FINANCIAL SERVICES ACT, 1998

Repealed by Act. 2006-32 as from 1.11.2007

Principal Act

Act. No. 1998-10

Commencement	4.6.1998
Assent	29.1.1998

Amending enactments		Relevant current provisions	Commencement date
LN.	1998/035	*Corrigendum*	4.6.1998
Act.	2006-03	ss. 2(2), 18(1)(d), 27A	20.4.2006

English sources:
None

EU Legislation/International Agreements involved:
Directive 77/780/EEC
Directive 89/646/EEC
Directive 93/22/EEC
Directive 93/6/EEC
Directive 95/26/EC

ARRANGEMENT OF SECTIONS.

PART I.
PRELIMINARY.

PART II.
CONTROL OF INVESTMENT FIRMS.

PART III.
AUTHORISATION AND SUPERVISION OF GIBRALTAR INVESTMENT FIRMS.

Authorisation.

Duty of Auditors.

Notification of Controllers.

Ministerial Directions to the Authority.

PART IV.

Financial Services, 1998

AN ACT TO TRANSPOSE INTO THE LAW OF GIBRALTAR COUNCIL DIRECTIVE 93/22/EEC ON INVESTMENT SERVICES IN THE SECURITIES FIELD, AS AMENDED BY THE EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 95/26/EC, AND COUNCIL DIRECTIVE 93/6/EEC ON THE CAPITAL ADEQUACY OF INVESTMENT FIRMS AND CREDIT INSTITUTIONS, TO MAKE FURTHER PROVISIONS ABOUT THE FUNCTIONS OF THE AUTHORITY, WITHIN THE MEANING OF THE FINANCIAL SERVICES ACT 1989, AND TO AMEND THAT ACT.

PART I.
PRELIMINARY.

Title and commencement.

1. (1) This Act may be cited as the Financial Services Act, 1998.

(2) This Act shall come into operation on a day to be appointed by the Governor by notice in the Gazette and different days may be so appointed for different purposes.

Interpretation.

2. (1) In this Act "the 1989 Act" means the Financial Services Act, 1989[1]; and any expression to which a meaning is assigned by section 2(1) of the 1989 Act has the same meaning in this Act.

(2) In this Act and in the 1989 Act (as amended by this Act)–

"authorised European investment firm" shall be construed in accordance with section 18(1);

"authorised Gibraltar investment firm" means a firm to which an authorisation granted under Part III continues in force;

"authorised service" has the meaning given by section 6(7)(a) or, as the case may be, section 18(2);

"branch" means one or more places of business which are part of an investment firm but have no separate legal personality and which are established or proposed to be established in Gibraltar or in an EEA State for the purpose of providing listed services, and for this purpose all such places of business in one State, with headquarters in another State, shall be regarded as a single branch;

[1] **1989- 47**

"the Capital Adequacy Directive" means Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions;

"core investment service" means any of the services listed in Section A of the Annex to the Investment Services Directive (the text of which Annex is set out in Schedule 1) relating to any of the instruments listed in Section B of that Annex that are provided for a third party;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993;

"establish", in relation to a branch, means establish the place of business or, as the case may be, the first place of business which constitutes the branch;

"the European Commission" means the Commission of the Communities;

"European institution" means a European authorised institution or a European subsidiary institution;

"European investment firm" shall be construed in accordance with section 3(3)(b);

"European subsidiary institution" has the meaning given to it by the Banking Act, 1992[2];

"firm" includes an individual and a body corporate;

"the First Council Directive" means Council Directive 77/780/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions;

"Gibraltar investment firm" shall be construed in accordance with section 3(3)(a);

"Gibraltar licensed institution" means a credit institution which is licensed as mentioned in section 7 of the Banking Act, 1992[2];

[2] **1992-11**
[2] **1992-11**

"Gibraltar subsidiary institution" has the meaning given to it by the Banking Act, 1992;

"home State" shall be construed in accordance with section 3(4);

"investment firm" shall be construed in accordance with subsections (1) and (2) of section 3;

"the Investment Services Directive" means Council Directive 93/22/EEC on investment services in the securities field;

"listed service" means a service listed in Section A or Section C of the Annex to the Investment Services Directive (as set out in Schedule 1);

"majority controller" shall be construed in accordance with section 16(4)(d);

"Minister" means the Minister with responsibility for financial services;

"non-EEA laws" means laws of any country or territory outside the European Economic Area and "non-EEA administrative provisions" shall be construed accordingly;

"non-core investment service" means a listed service which is not a core investment service;

"the Prudential Supervision Directive" means European Parliament and Council Directive 95/26/EC;

"qualifying holding" means a direct or indirect holding in a firm which represents 10 per cent. or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the firm in which the holding subsists;

"relevant supervisory authority", in relation to an EEA State, means the authority which, under the law of that State, has regulatory functions in relation to any core investment service, whether or not it also has such functions in relation to any non-core investment service;

"requisite details", in relation to an investment firm, means–

(a) particulars of the programme of operations of the business to be carried on by the firm, including a description of the particular core investment services and non-core investment services to be provided; and

(b) where a branch is established or proposed to be established in Gibraltar or in the territory of an EEA State–

(i) particulars of the structural organisation of the branch;

(ii) the address in Gibraltar or, as the case may be, that territory in which the branch is or is to be established from which information about the business may be obtained; and

(iii) the names of the managers of the business;

"the Second Council Directive" means Council Directive 89/646/EEC on the coordination of laws, regulations and administrative provisions relating to the taking and pursuit of the business of credit institutions and amending the First Council Directive.

(3) For the purposes of this Act, any reference to the territory of an EEA State shall be construed, in the case of the United Kingdom, as excluding Gibraltar.

(4) In this Act the expressions "undertaking", "parent undertaking" and "subsidiary undertaking" have the same meaning as they have for the purpose of paragraph (f) of the definition of "controller" in section 2 of the Banking Act, 1992[2].

(5) Section 2 of the Financial Institutions (Prudential Supervision) Act, 1997[3] (meaning of "closely linked") applies for the purposes of this Act.

(6) In this Act a reference to a Part, section or Schedule is a reference to a Part, section or Schedule of or to this Act unless it is indicated that reference to some other enactment is intended.

(7) In this Act, a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

PART II.
CONTROL OF INVESTMENT FIRMS.

Investment firms.

[2] **1992-11**
[3] **1998-09**

3. (1) For the purposes of this Act, an investment firm is a person, other than one excluded by subsection (2), whose regular occupation or business is the provision of any one or more core investment services for third parties on a professional basis.

(2) The persons excluded from subsection (1) are those to whom the Investment Services Directive does not apply by virtue of the provisions of paragraph 2 of Article 2 of that Directive, the text of which is set out in Schedule 2.

(3) For the purposes of this Act–

(a) an investment firm is a Gibraltar investment firm if it is incorporated in or formed under the law of Gibraltar or, not being a body corporate, it has its head office in Gibraltar; and

(b) an investment firm is a European investment firm if its registered office is in the territory of an EEA State other than Gibraltar or, in the case of a firm which, under its national law, has no registered office or which is a natural person, if its head office is in the territory of an EEA State other than Gibraltar.

(4) In relation to a European investment firm, the "home State" means the EEA State in the territory of which the registered office or head office referred to in subsection (3)(b) is situated.

(5) For the purposes of this Act, where a person (the first person) provides one of the services referred to in paragraph 1(a) of Section A of the Annex to the Investment Services Directive (reception and transmission of orders) solely for the account of and under the full and unconditional responsibility of another person (the second person), that service shall be regarded as a service provided not by the first person but by the second person.

Regulation of provision of investment services.

4. (1) Nothing in section 3 of the 1989 Act shall prevent a Gibraltar investment firm from carrying on or holding itself out as carrying on any investment business in or from within Gibraltar if–

(a) the firm is authorised under Part III; and

(b) any listed service which it provides is, in relation to that firm, an authorised service.

(2) Nothing in section 3 of the 1989 Act shall prevent an authorised European investment firm from providing any listed service in Gibraltar if–

(a) the firm is a European institution and that service is for the time being an authorised service in relation to that firm; or

(b) the firm is not a European institution but the service is an authorised service in relation to that firm and, in accordance with Part IV, the firm is entitled to provide that service in Gibraltar.

(3) No licence may be issued to an investment firm under section 8 of the 1989 Act in respect of carrying on a category of investment business except one which does not constitute the provision of–

(a) a core investment service; or

(b) an authorised service in relation to the firm.

(4) In any case where–

(a) immediately before lst January 1996, a Gibraltar investment firm was the holder of a licence under section 8 of the 1989 Act and was providing listed services which included core investment services, and

(b) not later than six months after the date on which this section comes into force, the firm makes an application for authorisation under Part III in respect of one or more of those core investment services (with or without other listed services),

then, until such date as the Authority grants or rejects the application or the expiry of the period of six months from the date of the application, whichever first occurs, the firm shall be treated as authorised under Part III in respect of those core investment and other listed services referred to in paragraph (a) which are specified in its application.

PART III.
AUTHORISATION AND SUPERVISION OF GIBRALTAR INVESTMENT FIRMS.

Authorisation.

Application for authorisation.

5. (1) An application for authorisation under this Part of this Act shall be made to the Authority in such form and manner as may be prescribed.

(2) Such an application may be made only by a Gibraltar investment firm.

(3) Without prejudice to the generality of subsection (1), an application for authorisation under this Part shall contain–

(a) the requisite details;

(b) details of the persons, who shall be at least two, who will effectively direct the business of the firm;

(c) in the case of a company, the identities of the directors; and

(d) the identities of the persons who have, whether as shareholders, members or otherwise, and whether directly or indirectly, qualifying holdings in the firm and the amounts of those holdings.

(4) A firm making an application for authorisation under this Part shall furnish the Authority with–

(a) any further information which the Authority may reasonably require with respect to the matters specified in subsection (3); and

(b) such information as the Authority may reasonably require to enable it to determine whether, having regard to the nature of the core investment services in respect of which the firm seeks authorisation, the firm has, or will at its commencement of business in Gibraltar have, sufficient initial capital in accordance with the rules laid down in the Capital Adequacy Directive.

(5) At such time as the Authority may require, a firm making an application for authorisation under this Part shall give notice of the application in the prescribed form by publication in the Gazette and in a daily or weekly newspaper published in Gibraltar.

Grant and refusal of authorisation.

6. (1) The Authority shall not grant an application for authorisation under this Part (in this section referred to as "an application") unless it is satisfied–

(a) as to the matters specified in subsections (3) and (4)(b) of section 5;

(b) that the applicant has given notice in accordance with section 5(5);

(c) that the applicant carries on (or, if authorised, will carry on) business in or from within Gibraltar; and

(d) that, where the applicant is a body corporate, its head office (as well as its registered office) is in Gibraltar.

(2) The Authority shall refuse an application if, taking into account the need to ensure the sound and prudent management of the applicant, the Authority is not satisfied as to the suitability of the persons referred to in paragraphs (b) to (d) of subsection (3) of section 5.

(3) The Authority shall also refuse an application if it appears to the Authority that–

(a) the applicant firm is an undertaking which is closely linked with any person; and

(b) the applicant firm's close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Authority of its supervisory functions in relation to the applicant firm.

(4) Where the applicant is linked as mentioned in subsection (5) to an investment firm or credit institution which is for the time being authorised to act as such a firm or institution by the relevant supervisory authority in an EEA State, the Authority shall not grant the application unless the Authority has consulted that relevant supervisory authority.

(5) For the purposes of subsection (4), a Gibraltar investment firm making an application is linked to an investment firm or credit institution (in this subsection referred to as a relevant firm or institution) if the Gibraltar investment firm–

(a) is a subsidiary undertaking of the relevant firm or institution; or

(b) is a subsidiary undertaking of the same parent undertaking as the relevant firm or institution; or

(c) is controlled by a majority controller of the relevant firm or institution.

(6) Not later than six months after the date of the submission of an application which is complete, the Authority shall give notice to the applicant of its decision on the application and, where that decision is to refuse the application, the Authority shall give the reasons for the refusal.

(7) Where the Authority's decision on an application is to grant authorisation under this Part–

(a) the authorisation shall specify the listed services which the firm concerned is authorised to provide in or from within Gibraltar (in this Act referred to, in relation to the firm, as its "authorised services"); and

(b) the firm shall be entitled to commence business with effect from the date of the notice of the decision.

Terms and conditions of authorisation.

7. (1) It shall be a term of every authorisation granted by the Authority under this Part to a Gibraltar investment firm that the firm will at all times comply with–

(a) the conditions of the authorisation;

(b) the requirements of this Act, the 1989 Act and any regulations made under either of them; and

(c) such of the provisions of the Capital Adequacy Directive as are applicable to the firm.

(2) The Authority may make the authorisation of a Gibraltar investment firm under this Part conditional upon the provision by the firm of–

(a) a return, at such time or times as the Authority may require, of the identities of the persons who at the time in question have, whether as shareholders, members or otherwise, and whether directly or indirectly, qualifying holdings in the firm and the amounts of those holdings;

(b) such information as the Authority may reasonably require, on a continuous basis, as to the matters specified in section 5(3) and any other matter which, under section 8(1), might occasion the cancellation or suspension of the firm's authorisation; and

(c) such other information as the Authority may so require to enable it to monitor compliance on a continuous basis with the terms of the authorisation and the requirements of this Act, the 1989 Act and any regulations made under either of them.

(3) Subject to section 44 of the 1989 Act, the Authority may, on the grant of an authorisation under this Part or at any time thereafter, by notice in writing served on the firm in question, impose such conditions (in addition to any imposed under subsection (2)) as appear to the Authority to

be necessary or desirable for the protection of investors, and may vary or revoke any condition so imposed.

(4) Without prejudice to the generality of subsection (3), a condition imposed under that subsection may–

(a) prohibit the firm in question from–

(i) entering into transactions of a specified description or in specified circumstances or to a specified extent or with persons of a specified description;

(ii) soliciting any listed services in a specified place, or from persons of a specified description or otherwise than from such persons;

(iii) carrying on the business of an investment firm in a specified manner or otherwise than in a specified manner; or

(iv) disposing of, or otherwise dealing with, property or assets, whether generally or of a specified description, and either in a specified manner or otherwise than in a specified manner; or

(b) require the firm to take all necessary steps to transfer to the custody of a person approved by the Authority all property or assets of any specified description which–

(i) belong to the firm; or

(ii) are held by or to the order of the firm and either belong to investors or relate to the business of the firm as an investment firm.

(5) A prohibition or requirement such as is referred to in subsection (4) may relate to property or assets outside Gibraltar.

Cancellation or suspension of authorisation.

8. (1) Subject to section 44 of the 1989 Act, the Authority may at any time cancel or suspend an authorisation granted under this Part to a Gibraltar investment firm if it appears to the Authority–

(a) that the firm is not a fit and proper person to carry on the business of an investment firm or, as the case may be, any of its authorised services;

(b) that the firm has contravened any provision made by or under this Act, the 1989 Act or any regulations made under either of them;

(c) that the firm is in breach of the requirements of the Capital Adequacy Directive;

(d) that the firm is an undertaking which is closely linked with any person and those close links or any matters relating to any non-EEA laws or administrative provisions to which that person is subject are such as to prevent the effective exercise by the Authority of its supervisory functions in relation to the firm;

(e) that the firm has furnished misleading or inaccurate information to the Authority in connection with its application for authorisation or under or for the purposes of any other provision of this Act, the 1989 Act or any regulations made under either of them; or

(f) that for a continuous period of at least six months the firm has not provided one or more of its authorised services.

(2) Where the Authority suspends an authorisation, the suspension shall be for a specified period or until the occurrence of a specified event or until specified conditions are complied with; and, while an authorisation is suspended, the firm concerned shall not be authorised for the purposes of this Act (or the Investment Services Directive).

(3) If it considers it appropriate, the Authority may vary any period, event or conditions subject to which it has suspended an authorisation.

(4) The Authority may cancel an authorisation granted by it to a Gibraltar investment firm if the firm does not make use of the authorisation within twelve months of the grant.

(5) Subject to subsection (6), at the request of a firm to whom it has granted an authorisation, the Authority may cancel the authorisation or delete from it one or more of the firm's authorised services.

(6) The Authority may decline to accede to such a request as is mentioned in subsection (5)–

(a) if it considers that any matter should be investigated or any other action should be taken prior to or in connection with the Authority considering action under subsection (1); or

(b) that the action requested would not be in the interests of investors or the public interest.

Duty of Auditors.

Duty of auditor to notify Authority of certain information.

9. (1) In the circumstances specified in subsection (2)–

(a) an auditor of an authorised Gibraltar investment firm, or

(b) an auditor of a body with which a Gibraltar investment firm is closely linked by control who is also an auditor of that firm,

shall notify the Authority of any information which relates to the business or affairs of that investment firm and of which he becomes aware in his capacity as auditor.

(2) The circumstances referred to in subsection (1) are those in which the information referred to in that subsection is such as–

(a) to give the auditor reasonable cause to believe, as regards the investment firm concerned–

(i) that there is or has been, or may be or may have been, a contravention of any provision of this Act, the 1989 Act or any regulations made under either of them and that the contravention is likely to be of material significance; or

(ii) that, in purported compliance with any such provision, the investment firm has furnished the Authority with false, inaccurate or misleading information; or

(iii) that the continuous functioning of the investment firm may be affected; or

(b) to preclude him from stating in his report as auditor of the investment firm that its annual accounts have been properly prepared in accordance with the requirements of this Act, the 1989 Act and any regulations made under either of them.

(3) The reference in subsection (2)(a)(i) to a contravention of any provision of this Act or the 1989 Act includes a reference to a contravention of any prohibition or requirement imposed under either of them.

(4) In this section "of material significance" means of material significance for determining either–

(a) whether a person is a fit and proper person to carry on investment business; or

(b) whether powers under section 8 or under Part V of the 1989 Act should be exercised to protect investors from significant risk of loss.

Notification of Controllers.

Notification of new or increased control.

10. (1) No person shall become an indirect, 10 per cent., 20 per cent., 33 per cent. or majority controller of an authorised Gibraltar investment firm which is not a Gibraltar licensed institution unless he has served on the Authority a written notice that he intends to become such a controller of the firm and the Authority either–

(a) has notified him in writing before the end of the period of three months beginning with the date of the service of his notice that there is no objection to his becoming such a controller; or

(b) has allowed that period to elapse without serving on him under section 11 a written notice of objection to his becoming such a controller.

(2) After receiving a notice from any person under subsection (1), the Authority may, by notice in writing, require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve a notice of objection.

(3) Where additional information or documents are required from any person by a notice under subsection (2), the time between the giving of that notice and the receipt of the information or documents shall be added to the period mentioned in subsection (1)(a).

(4) A notice given by any person under subsection (1) shall not be regarded as complying with that subsection except as respects his becoming a controller of the firm in question within the period of one year beginning with the following date, namely–

(a) in the case of a person who becomes such a controller without having been served with a notice of objection, the date on which he became such a controller; and

(b) in the case of a person who becomes such a controller after having been served with one or more notices of objection which or, as the case may be, each of which was quashed, the date on which the notice was quashed or, as the case may require, the latest date on which any of the notices was quashed.

Objection to new or increased control.

11. (1) Where a person has served a notice on the Authority under section 10(1), then, unless the Authority is satisfied, having regard to the need to ensure the sound and prudent management of the firm in question, that that person is a fit and proper person to become a controller of the description in question, the Authority may, subject to section 12, serve on that person a notice of objection under this section.

(2) Where a person required to serve a notice under section 10(1) in relation to his becoming a controller of any description becomes such a controller without having given notice to the Authority as so required, then, subject to section 12, at any time within three months after becoming aware of his having done so, the Authority may serve on him a notice of objection under this section if, had notice been served on it under section 10(1), it would have done so.

(3) For the purpose of deciding whether to serve a notice of objection on any person by virtue of subsection (2), the Authority may by notice in writing require the person concerned to provide such information or documents as it may reasonably require.

(4) In any case where–

(a) the person who served, or was required to serve, a notice under section 10(1) is, or is a majority controller of, an investment firm which is for the time being authorised to act as such by a relevant supervisory authority in an EEA State, and

(b) the notice under section 10(1) stated that person's intention to become a majority controller or, where subsection (2) applies, the person has become such a controller,

then, before deciding whether to serve a notice of objection under this section, the Authority shall consult the relevant supervisory authority referred to in paragraph (a).

(5) Where the reasons stated in a notice of objection under this section relate specifically to matters which–

(a) refer to a person identified in the notice, other than the person on whom it is served; and

(b) are in the opinion of the Authority prejudicial to that person in relation to any office or employment,

then, unless it considers it impracticable to do so, the Authority shall serve a copy of the notice of objection on that person.

(6) A notice of objection under this section–

(a) shall specify the reasons why the Authority is not satisfied as mentioned in subsection (1); and

(b) shall give particulars of the right of appeal under section 45 of the 1989 Act.

(7) Where no appeal is brought under section 45 of the 1989 Act by a person on whom a notice of objection (or a copy of such a notice) is served, the Authority may give public notice that it has objected to the person concerned becoming a controller of the relevant description and the reasons for the objection.

Preliminary notices.

12. (1) Before serving a notice of objection on any person, the Authority shall serve on him a preliminary notice stating that the Authority is considering serving such a notice on him; and that preliminary notice–

(a) shall specify the reasons why the Authority is not satisfied as mentioned in section 11(1); and

(b) shall give particulars of the rights conferred by subsection (2).

(2) Within the period of one month beginning with the day on which a preliminary notice under this section (or, where subsection (4) applies, a copy of such a notice) is served on any person, that person may make written representations to the Authority; and the Authority shall take into account any representations so made in deciding whether to serve a notice of objection.

(3) Notwithstanding anything in section 10 or section 11(2), the period within which the Authority may notify a person under section 10(1)(a) or, as the case may be, may serve a notice of objection on a person shall not expire until fourteen days after the end of the period within which he may make representations under subsection (2).

(4) Where the reasons stated in a preliminary notice under this section relate specifically to matters which–

(a) refer to a person identified in the notice, other than the person on whom it is served; and

(b) are in the opinion of the Authority prejudicial to that person in relation to any office or employment,

then, unless it considers it impracticable to do so, the Authority shall serve a copy of the preliminary notice on that person.

(5) In this section "notice of objection" means a notice of objection under section 11.

Contraventions of section 10.

13. (1) Subject to subsection (2), a person shall be guilty of an offence if he contravenes section 10 by–

(a) failing to give notice to the Authority as required by subsection (1) of that section; or

(b) becoming a controller of a description falling within that subsection before the end of the period mentioned in paragraph (a) of that subsection and without the Authority having served a preliminary notice on him under section 12(4).

(2) A person shall not be guilty of an offence under subsection (1) if he shows that he did not know the acts or circumstances by virtue of which he became a controller of the relevant description; but where a person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he has become such a controller he shall be guilty of an offence unless, within fourteen days of becoming aware of the fact, he gives the Authority written notice of it.

(3) A person shall be guilty of an offence if–

(a) before the end of the period mentioned in paragraph (a) of subsection (1) of section 10 he becomes a controller of a description falling within that subsection after being served a preliminary notice under section 12(4); or

(b) he contravenes section 10 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or

(c) having become a controller of any description in contravention of section 10 (whether before or after being served with a notice of objection) he continues to be such a controller after such a notice has been served on him.

(4) A person guilty of an offence under subsection (1) or subsection (2) shall be liable on summary conviction to a fine at level 5 on the standard scale.

(5) A person guilty of an offence under subsection (3) shall be liable–

(a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both; and

(b) on summary conviction to a fine not exceeding level 5 on the standard scale and, in respect of an offence under paragraph (c) of that subsection, to a fine not exceeding £100 for each day on which the offence has continued.

Restrictions on voting rights.

14. (1) The powers conferred by this section shall be exercisable where a person–

(a) has contravened section 10 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or

(b) having become a controller of any description in contravention of that section continues to be one after such a notice has been served on him.

(2) The Authority may, by notice in writing served on the person concerned, direct that any specified shares to which this section applies shall, until further notice, be subject to the restriction that no voting rights shall be exercisable in respect of the shares.

(3) This section applies–

(a) to all the shares in the firm of which the person in question is a controller of the relevant description which are held by him or any associate of his and which were not so held immediately before he became such a controller of the firm; and

(b) where the person in question became a controller of the relevant description of a firm as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and which were not so held before he became such a controller of that firm.

(4) A copy of any notice served on the person concerned under subsection (2) shall be served on the firm or company to whose shares it

relates and, if it relates to shares held by an associate of that person, on that associate.

Prior notification of ceasing to be a relevant controller.

15. (1) A person shall not cease to be an indirect, 10 per cent., 20 per cent., 33 per cent. or majority controller of an authorised Gibraltar investment firm which is not a Gibraltar licensed institution unless he has first given to the Authority written notice of his intention to cease to be such a controller of the firm.

(2) If, after ceasing to be such a controller of such a firm, a person will, either alone or with any associate or associates–

(a) still hold 10 per cent. or more of the shares in the firm or in another body of which the firm is a subsidiary undertaking, or

(b) still be entitled to exercise or control the exercise of 10 per cent. or more of the voting power at any general meeting of the firm or of another such body, or

(c) still be able to exercise a significant influence over the management of the firm or of another such body by virtue either of a holding of shares in the firm or in the other body or of an entitlement to exercise, or control the exercise of, the voting power at a general meeting of the firm or the other body,

his notice under subsection (1) shall state the percentage of the shares or voting power which (alone or with any associate or associates) he will hold or be entitled to exercise or control.

(3) Subject to subsection (4), a person who contravenes subsection (1) or subsection (2) shall be guilty of an offence.

(4) Subject to subsection (5), a person shall not be guilty of an offence under subsection (3) if he shows that he did not know of the acts or circumstances by virtue of which he ceased to be a controller of the relevant description in sufficient time to enable him to comply with subsection (1).

(5) Notwithstanding anything in subsection (4), a person who ceases to be a controller of a relevant description without having complied with subsection (1) shall be guilty of an offence if, within fourteen days of becoming aware of the fact that he has ceased to be such a controller–

(a) he fails to give the Authority written notice of that fact; or

(b) he gives the Authority such a notice but the notice fails to comply with subsection (2).

(6) A person guilty of an offence under any provision of this section shall be liable on summary conviction to a fine at level 5 on the standard scale.

Construction of provisions relating to controllers.

16. (1) The provisions of this section have effect for the construction of sections 10 to 15 ("the relevant sections").

(2) In the relevant sections and in the following provisions of this section, a "controller" in relation to an investment firm, means a person who, either alone or with any associate or associates–

(a) holds 10 per cent. or more of the shares in the firm or in another body of which the firm is a subsidiary undertaking; or

(b) is entitled to exercise, or control the exercise of, 10 per cent. or more of the voting power at any general meeting of the firm or of another body of which the firm is a subsidiary undertaking; or

(c) is able to exercise a significant influence over the management of the firm or of another body of which the firm is a subsidiary undertaking by virtue either of a holding of shares in the firm or in the other body or of an entitlement to exercise, or control the exercise of, the voting power at a general meeting of the firm or the other body.

(3) Without prejudice to the generality of paragraph (c) of subsection (2), in the case of a firm which is a partnership, every partner shall be regarded as a person falling within that paragraph.

(4) In the relevant sections an "indirect controller" means a controller falling within paragraph (c) of subsection (2) and references to other descriptions of controller shall be construed as follows–

(a) a "10 per cent. controller" means a controller in whose case the percentage referred to in the relevant paragraph is 10 or more but less than 20;

(b) a "20 per cent. controller" means a controller in whose case the percentage referred to in the relevant paragraph is 20 or more but less than 33;

(c) a "33 per cent. controller" means a controller in whose case the percentage referred to in the relevant paragraph is 33 or more but less than 50; and

(d) a "majority controller" means a controller in whose case the percentage referred to in the relevant paragraph is 50 or more;

and in paragraphs (a) to (d) "the relevant paragraph", in relation to a controller, means whichever of paragraphs (a) and (b) of subsection (2) gives the greater percentage in his case.

(5) In the relevant sections and in subsection (2) "associate", in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, an undertaking means–

(a) the wife or husband or son or daughter of that person;

(b) the trustees of any settlement under which that person has a life interest in possession;

(c) any company of which that person is a director;

(d) any person who is an employee or partner of that person;

(e) if that person is a company, any director or subsidiary undertaking of that company and any director or employee of such a subsidiary undertaking; and

(f) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that undertaking or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(6) For the purposes of subsection (5)–

(a) "son" includes stepson and "daughter" includes stepdaughter; and

(b) "settlement" includes any disposition or arrangement under which property is held on trust.

(7) Nothing in the relevant sections shall require a person to give notice of his intention to become or cease to be a controller of any description pursuant to an agreement entered into before 1st January 1996 to acquire or dispose of a holding of shares or an entitlement to exercise or control the exercise of voting power.

Ministerial Directions to the Authority.

Ministerial directions for implementing certain EC Decisions.

17. (1) In this section "relevant decision" means any decision of the Council of the European Union or the European Commission under Article 7.5 of the Investment Services Directive (relations with third countries, limitation or suspension of decisions regarding applications for authorisations).

(2) For the purpose of implementing a relevant decision, the Minister may issue a direction to the Authority–

(a) to refuse an application for authorisation made by an investment firm incorporated in or formed under the law of Gibraltar;

(b) to defer a decision on such an application either indefinitely or for such period as may be specified in the direction; or

(c) to serve a notice of objection on a person–

(i) who has given notice under section 10 of his intention to become a majority controller of any description of such a firm; or

(ii) who has become such a controller without having given the notice required under that section.

(3) A direction under this section may relate to a particular firm or class of firm and may be given before the application in question or, as the case may be, before any notice under section 10 is received.

(4) Any notice of objection served by virtue of a direction falling within subsection (2)(c) shall state the grounds upon which it is served.

(5) A direction under this section may be revoked at any time by the Minister, but such a revocation shall not affect anything done in accordance with the direction before it was revoked.

PART IV.
OPERATION IN GIBRALTAR OF
EUROPEAN INVESTMENT FIRMS.

Authorised European investment firms.

18. (1) A European investment firm is for the purposes of this Act an authorised European investment firm if–

(a) it is for the time being a European authorised institution whose authorisation under the First Council Directive or the Second Council Directive covers one or more core investment services; or

(b) *Repealed*

(c) it is authorised to act as an investment firm by a relevant supervisory authority in its home State.

(2) In relation to an authorised European investment firm, "authorised service" means–

(a) a listed service which, by virtue of the firm's authorisation under the law of its home State (whether as an investment firm or as a credit institution), it is authorised to provide there; or

(b) in the case of a European subsidiary institution, a listed service which, under the law of its home State, it is lawful for it to carry on and it is for the time being carrying on.

(3) Schedule 3 (which contains requirements to be complied with by or in relation to authorised European investment firms) shall have effect.

Requirements for providing listed services in Gibraltar.

19. (1) An authorised European investment firm shall not–

(a) provide any listed service in Gibraltar; or

(b) establish a branch in Gibraltar for the purpose of providing any listed service,

unless the requirements of paragraph 1 of Schedule 3 have been complied with in relation to its provision of the service or, as the case may be, the establishment of the branch.

(2) An authorised European investment firm which does not have a branch in Gibraltar shall not change the requisite details of its activities in Gibraltar unless the requirements of paragraph 4 of Schedule 3 have been complied with in relation to its making of the change.

(3) An authorised European investment firm shall not change the requisite details of a branch established by it in Gibraltar unless the

requirements of paragraph 5 of Schedule 3 have been complied with in relation to its making of the change.

(4) Nothing in subsections (1) to (3) applies to an authorised European investment firm which is a credit institution whose authorised services include one or more core investment services.

(5) An investment firm which contravenes any provision of subsections (1) to (3) shall be guilty of an offence and liable on summary conviction to a fine at level 5 on the standard scale, but such a contravention shall not invalidate any transaction.

(6) In proceedings brought against an investment firm for an offence under subsection (5), it shall be a defence to show that the investment firm took all reasonable precautions and exercised due diligence to avoid the commission of the offence.

(7) If, before the coming into operation of this section,–

(a) a person who is an authorised European investment firm gave a notice which complied with paragraph (iv) of Part II of Schedule 4 to the 1989 Act (as then in force) and included information as to the investment business which that person proposed to carry on in Gibraltar and the services which he would hold himself out as able to provide in the carrying on of that business, and

(b) those services consist of or include listed services, and

(c) a certificate was given which complied with paragraph (v) of that Part and related to that person and the investment business he is authorised to carry on,

then, for the purposes of this Act, the requirements of paragraph 1 of Schedule 3 shall be regarded as being complied with in relation to the provision of those listed services in Gibraltar by that firm.

Duty to prepare for supervision.

20. (1) In any case where the Authority receives from a relevant supervisory authority of a European investment firm's home State a notice given in accordance with paragraph 3 of Schedule 3, the Authority shall, before the expiry of the relevant period, draw to the attention of the firm such provisions of this Act, the 1989 Act and any regulations made under either Act as, having regard to the services mentioned in the notice, the Authority considers appropriate.

(2) In any case where the Authority receives from the relevant supervisory authority of a European investment firm's home State such a notice as is mentioned in subsection (1) stating that the firm intends to establish a branch in Gibraltar–

(a) the Authority shall also, before the expiry of the relevant period, consider whether the situation as respects the firm is such that the powers conferred by section 21 are likely to become exercisable; and

(b) if so, the Authority may impose, as soon as the requirements of paragraph 1 of Schedule 3 have been complied with in relation to the firm, such restriction under section 22 as appears to be desirable.

(3) In any case where the Authority receives from a European investment firm a notice given in accordance with paragraph 4 or paragraph 5 of Schedule 3, the Authority shall draw to the attention of the firm such provisions of this Act, the 1989 Act and any regulations made under either Act as, having regard to the proposed change mentioned in the notice, the Authority considers appropriate.

(4) In this section "the relevant period" means–

(a) in relation to a notice given in accordance with paragraph 3 of Schedule 3 which states that the firm intends to establish a branch in Gibraltar, the period of two months beginning with the day on which the Authority receives the notice; and

(b) in any other case, the period of one month beginning with the day on which the Authority receives the notice.

(5) In a case where subsection (7) of section 19 applies in relation to the provision of listed services by a European investment firm, the certificate given as mentioned in paragraph (c) of that subsection shall be treated for the purposes of this section as a notice given in accordance with paragraph 3 of Schedule 3 and received as mentioned in subsection (1) on the coming into operation of this section.

Power to prohibit provision of listed services.

21. (1) If it appears to the Authority that a European investment firm–

(a) has contravened or is likely to contravene any provision of the relevant legislation,

(b) in purported compliance with any provision of the relevant legislation, has furnished the Authority with false, inaccurate or misleading information, or

(c) has contravened or is likely to contravene any prohibition or requirement imposed under the relevant legislation,

the Authority may impose on the investment firm a prohibition under this section, that is to say, a prohibition on providing or purporting to provide any listed services in Gibraltar.

(2) A prohibition under this section–

(a) may be absolute; or

(b) may be limited, that is to say, imposed for a specified period or until the occurrence of a specified event or until specified conditions are complied with;

and any period, event or conditions specified in the case of a limited prohibition may be varied by the Authority on the application of the investment firm concerned.

(3) Any prohibition imposed under this section may be withdrawn by written notice served by the Authority on the investment firm concerned, and any such notice shall take effect on such date as is specified in the notice.

(4) In this section "the relevant legislation" means this Act, the 1989 Act and any regulations made under either Act.

Power to restrict provision of listed services.

22. (1) Where it appears to the Authority that the situation with respect to a European investment firm providing any listed service in Gibraltar is such that the powers conferred by section 21 are exercisable, the Authority may, instead of or as well as imposing a prohibition under that section, impose a restriction on that firm prohibiting it from–

(a) entering into transactions of a specified description or in specified circumstances or to a specified extent or with persons of a specified description;

(b) soliciting any listed service in a specified place, or from persons of a specified description or otherwise than from such persons;

(c) carrying on the business of an investment firm in a specified manner or otherwise than in a specified manner; or

(d) disposing of, or otherwise dealing with, property or assets, whether generally or of a specified description, and either in a specified manner or otherwise than in a specified manner.

(2) A restriction under this section may relate to property or assets outside Gibraltar.

(3) Subsection (2) of section 21 shall apply to a restriction imposed under this section as it applies to a prohibition under that section.

(4) Any restriction imposed under this section may be withdrawn by written notice served by the Authority on the investment firm concerned, and any such notice shall take effect on such date as is specified in the notice.

Notice of prohibition or restriction.

23. (1) Where the Authority proposes to impose a prohibition on a European investment firm under section 21 or to refuse an application under subsection (2) of that section or to impose a restriction on such a firm under section 22, the Authority shall serve on the firm a notice in writing stating–

(a) that the Authority is considering taking the action in question for the reasons stated in the notice;

(b) that, within 28 days of the date of the service of the notice, written or oral representations may be made to the Authority in such manner as the Authority may from time to time decide; and

(c) that in the event of the Authority deciding to take the action, an appeal against the decision may be brought under section 45 of the 1989 Act.

(2) In the case of a proposed prohibition or restriction, the notice under subsection (1) shall state the date on which it is proposed that the prohibition or restriction should take effect and, in the case of a limited prohibition or restriction, its proposed duration.

(3) Where the reasons stated in a notice under subsection (1) relate specifically to matters which–

(a) refer to a person identified in the notice (other than the firm concerned), and

(b) are in the opinion of the Authority prejudicial to that person in relation to any office or employment,

then, unless it considers it impracticable to do so, the Authority shall serve a copy of the notice on that person.

(4) The Authority shall consider any representations made in response to a notice or copy notice served under subsection (1) or subsection (3) before giving further consideration to the matter to which the notice relates.

(5) Where no appeal is brought under section 45 of the 1989 Act by a person on whom a notice is served under subsection (1), the Authority shall, at the expiry of the period within which such an appeal could have been brought–

(a) give that person written notice of the prohibition, refusal or restriction; or

(b) give that person written notice that the prohibition or restriction is not to be imposed or, as the case may be, written notice of the granting of the application.

(6) The Authority may give public notice of any decision of which written notice is given in accordance with subsection (5)(a) or subsection (5)(b), but, in the case of a decision of which notice is given under subsection (5)(b), only with the consent of the person concerned.

(7) Where the Authority gives a notice under subsection (1), subsection (5)(a) or subsection (5)(b), it shall serve a copy of the notice on the relevant supervisory authority in the firm's home State.

Limitation on the Authority's powers.

24. (1) This section applies where it appears to the Authority that the situation is such that its power–

(a) to impose a prohibition on a European investment firm under section 21,

(b) to impose a restriction on such a firm under section 22,

(c) to make an application with respect to such a firm under section 42(1) of the 1989 Act (injunctions), or

(d) to refuse an application for the variation or rescission of such a prohibition or restriction as is mentioned in paragraph (a) or paragraph (b),

is exercisable by virtue of a contravention of any provision which is made pursuant to a provision of the Investment Services Directive that confers powers on the host State and which is conferred under or by virtue of this Act.

(2) The Authority shall require the European investment firm to remedy the situation.

(3) If a firm fails to comply with a requirement under subsection (2) within a reasonable time, the Authority shall give a notice to that effect to the relevant supervisory authority of the firm's home State, requesting that supervisory authority–

(a) to take all appropriate measures for the purpose of ensuring that the firm remedies the situation which has given rise to the issue of the notice; and

(b) to inform the Authority of the measures it proposes to take or has taken or the reasons for not taking such measures.

(4) Subject to subsection (5), the Authority shall not take any such action as is mentioned in paragraphs (a) to (d) of subsection (1) with respect to a European investment firm unless it is satisfied–

(a) that the relevant supervisory authority has failed or refused to take measures for the purpose mentioned in subsection (3)(a); or

(b) that the measures taken by that supervisory authority have proved inadequate for that purpose.

(5) Where the Authority decides that, as a matter of urgency to protect the interests of investors, it should take action falling within any of paragraphs (a) to (c) of subsection (1) with respect to a European investment firm, it may take that action–

(a) before complying with all or any of the requirements of subsections (2) and (3); or

(b) where it has complied with those requirements, before it is satisfied as mentioned in subsection (4);

but, in such a case, the Authority shall, at the earliest opportunity, inform the relevant supervisory authority of the firm's home State and the European Commission of the action taken.

(6) In any case where–

(a) by virtue of subsection (5), the Authority has taken action falling within any of paragraphs (a) to (c) of subsection (1) before complying with subsections (2) and (3) or, as the case may be, before it is satisfied as mentioned in subsection (4), and

(b) the European Commission decides under the Investment Services Directive that the Authority must rescind or vary the prohibition or restriction or withdraw the application,

the Authority shall, in accordance with that decision, rescind or vary the prohibition or restriction or withdraw the application.

PART V.
REGULATED MARKETS.

Authority to maintain list of regulated markets.

25. (1) The Authority shall keep a list upon which it shall enter the name of each market of which Gibraltar is the home territory and which appears to the Authority to satisfy the conditions set out in subsection (2).

(2) The conditions referred to in subsection (1) are that the market in question–

(a) is a market for instruments of the kind listed in section B of the Annex to the Investment Services Directive (the text of which is set out in Schedule 1);

(b) functions regularly;

(c) is licensed by the Authority under section 6 of the 1989 Act and subject to such rules as are referred to in section 29A of that Act; and

(d) has rules that give effect to the provisions of Articles 20 and 21 of the Investments Services Directive.

(3) If it appears to the Authority that a market the name of which it has entered on the list kept by virtue of this section has ceased to comply with any of the conditions in subsection (2), the Authority shall forthwith remove the name of the market in question from the list.

(4) For the purposes of this section, Gibraltar is the home territory for a market if–

(a) the head office of the person providing the trading facilities is situated in Gibraltar; and

(b) if that person has a registered office, that registered office is also situated in Gibraltar.

Licensing of investment exchanges.

Section 26 inserts new s.29A in the 1989 Act.

PART VI.
RECOGNITION IN EEA STATES OF AUTHORISED GIBRALTAR INVESTMENT FIRMS.

Requirements for carrying on listed services in EEA.

27. (1) Subject to subsection (2), an authorised Gibraltar investment firm shall not–

(a) provide in an EEA State any listed service which it is lawful for it to carry out in Gibraltar, or

(b) establish a branch in an EEA State for the purpose of providing such a service,

unless the requirements of paragraph 1 of Schedule 4 have been complied with in relation to its provision of the service or, as the case may be, its establishment of the branch.

(2) The provisions of Schedule 4 shall have effect for the purposes of this Part.

(3) Subsection (1) shall not require a Gibraltar subsidiary institution which, immediately before lst January 1996, complied with the requirements of section 38 of the Banking Act, 1992 to give further notice of any matter of which it has given notice under that section.

(4) An authorised Gibraltar investment firm shall not change the requisite details it has given of the services it provides in an EEA State in which it has no branch unless the requirements of paragraph 5 of Schedule 4 have been complied with in relation to its making of the change.

(5) An authorised Gibraltar investment firm shall not change the requisite details of a branch established by it in an EEA State unless the requirements of paragraph 6 of Schedule 4 have been complied with in relation to its making of the change.

(6) In subsections (4) and (5) "requisite details", in relation to an authorised Gibraltar investment firm which, immediately before lst January 1996, was a Gibraltar subsidiary institution shall include any details it has furnished pursuant to the provisions of the Banking Act, 1992 with respect to any listed service it provides by the provision of services or with respect to any branch it has established in an EEA State from which it provides any listed service.

(7) An investment firm which contravenes any of subsections (1), (4) or (5) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) In proceedings brought against an investment firm for an offence under subsection (7) it shall be a defence for the firm to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Requirements for carrying on investment services in the United Kingdom.

27A. The Minister may, by regulations, make specific provisions requiring authorised Gibraltar investment firms–

(a) which provide investment services into the United Kingdom on a passporting, cross-border basis, to make, in all their written and visual advertisements and client agreements (for the United Kingdom), such statements as the Minister may prescribe;

(b) which provide investment services (listed in schedule 1) in the United Kingdom through a branch established in the United Kingdom, to participate in any investor compensation scheme established in the United Kingdom, on such terms as the Minister may prescribe.

PART VII.
EXERCISE OF THE AUTHORITY'S FUNCTIONS.

Administrative notices.

28. (1) The Authority shall cause to be published in the form of administrative notices statements setting out the criteria and any variation in the criteria from time to time by reference to which the Authority proposes to exercise its functions under this Act, including, in particular, its powers to grant, cancel or suspend authorisations under Part III or to impose conditions of general application on such authorisations.

(2) The Authority shall also publish in the form of administrative notices under this section criteria to facilitate compliance in Gibraltar with any relevant Community obligation, including, in particular, the requirements of the Capital Adequacy Directive.

(3) An administrative notice published under this section shall be admissible in evidence in any action commenced in exercise of the rights of appeal under section 45 of the 1989 Act, as extended by this Act, or otherwise in connection with the operation of this Act.

Restrictions on disclosure of information.

29. (1) This section applies to any confidential information which–

(a) a person who works or has worked for the Authority or for any other person for the time being designated as a competent authority in relation to Gibraltar for the purposes of Article 22 of the Investment Services Directive or Article 9 of the Capital Adequacy Directive, or

(b) any auditor or expert instructed by the Authority or a person so designated,

has received in the course of discharging his duties as such a person, auditor or expert in relation to a Gibraltar investment firm or a European investment firm.

(2) Section 58(2) of the 1989 Act (disclosure of confidential information) shall not apply to information to which this section applies.

(3) Information to which this section applies shall not be disclosed by any person referred to in subsection (1)(a) or subsection (1)(b), or by any person receiving it directly or indirectly from such a person, except in any of the circumstances specified in paragraphs 1 to 7 of Article 25 of the Investment Services Directive, as amended by the Prudential Supervision Directive, the text of which paragraphs (as so amended) is set out in Schedule 5.

(4) Information received under Article 25.2 of the Investment Services Directive may not be communicated in the circumstances referred to in Article 25.7 of that Directive without the express consent of the competent authority from whom it was obtained.

(5) Any person who contravenes any provision of this section shall be 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 imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

PART VIII.
AMENDMENTS OF FINANCIAL SERVICES ACT, 1989.

Amendments consequential on this Act, etc.

30. The 1989 Act shall have effect subject to the amendments in Schedule 6, being amendments necessary to give effect to, or consequential upon, the preceding provisions of this Act and amendments consequential on the establishment of the European Economic Area.

Application for licence.

Section 31 amends subsection 6(3) of the 1989 Act.

Grant or refusal of licence.

Section 32 amends subsection 8(1) of the 1989 Act.

Criteria for grant of licence.

Section 33(a) amends subsection 9(c) of the 1989 Act.

Section 33(b) inserts new subsection 9(cc) in the 1989 Act.

Section 33(c) amends subsection 9(d) of the 1989 Act.

Imposing of conditions on licence.

Section 34 inserts new subsection 10(4) in the 1989 Act.

Cancellation or suspension of licence.

Section 35 inserts new subsection 11(2)(hh) in the 1989 Act.

Auditor to notify Authority of certain matters.

Section 36 inserts new section 13A in the 1989 Act.

Recognition of certain collective investment schemes.

Section 37 inserts new subsection 26(2A) in the 1989 Act.

SCHEDULE 1

Section 2(2)

ANNEX TO THE INVESTMENT SERVICES DIRECTIVE

SECTION A

Services

1. (a) Reception and transmission, on behalf of investors, of orders in relation to one or more of the instruments listed in section B.

(b) Execution of such orders other than for own account.

2. Dealing in any of the instruments listed in Section B for own account.

3. Managing portfolios of investments in accordance with mandates given by investors on a discretionary, client-by-client basis where such portfolios include one or more of the instruments listed in section B.

4. Underwriting in respect of issues of any of the instruments listed in section B and/or the placing of such issues.

SECTION B

Instruments

1.(a) Transferable securities.

(b) Units in collective investment undertakings.

2. Money market instruments.

3. Financial-futures contracts, including equivalent cash-settled instruments.

4. Forward interest-rate agreements (FRAs).

5. Interest-rate, currency and equity swaps.

6. Options to acquire or dispose of any instruments falling within this section of the Annex, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates.

SECTION C

Non-core services

1. Safekeeping and administration in relation to one or more of the instruments listed in Section B.

2. Safe custody services.

3. Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the instruments listed in Section B, where the firm granting the credit or loan is involved in the transaction.

4. Advice to undertakings on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of undertakings.

5. Services related to underwriting.

6. Investment advice concerning one or more of the instruments listed in Section B.

7. Foreign-exchange service where these are connected with the provision of investment services.

SCHEDULE 2

ARTICLE 2.2. OF THE INVESTMENT SERVICES DIRECTIVE

Section 3(2)

"This Directive shall not apply to:

(a) insurance undertakings as defined in Article 1 of Directive 73/239 (O.J. 1973, L228/3) or Article 1 of Directive 79/267 (O.J. 1979, L.63/1) or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 64/225 (O.J. 1964, 56/878);

(b) firms which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

(c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;

(d) firms that provide investment services consisting exclusively in the administration of employee-participation schemes;

(e) firms that provide investment services that consist in providing both the services referred to in (b) and those referred to in (d);

(f) the central banks of member States and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;

(g) firms

- which may not hold clients' funds or securities and which for that reason may not at any time place themselves in debit with their clients, and

- which may not provide any investment service except the reception and transmission of orders in transferable securities and units in collective investment undertakings, and

- which in the course of providing that service may transmit orders only to–

  (i) investment firms authorised in accordance with this Directive;

  (ii) credit institutions authorised in accordance with Directives 77/780 and 89/646;

  (iii) branches of investment firms or of credit institutions which are authorised in a third country and which are subject to and comply with prudential rules considered by the competent authorities as at least as stringent as those laid down in this Directive, in Directive 89/646 or in Directive 93/6;

  (iv) collective investment undertakings authorised under the law of a member State to market units to the public and to the managers of such undertakings;

  (v) investment companies with fixed capital, as defined in Article 15(4) of Directive 79/91, (O.J. 1977, L26/1) the securities of which are listed or dealt in on a regulated market in a member State;

- the activities of which are governed at national level by rules or by a code of ethics,

(h) collective investment undertakings whether co-ordinated at Community level or not and the depositories and managers of such undertakings;

(i) persons whose main business is trading in commodities amongst themselves or with producers or professional users of such products and who provide investment services only for such producers and professional users to the extent necessary for their main business;

(j) firms that provide investment services consisting exclusively in dealing for their own account on financial-futures or options markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets. Responsibility for ensuring the performance of contracts

entered into by such firms must be assumed by clearing members of the same markets;

(k) associations set up by Danish funds with the sole aim of managing the assets of pension funds that are members of those associations;

(l) “agenti di cambio” whose activities and functions are governed by Italian Royal Decree No. 222 of 7 March 1925 and subsequent provisions amending it, and who are authorised to carry on their activities under Article 19 of Italian Law No 1 of 2 January 1991.

SCHEDULE 3

Section 18(3)

REQUIREMENTS AS RESPECTS AUTHORISED EUROPEAN INVESTMENT FIRMS

Requirements for providing services, etc.

1.(1) In relation to the provision of any listed service, the requirements of this paragraph are–

(a) that the firm has given to the relevant supervisory authority of its home State a notice in accordance with paragraph 2; and

(b) that the Authority has received from that supervisory authority a notice in accordance with paragraph 3.

(2) In relation to the establishment of a branch, the requirements of this paragraph are–

(a) that the firm has given to the relevant supervisory authority of its home State a notice in accordance with paragraph 2;

(b) that the Authority has received from that supervisory authority a notice in accordance with paragraph 3; and

(c) that either the Authority has informed the firm that it may establish the branch or the period of two months beginning with the day on which the Authority received the notice in accordance with paragraph 3 has expired.

2. A notice given by a firm to the relevant supervisory authority of its home State is given in accordance with this paragraph if it states–

(a) Gibraltar to be a territory in which the firm intends to provide listed services;

(b) whether the firm plans to establish a branch in Gibraltar; and

(c) the requisite details.

3. A notice given in respect of an authorised European investment firm by the relevant supervisory authority of its home State is in accordance with this paragraph if–

(a) it certifies that the firm is an investment firm which is for the time being authorised to act as such a firm by the authority;

(b) it contains the information stated in the firm's notice; and

(c) where the firm intends to establish a branch in Gibraltar, it contains details of any compensation scheme which is intended to protect the branch's investors.

Requirements for changing requisite details where services are provided.

4. (1) Subject to subparagraph (2), the requirements of this paragraph are that the firm has given to the Authority and to the relevant supervisory authority of its home State a notice stating the details of the proposed change.

(2) In the case of a change occasioned by circumstances beyond the firm's control, the requirements of this paragraph are that the firm has, as soon as practicable (whether before or after the change), given to the Authority and to the relevant supervisory authority of its home State a notice stating the details of the change.

Requirements for changing requisite details of branch.

5. (1) Subject to subparagraph (2), the requirements of this paragraph are–

(a) that the firm has given to the Authority and to the relevant supervisory authority of its home State a notice stating the details of the proposed change;

(b) that the Authority has received from that supervisory authority a notice stating those details; and

(c) that the Authority has informed the firm that it may make the change or the period of one month beginning with the day on which the firm gave the Authority the notice mentioned in paragraph (a) has expired.

(2) In the case of a change occasioned by circumstances beyond the firm's control, the requirements of this paragraph are that the firm has, as soon as practicable (whether before or after the change), given to the Authority and to the relevant supervisory authority of its home State a notice stating the details of the change.

SCHEDULE 4

Section 27

REQUIREMENTS AS RESPECTS AUTHORISED GIBRALTAR INVESTMENT FIRMS

Requirements for providing listed services.

1. (1) In relation to the provision of any listed service, the requirements of this paragraph are that the firm has given to the Authority a notice in accordance with paragraph 2.

(2) In relation to the establishment of a branch the requirements of this paragraph are–

(a) that the firm has given to the Authority a notice in accordance with paragraph 2;

(b) that the Authority has given to the relevant supervisory authority of the EEA State concerned the notice which, subject to paragraph 4(2), it is required by paragraph 3 to give; and

(c) that either that relevant supervisory authority has informed the firm that it may establish the branch or the period of two months beginning with the day on which the Authority gave the relevant supervisory authority the notice mentioned in paragraph (b) has expired.

2. A notice given by a firm to the Authority is given in accordance with this paragraph if it states–

(a) the territory of the EEA State in which the firm proposes to provide listed services;

(b) whether the firm proposes to establish a branch in that territory; and

(c) the requisite details.

3. The notice which, subject to paragraph 4(2), the Authority is required to give in respect of an authorised Gibraltar investment firm is a notice which

is addressed to the relevant supervisory authority of the EEA State identified in the firm's notice under paragraph 2 and which–

(a) certifies that the firm is authorised under this Act;

(b) contains the information stated in the firm's notice; and

(c) if the firm intends to establish a branch in the territory of the EEA State, contains details of any compensation scheme which is intended to protect the branch's investors.

4. (1) Where the firm's notice under paragraph 2 states that the firm does not intend to establish a branch in the territory of the EEA State concerned, the notice referred to in paragraph 3 shall be given within the period of one month beginning with the date on which the firm's notice was received by the Authority.

(2) Where the firm's notice under paragraph 2 states that the firm intends to establish a branch in the territory of the EEA State concerned, the Authority shall, within the period of three months beginning with the date on which the firm's notice was received–

(a) give the notice referred to in paragraph 3; or

(b) refuse to give such a notice.

(3) The Authority may not refuse to give such a notice unless, having regard to the listed services proposed to be provided, the Authority doubts the adequacy of the administrative structure or the financial situation of the firm.

(4) In reaching a determination as to the adequacy of the administrative structure of a firm, the Authority may have regard to the adequacy of management, systems and controls and the presence of relevant skills needed for the services proposed to be provided.

(5) Where the firm's notice under paragraph 2 states that the firm intends to establish a branch, the Authority shall, within the period of three months referred to in subparagraph (2), notify the firm–

(a) that it has given the notice referred to in paragraph 3, stating the date on which it did so; or

(b) that it has refused to give such a notice and stating the reasons for the refusal and giving particulars of the right of appeal under section 45 of the 1989 Act.

Requirements for changing requisite details where services are provided.

5. (1) Subject to subparagraph (2), the requirements of this paragraph are that the firm has given to the Authority and to the relevant supervisory authority of the EEA State concerned a notice stating the details of the proposed change.

(2) In the case of a change occasioned by circumstances beyond the firm's control, the requirements of this paragraph are that the firm has, as soon as practicable (whether before or after the change), given to the Authority and to the relevant supervisory authority of the EEA State concerned a notice stating the details of the change.

Requirements for changing requisite details of branch.

6. (1) Subject to subparagraph (2), the requirements of this paragraph are–

(a) that the firm has given to the Authority and to the relevant supervisory authority of the EEA State in the territory of which it has established the branch a notice stating the details of the proposed change;

(b) that that supervisory authority has received from the Authority a notice under paragraph 7(1); and

(c) that that supervisory authority has informed the firm that it may make the change or the period of one month beginning with the day on which the firm gave that supervisory authority the notice mentioned in paragraph (a) has expired.

(2) In the case of a change occasioned by circumstances beyond the firm's control, the requirements of this paragraph are that the firm has, as soon as practicable (whether before or after the change), given to the Authority and to the relevant supervisory authority of the EEA State in the territory of which it has established the branch, a notice stating the details of the change.

7. (1) Within the period of one month beginning with the date on which it receives a notice under paragraph 6(1), the Authority shall–

(a) give a notice to the relevant supervisory authority informing it of the details of the proposed change; or

(b) refuse to give such a notice.

(2) The Authority may not refuse to give such a notice unless, having regard to the changes and the listed services proposed to be provided, the

Authority doubts the adequacy of the administrative structure or the financial situation of the firm.

(3) In reaching a determination as to the adequacy of the administrative structure of a firm, the Authority may have regard to the adequacy of management, systems and controls and the presence of relevant skills needed for the services proposed to be provided.

(4) Within the period of one month referred to in subparagraph (1), the Authority shall notify the firm–

(a) that it has given the notice referred to in that subparagraph, stating the date on which it did so; or

(b) that it has refused to give such a notice and stating the reasons for the refusal and giving particulars of the right of appeal under section 45 of the 1989 Act.

SCHEDULE 5

Section 29(3)

PARAGRAPHS 1 TO 7 OF ARTICLE 25 OF THE INVESTMENT SERVICES DIRECTIVE, AS AMENDED BY THE PRUDENTIAL SUPERVISION DIRECTIVE

"1. Member States shall provide that all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, shall be bound by the obligation of professional secrecy. Accordingly no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that individual investment firms cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where an investment firm has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that investment firm may be divulged in civil or criminal proceedings.

2. Paragraph 1 shall not prevent the competent authorities of different member States exchanging information in accordance with this Directive or other Directives applicable to investment firms. That information shall be subject to the conditions of professional secrecy imposed in paragraph 1.

3. Member States may conclude cooperation agreements providing for exchanges of information with the competent authorities of third countries only if the information disclosed is covered by guarantees of professional secrecy at least equivalent to those provided for in this Article.

4. Competent authorities receiving confidential information under paragraph 1 or 2 may use it only in the course of their duties:

- to check that the conditions governing the taking up of the business of investment firms are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to the capital adequacy requirements imposed by Directive 93/6, administrative and accounting procedures and internal-control mechanisms,

- to impose sanctions,

- in administrative appeals against decisions by the competent authorities, or

- in court proceedings under Article 26.

5. Paragraphs 1 and 4 shall not preclude the exchange of information:

(a) within a member State, where there are two or more competent authorities, or

(b) within a member State or between member States, between competent authorities, and

- authorities responsible for the supervision of credit institutions, other financial organisations and insurance undertakings and the authorities responsible for the supervision of financial markets,

- bodies responsible for the liquidation and bankruptcy of investment firms and other similar procedures, and

- persons responsible for carrying out statutory audits of the accounts of investment firms and other financial institutions, in the performance of their supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions. Such information shall be subject to the conditions of professional secrecy imposed in paragraph 1.

5a. Notwithstanding paragraphs 1 to 4, member States may authorise exchanges of information between the competent authorities and:

- the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of investment firms and other similar procedures, or

- the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task of overseeing referred to in the first subparagraph,

- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,

- where the information originates in another member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other member States the names of the authorities which may receive information pursuant to this paragraph.

5b. Notwithstanding paragraphs 1 to 4, member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task referred to in the first subparagraph,

- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,

- where the information originates in another member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph.

In order to implement the final indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before December 31, 2000, the Commission shall draw up a report on the application of the provisions of this paragraph.

6. This Article shall not prevent a competent authority from transmitting:

- to central banks and other bodies with a similar function in their capacity as monetary authorities,

- where appropriate, to other public authorities responsible for overseeing payment systems,

information intended for the performance of their task, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

7. This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 1 to 4 to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their member State's markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received shall be subject to the conditions of professional secrecy imposed in paragraph 1. The member States shall, however, ensure that information received under paragraph 2 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.".

SCHEDULE 6

Section 30

AMENDMENTS OF FINANCIAL SERVICES ACT, 1989

Interpretation.

Paragraph 1(1) inserts new definition in section 2.

Paragraph 1(2) amends definition in section 2.

Restriction on carrying on investment business, etc.

Paragraph 2 amends section 3(1).

Conduct of business.

Paragraph 3 substitutes section 11A.

Conduct of business regulations.

Paragraph 4 amends the proviso to subsection 12(1).

Accounting and financial regulations.

Paragraph 5 amends the proviso to subsection 13(1).

Collective investment schemes in member States.

Paragraph 6 omits words in subsection 24(1).

Powers of intervention.

Paragraph 7 substitutes subsection 32(1)(a).

Extension of powers to obtain information.

Paragraph 8 inserts words in section 34.

Investigations.

Paragraph 9 substitutes words in subsection 38(1)(a).

Injunctions and restitution orders.

Paragraph 10(1) amends subsection 42(1)(a).

Paragraph 10(2) amends subsection 42(2).

Action for damages.

Paragraph 11 amends section 43.

Representations concerning decisions of the Authority.

Paragraph 12 inserts new subsection 44(1)(h) and (i).

Appeals.

Paragraph 13(1) inserts new subsection 45(1)(c), (d), (e) and (f).

Paragraph 13(2) amends subsection 45(5).

Immunity.

Paragraph 14 amends section 47.

Offences.

Paragraph 15(1) amends subsection 48(2).

Paragraph 15(2) inserts new subsection 48(2)(aa).

Penalties.

Paragraph 16 amends subsection 49(2).

Criminal proceedings etc.

Paragraph 17 amends sections 50 and 51.

Service of notices and documents.

Paragraph 18 amends section 52.

Regulations.

Paragraph 19(1) amends subsections 53(1) and (2).

Paragraph 19(2) amends subsections 53(3) and (4).

Fees regulations.

Paragraph 20(1)(a) amends subsection 56(1)(a).

Paragraph 20(1)(b) amends subsection 56(1)(b).

Paragraph 20(2) amends subsection 56(4).

Winding up regulations.

Paragraph 21(1) substitutes subsection 57(1)(a).

Confidentiality.

Paragraph 22 amends subsection 58(1).

Investments.

Paragraph 23(1) amends Schedule 1, paragraph 1.

Paragraph 23(2) amends Schedule 1, paragraph 2.

Exempted persons.

Paragraph 24 substitutes Schedule 4, Part II.