar and to take such appropriate action as it is empowered to do against persons carrying on such business without the necessary authorisation, licence or registration;
- (f) to carry out the duties and discharge the functions imposed on, or given to, it under this or any other Act;
- (g) to determine subject to the approval of the Minister the terms of service of the Chief Executive;
- (h) to determine the number and skill mix of employees required by the Commission to carry out its functions and to determine their terms and conditions of employment;

- (i) to monitor and oversee the performance by the Chief Executive of all functions delegated to him by the Commission;
- (j) to approve the annual estimates of income and expenditure to be furnished to the Minister under section 16; and
- (k) to supervise and regulate financial services business carried on in or from Gibraltar to the standards and supervisory practices governing the provision of financial services within the United Kingdom.

(2) The Commission shall advise the Minister if, at any time, it considers that this Act and the supervisory Acts do not provide it with sufficient powers, or otherwise do not enable it, or it does not have such financial, technical and other resources, and such personnel, as are necessary to enable it—

- (i) to supervise and regulate financial services business carried on in or from Gibraltar to internationally accepted standards; or
- (ii) in respect of those areas of financial services business where Community law applies, to supervise and regulate financial services business carried on in or from Gibraltar in accordance with Community obligations or to establish and implement standards and supervisory practices which match the standards and supervisory practices governing the provision of financial services within the United Kingdom;
- (iii) to discharge its functions under this or any other Act.

Discharge by Commission of its functions.

7.(1) In discharging its functions under this or any other Act, the Commission—

- (a) shall, so far as reasonably possible, act in a way—
 - (i) which is compatible with the regulatory objectives specified in subsection (2),
 - (ii) which has regard to generally accepted principles of good corporate governance, and
 - (iii) which the Commission considers most appropriate for the purposes of meeting those objectives; and
- (b) shall have regard to—
 - (i) the need to use resources in the most efficient and effective way;
 - (ii) the principle that the duty to manage a business falls upon the senior management of that business;
 - (iii) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
 - (iv) the desirability of facilitating innovation in connection with financial services business;
 - (v) the international character of financial services and markets and the desirability of maintaining the competitive position of Gibraltar;
 - (vi) the desirability of minimising, as far as reasonably practicable, the adverse effects of regulation on competition and consumer choice;

- (vii) the need to maintain the good international reputation of Gibraltar generally and as a jurisdiction for the conduct of financial services business;
- (viii) the policy of the Government, as advised to the Commission by the Minister, where it relates to matters of general application regarding the authorisation, licensing, recognition and registration of financial services business which, in the judgement of the Minister, affects or relates to the macro economic or other public interest of Gibraltar.

(2) The regulatory objectives, which are more specifically described in the Schedule, are—

- (a) the promotion of market confidence;
- (b) the reduction of systemic risk;
- (c) the promotion of public awareness;
- (d) the protection of consumers; and
- (e) the reduction of financial crime.

Appointment of Chief Executive.

8.(1) The Commission with the approval of the Minister shall appoint a person to be the Chief Executive of the Commission.

(2) The Chief Executive shall be appointed for a term of three years, and may be re-appointed for such additional period(s) as the Commission with the approval of the Minister may determine.

(3) The Chief Executive shall perform such functions, and exercise such powers as are from time to time conferred upon him by this or any other Act or regulation or are delegated to him by the Commission.

(4) The Chief Executive shall, with the approval of the Commission, additionally be responsible for drawing up and implementing codes for

regulating the terms of service, discipline and training of all persons employed by the Commission.

(5) In the event of the absence from Gibraltar of the Chief Executive for a period in excess of four days, the Chief Executive shall appoint an officer of the Commission to act as Chief Executive for a period of time not exceeding one month.

(6) If the Minister and the Commission are satisfied that the Chief Executive—

- (a) has been absent from three consecutive meetings of the Commission without the permission of the Commission;
- (b) has become bankrupt;
- (c) has been convicted of a criminal offence punishable by a term of imprisonment of 3 months or more;
- (d) is incapacitated by physical or mental illness;
- (e) is in material breach of the terms under which he was appointed; or
- (f) is otherwise unable or unfit to discharge the functions of a member,

the Minister may declare his office to be vacant.

Delegation of functions.

9.(1) Subject to any express provision to the contrary contained in this or any other Act, the Commission may delegate the discharge of any of its functions to the Chief Executive or, with the consent of the Minister, to such other person or persons as the Commission may propose.

(2) The delegation by the Commission of any of its functions shall not affect the exercise by the Commission of such functions.

Powers of the Commission.

10.(1) Subject to the provisions of this or any other Act the Commission shall have power to do all things necessary for and ancillary and reasonably incidental to the discharge of its functions, and the carrying out of its duties under this or any other Act.

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

- (a) purchase, or otherwise acquire and hold any personal property and lease any real property required for the purposes of the Commission and dispose of any such property no longer required for such purposes;
- (b) contract with any person for the supply to, or by, the Commission of any goods, services or personnel;
- (c) pay expenses properly incurred by the Commission;
- (d) employ such persons (including advisors and consultants) as the Commission thinks fit for the proper discharge by the Commission of its functions;
- (e) establish and maintain schemes or make such other arrangements as it thinks fit for the payment of pensions or other benefits to its employees;
- (f) compile, prepare, print, publish, issue, circulate and distribute, whether in paper or in electronic form and whether for payment or otherwise, such papers, leaflets, magazines, periodicals, books and other literary matter as may be conducive to the attainment of the functions of the Commission.

Disclosure of interest.

11.(1) A Member of the Commission who has any direct or indirect personal, professional, business or pecuniary interest in any matter coming before the Commission shall on each and every occasion on which the matter comes before the commission declare his interest and thereafter,

unless the Chairman directs that a conflict of interest thereby arising is insufficiently significant to require the withdrawal of that Member, shall withdraw from the meeting, take no further part in the proceedings of the Commission in relation to such matter nor vote on such matter and the quorum necessary for that meeting shall be reduced by the number of Members withdrawing under this section.

(2) A declaration, withdrawal or direction referred to in subsection (1) of this section shall be recorded.

(3) Unless the Chairman shall otherwise direct, any decision reached by the Commission on a matter in which a member has declared an interest in accordance with subsection (1) of this section shall be recorded in the normal way save that proceedings of the Commission on such a matter prior to the making of a decision shall be recorded separately and that record shall be provided only to those Commission members who were present at those proceedings.

Committees of the Commission.

12.(1) The Commission—

- (a) shall establish a standing committee for the purpose of reviewing the finances of the Commission (the Audit Committee); and
- (b) may establish other standing or special committees, (which expression shall include sub-committees) and may refer to any such committee any matters for consideration, enquiry or management.

(2) The Commission shall establish terms of reference and rules of procedure for such committees.

(3) The Commission may appoint as a member of any Committee any Commission member or employee of the Commission.

(4) Every appointment under subsection (3) may be revoked by the Commission at any time.

(5) A Committee may elect any of its members to be the Chairman and shall conduct its business in accordance with the rules of procedure referred to in subsection (2) of this section.

Reviews of supervisory activities of the Commission.

13.(1) The Minister may, at any time, and shall at least once in every period of four years, appoint a suitable person or persons to review the supervisory activities, under this or any Supervisory Act, of the Commission in relation to any functions and responsibilities thereunder and to report and as appropriate make recommendations to the Minister.

(2) The reasonable cost of such reviews shall be charged to the Commission unless the Minister (with the agreement of the Minister for Finance, if different) shall decide to charge the same to the Consolidated Fund.

(3) The Minister shall lay in the Parliament a copy of every such review report within 30 days of its receipt by the Minister.

The Revenues of the Commission.

14.(1) The revenues of the Commission shall be:

- (a) such fees and charges as may be payable to the Commission under any Supervisory Act;
- (b) such funds as may from time to time be voted by the Gibraltar Parliament;
- (c) such funds as may properly accrue to the Commission from any other source.

(2) The Commission shall, by notice in the Gazette publish the fees and charges levied under any Supervisory Act.

(3) The Commission may with the consent of the Minister increase or otherwise vary any fee or charge payable under any Supervisory Act.

(4) The Commission may invest any of its funds not required for immediate use by depositing the same in one or more banks or building societies in Gibraltar or otherwise as may be approved by the Minister.

Establishment and operation of general fund.

15.(1) The Commission shall establish a general fund into which all monies received by the Commission shall be paid; and out of which all payments made by the Commission shall be made.

(2) The Commission shall be responsible for the management of the general fund.

(3) The Commission may borrow on such terms as may be agreed from time to time from the Government such sums as it may require to enable it to discharge its functions and for the purposes of meeting expenditure of a capital nature.

Accounts and auditing.

16.(1) The Commission shall keep proper accounting records of its income and other receipts and expenditures during each financial year, and shall also cause a statement of its accounts for each financial year to be prepared within three months after the end of that year.

(2) The financial statements of the Commission for each financial year shall be audited and certified within four months after the end of that year by an auditor to be appointed annually by the Commission provided that no person or firm may audit the accounts of the Commission on more than five successive years.

(3) The auditor of the Commission shall be a person or firm registered in Part I or II, in the case of firms, of the Register maintained under the provisions of the Auditors Approval and Registration Act, 1998.

(4) The auditor shall, with reference to the accounts of the Commission, report—

- (a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of the audit; and

- (b) whether, in his opinion, proper accounting records have been kept by the Commission;
- (c) whether the Commission's balance sheet and accounts dealt with by the report are in agreement with the accounting records;
- (d) whether in his opinion and to the best of his information and according to the explanations given to him, the said accounts give a true and fair view, in the case of the balance sheet of the Commission's finances as at the end of the financial year and in the case of the income and expenditure account, of the surplus or deficit for that financial year; and
- (e) whether in his opinion the Commission has discharged with diligence its obligations in relation to the collection of its revenues.

(5) Within five months after the end of the financial year, the Commission shall prepare and submit to the Minister a written report of its operations for that year together with a copy of the audited accounts for that year and the Minister shall lay a copy of such report and of the audited accounts on the table of the Gibraltar Parliament at the earliest possible opportunity.

Preparation of estimates and value for money.

17.(1) The Commission shall prepare and furnish to the Minister annual estimates of income and expenditure, including capital expenditure, not later than 3 months prior to the commencement of each financial year and such additional information and explanations as he may require.

(2) The Minister may at any time and from time to time appoint any person or persons to conduct a value for money review of the expenditure budget of the Commission and to report thereon to the Minister and the Minister shall lay in the Parliament a copy of any such report within 30 days of its receipt by him.

Financial year.

18. The financial year of the Commission shall be such period as may from time to time be determined by the Commission, but shall not be changed without the consent of the Minister.

Immunity.

19.(1) Neither the Commission nor any member of the Commission, nor any officers or servants of the Commission, nor any person to whom the Commission's powers have been delegated, shall be liable in damages for anything done or omitted in the discharge or purported discharge of any powers or functions conferred on the Commission by this or any other Act or regulation unless the act or omission is shown to have been in bad faith.

(2) Subsection (1) shall not apply to the exercise or purported exercise by the Commission of the powers conferred on it by section 10(2).

(3) The Commission shall (unless bad faith is definitively found to have existed) indemnify any of its existing and former members, officers or servants for the costs of defending any action brought by a third party in respect of anything they are alleged to have done or omitted in the discharge or purported discharge of any powers or functions conferred on the Commission or the Commissioner by this or any other Act or regulation.

Proceedings on failure of the Commission to perform its duties.

20.(1) If at any time it appears to the Minister that the Commission has failed to comply with any of the provisions of this or any other Act, the Minister may, by notice in writing, require the Commission to make good the default within such time as may be specified in the notice.

(2) If the Commission fails to comply with the requirements of a notice issued under the provisions of subsection (1), the Minister may apply to the Supreme Court for an order requiring the Commission to remedy the default specified and the Supreme Court may make such order on the application as it thinks fit.

Restriction on execution.

21. No execution by attachment of property or process in the nature thereof shall be issued against the Commission.

Exemption from Income Tax

22. The income of the Commission shall be exempt from income tax under the Income Tax Act.

Confidentiality.

23.(1) Save as may be provided for by any other Act, any information from which an individual or body can be identified and which is acquired by the Commission in the course of carrying out its functions shall be regarded as confidential by the Commission and by its members, officers and servants.

(2) Save as may be provided for by any other Act, no such information as is referred to in subsection (1) shall be disclosed without the consent of every individual who, and every body which, can be identified from that information, except to the extent that its disclosure appears to the Commission to be necessary—

- (a) to enable the Commission to carry out any of its statutory functions;
- (b) in the interests of the prevention or detection of crime;
- (c) in connection with the discharge of any international obligation to which Gibraltar is subject;
- (d) to assist, in the interests of the public, any authority which appears to the Commission to exercise in a place outside Gibraltar functions corresponding to those of the Commission;
- (e) to comply with the directions of the Supreme Court; or
- (f) for the purpose of assisting or enabling any person appointed to carry out a review in accordance with section 13 to discharge his functions:

provided always any such disclosure is consistent with any applicable Community obligation.

(3) Without prejudice to subsections (1) and (2), any information communicated to the Commission by any Department of the Government of Gibraltar shall, if that Department so requests be regarded as confidential, by the Commission and by its members, officers and servants; and no such information shall be disclosed except in compliance with the directions of the Supreme Court.

(4) A person who discloses information, or who causes or permits the disclosure of information, in contravention of this section, is guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both;
- (b) on summary conviction, to a fine not exceeding £500.

Rules and Guidance.

24.(1) The Commission may, with the consent of the Minister, make rules in respect of anything required or permitted to be prescribed by this Act or any other Supervisory Act.

(2) The Minister may make rules in respect of anything required or permitted to be prescribed by this Act or any other Supervisory Act.

(3) The Commission may issue guidance consisting of such information and advice as it considers appropriate—

- (a) with respect to the operation of this or any other supervisory Act and of any rules made under them;
- (b) with respect to any matters relating to functions of the Commission;
- (c) for the purpose of meeting the regulatory objectives of the Commission; and
- (d) with respect to any other matters about which it appears to the Commission to be desirable to give information or advice.

(4) The Commission must make and maintain effective arrangements for consulting practitioners and consumers prior to making rules under subsection (1) or issuing guidance under subsection (2).

(5) The Commission shall provide the Minister with written notice of its intention to make rules or issue guidance under subsections (1) or (2), or to revoke or amend rules or guidance already made under that subsection.

(6) The period of notice to be provided under subsection (4) shall be—

- (a) not less than 28 days prior to the date that the rules take effect;
or
- (b) such shorter period as the Minister may agree to accept.

(7) The Minister may, during the period specified under subsection (6)(a), require the Commission to do the following:

- (a) not to issue the intended rules or guidance,
- (b) not to revoke or amend the existing rules or guidance in the manner proposed, or
- (c) to issue the intended rules or guidance, revocation or amendment in a manner prescribed by the Minister.

(8) Rules or guidance made under subsections (1) or (2) may make different provision for different persons, circumstances or cases.

(9) A breach of any rules made under subsection (1), or guidance made under subsection (2), may be used by the Commission as grounds for such action as permitted by the supervisory Act to which it relates.

(10) The Minister may require the Commission to revoke or to amend in the manner specified by him any rules made hereunder and if the Commission shall not do so within a period of 30 days, the Minister may revoke such rules.

Petitioning the court for winding up.

25.(1) The Minister or the Commission (with the consent of the Minister) may petition the Supreme Court for the winding up of a company incorporated in Gibraltar which—

- (a) appears to the Commission to be undertaking financial services business without an authorisation, licence or registration required for undertaking the financial services business being carried out; or
- (b) has had its licence, authorisation, recognition or registration cancelled or suspended under the provision of any Supervisory Act

(2) The Commission may not present a petition if the Court is already winding up the company.

(3) Where a report has been made into the affairs of any person under the provision of any supervisory Act, a copy of that report, certified by the Commission to be a true copy, is admissible in legal proceedings under this section as evidence of the opinion of the appointed person in relation to any matter contained in the report.

(4) A document purporting to be a certificate under this subsection shall be received in evidence and deemed to be such a certificate unless the contrary is proved.

(5) Notwithstanding any provision in the Companies Act, the Court shall wind up the company if it appears to the Court that the company has undertaken or is undertaking financial services business without an authorisation, licence or registration required for undertaking the financial services business being or that has been carried out.

Deregistration of Part IX companies.

26. The Minister may, at the request of the Commission direct the Registrar of Companies to deregister any Part IX companies which—

- (a) appears to the Commission to be undertaking financial services business without an authorisation, licence or

registration covering the financial services business being undertaken; or

- (b) has had its licence cancelled or suspended under the provision of any supervisory Act.

Transitional provisions.

27.(1) On the coming into force of this Act—

- (a) the Commissioner appointed under the Financial Services Commission Act 1989 shall serve as Chief Executive of the Commission until the conclusion of his contract, and may be re-appointed in this position;
- (b) the members of the Commission appointed under the Financial Services Commission Act 1989 shall continue to serve as members of the Commission until the expiry of the terms of office in their instruments of appointment and may be re-appointed;
- (c) any leases, contracts or obligations entered into by the Commission or Commissioner appointed under the Financial Services Commission Act 1989 shall continue in force;
- (d) any debtors or creditors of the Commission under the Financial Services Commission Act 1989 shall continue to be debtors or creditors of the Commission created under this Act;
- (e) any licences, permissions, authorisations or registrations granted, enforcement action, direction or conditions imposed by the Authority under the Financial Services Commission Act 1989 or any Supervisory Act shall continue in force and be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Act;
- (f) any contracts of employment entered into by the Commission or Commissioner appointed under the Financial Services Commission Act 1989 shall continue in force as if entered into by the Commission or Commissioner under this Act;

- (g) any guidance or codes issued by the Commission in the exercise of its functions under the Financial Services Commission Act 1989 shall be treated as if made under this Act;
- (h) any investigations, inquiries or legal proceedings begun or instituted by the Commission or the Commissioner under the Financial Services Commission Act 1989 shall be treated as if begun or instituted under this Act;
- (i) any books of accounts and other records, financial reserves, property, bank accounts, assets and liabilities of the Commission under the Financial Services Commission Act 1989 shall continue to be the property of the Commission under this Act;
- (j) the immunity provided to members of the Commission, officers or servants of the Commission under the Financial Services Commission Act 1989 shall continue to be granted to members of the Commission, officers or servants under this Act and the provisions of section 19 of this Act shall apply to those members of the Commission, officers or servants as if they had been employed or contracted under this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may by regulations make provision for such further transitional provisions, as the Minister may from time to time deem appropriate.

Repeal.

28. Subject to section 27, the Financial Services Commission Act 1989 is repealed.

SCHEDULE

REGULATORY OBJECTIVES

For the purposes of this Schedule, “the financial system” means the financial system operating in Gibraltar and includes financial services business.

The regulatory objectives specified in section 7(2) are more particularly described in this Schedule:

1. Market Confidence.

The market confidence objective is maintaining confidence in the financial system.

2. Systemic Risk.

The systemic risk objective is reducing the impact of the failure of one institution upon the financial system as a whole.

3. Public Awareness.

The public awareness objective is promoting public understanding of the financial system and includes, in particular—

- (a) promoting awareness of the benefits and risks associated with different kinds of investment or other financial dealing; and
- (b) the provision of appropriate information and advice.

4. The Protection of the Reputation of Gibraltar.

The protection of the reputation of Gibraltar objective is taking such action as required by the Government or is considered necessary by the Commission in consultation with the financial sector and with the consent of the Minister to preserve Gibraltar’s reputation as a financial services centre.

5. The Protection of Consumers.

The protection of consumers' objective is securing the appropriate degree of protection for consumers.

In considering what degree of protection may be appropriate, the Commission must have regard to—

- (a) the differing degrees of risk involved in different kinds of investment or other transaction;
- (b) the differing degrees of experience and expertise that different consumers may have in relation to different kinds of regulated activity;
- (c) the needs that consumers may have for advice and accurate information; and
- (d) the general principle that consumers should take responsibility for their decisions.

6. The Reduction of Financial Crime.

The reduction of financial crime objective is reducing the extent to which it is possible for a business carried on by—

- (a) an authorised person; or
- (b) a person carrying on financial services business without holding the necessary authorisation, licence or registration,

to be used for a purpose connected with financial crime.

In considering the reduction of financial crime objective, the Commission must, in particular, have regard to the desirability of—

- (a) authorised persons being aware of the risk of their businesses being used in connection with the commission of financial crime;

- (b) authorised persons taking appropriate measures (in relation to their administration and employment practices, the conduct of transactions by them and otherwise) to prevent financial crime, facilitate its detection and monitor its incidence;
 - (c) authorised persons devoting adequate resources to the matters mentioned in paragraph (b).
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EXPLANATORY MEMORANDUM

This Act establishes the Financial Services Commission. It repeals and re-enacts with various changes the Financial Services Commission Act 1989.

Part II establishes the Commission, to be appointed by the Minister. The members of the existing Commission will continue in office until their appointments expire (section 27) and when a vacancy arises the Minister will appoint a person from a short list presented by the Commission. A new post of 'Chief Executive' (section 8) is created, appointed by the Commission with the approval of the Minister. The remainder of the Act deals with the powers and duties of the Commission which are only changed to reflect the changes in the Constitution of Gibraltar.

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