

SAINT CHRISTOPHER AND NEVIS

STATUTORY RULES AND ORDERS

1997, No. 25

The Financial Services (Regulations) Order, 1997.

AN ORDER made by the Minister under sections 219 and 221 of the Companies Act, 1996 - 22; sections 73 and 75 of the Limited Partnerships Act, 1996 - 24; and sections 105 and 107 of the Trusts Act, 1996 - 23.

PART I

Preliminary

1. Citation and commencement

- (1) This Order may be cited as the Financial Services (Regulations) Order, 1997.
- (2) This Order shall come into force on 3rd of April, 1997.

2. Interpretation

- (1) In this Order unless the context otherwise requires -

“the Acts” means the Acts under which this Order is made;

“actuary” means a person who is qualified as an actuary by examination conducted by the Institutes of Actuaries in England or the Faculty of Actuaries in Scotland or the Society of Actuaries in the United States of America or Canada, and is a practising member of good standing of one of those professional associations or a person of good standing with some other actuarial qualification who is recognised by the Minister as such for the purpose of this Order;

“associate”, in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, a company, means -

- (a) the spouse or children or step-children of that person;
- (b) the trustees of any settlement under which that person has a life interest;
- (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 -
 - (i) any director of that company;
 - (ii) any subsidiary company of that company; and
 - (iii) any director or employee of any such subsidiary company; 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 interest in that company or under which they undertake to act together in exercising their voting power in relation to it, that other person;

“accountant” means a person who is qualified as an accountant by examination conducted by one of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants and is a practising member in good standing of one of those institutes or is otherwise approved by any supervisory body of the accounting profession recognised under the law of the Federation;

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“assurance business” means the carrying on of the business of -

- (a) insurance agent;
- (b) insurance broker;
- (c) insurance sub-agent;
- (d) insurance manager; or
- (e) principal insurance representative;

“auditor” means an accountant who is eligible for appointment as auditor under the rules of the institute of chartered or certified accountants of which he is a practising member in good standing or is otherwise approved for appointment as auditor by any supervisory body of the accounting profession recognised under the law of the Federation;

“authorisation” means authorisation granted by the Minister under this Order and “authorised” shall be construed accordingly;

“chief executive”, in respect to an authorised person, means a person who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the authorised person and in relation to an authorised person whose principal place of business is in a place outside the Federation, includes a person who, either alone or jointly with one or more other persons, is responsible for the conduct of its business in the Federation;

“close relative”, in relation to any person, means -

- (a) his spouse;
- (b) his children and step-children, his parents and step-parents, his brothers and sisters and step-brothers and step-sisters; and
- (c) the spouse of any person mentioned in paragraph (b);

“company” means any body corporate wherever and however incorporated, other than a corporation sole;

“contract”, in relation to insurance business, includes policy;

“controller” in relation to a company, means -

- (a) a chief executive of the company;
- (b) a chief executive of any other company of which that company is a subsidiary company;
- (c) a partner in any partnership of which the company is also a partner;
- (d) a person in accordance with whose directions or instructions any director of that company or any other company of which that company is a subsidiary company is accustomed to act;
- (e) a person who, either alone or with any associate or associates, is entitled to exercise or control the exercise of not less than 15 per cent of the voting power in general meeting of that company or of any other company of which that company is a subsidiary company;

and in this Order, a person coming within paragraph (d) is referred to as “an indirect controller” and a person coming within paragraph (e) is referred to as a “shareholder controller”;

“corporate business” means the carrying on of, and the provision of services in relation to, the business of -

- (a) incorporating or establishing, as may be appropriate, companies or partnerships;
- (b) providing nominee shareholders, directors, chief executives or managers, as may be appropriate, for companies or partnerships;
- (c) maintaining the registered office or the office for service, as may be appropriate, for companies or partnerships;

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(d) managing or administrating, as may be appropriate, companies or partnerships;

“currency” includes foreign currency and any other means of exchange that may be prescribed;

“deposit” has the meaning assigned to it by section 1 of Schedule I to this Order;

“deposit-taking business” means the business of engaging in one or more of the activities which fall within section 2 of Schedule I to this Order;

“director” includes -

- (a) in the case of a company, a person who occupies the position of a director, by whatever name called;
- (b) in the case of a partnership, a partner;
- (c) in the case of a trust, a trustee;

“Director General” means the Director General appointed pursuant to section 21;

“documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“domestic business” means -

- (a) deposit-taking business conducted exclusively in dollars and any other deposit-taking business when deposits are taken from, or moneys are lent to, persons resident in the Federation;
- (b) investment business conducted exclusively in dollars and any other investment business when the investment represents a claim on persons resident in the Federation;
- (c) insurance business conducted exclusively in dollars and any other insurance business when the contract is in respect of the life, safety, fidelity or insurable interest (other than in respect of property) of a person who at the time of effecting the contract is resident in the Federation, or property that at the time of effecting the contract is in the Federation or, in the case of a vehicle, vessel, aircraft or other movable property, is ordinarily based in the Federation (but does not include re-insurance business);
- (d) assurance business when such business is conducted exclusively on behalf of an insurer who is carrying on domestic business;

“exempt person” means any exempt company, exempt limited partnership or exempt trust;

“excluded person” means a person excluded under sub-section (2) of Section 4;

“finance business” means any -

- (a) deposit-taking business;
- (b) investment business;
- (c) insurance business;
- (d) assurance business;
- (e) trust business; or
- (f) corporate business,

carried on for profit or reward in or from within the Federation;

“financial year”, in relation to an authorised person, means the period not exceeding 53 weeks at the end of which the balance of the authorised person’s accounts is struck or, if no such balance is struck or if a period in excess of 53 weeks is employed, then a calendar year;

“general insurance business” means insurance business other than long-term insurance business;

“insurance agent” means a person (not being an insurer) who solicits directly, or through representatives, advertising or other means, insurance business on behalf of not more than one insurer;

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“insurance broker” means a person (not being an insurer) who negotiates directly, or through representatives or other means, contracts of insurance or of re-insurance on behalf of more than one insurer, or for placement with insurers or re-insurers;

“insurance business” means the business of effecting and carrying out contracts -

- (a) protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed; or
- (b) to pay a sum of money or other thing of value upon the happening of an event,

and includes re-insurance business and running-off business including the settlement of claims;

“insurance manager” means a person operating in or from within the Federation who provides insurance expertise to or for insurers and which has in its *bona fide* employment a person who -

- (a) is qualified by examination as a fellow or associate of the Chartered Insurance Institute of London, or who is a member of either the Society of Chartered Property and Casualty Underwriters or the American Society of Chartered Life Underwriters both of the United States of America; and who is either a current member of good standing of the applicable professional body or of some other professional insurance association recognised by the Minister for the purpose of this Order; or
- (b) is a person of good standing with such insurance expertise as has been approved by the Minister.

“insurance sub-agent” means a person (not being an insurer, insurance agent or insurance broker) who solicits directly or through advertising or other means, insurance business on behalf of an insurance agent or on behalf of an insurance broker;

“insurer” means a person carrying on insurance business;

“investment” means any asset, right or interest falling within any section in Part I of Schedule II to this Order;

“investment business” means the business of engaging in one or more of the activities which fall within the sections in Part II of Schedule II to this Order and are not excluded by Part III or IV of that Schedule;

“long-term insurance business” means insurance business involving the making of contracts of insurance -

- (a) on human life or contracts to pay annuities on human life; but excluding contracts for credit life insurance and term life insurance for a period of five years or less other than convertible and renewable term life contracts;
- (b) against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of a specified class or becoming incapacitated in consequence of disease or diseases of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either not expressed to be terminable by the insurer before the expiration of five years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned; and
- (c) whether by bonds, endowment certificates or otherwise whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable to the person insured in the future, not being contracts falling within paragraphs (a) or (b);

“manager” means a person, by whatever name called, other than a director or chief executive, who is responsible for the overall control and administration or having effective control of the day to day business of an authorised person or an office in the Federation of that authorised person;

“net assets” means the value of all the assets of a business less all its liabilities except its capital and reserves (other than reserves for duties, charges or contingencies) as determined on the basis of such regulations and valuation rules as the Minister may prescribe;

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“this Order” means this Order as amended, or as extended or applied, by or under any other Order made under the Acts;

“partner” includes any general partner of a limited partnership;

“partnership” means any partnership, limited partnership or other unincorporated association wherever and however established;

“person” includes any -

- (a) individual;
- (b) company;
- (c) partnership; or
- (d) trust;

“principal insurance representative” means a person operating in or from within the Federation who, not being a *bona fide* employee, maintains for an insurer full and proper records of the business activities of that insurer;

“resident in the Federation” means a person who ordinarily resides within the Federation or carries on business from an office or other fixed place within the Federation but does not include an excluded person or an exempt person;

“restricted business” means deposit-taking business, investment business or trust business undertaken exclusively for persons listed in any undertaking accompanying the application for the relevant authorisation and “unrestricted business” shall be construed accordingly;

“settlement” includes any disposition or arrangement under which property is held in trust;

“shareholder controller” has the meaning given by paragraph (e) of the definition of controller, above, and “minority shareholder controller”, “majority shareholder controller” and “principal shareholder controller” mean, respectively -

- (a) a shareholder controller in whose case the percentage referred to in that paragraph does not exceed 50;
- (b) a shareholder controller in whose case the percentage exceeds 50 but does not exceed 75;
- (c) a shareholder controller in whose case that percentage exceeds 75;

“trust” means any trust or settlement wherever and however established;

“trust business” means the carrying on of, and the provision of services in relation to, corporate business and the business of -

- (a) undertaking or executing trusts;
- (b) providing trustees or protectors for trusts;
- (c) maintaining the office for service of trusts;
- (d) managing or administering trusts.

- (2) Subject to sub-section (1), any words defined in the Acts shall, if not inconsistent with the subject or context, bear the same meaning in this Order.
- (3) A references in this Order to an enactment is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.
- (4) A reference to dollars in this Order is a reference to the currency of the Eastern Caribbean Central Bank.

3. Application of this Order

The provisions of this Order shall not extend or apply to persons carrying on domestic business.

PART II

Authorisation

4. Prohibition of unauthorised finance business

- (1) Subject to the provisions of this Order, no person shall carry on or hold himself out as carrying on any finance business in or from within the Federation unless that person is for the time being authorised under this Order.
- (2) This section shall not apply to the doing of anything by or on behalf of -
 - (a) the Government;
 - (b) the Eastern Caribbean Central Bank;
 - (c) the Eastern Caribbean Mortgage Bank;
 - (d) the Caribbean Development Bank; or
 - (e) any other person which the Minister may from time to time prescribe (subject always to such conditions or restrictions as the Minister may think fit to impose in such Order).
- (3) This section shall not apply to any transaction prescribed by the Minister for the purposes of this sub-section.
- (4) An Order under sub-section (3) -
 - (a) may prescribe transactions by reference to any factor appearing to the Minister to be appropriate; and
 - (b) may make any exemption for which it provides subject to compliance with specified conditions or requirements.
- (5) A person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding 54,000 dollars or, if that person is an individual, to imprisonment for a term not exceeding 2 years, or both.

5. Application for and grant and extent of authorisation

- (1) Subject to the provisions of this Order, on an application in that behalf made under this section and on payment of the prescribed fee, the Minister shall authorise that person.
- (2) Every authorisation shall, unless previously revoked under the provisions of section 7, expire on the anniversary date in the next following year of the date on which it takes effect.
- (3) Where an application under this section is made by or on behalf of a person who is not at the time of the application an authorised person the applicant shall deliver to the Director General together with the prescribed fee a statement signed by or on behalf of the applicant setting out -
 - (a) the full name and principal business address of any applicant who is not a company, or in the case of a company its full name, the place where it is incorporated and the full address of its registered or principal office;
 - (b) the nature and scale of the finance business which the applicant intends to carry on, any plans of the applicant for the future development of that business and particulars of the applicant's arrangement for the management of that business; and
 - (c) where an application is delivered by a person as agent for any applicant, the statement shall specify that fact and the person's name and address.
- (4) Every statement delivered to the Director General pursuant to sub-section (3) shall be accompanied by -
 - (a) in the case of a company or partnership, a copy of the act, charter, articles of incorporation, memorandum and articles of association or partnership agreement of the applicant, as may be appropriate, verified by an affidavit sworn by a director and duly authenticated as follows -

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- (i) in the case of a company incorporated or partnership established under the law of the Federation, notarised; and
- (ii) in the case of a company incorporated or partnership established under the law of any other country or territory, certified and authenticated under the public seal of the country or territory under the laws of which such company or partnership was incorporated or established;
- (b) a list containing the names, addresses and nationalities of each shareholder controller and indirect controller of the applicant, together with a statement explaining, in respect of each of them, the nature and size of his controlling interest in the applicant;
- (c) a list containing the names, addresses and nationalities of each director, chief executive and manager of the applicant, together with a statement explaining, in respect of each of them, any contractual arrangements that he may have with the applicant;
- (d) in respect of each director, chief executive and manager of the applicant -
 - (i) a police affidavit of no criminal record;
 - (ii) two letters of references, one from a recognised bank and one from a reputable lawyer, accountant or other professional; and
 - (iii) a resume with particular emphasis on experience in the finance business for which the application is submitted;
- (e) the names and addresses -
 - (i) of one director, chief executive or manager of the applicant who is the authorised agent in the Federation to accept on behalf of the applicant service of process and any notice required to be served on the applicant; and
 - (ii) of another director, chief executive or manager of the applicant who in the absence or inability to act of the person mentioned in sub-paragraph (i) is the authorised agent in the Federation of the applicant for the purposes of that sub-paragraph;
- (f) the names and addresses of lawyers, if any, of the applicant, together with a letter from the lawyers confirming that they act for the applicant;
- (g) the names and addresses of auditors of the applicant, together with a letter from auditors confirming that they act for the applicant;
- (h) an undertaking in writing to maintain at all times the relevant minimum financial resources set out in sub-section (1) of section 6;
- (i) the audited accounts of the applicant for the three years immediately preceding the date of the application or, in the case where the applicant has not carried out any business before the date of the application, an audited balance sheet showing the net assets of the applicant as at the end of the month immediately preceding the date of the application;
- (j) in the case of an application for the authorisation to carry on a deposit-taking business, investment business or insurance business, a detailed business plan for the five years next following the date of the application;
- (k) in the case of an application for an authorisation to undertake restricted business, an undertaking in writing to undertake business exclusively for the persons whose names, addresses and nationalities are given in the undertaking; and
- (l) such other information or documents as the Minister may reasonably require for the purpose of determining the application.

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- (5) Where an application under this section is made by or on behalf of a person who is at the time of the application an authorised person the applicant shall deliver to the Director General together with the prescribed fee a statement signed by or on behalf of the applicant setting out -
 - (a) the full name and principal business address of any applicant who is not a company, or in the case of a company its full name, the place where it is incorporated and the full address of its registered or principal office;
 - (b) the extent to which any information given in any statement, audited accounts or other document delivered in respect of the last application has changed; and
 - (c) where an application is delivered by a person as agent for any applicant, the statement shall specify that fact and the person's name and address.
- (6) At any time after receiving an application and before determining it the Minister may by written notice require the applicant or any person who is or is to be a controller, director or manager of the applicant to provide additional information or documents.
- (7) The Minister may by written notice require the applicant or any other person as is mentioned in sub-section (6) to provide a report by an accountant or other qualified person approved by the Minister on such aspects of any information received by the Minister as he may specify in the notice.
- (8) The directions and requirements given or imposed under sub-section (6) may differ as between different applications.
- (9) An application may be withdrawn by written notice to the Minister at any time before it is granted or refused.

6. Conditions of grant of authorisation

- (1) Subject to the provisions of this Order, no authorisation shall be granted unless the applicant has the following minimum financial resources -
 - (a) in the case of deposit-taking business, net assets in the minimum sum of -
 - (i) 1,350,000 dollars or its equivalent in other currencies for an authorisation to undertake unrestricted business and restricted business;
 - (ii) 135,000 dollars or its equivalent in other currencies for an authorisation to undertake restricted business but not unrestricted business;
 - (b) in the case of investment business, net assets in the minimum sum of -
 - (i) 1,080,000 dollars or its equivalent in other currencies for an authorisation to undertake unrestricted business and restricted business;
 - (ii) 108,000 dollars or its equivalent in other currencies for an authorisation to undertake restricted business but not unrestricted business;
 - (c) in the case of insurance business, net assets in the minimum sum of -
 - (i) 810,000 dollars or its equivalent in other currencies for an authorisation to undertake long-term insurance business and general insurance business;
 - (ii) 540,000 dollars or its equivalent in other currencies for an authorisation to undertake long-term insurance business but not general insurance business;
 - (iii) 270,000 dollars or its equivalent in other currencies for an authorisation to undertake general insurance business but not long-term insurance business;
 - (d) in the case of trust business, net assets in the minimum sum of -
 - (i) 540,000 dollars or its equivalent in other currencies for an authorisation to undertake unrestricted business and restricted business;

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- (ii) 54,000 dollars or its equivalent in other currencies for an authorisation to undertake restricted business but not unrestricted business;
- (e) in the case of any other finance business –
 - (i) net assets in the minimum sum of 270,000 dollars or its equivalent in other currencies; or
 - (ii) a professional indemnity insurance in respect of the activities of the applicant and extended to include the activities on behalf of the applicant or of his agents, if any, placed with an insurer approved by the Minister, and for an indemnity in the minimum sum of 270,000 dollars or its equivalent in other currencies for any one loss; or
 - (iii) a guarantee in the minimum sum of 270,000 dollars or its equivalent in other currencies given under seal by a holding company of the applicant approved by the Minister, provided always, that any guarantee which may be given under this sub-paragraph shall only be effective if it expressly provides that its formal validity, its essential validity, its interpretation and effect and the rights and obligation of the parties to it are governed exclusively by the law of the Federation and that the Court only shall be the forum for these purposes.
- (2) Without prejudice to the generality of sub-section (1), the requirement for an applicant to have the minimum financial resources specified in that sub-section shall not apply in the case where a lawyer or accountant applies for an authorisation to carry on corporate business.
- (3) Every authorisation shall be subject to the conditions that the authorised person -
 - (a) maintains at all times the minimum financial resources specified in sub-section (1);
 - (b) informs the Minister by notice in writing delivered to the Director General of any change, or proposed change, in the information contained in, or supplied in connexion with, the last application for an authorisation;
 - (c) carries on business only in accordance with the information referred to in paragraph (b) and such changes as the Minister may have approved.
- (4) Notwithstanding anything in sub-sections (1), (2) and (3), the Minister may prescribe such conditions as he thinks fit applicable either generally to all authorised persons or to a class of authorised persons and may attach conditions to the authorisation of any particular person under that section and may from time to time vary any general condition, any condition applying to a class of authorised persons or any condition attached to an authorisation or prescribe or attach a new condition.
- (5) Without prejudice to the generality of sub-section (4), such conditions may include matters which the Minister considers to be desirable in the interests of clients or prospective clients of an authorised person, whether for the purpose of safeguarding the assets of the authorised person or otherwise, and may in particular -
 - (a) require the authorised person to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict its business in a particular way;
 - (b) require any authorised person to have higher minimum financial resources than those specified in sub-section (1);
 - (c) require any authorised person to effect a policy of insurance with a reputable insurance company against -
 - (i) the dishonesty of employees of the authorised person; and
 - (ii) loss of documents,in such amount and of such a nature as the Minister may determine to be fit and proper, having due regard to the nature and type of business carried on by the authorised person;
 - (d) specify the manner in which an authorised person may hold money for his clients;
 - (e) impose limitations on the acceptance of deposits, the granting of credit, the effecting of insurance contracts or the making of investments;

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- (f) prohibit the authorised person from soliciting business either generally or from persons who are not already clients of that authorised person;
 - (g) prohibit an authorised person from entering into any other transaction or class of transactions;
 - (h) require the removal of any director, chief executive or manager;
 - (i) require the appointment of an auditor for a branch office of the authorised person;
 - (j) require the production to the Minister of true and fair view audited accounts; and
 - (k) require that the authorised person shall at all times have appointed a director, chief executive or manager approved by the Minister responsible for ensuring compliance with the terms and conditions of the authorisation.
- (6) If any person fails to comply with any condition imposed under this section, that person shall for each such contravention be liable to a fine of 27,000 dollars or, if that person is an individual, to imprisonment for a term not exceeding 2 years, or both.
- (7) Where the Minister varies a condition attached to an authorisation or attaches a condition to an authorisation, he shall give notice in writing to the authorised person concerned.

7. Refusal and revocation of authorisation

- (1) The Minister may refuse to grant an authorisation or, where an authorisation has been granted may revoke the authorisation, if -
- (a) the applicant or the authorised person has not provided information required under section 5 or (as the case may be) has not provided to the Minister at any other time such information as the Minister may reasonably require;
 - (b) it appears to the Minister that circumstances exist which either are likely to lead to the improper conduct of business by, or reflect discredit on, the method of conducting business of the applicant or the authorised person (as the case may be), or any person employed by or associated with the applicant or that authorised person for the purposes of his business;
 - (c) without prejudice to the generality of paragraph (b), it appears to the Minister that by reason of the applicant or authorised person (as the case may be), or any person employed by or associated with, the applicant or that authorised person for the purposes of his business -
 - (i) having been convicted of an offence involving dishonesty in any part of the Federation or in any other place, or
 - (ii) having been convicted of an offence against this Order,the applicant or authorised person is not, or as the case may be, is no longer a fit and proper to be authorised;
 - (d) it appears to the Minister, as a result of information provided in pursuance of the requirements of section 5 or information otherwise obtained, that it is not in the best interest of clients or prospective clients of the applicant or the authorised person (as the case may be) or in order to protect the integrity of the Federation in financial or commercial matters or that it is not in the best economic interests of the Federation that the applicant or authorised person should be authorised or should continue to be authorised; or
 - (e) without prejudice to sub-paragraph (ii) of paragraph (c), if in connexion with any application for the grant of an authorisation under this Order, the applicant or authorised person has provided to the Minister information which is untrue or misleading in any material particular.
- (2) Where the Minister refuses to grant an authorisation or revokes an authorisation he shall give written notice accordingly to the applicant or authorised person, as the case may be.

8. Authorisation certificate and publication of names of authorised persons

- (1) Whenever the Minister authorises a person he shall issue to that person, free of charge, an authorisation certificate.
- (2) The Minister shall from time to time publish in the *Gazette* the names and addresses of all authorised persons, together with such other information appertaining to such persons as the Minister may think appropriate.

9. Display, production and delivery of authorisation certificate

- (1) Every authorised person shall -
 - (a) keep a copy of his authorisation certificate displayed in a prominent place and open to public view in every place in or from which he carries on a finance business;
 - (b) when required by or on behalf of the Minister to do so, produce or deliver his authorisation certificate to the Minister or to any person authorised in that behalf.
- (2) If any authorised person fails to comply with the provisions of this section, that person shall be guilty of an offence and liable to a fine not exceeding 2,700 dollars and to a further fine not exceeding 270 dollars for each day during which the offence continues.

PART III

Control of Transferability of Shares

10. Notification of new or increased control

- (1) No person shall become a minority, majority or principal shareholder controller or an indirect controller of an authorised person which is a company incorporated in the Federation unless -
 - (a) he has notified the Minister in writing of his intention to become such a controller; and
 - (b) the Minister has notified him in writing that there is no objection to his becoming such a controller.
- (2) Sub-section (1) applies also in relation to a person becoming a partner of an authorised person which is a partnership formed under the law of the Federation.
- (3) Following receipt of a notice under sub-section (1), the Minister may, by giving written notice to the person from whom the notice was received, require him to give such additional information or documents as the Minister may require for deciding whether to serve a notice of objection.

11. Objection to new or increased control

- (1) The Minister may serve a notice of objection under this section on a person who has given notice under section 10 unless he is satisfied -
 - (a) that the person concerned is a fit and proper person to become a controller of the description in question of the authorised person;
 - (b) that the interest of clients and potential clients of the authorised person would not be in any other manner prejudiced by that person becoming a controller of that description of the authorised person; and
 - (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the authorised person as a controller of the description in question the authorised person would be likely to continue to fulfil the conditions imposed on the authorised person under section 7, or, if any of those conditions is not fulfilled, that the person concerned would be likely to take remedial action.
- (2) A notice of objection under this section shall -
 - (a) specify which of the matters mentioned in sub-section (1) the Minister is not satisfied about and, subject to sub-section (3), the reasons for which he is not satisfied;
 - (b) give particulars of the rights of appeal conferred by section 15.

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- (3) Sub-section (2) shall not require the Minister to specify any reason which would in his opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

12. Objection to existing shareholder controller

- (1) Where it appears to the Minister that a person who is a shareholder controller of any description of an authorised person which is a company incorporated in the Federation is not or is no longer, a fit person to be such a controller, the Minister may serve on him a written notice of objection to his being such a controller.
- (2) A notice of objection under this section shall -
- (a) subject to sub-section (3), specify the reasons for which it appears to the Minister that the person in question is no longer a fit and proper person as mentioned in sub-section (1); and
 - (b) give particulars of the rights of appeal conferred by section 15.
- (3) Paragraph (a) of sub-section (2) shall not require the Minister to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

13. Contravention by controller

- (1) Subject to sub-section (2), any person who contravenes section 10 by -
- (a) failing to give the notice required by paragraph (a) of sub-section (1) of that section; or
 - (b) becoming a controller of any description to which that section applies before having been served with a notice by the Minister under paragraph (b) of sub-section (1) of that section,
- shall be guilty of an offence.
- (2) A person shall not be guilty of an offence under sub-section (1) if he shows that he did not know of the acts or circumstances by virtue of which he became a controller of the relevant description, but where any 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 he gives the Minister written notice of the fact that he has become such a controller within 14 days of becoming aware of the fact.
- (3) Any person who -
- (a) 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
 - (b) having become a controller of any description in contravention of that section (whether before or after being served with such a notice of objection) continues to be such a controller after such a notice has been served on him,
- shall be guilty of an offence.
- (4) A person guilty of an offence under sub-section (1) or (2) shall be liable to a fine not exceeding 27,000 dollars.
- (5) A person guilty of an offence under sub-section (3) shall be liable to a fine not exceeding 54,000 dollars or, if that person is an individual, to imprisonment for a term not exceeding 2 years, or both and, in the case of an offence under paragraph (b) of that sub-section, to a fine not exceeding 5,400 dollars for each day on which the offence has continued.

14. Restrictions on acquisition and disposal of shares

- (1) The powers conferred by this section shall be exercisable where a person -
- (a) has contravened section 10 by becoming a shareholder 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 shareholder controller of any description in contravention of that section continues to be one after such a notice has been served on him; or

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- (c) continues to be a shareholder controller of any description after being served under section 12 with a notice of objection to his being a controller of that description.
- (2) The Minister 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 one or more of the following restrictions -
 - (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or agreement to transfer the right to be issued with them shall be void;
 - (b) no voting rights shall be exercisable in respect of the shares;
 - (c) no further shares shall be issued in place of them or in pursuance of any offer made to their holder;
 - (d) except in liquidation, no payment shall be made of any sum, due from the authorised person on the shares, whether in respect of capital or otherwise.
- (3) The Court may, on the application of the Minister, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under sub-section (2), that they shall cease to be subject to those restrictions.
- (4) The Court shall not make any order under sub-section (3) in a case where notice of objection was served under section 11 or 12 -
 - (a) until the end of the period within which an appeal can be brought against the notice of objection; and
 - (b) if such an appeal is brought, until it has been determined or withdrawn.
- (5) Where an order has been made under sub-section (3) the Court may, on the application of the Minister, make such further order relating to the sale or transfer of the shares as it thinks fit.
- (6) Where shares are sold in pursuance of an order under this section the proceeds of sale, less the costs of the sale, shall be paid into Court for the benefit of the persons beneficially interested in them, and any such person may apply to the Court for an order that the whole or part of the proceeds be paid to him.
- (7) This section applies -
 - (a) to all the shares in an authorised person of which the person in question is a controller of the relevant description which are held by him or any associate of his and were not so held immediately before he became such a controller of the authorised person; and
 - (b) where the person in question became a controller of the relevant description of an authorised person 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 were not so held before he became such a controller of that authorised person.
- (8) A copy of the notice served on the person concerned under sub-section (2) shall be served on the authorised person or the company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

PART IV

Appeals

15. Procedure and rights of appeal

- (1) Where the Minister, acting under section 7, refuses an authorisation or revokes any authorisation or, acting under section 6, attaches a condition to a requisition of a particular person or varies any condition so attached, the applicant or the authorised person, as the case may be, may require the Minister to furnish him with a statement in writing of its reasons for that decision.
- (2) Any person aggrieved by such refusal or revocation, or by the conditions attached to his authorisation or by any variation of such conditions may appeal to the Court, either in term or in vacation, on the ground that the decision of the Minister was unreasonable having regard to all the circumstances of the case.

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- (3) Where any person appeals against the revocation of his authorisation or against the variation of any condition attached to his authorisation under section 6, or, where his original authorisation was granted without any conditions attached thereto, against any subsequent attaching of conditions, the authorisation shall not be cancelled or the condition varied or attached as the case may be, until the appeal has been determined or withdrawn.
- (4) Notwithstanding anything in sub-section (3), the Court may until an appeal is determined or withdrawn make such order as it thinks fit for protecting the public against financial loss due to the dishonesty, incompetence or malpractice by the person appealing in respect of any of the matters mentioned in that sub-section.
- (5) Any person on whom a notice of objection has been served under section 11 or 12 may appeal to the Court against the decision of the Minister to serve the notice; but this sub-section does not apply to a person in any case in which he has failed to give a notice or become or continued to be a controller in circumstances in which his doing so constitutes an offence under section 13.

16. Representation to the Court by Minister

- (1) Notwithstanding section 15, where the Minister decides to refuse an authorisation or to revoke any authorisation or to attach or vary any condition or where a person has ceased for any other reason to be an authorised person, he may represent to the Court that, in order that the interest of the clients of the applicant, the authorised person or the former authorised person, as the case may be, shall not be prejudicially affected, the business of the applicant or the authorised person or the former authorised person should be subject to such supervision, restraint or conditions from such time and for such periods as the Minister may specify in the representation.
- (2) On the presentation of a representation under this section, the Court may make such order as it thinks just.

PART V

Information

17. Annual audited accounts, certificate of compliance and other documents

- (1) An authorised person shall within 3 months of the end of each of his financial years -
 - (a) prepare annual accounts in accordance with generally accepted accounting principles, audited by an independent auditor;
 - (b) deliver to the Director General the annual accounts together with written confirmation from an independent auditor that the annual accounts have been prepared as required under paragraph (a) and whether or not the auditor's certificate for such accounts is unqualified and if qualified, the nature of the qualification;
 - (c) deliver to the Director General a certificate of compliance issued by an independent auditor that the information set out in the application for an authorisation, as modified by any subsequent notification of change in accordance with paragraph (b) of sub-section (5) of section 5, remains correct and gives an accurate summary of the business of the authorised person; and
 - (d) deliver to the Director General such other documents as are mentioned in section 18 or 19, as the case may require.
- (2) The Director General may at any time by written notice sent to an authorised person request that the authorised person shall within 1 month from the date of such notice deliver to the Director General a certificate of compliance issued by an independent auditor that the information set out in the application for an authorisation, as modified by any subsequent notification of change in accordance with paragraph (b) of sub-section (5) of section 5, remains correct and gives an accurate summary of the business of the authorised person.
- (3) Where an authorised person changes auditor, the authorised person shall, when required by the Director General, authorize the former auditor to disclose the circumstances that gave rise to the change, and when so authorized, the auditor shall disclose such circumstances.

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- (4) The period within which any document is required to be submitted under this section may be extended by the Director General where he considers that there are circumstances justifying an extension.
- (5) If any authorised person fails to comply with the provisions of this section, that person shall be guilty of an offence and liable to a fine not exceeding 5,400 dollars and to a further fine not exceeding 540 dollars for each day during which the offence continues.

18. Quarterly statements and returns

- (1) An authorised person carrying on deposit-taking business or investment business shall in relation to his operations in or from within the Federation submit to the Director General within 1 month of the end of each of his financial quarters the undermentioned documents in such form as the Director General may from time to time approve -
 - (a) in the case of a deposit taking business -
 - (i) a quarterly statement of the assets and liabilities of its offices and branches in the Federation at the close of the last business day of the quarter to which the statement relates; and
 - (ii) a quarterly return providing an analysis of the liabilities of clients to such authorised person in respect of loans, advances and other assets of the authorised person at the close of the last day of business of the quarter to which the return relates;
 - (b) in the case of an investment business, a quarterly statement of the assets and liabilities of its offices and branches in the Federation at the close of the last business day of the quarter to which the statement relates.
- (2) The period within which any document is required to be submitted under this section may be extended by the Director General where he considers that there are circumstances justifying an extension.
- (3) If any authorised person fails to comply with the provisions of this section, that person shall be guilty of an offence and liable to a fine not exceeding 5,400 dollars and to a further fine not exceeding 540 dollars for each day during which the offence continues.

19. Actuarial valuations and written confirmations

- (1) Every authorised person carrying on insurance business or assurance business shall in relation to his operations in or from within the Federation submit to the Director General within 3 months of the end of each of his financial years the undermentioned documents in such form as the Director General may from time to time approve -
 - (a) in the case of an insurer -
 - (i) if he carries on long-term insurance business, an actuarial valuation of his assets and liabilities;
 - (ii) if he has a branch or other subsidiary activity in the Federation which is constituted as a separate legal entity, written confirmation that he accepts responsibility for all contracts issued by such branch or subsidiary activity and also for all acts, omissions and liabilities of such branch or subsidiary activity; and
 - (iii) a list of insurance agents and insurance brokers who have his authority to effect business on his behalf.
 - (b) In the case of an insurance agent -
 - (i) a confirmation in writing that the said agent is acting for one insurer only and the name of that insurer;
 - (ii) a list of the sub-agents, if any, authorised by the said agent to solicit insurance business on his behalf and on behalf of the insurer whom he represents.
 - (c) In the case of an insurance broker -

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- (i) a list of all insurers for whom the said insurance broker is authorised to act;
 - (ii) a list of the sub-agents, if any, authorised by the said insurance broker to solicit insurance business on his behalf and on behalf of the insurers whom he represents.
- (d) in the case of an insurance sub-agent, a confirmation in writing that the said sub-agent is acting for one insurance agent only, or for one insurance broker only, and the name of such insurance agent or insurance broker.
- (e) In the case of an insurance manager, a list of all insurers for whom the said insurance manager acts.
- (2) The period within which any document is required to be submitted under this section may be extended by the Director General where he considers that there are circumstances justifying an extension.
- (3) If any authorised person fails to comply with the provisions of this section, that person shall be guilty of an offence and liable to a fine not exceeding 5,400 dollars and to a further fine not exceeding 540 dollars for each day during which the offence continues.

PART VI

Administration

20. Establishment of the Financial Services Department

- (1) For the purpose of administering this Order there is established, in accordance with the provisions of this Order, within the Ministry of Finance a department to be known as the Financial Services Department. *(this sub-section as amended by S.R.O. No. 45 of 1997)*
- (2) The Financial Services Department consists of the Office of the Director General, comprising the Director General and the Assistant to the Director General, and subordinated thereto, the following organisational units -
- (a) the Office of Superintendents, comprising –
 - (i) the Superintendent of Deposit-Taking and Investment Business,
 - (ii) the Superintendent of Insurance and Assurance Business, and
 - (iii) the Superintendent of Trust and Corporate Business,
 - (b) the Office of Registrars, comprising –
 - (i) the Registrar of Companies,
 - (ii) the Registrar of Limited Partnerships, and
 - (iii) the Registrar of Trusts,
 - (c) the Office of Public Relation Officers, comprising –
 - (i) the Officer of Information and Press Relations,
 - (ii) the Officer of Marketing and Advertising; and
 - (iii) the Officer of Publications and Promotional Activities, and
 - (d) the Office of Administrative Officers, comprising
 - (i) the Principal Accountant,
 - (ii) the Principal Secretary, and
 - (iii) the Assistant Secretary.

21. Appointment of Director General

- (1) For the purpose of ensuring the proper administration of this Order, there shall be appointed by the Minister an individual to be known as the Director General of the Financial Services Department. *(this sub-section as amended by S.R.O. No. 45 of 1997)*

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- (2) The functions of the Director General include -
- (a) the monitoring of finance business in the Federation;
 - (b) where he thinks fit or when required by the Minister, the examination in such manner as he considers necessary, the affairs or business of any authorised person for the purpose of satisfying himself that the provisions of this Order are being complied with and the authorised person is in a sound financial position and is carrying on its business in a satisfactory manner;
 - (c) reporting to the Minister regarding the examination of any documents produced to the Director General in the course of the performance of his functions;
 - (d) examining and making recommendations to the Minister with respect to all applications; and
 - (e) the management and supervision of the day-to-day affairs of the Financial Services Department.

22. Appointment of other Officers

- (1) The Director General, with the written approval of the Minister, may appoint any person to hold such office within the Financial Service Department as he thinks may be required to assist him in the performance of his functions under this Order.
- (2) The Director General, with the written approval of the Minister, may fix the terms of employment of the persons appointed by him under sub-section (1) and define the functions to be performed by them under this Order if they are not set out in the Acts.

23. Production of records and evidence to Director General

- (1) In the performance of his functions under this Order, the Director General may at any time require an authorised person -
 - (a) to produce for examination such books, records and other documents; and
 - (b) to supply such information or explanation,as the Director General may reasonably require for the purpose of enabling him to perform his functions under this Order.
- (2) Notwithstanding sub-section (1), the Director General shall not have access to any document of a client of an authorised person or to any information, matter or thing relating to or concerning the affairs of any such client without first having obtained -
 - (a) the written consent of that client; or
 - (b) an order of the Court made on the ground that there are no other reasonable means of obtaining such document, matter or thing.

24. Authority for search

- (1) The Director General may for the purpose of enabling him to perform his functions under this Order apply to the Court *ex parte* for a warrant under this section in relation to specified premises.
- (2) If the Court is satisfied that the conditions in sub-section (3) are fulfilled it may issue a warrant authorizing a police officer and any other person named in the warrant to enter the specified premises (using such force as is reasonably necessary for the purpose) and to search them.
- (3) The conditions referred to in sub-section (2) are -
 - (a) that an authorisation has been revoked under section 7;
 - (b) that there are reasonable grounds for believing that an offence under this Order has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the application; or

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- (c) that any documents that ought to have been produced under section 23 and have not been produced are to be found at any premises specified in the application.
- (4) Where a person has entered premises in the execution of a warrant issued under this section, he may seize and retain any material which is likely to be of substantial value (whether by itself or together with other material) in determining whether an offence under this Order has been or is being committed.
- (5) In this Section, "premises" includes any place and, in particular, includes -
 - (a) any vehicle, vessel, aircraft or hovercraft;
 - (b) any offshore installation; and
 - (c) any tent or movable structure.

25. Obstruction

Any person who wilfully obstructs any person acting in the execution of a warrant issued under section 24 is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.

26. Failure to co-operate with Director General

- (1) If any person fails to comply with a requirement under section 23 the Director General may certify the refusal in writing to the Court.
- (2) The Court may thereupon inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, the Court may punish the offender as if he had been guilty of contempt of the Court.
- (3) Notwithstanding the generality of the foregoing, no proceedings for an offence or for the recovery of any penalty shall be instituted under this section against any person who refuses to answer any question if such refusal is made pursuant to sub-section (4).
- (4) A person may refuse to answer any question put to him pursuant to any provision of this Order if his answer would tend to expose that person, or the spouse of that person, to proceedings under the law of the Federation for an offence or for the recovery of any penalty.

27. Preservation of secrecy

- (1) Except for the purpose of the performance or exercise of his duties or functions under this Order or when lawfully required to do so by the Court or under the provisions of any other law, the Director General or any person appointed under sub-section (1) of section 22 to assist him shall not disclose any information relating to any application under the provisions of this Order, or to the affairs of an authorised person or of any client of an authorised person which he has acquired in the performance or exercise of such duties or functions under this Order.
- (2) Sub-section (1) shall not apply to the disclosure by the Director General to a banking supervisory authority or any other like regulatory authority of information about the authorised person.

PART VII

Miscellaneous and Final Provisions

28. Duties of Authorised Persons

- (1) An authorised person shall maintain in respect of any finance business carried out by him -
 - (a) such books or records as accurately reflect the finance business carried out by him;
 - (b) separate accounts in the books or records in respect of each of his clients and shall separate the funds and other property of every such client from his own; and
 - (c) in the case of finance business other than deposit-taking business, one or more separate bank accounts into which shall be deposited all moneys held on behalf of each of his clients.

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- (2) An authorised person shall not change its name or operate outside the Federation a subsidiary, branch, agency or representative office without the prior written approval of the Minister.

29. Restrictions in use of certain terms

- (1) No person other than an authorised person shall -
- (a) use any word, either in English or in any other language, in the description or title under which he carries on business in or from within the Federation that, in the opinion of the Minister, suggests that he is carrying on any finance business; or
 - (b) make any representation in any document or in any other manner that is likely to suggest that he is carrying on any finance business.
- (2) The Minister may require an authorised person who carries on any finance business under a name which is -
- (a) identical to that of any other person, whether within or outside the Federation, or which so nearly resembles that name as to be calculated to deceive;
 - (b) calculated to suggest falsely the patronage of or connexion with some person whether within or outside the Federation; or
 - (c) calculated to suggest falsely that he has special status in relation to or derived from the Government or has the official approval of, or acts on behalf of, the Government or of any of its departments or officials,
- forthwith to change the name and in default of compliance may revoke the licence issued to the authorised person.

30. Exemptions

An authorised person shall not be subject to any of the following Acts, that is to say -

- (a) the Banking Act, 1991, if he is authorised to carry on deposit-taking or investment business under this Order;
- (b) the Insurance Act, 1968, if he is authorised to carry on insurance or assurance business under this Order; and
- (c) the Licences on Business and Occupation Act, 1972, in respect of the finance business which he is authorised to carry on under this Order if he is resident in the Island of Saint Christopher. *(title and section as amended by S.R.O. No. 45 of 1997).*

31. Transitional provisions

Any person carrying on a finance business shall apply for an authorisation under these regulations within a period of eighteen months from the day on which this Order comes into operation. *(this section as amended by S.R.O. No. 47 of 1997)*

Made by the Minister this 3rd of April, 1997.

Denzil L. Douglas
Minister of Finance

SCHEDULE I

Deposit and Deposit-Taking Business

1. Deposit

- (1) In this Order, unless the context otherwise requires, “deposit” means a sum of money denominated in whatever currency paid on terms -
 - (a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
 - (b) which are not referable to the provision of property or services or to the giving of security;and reference in this Order to money deposited and to the making of a deposit shall be construed accordingly.
- (2) For the purposes of paragraph (b) of sub-section (1), money is paid on terms which are referable to the provision of property or services or to the giving of security if, and only if -
 - (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services and is repayable only in the event that the property or services is not or are not in fact, sold, hired or otherwise provided;
 - (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
 - (c) without prejudice to paragraph (b), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.
- (3) Except so far as any provision of this Order otherwise provides, in this Order “deposit” does not include -
 - (a) a sum paid by an authorised person;
 - (b) a sum paid by an excluded person;
 - (c) a sum paid by a person, other than a person mentioned in paragraph (a) or (b), in the course of carrying on a business consisting wholly or mainly of lending money;
 - (d) a sum which is paid by one company to another at a time when one is a subsidiary of the other or both are subsidiaries of another company or the same individual is a majority or principal shareholder controller of both of them; or
 - (e) a sum which is paid by a person who, at the time when it is paid, is a close relative of the person receiving it or who is, or is a close relative of, a controller, director or manager of that person;
 - (f) a sum paid on terms involving the issue of debentures or other securities.
- (4) In the application of paragraph (e) of sub-section (3) to a sum paid by a partnership that paragraph shall have effect as if for the reference to the person paying the sum there were substituted a reference to each of the partners.

2. Activities Constituting Deposit-Taking Business

- (1) For the purpose of this Order, a person carries on deposit-taking business if -
 - (a) in the course of the business money received by way of deposit is lent to others; or
 - (b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.
- (2) Notwithstanding sub-section (1), a business is not a deposit-taking business for the purpose of this Order if -
 - (a) the person carrying it on does not hold himself out as accepting deposits on a day to day basis; and
 - (b) any deposits which are accepted are accepted only on particular occasions.

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- (3) For the purpose of sub-section (1) all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.
- (4) In determining for the purpose of paragraph (b) of sub-section (2) whether deposits are accepted only on particular occasion regard shall be had to the frequency of those occasions and to any characteristics distinguishing them from each other.
- (5) For the purpose of sub-section (2) there shall be disregarded any deposit in respect of the acceptance of which the person in question is an excluded person and any money received by way of deposit which is not used in the manner described in sub-section (1).

SCHEDULE II

Investments and Investment Business

PART I

Investments

1. Shares

- (1) Shares and stock in the share capital of a company.
- (2) In this section “company” does not include an open-ended investment company.

2. Debentures

- (1) Debentures, including debenture stock, loan stock, bonds, certificates of deposits and other instruments creating or acknowledging indebtedness, not being instruments falling within section 3.
- (2) This section shall not be construed as applying -
 - (a) to any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
 - (b) to a cheque or other bill of exchange, a banker’s draft or a letter of credit; or
 - (c) to a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property, a heritable security or an insurance policy;

3. Government and public securities

- (1) Loan stock, bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority.
- (2) In this section “government, local authority or public authority” means -
 - (a) the government of the Federation or of any country or territory outside the Federation;
 - (b) a local authority in the Federation or elsewhere;
 - (c) any international organisation the members of which include the Federation or another member State.
- (3) Sub-section (2) of section 2 shall, so far as applicable, also apply to this section.

4. Instruments entitling to shares or securities

- (1) Warrants or other instruments entitling the holder to subscribe for investments falling within section 1, 2 or 3.
- (2) For the purposes of this section it is immaterial whether the investments are for the time being in existence or identifiable.
- (3) An investment falling within this section shall not be regarded as falling within section 7, 8 or 9.

5. Certificates representing securities

- (1) Certificates or other instruments which confer -
 - (a) property rights in respect of any investment falling within section 1, 2, 3 or 4;
 - (b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or
 - (c) a contractual right (other than an option) to acquire any such investment otherwise than by subscription;
- (2) This section does not apply to any instrument which confers rights in respect of two or more investments issued by different persons or in respect of two or more different investments falling within section 3 and issued by the same person.

6. Units in collective investment schemes

Units in collective investment schemes, including shares in or securities of an open-ended investment company.

7. Options

Options to acquire or dispose of -

- (a) an investment falling within any other section of this Part of this Schedule;
- (b) currency of any country or territory;
- (c) gold, palladium, platinum or silver; or
- (d) an option to acquire or dispose of an investment falling within this section by virtue of paragraph (a), (b) or (c).

8. Futures

- (1) Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made.
- (2) This section does not apply if the contract is made for commercial and not for investment purposes.
- (3) A contract shall be regarded as made for investment purposes if it is made or traded on a recognised investment exchange or made otherwise than on a recognised investment exchange but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.
- (4) A contract not falling within sub-section (3) shall be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within 7 days.
- (5) The following are indications that any other contract is made for a commercial purpose and the absence of any of them is an indication that it is made for investment purposes -
 - (a) either or each of the parties is a producer of the commodity or other property or uses it in his business;
 - (b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.
- (6) It is an indication that a contract is made for commercial purposes that the price, the lot, the delivery date or the other terms are determined by the parties for the purposes of the particular contract and not by reference to regularly published prices, to standard lots or delivery dates or to standard terms.
- (7) The following are also indications that a contract is made for investment purposes -
 - (a) it is expressed to be as traded on a market or on an exchange;
 - (b) performance of the contract is ensured by an investment exchange or a clearing house;
 - (c) there are arrangements for the payment or provision of margin.
- (8) A price shall be taken to have been agreed upon when a contract is made -
 - (i) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
 - (ii) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

9. Contracts for differences

- (1) Rights under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

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- (2) This section does not apply where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.

10. Long-term insurance contracts

- (1) Rights under a contract the effecting and carrying out of which constitute long-term insurance business.
- (2) This section does not apply to rights under a contract of insurance if -
- (a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
 - (b) no benefits are payable under the contract on a death (other than a death due to accident) unless it occurs within 10 years of the date on which the life of the person in question was first insured under the contract or before that person attains a specified age not exceeding 17 years;
 - (c) the contract has no surrender value or the consideration consists of a single premium and the surrender value does not exceed that premium; and
 - (d) the contract does not make provision for its conversion or extension in a manner that would result in its ceasing to comply with sub-paragraphs (a), (b) and (c).
- (3) This section does not apply to rights under a re-insurance contract.
- (4) Rights falling within this section shall not be regarded as falling within section 9.

11. Rights and interests in investments

- (1) Rights to and interests in anything which is an investment falling within any other section of this Part of this Schedule.
- (2) This section does not apply to interests under the trusts of an occupational pension scheme.
- (3) This section does not apply to rights or interests which are investments by virtue of any other section of this Part of this Schedule.

PART II

Activities Constituting Investment Business

12. Dealing in investments

- (1) Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so, either as principal or as an agent.
- (2) This section does not apply to a person by reason of his accepting, or offering or agreeing to accept, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide;
- (3) The references in sub-section (2) to a person accepting, or offering or agreeing to accept, an instrument include references to a person becoming, or offering or agreeing to become, a party to an instrument otherwise than as a debtor or a surety.

13. Arranging deals in investments

- (1) Making or offering or agreeing to make -
- (a) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment; or
 - (b) arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

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- (2) This section does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a transaction to which he will himself be a party as principal or which will be entered into by him as agent for one of the parties.
- (3) The arrangements in paragraph (a) of sub-section (1) are arrangements which bring about or would bring about the transaction in question.
- (4) This section does not apply to a person (“the relevant person”) whose ordinary business includes the making of loans or the giving of guarantees in connexion with loans by reason of the relevant person making, or offering or agreeing to make, arrangements with a view to an authorised person who carries on insurance business which is investment business selling an investment which falls within section 10 or, so far as relevant to that section, section 11 if the arrangements are either -
 - (a) that the authorised person or a person on his behalf will introduce persons to whom the authorised person has sold or proposes to sell an investment of the kind described above, or will advise such persons to approach, the relevant person with a view to the relevant person lending money on the security of that investment; or
 - (b) that the authorised person gives an assurance to the relevant person as to the amount which will or may be received by the relevant person, should that person lend money to a person to whom the authorised person has sold or proposes to sell an investment of the kind described above, on the surrender or maturity of that investment if it is taken as security for the loan.
- (5) This section does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a person accepting, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide.
- (6) Arrangements do not fall within paragraph (b) of sub-section (4) by reason of their having as their purpose the provision of finance to enable a person to buy, sell, subscribe for or underwrite investments.
- (7) This section does not apply to arrangements for the introduction of persons to another person if -
 - (a) the person to whom the introduction is made is an authorised person or excluded person or is a person whose ordinary business involves him in engaging in activities which fall within this Part of this Schedule or would do apart from the provisions of Part III or Part IV and who is not unlawfully carrying on investment business in the Federation; and
 - (b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion either -
 - (i) in relation to investments generally; or
 - (ii) in relation to any class of investments if the transaction or advice is or is to be with respect to an investment within that class.
- (8) The references in sub-section (4) above to a person accepting an investment include references to a person becoming a party to an instrument otherwise than as a debtor or a surety.

14. Managing investments

Managing, or offering or agreeing to manage, assets, belonging to another person if -

- (a) those assets consist of or include investments; or
- (b) the arrangement for their management are such that those assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them and either they have at any time since the date of the coming into force of this Order done so or the arrangements have at any time (whether before or after that date) been held out as arrangements under which they would so be.

15. Investment advice

Giving, or offering or agreeing to give, to persons in their capacity as investors or potential investors advice on the merits of their purchasing, selling, subscribing for or underwriting an investment, or exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

16. Establishing etc. collective investment schemes

Establishing, operating or winding up collective investment schemes, including acting as trustee of unit trusts.

PART III

Excluded Activities

17. Dealings as principals

- (1) Section 12 applies to a transaction which is or is to be entered into by a person as principal only if -
 - (a) he holds himself out as willing to enter into transactions of that kind at prices determined by him generally and continuously rather than in respect of each particular transaction; or
 - (b) he holds himself out as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
 - (c) he regularly solicits members of the public for the purpose of inducing them to enter as principals or agents into transactions to which that paragraph applies and the transaction is or is to be entered into as a result of his having solicited members of the public in that manner.
- (2) In sub-section (1) “buying” and “selling” means buying and selling by transactions to which section 12 applies and “member of the public”, in relation to the person soliciting them (“the relevant person”), means any other persons except -
 - (a) authorised persons, excluded persons, or persons holding a permission under section 23;
 - (b) members of the same group as the relevant person;
 - (c) persons who are, or propose to become, participators with the relevant person in a joint enterprise;
 - (d) any person who is solicited by the relevant person with a view to -
 - (i) the acquisition by the relevant person of 15 per cent or more of the voting shares in a company (That is to say, shares carrying not less than that percentage of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the body); or
 - (ii) if the relevant person (either alone or with other members of the same group as himself) holds 15 per cent or more of the voting shares in a company, the acquisition by him of further shares in the body or the disposal by him of shares in that body to the person solicited or to a member of the same group as that person; or
 - (iii) if the person solicited (either alone or with other members of the same group as himself) holds 15 per cent or more of the voting shares in a company, the disposal by the relevant person of further shares in that body to the person solicited or to a member of the same group as that person;
 - (e) any person whose head office is outside the Federation, who is solicited by an approach made or directed to him at a place outside the Federation and whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part or Part IV.
- (3) Sub-section (1) applies only -
 - (a) if the investment to which the transaction relates or will relate falls within any of sections 1 to 6 or, so far as relevant to any of those sections, section 11; or

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- (b) if the transaction is the assignment of an investment falling within section 10 or is the assignment of any investment falling within section 11 which confers rights to or interests in an investment falling within section 10.
- (4) Section 12 does not apply to any transaction which relates or is to relate to an investment which falls within section 10 or, so far as relevant to that section, section 11 nor does it apply to a transaction which relates or is to relate to an investment which falls within any of sections 7 to 9 or, so far as relevant to any of those sections, section 11 being a transaction which, in either case, is or is to be entered into by a person as principal if he is not an authorised person and the transaction is or is to be entered into by him -
 - (a) with or through an authorised person, an excluded person or a person holding a permission under section 23; or
 - (b) through an office outside the Federation, maintained by a party to the transaction, and with or through a person whose head office is situated outside the Federation and whose ordinary business is such as is mentioned in paragraph (e) of sub-section (2).

18. Groups and joint enterprises

- (1) Section 12 does not apply to any transaction which is or is to be entered into by a person as principal with another person if -
 - (a) they are companies in the same group; or
 - (b) they are, or propose to become, participators in a joint enterprise and the transaction is or is to be entered into for the purposes of, or in connexion with, that enterprise.
- (2) Section 12 does not apply to any transaction which is or is to be entered into by any person as agent for another person in the circumstances mentioned in paragraph (a) or (b) of sub-section (1) if -
 - (a) where the investment falls within any of sections 1 to 6 or, so far as relevant to any of those sections, section 11, the agent does not -
 - (i) hold himself out (otherwise than to other companies in the same group or persons who are or propose to become participators with him in a joint enterprise) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
 - (ii) regularly solicit members of the public for the purpose of including them to enter as principals or agents into transactions to which section 12 applies;and the transaction is not or is not to be entered into as a result of his having solicited members of the public in that manner;
 - (b) where the investment is not as mentioned in paragraph (a) -
 - (i) the agent enters into the transaction with or through an authorised person, an excluded person or a person holding a permission under section 23; or
 - (ii) the transaction is effected through an office outside the Federation, maintained by a party to the transaction, and with or through a person whose head office is situated outside the Federation and whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part and Part IV.
- (3) Section 13 does not apply to arrangements which a person makes or offers or agrees to make if -
 - (a) that person is a company and the arrangements are with a view to another company in the same group entering into a transaction of the kind mentioned in that section; or
 - (b) that person is or proposes to become a participator in a joint enterprise and the arrangements are with a view to another person who is or proposes to become a participator in the enterprise entering into such a transaction for the purposes of or in connexion with that enterprise.

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- (4) Section 14 does not apply to a person by reason of his managing or offering or agreeing to manage the investments of another person if -
 - (a) they are companies in the same group; or
 - (b) they are, or propose to become, participators in a joint enterprise and the investments are or are to be managed for the purpose of, or in connexion with, that enterprise.
- (5) Section 15 does not apply to advice given by a person to another person if -
 - (a) they are companies in the same group; or
 - (b) they are, or propose to become, participators in a joint enterprise and the advice is given for the purposes of, or in connexion with, that enterprise.
- (6) The definitions in sub-section (2) of section 17 shall apply also for the purposes of paragraph (a) of sub-section (2) except that the relevant person referred to in paragraph (d) of sub-section (2) of section 17 shall be the person for whom the agent is acting.

19. Sale of goods and supply of services

- (1) Subject to sub-section (9) this section has effect where a person (“the supplier”) sells or offers or agrees to sell goods to another person (“the customer”) or supplies or offers or agrees to supply him with services and the supplier’s main business is to supply goods or services and not to engage in activities falling within Part II of this Schedule.
- (2) Section 12 does not apply to any transaction which is or is to be entered into by the supplier as principal if it is or is to be entered into by him with the customer for the purposes of or in connexion with the sale or supply or a related sale or supply (that is to say, a sale or supply to the customer otherwise than by the supplier but for or in connexion with the same purpose as the first-mentioned sale or supply).
- (3) Section 12 does not apply to any transaction which is or is to be entered into by the supplier as agent for the customer if it is or is to be entered into for the purposes of or in connexion with the sale or supply or a related sale or supply and -
 - (a) where the investment falls within any of sections 1 to 6 or, so far as relevant to any of those sections, section 11, the supplier does not -
 - (i) hold himself out (otherwise than to the customer) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
 - (ii) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which section 12 applies;and the transaction is not or is not to be entered into as a result of his having solicited members of the public in that manner;
 - (b) where the investment is not as mentioned in paragraph (a), the supplier enters into the transaction -
 - (i) with or through an authorised person, an excluded person or a person holding a permission under section 23; or
 - (ii) through an office outside the Federation, maintained by a party to the transaction, and with or through a person whose head office is situated outside the Federation and whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part and Part IV.
- (4) Section 13 does not apply to arrangements which the supplier makes or offers or agrees to make with a view to the customer entering into a transaction for the purposes of or in connexion with the sale or supply or a related sale or supply.

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- (5) Section 14 does not apply to the supplier by reason of his managing or offering or agreeing to manage the investments of the customers if they are or are to be managed for the purposes of or in connexion with the sale or supply or a related sale or supply.
- (6) Section 15 does not apply to advice given by the supplier to the customer for the purposes of or in connexion with the sale or supply or a related sale or supply or to a person with whom the customer proposes to enter into a transaction for the purposes of or in connexion with the sale or supply or a related sale or supply.
- (7) Where the supplier is a company and a member of a group sub-sections (2) to (6) shall apply to any other member of the group as they apply to the supplier; and where the customer is a company and a member of a group reference in those sub-sections to the customer include references to any other member of the group.
- (8) The definitions in sub-section (2) of section 17 shall apply also for the purposes of paragraph (a) of sub-section (3).
- (9) This section does not have effect where either -
 - (a) the customer is an individual; or
 - (b) the transaction in question is the purchase or sale of an investment which falls within section 6 or 10 or, so far as relevant to either of those sections, section 11; or
 - (c) the investments which the supplier manages or offers or agrees to manage consist of investments falling within section 6 or 10 or, so far as relevant to either of those sections, section 11; or
 - (d) the advice which the supplier gives is advice on an investment falling section 6 or 10 or, so far as relevant to either of those sections, section 11.

20. Employees' share scheme

- (1) Sections 12 and 13 do not apply to anything done by a company, a company connected with it or a relevant trustee for the purpose of enabling or facilitating transactions in shares in or debentures of the first mentioned body between or for the benefit of any of the persons mentioned in sub-section (2) or the holding of such shares or debentures by or for the benefit of any such person.
- (2) The persons referred to in sub-section (1) are -
 - (a) the *bona fide* employees or former employees of the company or of another company in the same group; or
 - (b) the wives, husbands, widows, widowers, or children or step-children under the age of eighteen of such employees or former employees.
- (3) In this section "a relevant trustee" means a person holding shares in or debentures of a company as trustee in pursuance of arrangements made for the purpose mentioned in sub-section (1) by, or by a company connected with, that company.
- (4) In this section "shares" and "debentures" include any investment falling within section 1 or 2 and also include any investment falling within section 4 or 5 so far as relating to those sections or any investment falling within section 11 so far as relating to section 1, 2, 4 or 5.
- (5) For the purposes of this section a company is connected with another company if -
 - (a) they are in the same group; or
 - (b) one is entitled, either alone or with any other company in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other company or of its holding company.

21. Sale of company

- (1) Sections 12 and 13 do not apply to the acquisition or disposal of, or to anything done for the purpose of the acquisition or disposal of, shares in a company other than an open-ended investment company, and section 15 does not apply to advice given in connexion with the acquisition or disposal of such shares if -
 - (a) the shares consist of or include shares carrying 75 per cent or more of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the company; or
 - (b) the shares, together with any already held by the person acquiring them, carry not less than that percentage of those voting rights; and
 - (c) in either case, the acquisition and disposal is, or is to be, between parties each of whom is a company, a partnership, a single individual or a group of connected individuals.
- (2) For the purposes of paragraph (c) of sub-section (1) “a group of connected individuals”, in relation to the party disposing of the shares, means persons each of whom is, or is a close relative of, a controller, director or manager of the company and, in relation to the party acquiring the shares, means persons each of whom is, or is a close relative of, a person who is a controller, director or manager of the company.

22. Trustees and personal representatives

- (1) Section 12 does not apply to a person by reason of his buying, selling or subscribing for an investment or offering or agreeing to do so if -
 - (a) the investment is or, as the case maybe, is to be held by him as bare trustee or nominee for another person;
 - (b) he is acting on that person’s instructions; and
 - (c) he does not hold himself out as providing a service of buying and selling investments.
- (2) Section 13 does not apply to anything done by a person as trustee or personal representative with a view to -
 - (a) a fellow trustee or personal representative and himself engaging in their capacity as such in an activity falling within section 12; or
 - (b) a beneficiary under the trust, will or intestacy engaging in any such activity,unless that person is remunerated for what he does in addition to any remuneration he receives for discharging his duties as trustee or personal representative.
- (3) Section 14 does not apply to anything done by a person as trustee or personal representative unless he holds himself out as offering investment management services or is remunerated for providing such services in addition to any remuneration he receives for discharging his duties as trustee or personal representative.
- (4) Section 15 does not apply to advice given by a person as trustee or personal representative to -
 - (a) a fellow trustee or personal representative for the purposes of the trust or estate; or
 - (b) a beneficiary under the trust, will or intestacy concerning his interest in the trust fund or estate,unless that person is remunerated for doing so in addition to any remuneration he receives for discharging his duties as trustee or personal representative.
- (5) Sub-section (1) has effect to the exclusion of section 17 as respects any transaction in respect of which the conditions in paragraphs (a) and (b) of sub-section (1) are satisfied.
- (6) For the purposes of paragraph (a) of sub-section (1) “bare trustee”, in relation to an investment, means a person holding the investment on trust for another person who has the exclusive right to direct how it shall be dealt with subject only to satisfying any outstanding charge, lien or other right of the trustee to resort to it for the payment of duty, taxes, costs or other outgoings.

23. Dealings in course of non-investment business

- (1) Section 12 does not apply to anything done by a person -

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- (a) as principal;
 - (b) if that person is a company in a group, as agent for another member of the group; or
 - (c) as agent for a person who is or proposes to become a participator with him in a joint enterprise and for the purposes of or in connexion with that enterprise,
- if it is done in accordance with the terms and conditions of a permission granted to him by the Minister under this section.
- (2) Any application for permission under this section shall be accompanied or supported by such information as the Minister may require and shall not be regarded as duly made unless accompanied by the prescribed fee.
 - (3) The Minister may grant a permission under this section if it appears to him -
 - (a) that the applicant's main business, or if he is a member of a group the main business of the group, does not consist of activities for which a person is required to be authorised under this Order;
 - (b) that the applicant's business is likely to involve such activities which fall within section 12; and
 - (c) that, having regard to the nature of the applicant's main business and, if he is a member of a group, the main business of the group taken as a whole, the manner in which, the persons with whom and the purposes for which the applicant proposes to engage in activities that would require him to be an authorised person and to any other relevant matters, it is inappropriate to require him to be subject to regulation as an authorised person.
 - (4) Any permission under this section shall be granted by a notice in writing; and the Minister may by a further notice in writing withdraw any such permission if for any reason it appears to him that it is not appropriate for it to continue in force.
 - (5) The Minister may prescribe regulations, requiring persons holding permissions under this section to furnish him with information for the purpose of enabling him to determine whether those permissions should continue in force; and such regulations may, in particular, require such persons -
 - (a) to give him notice forthwith of the occurrence of such events as are specified in the regulations and such information in respect of those events as is so specified;
 - (b) to furnish him at such times or in respect of such periods as are specified in the regulations with such information as is so specified.
 - (6) Part V of this Order shall apply to a person holding a permission under this section as if he were an authorised person carrying on investment business.

24. Advice given or arrangements made in course of professional or non-investment business

- (1) Section 13 does not apply to arrangements -
 - (a) which are made in the course of the carrying on of any profession or of a business not otherwise constituting investment business; and
 - (b) the making of which is a necessary part of other services provided in the course of carrying on that profession or business.
- (2) Section 15 does not apply to advice -
 - (a) which is given in the course of the carrying on of any profession or of a business not otherwise constituting investments business; and
 - (b) the giving of which is a necessary part of other advice or services given in the course of carrying on that profession or business.
- (3) The making of arrangements shall not be regarded as falling within paragraph (b) of sub-section (1) and advice shall not be regarded as falling within paragraph (b) of sub-section (2) if the giving of advice or the making of arrangements is remunerated separately from the other advice or services.

25. Newspapers

- (1) Section 15 does not apply to advice given in a newspaper, journal, magazine or other periodical publication if the principal purpose of the publication, taken as a whole and including any advertisements contained in it, is not to lead persons to invest in any particular investment.
- (2) The Minister may, on the application of the proprietor of any periodical publication, certify that it is of the nature described in sub-section (1) and revoke any such certificate if he considers that it is no longer justified.
- (3) A certificate given under sub-section (2) and not revoked shall be conclusive evidence of the matters certified.

26. Advice given in television, sound or teletext services

- (1) Section 15 does not apply to any advice given in any programme included, or made for inclusion in -
 - (a) any television broadcasting service or other television programme service; or
 - (b) any sound broadcasting service or licensable sound programme service; or
 - (c) any teletext service.
- (2) For the purpose of this section, “programme”, in relation to a service mentioned in sub-section (1), includes any advertisement and any other item included in the service.

27. International self-regulating organisations

- (1) An activity within section 13 engaged in for the purposes of carrying out the functions of a body or association which is approved under this section as an international securities self-regulating organisation, whether by the organisation or by any person acting on its behalf, shall not constitute the carrying on of investment business in the Federation for the purpose of this Order.
- (2) In this section -
 - (a) “international securities business” means the business of buying, selling, subscribing for or underwriting investments (or offering or agreeing to do so, either as principal or agent) which fall within any of the sections in Part I of this Schedule other than section 10 and, so far as relevant to section 10, section 11 and which, by their nature, and the manner in which the business is conducted, may be expected normally to be bought or dealt in by persons sufficiently expert to understand any risks involved, where either the transaction is international or each of the parties may be expected to be indifferent to the location of the other, and, for the purpose of this definition, the fact that the investments may ultimately be bought otherwise than in the course of international securities business by persons not so expert shall be disregarded; and
 - (b) “international securities self-regulating organisation” means an organisation which -
 - (i) does not have its head office in the Federation;
 - (ii) has a membership composed of persons falling within any of the following categories, that is to say, authorised persons, excluded persons, persons holding a permission under section 23 and persons whose head offices are outside the Federation and whose ordinary business is such as is mentioned in paragraph (e) of sub-section (2) of section 17; and
 - (iii) which facilitates and regulates the activity of its members in the conduct of international securities business.
- (3) The Minister may approve as an international securities self-regulating organisation any body or association appearing to him to fall within sub-section (2) if, having regard to such matter affecting international trade, overseas earnings and the balance of payments or otherwise as he considers relevant, it appears to him that to do so would be desirable and not result in any undue risk to investors.
- (4) Any approval under this section shall be given by notice in writing; and the Minister may by further notice in writing withdraw any such approval if for any reason it appears to him that it is not appropriate for it to continue in force.

Part IV

Additional Exclusions for Persons Without Permanent Place of Business in the Federation

28. Transactions with or through authorised or excluded persons

- (1) Section 12 does not apply to any transaction by a person who does not carry on investment business from a permanent place of business maintained by him in the Federation (“an overseas person”) with or through -
 - (a) an authorised person; or
 - (b) an excluded person.
- (2) Section 13 does not apply if -
 - (a) the arrangements are made by an overseas person with, or the offer or agreement to make them is made by him to or with, an authorised person or an excluded person; or
 - (b) the transactions with a view to which the arrangements are made are, as respects transactions in the Federation, confined to transactions by authorised persons and transactions by excluded persons.

29. Unsolicited or legitimately solicited transactions etc. with or for other persons

- (1) Section 12 does not apply to any transaction entered into by an overseas person as principal with, or as agent for, a person in the Federation, sections 13, 14 and 15 do not apply to any offer made by an overseas person to or arrangement made by him with a person in the Federation and section 15 does not apply to any advice given by an overseas person to a person in the Federation if the transaction, offer, agreement or advice is the result of -
 - (a) an approach made to the overseas person by or on behalf of the person in the Federation which either has been in any way solicited by the overseas person or has been solicited by him in any way which has not contravened any provision which the Minister may by Order make to regulate unsolicited calls and investment advertisements; or
 - (b) an approach made by an overseas person which has not contravened any of those provisions.
- (2) Where the transaction is entered into by the overseas person as agent for a person in the Federation, sub-section (1) applies only if -
 - (a) the other party is outside the Federation; or
 - (b) the other party is in the Federation and the transaction is the result of such an approach by the other party as is mentioned in paragraph (a) of sub-section (1) or of such an approach as is mentioned in paragraph (b) of sub-section (1).

PART V

Interpretation

30. Meaning of “entering into a transaction”

For the purpose of this Schedule a transaction is entered into through a person if he enters into it as agent or arranges for it to be entered into by another persons as principal or agent.

31. Meaning of “group” and “joint enterprise”

- (1) For the purpose of this Schedule “a group” shall be treated as including any company in which a member of the group is a shareholder controller.
- (2) In this Schedule “a joint enterprise” means an enterprise into which two or more persons (in this Schedule referred to as “participators”) enter for commercial reasons related to a business or businesses (other than investment business) carried on by them; and where a participator is a company and a member of a group each other member of the group shall also be regarded as a participator in the enterprise.

32. Meaning of “collective investment scheme”

- (1) In this Schedule “a collective investment scheme” means, subject to the provisions of this section, any arrangement with respect to property the purpose or effect of which is to enable persons taking part in the arrangement (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (2) The arrangements must be such that the persons who are to participate as mentioned in sub-section (1) (in this Schedule referred to as “participants”) do not have day to day control over the management of the property in question whether or not they have the right to be consulted or to give directions; and the arrangements must also have either or both of the following characteristics -
 - (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
 - (b) the property in question is managed as a whole by or on behalf of the operator of the scheme.
- (3) Where any arrangements provide for such pooling as is mentioned in paragraph (a) of sub-section (2) in relation to separate parts of the property in question, the arrangements shall not be regarded as constituting single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.
- (4) For the purpose of this Schedule arrangements are not a collective investment scheme if -
 - (a) the property to which the arrangements relate (other than cash awaiting investment) consists of investments falling within any section 1 to 6 and 10;
 - (b) each participant is the owner of a part of that property and entitled to withdraw it at any time; and
 - (c) the arrangements do not have the characteristics mentioned in paragraph (a) of sub-section (2) and have those mentioned on paragraph (b) of that sub-section only because the parts of the property belonging to different participants are not bought and sold separately except where a person becomes or ceases to be a participant.
- (5) For the purpose of this Schedule the following are not collective investment schemes -
 - (a) arrangements operated by a person otherwise than by way of business;
 - (b) arrangements where each of the participants carries on a business other than investment business and enters into arrangements for commercial purposes related to that business;
 - (c) arrangements where each of the participants is a company in the same group as the operator;
 - (d) arrangements where -
 - (i) each of the participants is a *bona fide* employee or former employee (or the wife, husband, widow, widower, child or step-child under the age of eighteen of such employee or former employee) of a company in the same group as the operator; and
 - (ii) the property to which the arrangements relate consists of shares or debentures (as defined in sub-section (4) of section 20) in or of a member of that group;
 - (e) franchise arrangements, that is to say, arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the good-will attached to it;
 - (f) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;
 - (g) arrangements under which the rights or interests of the participants are investments falling within section 5;

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- (h) arrangements the purpose of which is the provision of clearing services and which are operated by an authorised person, a recognised clearing house or a recognised investment exchange;
- (i) contracts of insurance;
- (j) occupational pension schemes;
- (k) arrangements where the entire contribution of each participant is a deposit within the meaning of section 1 of Schedule I of this Order;
- (l) arrangements under which the rights or interests of the participants are represented by the following -
 - (i) investments falling within section 2 which are issued by a single company which is not an open-ended investment company or which are issued by a single issuer which is not a company and are guaranteed by the government of the Federation, or of any country or territory outside the Federation; or
 - (ii) investments falling within sub-paragraph (i) which are convertible into or exchangeable for investments falling within section 1 provided that those latter investments are issued by the same person as issued the investment falling within sub-paragraph (i) or issued by a single other issuer; or
 - (iii) investments falling within section 3 issued by the same government, local authority or public authority; or
 - (iv) investments falling within section 4 which are issued otherwise than by an open-ended investment company and which confer rights in respect of investments, issued by the same issuer, falling within section 1 or within sub-paragraph (i), (ii) or (iii);
- (m) arrangements which would fall within paragraph (b) were it not for the fact that the rights or interests of a participant (“the counterparty”) whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from Part III or IV are or include rights or interests under a swap arrangement, that is to say, an arrangement the purpose of which is to facilitate the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things, being an arrangement under which -
 - (i) the counterparty is entitled to receive amounts (whether representing principal or interest) payable in respect of any property subject to the scheme or sums determined by reference to such amounts; and
 - (ii) the counterparty makes payments (whether or not of the same amount and whether or not in the same currency as those referred to in sub-paragraph (i)) which are calculated in accordance with an agreed formula by reference to the amounts or sums referred to in that sub-paragraph;
- (n) arrangements under which the rights or interests of the participants are rights to or interests in money held in a common account in circumstances in which the money so held is held on the understanding that an amount representing the contribution of each participant is to be applied either in making payments to him or in satisfaction of sums owed by him or in the acquisition of property or the provision of services for him.

33. Miscellaneous Definitions

- (1) In this Schedule unless the context otherwise requires -

“buying and selling” includes any acquisition or disposal for valuable consideration;

“instrument” includes any record whether or not in the form of a document;

“investment advertisement” means any advertisement inviting persons to enter or offer to enter into an investment agreement or the exercise any rights conferred by an investment to acquire, dispose or, underwrite or convert an investment or containing information calculated to lead directly or indirectly to persons doing so;

“investment agreement” means any agreement the making or performance of which by either party constitutes an activity which falls within any section of Part II of this Schedule or would do so apart from Parts III and IV;

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“occupational pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category;

“offer” includes any invitation to trade;

“open-ended investment company” means a collective investment scheme under which -

- (a) the property in question belongs beneficially to, and is managed by or on behalf of, a company having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that company; and
- (b) the rights of the participants are represented by shares in or securities of that company which -
 - (i) the participants are entitled to have redeemed or repurchased, or which are redeemed or repurchased from them by, or out of funds provided by, that company; or
 - (ii) the company ensures can be sold by the participants on an investment exchange at a price related to the value of the property to which they relate;

“operator”, in relation to a unit trust with a separate trustee, means the manager and, in relation to an open-ended investment company, means that company;

“participant” has the meaning given in sub-section (2) of section 32;

“participator” has the meaning given in sub-section (2) of section 31;

“property” includes property of any description, including money denominated in the currency of any country or territory;

“recognised clearing house” means a body declared by an Order of the Minister for the time being in force to be a recognised clearing house for the purposes of this Schedule;

“recognised investment exchange” means a body declared by an Order of the Minister for the time being in force to be a recognised investment exchange for the purposes of this Schedule;

“trustee”, in relation to a unit trust, means the person holding the property in question on trust for the participants and, in relation to a collective investment scheme constituted under the law of a country or territory outside the Federation, means any person who (whether or not under a trust) is entrusted with the custody of the property in question;

“units” means the rights or interests (however described) of the participants in a collective investment scheme;

“unit trust” means a collective investment scheme under which the property in question is held on trust for the participants.

- (2) In the definition for “buying and selling” given in sub-section (1) “disposal” includes -
 - (a) in the case of an investment consisting of rights under a contract or other arrangements, assuming the corresponding liabilities under the contract or arrangement;
 - (b) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;
 - (c) in the case of an investment consisting of rights under a contract, surrendering, assigning or converting those rights.
- (3) A company shall not by reason of issuing its own shares or share warrants, and a person shall not by reason of issuing his own debentures or debenture warrants, be regarded for the purpose of this Schedule as disposing of

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them or, by reason of anything done for the purpose of issuing them, be regarded as making arrangements with a view to a person subscribing for or otherwise acquiring them or underwriting them.

(4) In sub-section (3) -

- (a) “company” has the same meaning as in section 1;
- (b) “shares” and “debentures” include any investments falling within section 1 or 2; and
- (c) “share warrants” and “debenture warrants” means any investment which falls within section 4 and relates to shares in the company concerned or, as the case may be, to debentures issued by the person concerned.