

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 2,780 of 26th May, 1994.**

---

---

I ASSENT,

JOHN CHAPPLE,

GOVERNOR.

26th May, 1994



**GIBRALTAR  
No. 3 of 1994**

AN ORDINANCE to amend the Financial Services Commission Ordinance, 1989

ENACTED by the Legislature of Gibraltar.

**Title and commencement.**

1. This Ordinance may be cited as the Financial Services Commission (Amendment) Ordinance 1994 and shall come into effect on such day as the Governor may, by notice in the Gazette, appoint and different days may be so appointed for different purposes.

**Amendment to section 2.**

2. Section 2 of the Financial Services Commission Ordinance 1989 (hereinafter called "the principal Ordinance") is amended by omitting the definition of "finance business" and substituting therefor the following definitions -

"finance business" means any business related to finance and investment and includes the business of banking, insurance, investment and asset management and administration or the provision of the services in relation to any of the aforesaid.

"financial services" means any services provided in connection with any finance business, and "financial services legislation" shall be construed accordingly.

"institution" means any person, company or partnership."

**Amendment to section 3.**

3. Section 3 of the principal Ordinance is amended -

(a) in sub-section (1) by omitting paragraph (b) and substituting therefor the following new paragraph -

"(b) seven other persons appointed by the Governor, acting with the approval of the Foreign and Commonwealth Secretary after consultation with the Commissioner, of whom-

(i) four shall have experience of regulation and supervision of finance business or shall practise as a solicitor, barrister, auditor or actuary in the United Kingdom; and

(ii) three shall be a solicitor, barrister, auditor or actuary and practise as such in Gibraltar or have experience in the practice of finance business in Gibraltar.";

in sub-section (2) by omitting the words "(excepting the Commissioner)";

Financial Services Commission (Amendment) Ordinance, 1994.

(c) in sub-section (3) by -

(i) omitting paragraph (e) and substituting therefor the following two paragraphs -

"(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.";

(ii) inserting after the word "Governor" the words "acting with the approval of the Foreign and Commonwealth Secretary".

**Amendment to section 5.**

4. Section 5 of the principal Ordinance is amended -

(a) in sub-section (1) by inserting after the word "Chairman" the expression "and two of the four members referred to in section 3(1)(b)(i).";

(b) in sub-section (2) by inserting after the word "Commission" where it occurs for the second time, the words "and shall take place in Gibraltar."

**Amendment to section 6.**

5. Section 6 of the principal Ordinance is amended -

(a) in sub-section (1) by -

(i) omitting the word "Ordinance" and substituting therefor the words "relevant ordinance";

(ii) inserting after the word "regulation" the words "so far as is practicable";

(iii) omitting the words "so to do" and substituting therefor the words "to do so";

(b) in sub-section (2) by-

(i) omitting paragraphs (a), (c), (d) and (e) and redesignating paragraph (b) as paragraph (c) and omitting at the end of that paragraph the semi-colon and substituting therefor a fullstop;

(ii) inserting before paragraph (c) as now so designated the following new paragraphs (a) and (b) and inserting after paragraph (c) the following new paragraphs (d) and (e) -

"(a) to keep under review both the operation of Gibraltar legislation relating to financial services and the effectiveness of the supervision of institutions licensed to provide any financial services.

(b) in respect of financial services in those areas where Community law applies, to monitor the extent to which Gibraltar legislation and supervision of licensed institutions -

(i) comply with Community obligations; and

(ii) establish and implement standards which match those required by legislation and supervisory practice governing the provision of financial services within the United Kingdom.

(d) to advise the Government of Gibraltar and the Government of the United Kingdom on matters concerning financial services, having regard, in particular, to any matter arising in the course of the discharge by the Commission of its duties under paragraph (b) above, and to the need for timely and effective implementation in Gibraltar law of Community obligations.

(e) to draw up codes for regulating the terms of service, discipline and training of all persons employed by the Commission."

**Amendment to section 8.**

6. Section 8 of the principal Ordinance is amended -

- (a) in sub-section (1) by inserting after the word "Governor" the words "acting with the approval of the Foreign and Commonwealth Secretary";
- (b) by omitting sub-section (2);
- (c) by renumbering sub-section (3) as sub-section (2) and by inserting at the end of that sub-section the following new sentence "In particular he shall supervise institutions licensed to provide any financial services with a view to ensuring that such supervision complies with any applicable Community obligations and, where these obligations apply, establish and implement standards which match those required by legislation and supervisory practice governing the provision of financial services within the United Kingdom.";
- (d) by renumbering sub-section (4) as sub-section (3) and inserting after  
the word "Governor" the words "acting with the approval of the Foreign and Commonwealth Secretary".

**Amendment to section 12.**

7. Section 12 of the principal Ordinance is amended in sub-section (1) -

- (a) by omitting paragraphs (a), and (c);
- (b) by inserting the following new paragraph (a)-  
"a) to any suitably qualified or competent individual;  
or";
- (c) by omitting the semi-colon and the word "or" at the end of paragraph (b) and substituting therefor a fullstop.

**New section 12A.**

8. The principal Ordinance is amended by inserting after section 12 the following new section -

**"Reviews of supervisory activities of the Commission and Commissioner.**

12A. The Governor acting with the approval of the Foreign and Commonwealth Secretary shall appoint persons to review the supervisory activities under this or any other ordinance of the Financial Services Commission and the Financial Services Commissioner in relation to any financial services to which Community law applies and to report and as appropriate make recommendations to the Foreign and Commonwealth Secretary. Such reviews will take place annually or at the instigation of the Governor acting with the approval of the Foreign and Commonwealth Secretary. The cost of such reviews shall be charged to the Commission."

**Amendment to section 19.**

9. Section 20 of the principal Ordinance is amended in sub-section (1) by omitting the word "he" and substituting therefor the words "the Governor acting with the approval of the Foreign and Commonwealth Secretary".

**New section 22.**

10. The principal Ordinance is amended by inserting after section 21 the following new section 22 -

**"Confidentiality.**

22.(1) Save as may be provided for by any other Ordinance, 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 Ordinance, no such information as is referred to in sub-section (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; or
- (b) in the interests of the prevention or detection of crime; or
- (c) in connection with the discharge of any international obligation to which Gibraltar is subject; or
- (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; or
- (e) to comply with the directions of the Supreme Court;
- (f) for the purpose of assisting or enabling any person appointed to carry out a review in accordance with section 12A to discharge his functions;

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

- (3) Without prejudice to sub-sections (i) 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 -

Financial Services Commission (Amendment) Ordinance, 1994.

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

(b) on summary conviction, to a fine not exceeding £500."

Passed by the Gibraltar House of Assembly on the 18th day of May, 1994.

D. FIGUERAS,

Clerk to the Assembly.