

Financial Services (Contingency Fund) Act, 2014

Principal Act

Act. No. 2014-08

Commencement
Assent

Not in force
25.3.2014

ARRANGEMENT OF SECTIONS

Section

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AN ACT TO MAKE PROVISION FOR AND IN CONNECTION WITH THE CREATION OF A CONTINGENCY FUND TO BE AVAILABLE FOR USE UPON THE HAPPENING OF A MAJOR EVENT CONNECTED TO ACTIVITIES LICENSED UNDER THE SUPERVISORY ACTS; TO PROVIDE FOR THE FUNCTIONS AND POWERS OF THE AUTHORITY; AND FOR CONNECTED PURPOSES.

Title and commencement.

1. This Act may be cited as the Financial Services (Contingency Fund) Act, 2014 and shall come into operation on the date appointed by notice in the Gazette.

Interpretation.

2. In this Act–

“the Authority” means the Financial Services Commission;

“client” means any person, to which another person provided services for which a licence is required under a Supervisory Act;

“licence” includes any authorisation, licence, recognition or approval granted or deemed to have been granted under a Supervisory Act;

“Minister” means the Minister with responsibility for Financial Services;

“person” includes a company, trust or other legal entity;

“Supervisory Act” has the same meaning as in the Financial Services Commission Act 2007.

“Major Event”.

3.(1) In this Act “Major Event” means an event falling within paragraph (a), (b) or (c) which the Minister certifies, on the application of the Authority and due to its extraordinary nature, to be an event which necessitates the use by the Authority of the contingency fund–

- (a) the suspension or cancellation by the Authority of a licence pursuant to the provisions of a Supervisory Act, the imposition of conditions on a licence by the Authority pursuant to the provisions of a Supervisory Act whether or not an appeal has been lodged or any other legal challenge has been brought against the decision to suspend or cancel the licence;

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- (b) the commission of an act by an unlicensed person which had that person been the holder of a licence under the relevant Supervisory Act would have led to the Authority taking action as described in (a); or
- (c) an order being made for the liquidation of a licensed company.

(2) The Authority must inform the Finance Centre Council of any applications made by it to the Minister in accordance with this section as soon as is practicable.

Establishment of the contingency fund.

4.(1) The Authority shall establish a fund which shall be referred to as “the contingency fund”.

(2) The Authority shall hold and administer the contingency fund in accordance with this Act.

(3) The contingency fund shall consist of–

- (a) money levied on participants by the Authority;
- (b) money received as income from investments;
- (c) money borrowed by the Authority from the Government for the purposes of this Act;
- (d) money received by the Authority on any policy of insurance it takes out in accordance with subsection (5);
- (e) any other money required to be paid into the contingency fund or received by the Authority for the purposes of the contingency fund.

(4) The Authority may invest any money in the contingency fund in–

- (a) Government of Gibraltar debentures or bonds;
- (b) deposits in the Gibraltar Savings Bank;
- (c) deposits in credit institutions authorised under the Financial Services (Banking) Act; and
- (d) deposits in credit institutions other than set out above with the prior approval of the Minister.

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(5) For the purposes of this Act the Authority may, with the prior approval of the Minister, and subject to such restrictions as the Minister may impose, borrow money and take out insurance policies.

(6) The Minister may, by notice in the Gazette, amend the list of investments contained in subsection (4) so as to add or remove therefrom such investment or investments as he deems appropriate.

Participants in the contingency fund.

5.(1) Every holder of a licence under a Supervisory Act shall participate in the contingency fund.

(2) In respect of each financial year, each participant shall pay into the contingency fund a levy of an amount determined in accordance with this section.

(3) The amount of the levy shall be that set by the Minister as follows—

- (a) the Authority shall advise the Minister as to the amount which in its opinion is required to cover payments to be made from the contingency fund under section 6;
- (b) the Minister shall consult the Finance Centre Council before setting the amount of the levy;
- (c) the amount of the levy shall be expressed as a percentage of all annual licence fees (or other relevant recurring fees) due under the Supervisory Act or Acts under which participants are licensed.

(4) The levy shall not exceed 10% of the annual licence fees (or other relevant recurring fee or payment) due under the Supervisory Act, or Acts, under which the participants in the contingency fund are licensed.

(5) The amount of the levy shall be reviewed by the Minister—

- (a) at least once every 3 years; and
- (b) in the case of a Major Event, at the request of the Authority.

(6) A request under sub-section (5)(b) may only be made after notification has been given by the Authority to the Finance Centre Council.

(7) The levy in respect of any financial year becomes due—

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- (a) in the case of an institution which becomes a participant at any time during that financial year, at that time; and
- (b) in the case of any other participant, at such time the Authority may decide.

(8) If at the time it appears to the Authority that there will be a sufficient credit balance carried forward from the previous financial year to cover the expected payments to be made out of the contingency fund the next financial year, the Authority may determine to waive all or part of the levy for that year and shall notify the Minister, the Finance Centre Council and the participants accordingly.

Payments from the contingency fund.

6.(1) There shall be paid out of the contingency fund—

- (a) with the prior approval of the Minister, upon the occurrence of a Major Event, or during any period of time that a Major Event subsists, the Authority's administration, investigation and enforcement costs which directly relate to the Major Event;
- (b) with the prior approval of the Minister, the Authority's administration, investigation and enforcement costs which directly relate to a relevant event as defined in the Financial Services (Temporary Administration of Companies) Act 2010;
- (c) all reasonable costs and expenses incurred by the Authority in administering the contingency fund; and
- (d) money required for the repayment of (or interest on or charges in connection with) any money borrowed, or for the payment of premiums on any insurance policies taken out, for the purposes of the contingency fund.

(2) The contingency fund may not be applied to meet any other recurring or capital expenditure of the Authority or put towards the compensation of clients.

Preparation of estimates and value for money.

7.(1) An annual account of the income and expenditure of the contingency fund shall be included as a separate note in the accounts prepared by the Authority in accordance with the Financial Services Commission Act 2007.

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(2) The Minister may appoint a person or persons to conduct a value for money review of expenditure under this Act and to report thereon to him. The Minister shall lay before Parliament a copy of any such report within 30 days of its receipt by him.