

**CAYMAN ISLANDS**



# **SECURITIES INVESTMENT BUSINESS LAW**

**(2020 Revision)**

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# SECURITIES INVESTMENT BUSINESS LAW

## (2020 Revision)

**Arrangement of Sections**

Section	Page
<b>Part I - Introductory</b>	
1. Short title .....	7
2. Definitions.....	7
3. Group of companies .....	11
<b>Part II - Securities Investment Business</b>	
4. Meaning of securities investment business .....	12
4A. Exercise of discretionary powers .....	12
4B. Direction to cease and desist .....	12
4C. Prohibition to act as depositary .....	13
<b>Part III - Licensing and Regulation of Licensee</b>	
5. Requirement for a licence, registration, deregistration and fees payable .....	13
6. Application for a licence .....	16
7. Fees and returns .....	18
8. Shares not to be issued or transferred without the prior approval of the Authority .....	18
9. Use of words connoting securities investment business .....	19
10. Segregation of property .....	20
11. Regulations .....	20
12. Guidance notes .....	21
13. Accounts.....	21
14. Certain prohibitions on licensee .....	22



15.	Number and approval of directors .....	22
16.	Powers and duties of the Authority .....	23
17.	Enforcement powers of the Authority .....	24
18.	Injunctions and restitution and disgorgement orders .....	26
19.	Duty of auditor .....	28
20.	Entry and search of premises .....	29
21.	Winding up .....	30
22.	Appeals against decisions made under section 17(2A)(a) and (h).....	30
23.	Appeals against other decisions of the Authority .....	31

### **Part IV - False or Misleading Market and Insider Dealing**

24.	Creation of false or misleading market.....	31
25.	Insider dealing .....	31
26.	Defences .....	31
27.	Territorial scope of offence of insider dealing .....	33
28.	Limits on section 25 .....	34
29.	Dealing in listed securities .....	34
30.	Procuring the acquisition or disposal of a listed security.....	34
31.	Inside information .....	34
32.	"Price-affected securities" and "price-sensitive information" .....	35
33.	Information as an insider.....	35
34.	Definition of "made public" .....	35
35.	Penalties.....	35

### **Part V - Broker Members**

36.	Duty of Exchange and Authority in relation to broker members .....	36
-----	--	----

### **Part VI - General**

37.	Offences by corporations .....	37
38.	Indemnity.....	37
39.	Offences .....	37
40.	Spent.....	37
41.	Amendment of the Schedules .....	37
42.	Transitional.....	37

### **SCHEDULE 1 39**

<b>Securities</b> .....	<b>39</b>
<b>Shares</b> .....	<b>39</b>
<b>Instruments creating or acknowledging indebtedness</b> .....	<b>39</b>
<b>Instruments giving entitlements to securities</b> .....	<b>39</b>
<b>Certificates representing certain securities</b> .....	<b>40</b>
<b>Options</b> .....	<b>40</b>
<b>Futures</b> .....	<b>40</b>
<b>Contracts for differences</b> .....	<b>41</b>



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<b>SCHEDULE 2</b>	<b>42</b>
<b>Securities investment business - regulated activities</b>	<b>42</b>
<b>SCHEDULE 2A</b>	<b>44</b>
<b>Non-registrable persons</b>	<b>44</b>
<b>SCHEDULE 3</b>	<b>46</b>
<b>Excluded activities</b>	<b>46</b>
<b>SCHEDULE 4</b>	<b>50</b>
<b>Persons required to be registered under section 5(4)</b>	<b>50</b>
<b>SCHEDULE 4A</b>	<b>51</b>
<b>Connected Persons within a Single Family</b>	<b>51</b>
<b>ENDNOTES</b>	<b>53</b>
Table of Legislation History: .....	53



## CAYMAN ISLANDS



# SECURITIES INVESTMENT BUSINESS LAW

(2020 Revision)

## Part I - Introductory

### Short title

1. This Law may be cited as the *Securities Investment Business Law (2020 Revision)*.

### Definitions

2. In this Law —

“**AIF**” means a scheme or arrangement in respect of which activities are carried on in the course of securities investment business as defined in schedule 2 and is marketed in a EU Member State;

“**AIFM**” means a person who in the course of business is managing one or more AIFs;

“**AIFMD**” means the *Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers* and amending *Directives 2003/41/EC and 2009/65/EC* and *Regulations (EC) No 1060/2009 and (EU) No 1095/2010*;

“**Authority**” means the Cayman Islands Monetary Authority established under section 5(1) of the *Monetary Authority Law (2020 Revision)*;

“**broker member**” means a broker member of the Exchange;

“**client**” means a person with or for whom securities investment business is transacted;

“**company**” means a body corporate constituted under the Laws of the Islands or any other jurisdiction;

“**court**” means the Grand Court;

“**customer**” means a person, other than an individual, to whom a supplier sells goods or supplies services, or agrees to do so, and where the customer is a member of a group of companies, any other company which is a member of that group of companies;

“**depository**” means a depository appointed in accordance with paragraph 11 of the Schedule to the *Securities Investment Business (EU Connected Fund (Alternative Investment Fund Managers Directive)) Regulations, 2016* and carrying out the duties set out in paragraph 13 of that Schedule;

“**document**” includes an electronic record as defined in the *Electronic Transactions Law (2003 Revision)*;

“**EEA**” means the European Economic Area established by the Agreement on the European Economic Area which entered into force on 1<sup>st</sup> January, 1994 and the relevant amending annexes and protocols;

“**equity interest**” means a share, trust unit or partnership interest that —

- (a) carries an entitlement to participate in the profits or gains of the company, unit trust or partnership; and
- (b) is redeemable or repurchasable at the option of the investor and, in respect of a company incorporated in accordance with the *Companies Law (2020 Revision)* (including an existing company as defined in that law), in accordance with but subject to section 37 of the *Companies Law (2020 Revision)* before the commencement of winding-up or the dissolution of the company, unit trust or partnership, but does not include debt, or alternative financial instruments as prescribed under the *Banks and Trust Companies Law (2020 Revision)*;

“**EU**” means the European Union established by the Treaty on European Union signed in Maastricht on 7th February 1992;

“**EU Connected Fund**” means a company, unit trust or partnership which issues —

- (a) equity interests ; or
- (b) shares, trust units or partnership interests that carry an entitlement to participate in the profits or gains of the company, unit trust or partnership that are not redeemable or purchasable at the option of the investor,

the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and enabling investors in the company, unit trust or partnership to receive profits or gains from the acquisition, holding, management or disposal of investments and is —





- (i) managed by a person whose registered office is in a Member State and whose regular business is managing one or more AIFs notified to the Authority as being identified to the relevant competent authority of a Member State in accordance with the relevant Law implementing the AIFMD in the Member State; or
- (ii) marketed to investors or potential investors in a Member State, as notified to the Authority as being identified to the relevant competent authority of a Member State in accordance with the relevant Law implementing the AIFMD in the Member State;

“**EU Connected Manager**” means a person who carries on or purports to carry on securities investment business in relation to any of the activities set out in paragraphs 5, 6 or 7 of Schedule 2 and is a person to whom section 4(1)(a) or (b) refers;

“**Exchange**” means the Cayman Islands Stock Exchange, established under section 4 of the *Stock Exchange Company Law (2014 Revision)*;

“**group of companies**” has the meaning assigned by section 3;

“**high net worth person**” means —

- (i) an individual whose net worth is at least \$800,000 or its equivalent in any other currency; or
- (ii) any person that has total assets of not less than \$4,000,000 or its equivalent in any other currency;

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

“**joint enterprise**” means an enterprise into which two or more persons enter for commercial reasons related to a business or businesses (other than securities investment business) carried on by them;

“**licence**” means a licence granted under this Law;

“**listed security**” means any security which is listed on the Exchange;

“**market maker**” means a person who engages in activities specified in paragraph 1(b) of Schedule 2 in compliance with the rules of any market in securities operating under the oversight of or rules made by a recognised securities exchange or a recognised overseas regulatory authority;

“**members of the public**” means any person other than a person —

- (a) referred to in paragraphs 1 to 5 of Schedule 4;
- (b) regulated by the Authority; or
- (c) regulated by a recognised overseas regulatory authority;

“**Member State**” means a state which is —

- (a) a member of the EU; or
- (b) a part of the EEA in which the AIFMD has been implemented;

“**net worth**” means the excess of assets over liabilities;

“**partnership**” means a general or limited partnership established under the *Partnership Law (2013 Revision)*, an exempted limited partnership registered under the *Exempted Limited Partnership Law (2018 Revision)*, or a partnership established under the laws of a jurisdiction other than the Islands;

“**prescribed**” means prescribed by any regulation made under this Law;

“**proprietary assets**” means the total assets of any company, partnership or trust;

“**recognised overseas regulatory authority**” means a regulatory authority which, in a country or territory outside the Islands, exercises one or more functions corresponding to the Authority’s under this Law and which the Authority has declared by notice published in the Gazette to be recognised for the purposes of this Law;

“**recognised securities exchange**” means the Exchange or any other securities exchange which the Authority has declared by notice published in the Gazette to be so recognised for the purposes of this Law;

“**recognised securities organisation**” means an organisation which regulates its members in relation to the carrying on of activities constituting securities investment business which the Authority has declared by notice published in the Gazette to be so recognised for the purposes of this Law;

“**registered person**” means a person specified in Schedule 4 and who has registered with the Authority in accordance with section 5(4);

“**securities**” means assets, rights or interests specified in Schedule 1;

“**securities investment business**” has the meaning assigned to it in section 4;

“**senior officer**” means a director, managing director, president, chief executive officer, partner, managing partner, general partner, ultimate partner, manager or someone who has a similar control function;

“**share**” in the case of a company limited by guarantee, includes an interest of a member of the company;

“**single family**”, in relation to a single family office, means —

- (a) an individual; or
- (b) a group of individuals who are connected in at least one of the ways set out in in Schedule 4A;

“**single family office**” means a legal entity or legal arrangement formed in the Islands by a single family to conduct securities investment business for or on behalf of that single family where —

- (a) the securities are not beneficially owned by a third party; and



- (b) the legal entity or legal arrangement does not hold itself out to the public as conducting securities investment business for any person except members of the single family;

“**sophisticated person**” means a person —

- (a) regulated by the Authority;
- (b) regulated by a recognised overseas regulatory authority;
- (c) any of whose securities are listed on a recognised securities exchange; or
- (d) who —
  - (i) by virtue of knowledge and experience in financial and business matters is reasonably to be regarded as capable of evaluating the merits of a proposed transaction; and
  - (ii) participates in a transaction with a value or in monetary amounts of at least \$80,000 or its equivalent in any other currency, in the case of each single transaction; and

“**supplier**” means a person whose main business is to dispose of goods or supply services and not to carry on any of the activities specified in Schedule 2;

“**trust unit**” means a unit of participation in a unit trust;

“**unit trust**” means a trust established by a trustee which, for valuable consideration, issues trust units in profits or gains arising from the acquisition holding, management or disposal of investments by the trustee of the trust, the proper law of which is the law of the Islands or the law of any other jurisdiction.

### Group of companies

3. (1) For the purposes of this Law, a group of companies comprises every company which, directly or indirectly, is a subsidiary of the same holding company, and such a group includes the holding company.
- (2) A company shall be treated as a subsidiary (“the subsidiary”) of another company (“the holding company”) where —
- (a) the holding company is a member of the subsidiary and controls the composition of the subsidiary’s board of directors;
  - (b) the holding company, directly or indirectly, controls more than half of the votes which may be cast at general meetings of the subsidiary; or
  - (c) the subsidiary is a subsidiary of any other company which is itself a subsidiary of the holding company.
- (3) In subsection (2)(a), the composition of a company’s board of directors shall be treated as controlled by another company if that other company, by the exercise of some power, without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors.

## Part II - Securities Investment Business

### Meaning of securities investment business

4. (1) For the purposes of this Law and subject to section 5(2), a person carries on securities investment business if that person is engaged in the course of business, in any one or more of the activities set out in Schedule 2 and that person —
- (a) is —
    - (i) a company incorporated under the *Companies Law (2020 Revision)*;
    - (ii) a general partnership established under the *Partnership Law (2013 Revision)*;
    - (iii) a limited partnership registered under the *Partnership Law (2013 Revision)*;
    - (iv) an exempted limited partnership registered under the *Exempted Limited Partnership Law (2018 Revision)*;
    - (v) a foreign company registered under Part IX of the *Companies Law (2020 Revision)*;
    - (vi) a limited liability company formed and registered under the *Limited Liability Companies Law (2020 Revision)*; or
    - (vii) a limited liability partnership formed and registered under the *Limited Liability Partnership Law, 2017 [Law 13 of 2017]*;
  - (b) has established a place of business in the Islands through which such activities are carried on.
- (2) The respective activities carried out by the non-registrable persons described in Schedule 2A and the activities set out in Schedule 3 do not constitute the carrying on of securities investment business for the purpose of this Law.
- (3) The persons described in Schedule 2A are persons who are not required to register under this Law.

### Exercise of discretionary powers

4A. The Authority may —

- (a) impose conditions on an applicant for registration or licensing at the time of application or at any time thereafter, as the Authority may consider appropriate having regard to the nature, risk and scale of the business;
- (b) refuse registration of an applicant for registration; and
- (c) employ the enforcement powers of the Authority against a registered person.

### Direction to cease and desist

4B. (1) Where the Authority is of the opinion that a licensee or a registered person is —



- (a) committing, or about to commit, an act that is an unsafe or unsound practice in conducting the business of the licensee or a registered person; or
- (b) pursuing or about to pursue, a course of conduct that is an unsafe or unsound practice in conducting the business of the licensee or registered person,

the Authority may direct the licensee or registered person, in relation to the securities investment business of the licensee or registered person to cease or refrain from committing the act or pursuing the course of conduct and to perform such acts as, in the opinion of the Authority, are necessary to remedy or ameliorate the situation.

- (2) A person who, without reasonable cause, fails to comply with a direction given by the Authority under subsection (1) commits an offence and is liable —
  - (a) on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of one year or to both; and
  - (b) on conviction on indictment to a fine of one hundred thousand dollars or to imprisonment for a term of five years or to both, and if the offence of which the person is convicted is continued after conviction the person commits a further offence and is liable to a fine of ten thousand dollars for every day on which the offence is so continued.

### **Prohibition to act as depositary**

**4C.** A registered person shall not act or function as a depositary in or from within the Islands.

## **Part III - Licensing and Regulation of Licensee**

### **Requirement for a licence, registration, deregistration and fees payable**

- 5.** (1) A person shall not carry on or purport to carry on securities investment business unless that person holds a licence or registration granted under this Law or is exempt from holding a licence or registration.
- (1A) An individual shall not carry on securities investment business in or from within the Islands except where the individual is a person described in Schedule 2A.
- (1B) A person who carries on securities investment business activities for which a licence or registration is required shall be —
- (a) a company incorporated under the *Companies Law (2020 Revision)*;
  - (b) a general partnership established under the *Partnership Law (2013 Revision)*;

- (c) a limited partnership registered under the *Partnership Law (2013 Revision)*;
  - (d) an exempted limited partnership registered under the *Exempted Limited Partnership Law (2018 Revision)*;
  - (e) a foreign company registered under Part IX of the *Companies Law (2020 Revision)*;
  - (f) a limited liability company formed and registered under the *Limited Liability Companies Law (2020 Revision)*; or
  - (g) a limited liability partnership formed and registered under the *Limited Liability Partnership Law, 2017 [Law 13 of 2017]*.
- (2) The persons specified in Schedule 2A do not require a licence to conduct securities investment business but may apply to be licensed under this Law and in particular may, if those persons are EU Connected Managers in respect of any of the activities set out in paragraphs 5, 6 or 7 of Schedule 2, elect to apply to be licensed under this Law.
- (2A) A person who is not specified in Schedule 4 and who is an EU Connected Manager shall, in the manner prescribed, notify the Authority that the person is an EU Connected Manager.
- (2B) A person who elects to apply to be licensed under this Law pursuant to section 5(2) shall apply to the Authority in the manner prescribed.
- (2C) An EU Connected Manager who is an AIFM shall not carry on securities investment business with respect to the activity set out in paragraph 7 of Schedule 2.
- (2D) Where an application is made under subsection (2B), the Authority, after considering the application may grant a licence to the applicant in the manner that the Authority considers appropriate.
- (2E) Where a notification is made to the Authority pursuant to subsection (2A), the Authority, where the Authority considers it necessary, may modify an existing licence previously granted by the Authority to a person and impose conditions upon the licence with respect to the activities set out in paragraphs 5, 6 or 7 of Schedule 2.
- (2F) An EU Connected Manager who elects to be licensed under this Law shall comply with the applicable provisions of this Law.
- (2G) The Authority may provide attestation or confirmation of the status of an EU Connected Manager but before the attestation or confirmation of status is provided by the Authority, the EU Connected Manager shall submit to the Authority the prescribed information.
- (2H) The Authority, with respect to an EU Connected Manager, shall have the power to —



- (a) conduct an onsite inspection or to permit a regulator in the EU to conduct an onsite inspection;
  - (b) request information from or about the EU Connected Manager; and
  - (c) apply to the Grand Court for such orders as it thinks fit to preserve the assets of the investors in an EU Connected Fund, and the Grand Court has power to grant such orders.
- (2I) For the purposes of this section “**attestation**” or “**confirmation of status**” means the method, whether by letter or any other manner which the Authority considers appropriate, by which the Authority may be required to confirm the details of an EU Connected Manager to an overseas regulatory authority or a Member State.
- (3) For the purposes of subsection (1), a person may be considered to purport to carry on securities investment business where that person —
- (a) uses one or more words which connote securities investment business, either in English or in any other language, in the description or title under which that person carries on business;
  - (b) makes a representation in a document or in any other manner that that person is carrying on securities investment business; or
  - (c) otherwise holds themselves out as carrying on securities investment business.
- (4) A person specified in Schedule 4 shall register with the Authority and such person, in order to be registered, shall file an application in the prescribed form and pay the prescribed registration fee to the Authority.
- (4A) An applicant for registration shall not be registered unless the applicant has satisfied the Authority that the applicant’s shareholders, directors and senior officers are fit and proper persons.
- (4B) Where a registered person ceases to carry on securities investment business the registered person shall within twenty-one days after the date of ceasing to carry on in the Islands any regulated activity listed in Schedule 2 —
- (a) notify the Authority of its intention to deregister; and
  - (b) file the prescribed details to deregister in the manner specified by the Authority.
- (4C) A registered person shall notify the Authority within twenty-one days after any material change in the information filed by the registered person in its application or annual declaration.
- (4D) A registered person who fails to pay the prescribed annual fee shall pay a surcharge of one-twelfth of that fee for every month or part of a month after the 15th January in each year that the fee is not paid.
- (4E) A registered person shall —

- (a) file with the Authority, on or before the 15th day of January in each year, an annual declaration in such form as the Authority may approve; and
  - (b) pay to the Authority the prescribed annual fee at the time of the filing of the declaration.
- (4F) The Authority may, for good cause, waive any additional fee imposed under subsection (4D).
- (4G) If the prescribed annual fee referred to in subsection (4E) is not paid on or before the 15th day of January in each year, the unpaid annual fee may be sued for by the Crown by action as a civil debt and the Crown may require, and the court may order, the payment of any penalties accrued in respect of the late payment of the fee.
- (5) The Authority may, from time to time, require a registered person to provide the report specified under section 17(2A)(e).
- (6) Subject to subsection (2), a person who carries on or purports to carry on securities investment business without being the holder of a current licence or registration under this Law commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for one year, and in the case of a continuing offence, to a fine of ten thousand dollars for each day during which the offence continues.
- (7) A contract, transaction, obligation or instrument entered into by any person shall not be rendered unenforceable merely because it is entered into in connection with securities investment business carried on by that person in contravention of subsection (1).

### **Application for a licence**

6. (1) A person, other than a person to whom section 5(2) refers, who wishes to carry on securities investment business shall apply in writing to the Authority for the grant of a licence under this Law.
- (2) The Authority shall, in relation to an application received under subsection (1), either —
- (a) grant the licence;
  - (b) grant the licence subject to conditions; or
  - (c) refuse the licence.
- (3) A licence shall specify one or more of the activities set out in Schedule 2 that the licensee is permitted to carry on.
- (4) An application under this section shall include such information and shall be accompanied by such fee as may be prescribed.
- (5) A licence shall not be granted to an applicant unless the applicant has satisfied the Authority that —





- (a) the applicant will be able to comply with the provisions of this Law and the regulations;
  - (b) the applicant will be able to comply with the requirements of the *Anti-Money Laundering Regulations (2020 Revision)*;
  - (c) it will not be against the public interest, including, but not limited to, the need to protect investors, for the application to be approved;
  - (d) the applicant has personnel with the necessary skills, knowledge and experience and such facilities, and such books and records as the Authority considers appropriate having regard to the nature and scale of the business; and
  - (e) the applicant's senior officers and managers are fit and proper persons, and where the Authority is satisfied, it may grant a licence to the applicant either unconditionally or subject to such conditions as the Authority considers appropriate.
- (6) For the purposes of this section and sections 8 and 17, in determining whether the person is a fit and proper person, regard shall be had to all circumstances, including that person's —
- (a) honesty, integrity and reputation;
  - (b) competence and capability; and
  - (c) in the case of an applicant, financial soundness.
- (7) The conditions which the Authority may impose on a licensee may include conditions —
- (a) limiting the nature and scope of the securities investment business which may be carried on by the licensee;
  - (b) specifying whether or not the licensee may hold clients' assets; and
  - (c) requiring the licensee or a senior officer or manager of the licensee to acquire and maintain membership of a recognised securities exchange or a recognised securities organisation.
- (9) The Authority may, by notice in writing to a licensee, revoke at any time any condition attached to the licence.
- (10) The Authority may grant a restricted licence by limiting the number of clients to whom the licensee may provide services or setting the minimum value of an individual client's investment, as may be prescribed under this Law.
- (11) Where the Authority has granted a licence under this section, it shall, as soon as reasonably possible after the grant, publish notification of such grant in the Gazette.
- (12) The Authority shall maintain a current register of licensees setting out the business address of the licensee and details of the activities that the licensee is

permitted to carry on and such other information as may be prescribed and such register shall be available to the public.

- (13) A person licensed under this Law, a person specified in Schedule 2A or a person specified in Schedule 4 is not required to be licensed under the —
- (a) *Local Companies (Control) Law (2019 Revision)*;
  - (b) *Banks and Trust Companies Law (2020 Revision)*;
  - (c) *Insurance Law, 2010 [Law 32 of 2010]*;
  - (d) *Companies Management Law (2018 Revision)*;
  - (e) *Mutual Funds Law (2020 Revision)*; or
  - (f) *Trade and Business Licensing Law (2019 Revision)*,
- in respect of the carrying on of securities investment business.

### **Fees and returns**

7. (1) Every person to whom a licence is first granted shall at the date of such grant pay the prescribed fee.
- (2) The holder of a licence shall, on or before the 15th January in each year, pay the prescribed renewal fee, and there shall be payable by a licensee who fails to pay the prescribed renewal fee by that date a surcharge of one-twelfth of that fee for every month or part of a month after the 15th January in each year that the fee is not paid.
- (3) A licence in respect of which the prescribed renewal fee remains unpaid for three full months after the 15th January in any year shall lapse forthwith but if, within a period of one month after the date of lapse, the person who held the licence prior to its lapse pays —
- (a) the prescribed renewal fee;
  - (b) the surcharges due under subsection (2); and
  - (c) an administration fee of ten per cent of the prescribed renewal fee,
- the licence may be renewed for the period from the 1st January to the 31st December, inclusive, of the year in question.
- (4) A holder of a licence under this Law shall inform the Authority of any changes made relating to any of the information furnished in accordance with section 6(4) within seven days after any such change has occurred.

### **Shares not to be issued or transferred without the prior approval of the Authority**

8. (1) No shares in a company or interests in a partnership which is a licensee under this Law shall be issued, and no issued shares or interests shall be voluntarily transferred or disposed of, without the prior approval of the Authority.



- (1A) Shares in a company or interests in a limited liability company or a partnership which is a registered person under this Law shall not be issued and issued shares or interests shall not be voluntarily transferred or disposed of without the Authority being notified within twenty-one days of the transfer or disposal.
- (2) Notwithstanding subsection (1), the Authority may exempt from the provisions of this section a licensee whose shares or interests are publicly traded on a recognised securities exchange, and any such exemption —
- (a) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, notify the Authority of —
    - (i) any change in control of the licensee;
    - (ii) the acquisition by any person or group of persons of shares representing more than ten per cent of the licensee's issued share capital or total voting rights; or
    - (iii) the acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights of the licensee's parent company;
  - (b) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, provide such information to the Authority, and within such period of time, as the Authority may require for the purpose of enabling an assessment as to whether persons acquiring control or ownership of the licensee in the circumstances set out in paragraph (a) are fit and proper persons to have such control or ownership; and
  - (c) shall be subject to such other terms and conditions as the Authority may deem necessary.
- (3) In subsections (1) and (1A), the reference to shares or interests being transferred or disposed of includes the transfer or disposal of the legal or the beneficial interest in the shares or interests.
- (4) In the event of shares in a company or the interests in a partnership which is licensed or registered under this Law vesting involuntarily or through process of law in a person, the company or partnership, as soon as it becomes aware of such vesting, shall inform the Authority of the number of shares or interests and the identity of the person in whom they have vested, and the company or partnership and the person in whom they have vested shall comply with any instructions as to the licence, registration or the business of the company or partnership as may be given by the Authority.

### **Use of words connoting securities investment business**

9. The Authority may require a licensee or registered person with a name which —
- (a) is identical with that of another person, whether within the Islands or not, or which so nearly resembles that name as to be likely to deceive;

- (b) in the opinion of the Authority connotes, falsely, the patronage of or connection with a person whether within the Islands or not;
- (c) in the opinion of the Authority connotes, falsely, that it has a special status in relation to or derived from the Government, or has the official backing of or acts on behalf of the Government or of any of its departments or officials;
- (d) in the opinion of the Authority is liable to mislead investors, or constitute a misrepresentation; or
- (e) includes any prescribed word or expression,

forthwith to change its name, and in default of compliance within three calendar months of the receipt of notice from the Authority of its requirements, the Authority may revoke its licence or cancel its registration.

### **Segregation of property**

- 10.** A licensee or a registered person shall separately account for the funds and property of each client and for the licensee's or registered person's own funds and property.

### **Regulations**

- 11.** (1) The Cabinet may, after consultation with the Authority, make regulations —
- (a) prescribing anything which is to be prescribed under this Law; and
  - (b) generally for carrying the purposes and provisions of this Law into effect.
- (2) Without prejudice to the generality of the foregoing, such regulations may in respect of licensees —
- (a) specify standards for the form and content of any advertising or promotion of securities or of securities investment business;
  - (b) require a licensee to make full and proper disclosure to clients of the capacity in which that person is acting in relation to a particular securities investment business transaction and whether the transaction is being effected for that person's own account or that of any person other than the client;
  - (c) specify standards for dealings with clients and clients' assets, including the holding upon trust of clients' assets by the licensee;
  - (d) establish financial requirements and specify standards for financial conduct and record keeping and reporting;
  - (e) specify disclosure requirements in respect of the amount, value or arrangements for the payment or provision, of commissions or other inducements;
  - (f) specify arrangements for the settlement of disputes; and



- (g) specify the nature and extent of any insurance arrangements required of the licensee.
- (3) Regulations made under this Law may provide that the contravention of any provision constitutes an offence and may prescribe penalties for any such offence not exceeding the maximum fine and term of imprisonment prescribed in this Law for any offence under this Law.

### Guidance notes

- 12.** (1) The Authority may, after consultation with the Minister with responsibility for financial services and such persons as the Authority considers representative of the conduct of securities investment business, issue guidance notes for the purpose of giving practical guidance with respect to this Law and any regulations made under section 11.
- (2) The Authority shall publish in the Gazette any guidance notes and such notice shall indicate the date on which the guidance notes come into effect.
- (3) The Authority may also adopt any rules or codes issued by the Exchange or any recognised securities organisation and shall give notice of such adoption in the Gazette.
- (4) In determining whether a person has complied with any of the requirements under this Law or any regulation made under it —
- (a) a court shall take into account any relevant guidance notes issued under subsection (1) which apply to that person; and
  - (b) a court may take into account any other relevant guidance issued by a body that regulates, or is representative of, any trade, profession, business or employment carried on by that person.

### Accounts

- 13.** (1) A licensee shall have its accounts audited annually, or at such other time as the Authority may require, by an auditor who shall be a member of —
- (a) the Institute of Chartered Accountants in England and Wales;
  - (b) the Canadian Institute of Chartered Accountants;
  - (c) the Chartered Association of Certified Accountants;
  - (d) the American Institute of Certified Public Accountants; or
  - (e) any other professional body or institute approved by the Authority.
- (2) Within six months of the end of a licensee's financial year that person shall forward to the Authority —
- (a) his audited accounts for the financial year just ended; and

- (b) a certificate of compliance with the provisions of this Law and any regulations made under this Law or the *Monetary Authority Law (2020 Revision)*, signed by the licensee or if a company, a director of the licensee.
- (3) A licensee may not change its auditor without the prior written approval of the Authority and the licensee shall explain the circumstances giving rise to the change of auditor prior to such approval being given.
- (4) A person who signs a certificate under subsection (2)(b) knowing or believing that such certificate is false commits an offence and is liable on summary conviction to a fine of five thousand dollars and such person —
  - (a) may have that person's licence or the licence held by the company of which that person is a director revoked; and
  - (b) may not be granted a further licence, nor be permitted to be a director of a company which holds a licence.
- (5) Any licensee who fails to comply with subsection (2) within the prescribed period or any extension to such granted by the Authority for good cause shown, is liable to a late filing fee of fifty dollars for each day or part thereof that compliance remains outstanding.

#### **Certain prohibitions on licensee**

- 14.** (1) A licensee shall not, without the prior written approval of the Authority, open outside the Islands a subsidiary, branch, agency or representative office or change its name.
- (2) A licensee shall notify the Authority immediately of any change of address of its place of business.

#### **Number and approval of directors**

- 15.** (1) A licensee which is a company or a corporate general partner of a limited partnership which is a licensee shall at no time have fewer than two directors or, if the licensee is a company that does not have directors, two managers.
- (2) No alterations in the senior officers of a licensee shall be made without the prior written approval of the Authority.
- (3) A licensee or registered person shall remove or replace a senior officer who is convicted in any country of an offence involving dishonesty forthwith upon conviction.
- (4) A registered person shall have, where the registered person is —
  - (a) a company incorporated under the *Companies Law (2020 Revision)*, a minimum of —
    - (i) two directors who are individuals; or
    - (ii) one corporate director,



- each of whom is complying with the *Directors Registration and Licensing Law, 2014*;
- (b) a general partnership established, or a limited partnership registered under the *Partnership Law (2013 Revision)*, a minimum of two partners;
  - (c) an exempted limited partnership registered under the *Exempted Limited Partnership Law (2018 Revision)*, a minimum of two directors (or equivalent officers) appointed in respect of its general partner (or where the general partner is itself an exempted limited partnership registered under the *Exempted Limited Partnership Law (2018 Revision)* at the level of the ultimate general partner);
  - (d) a foreign company registered under Part IX of the *Companies Law (2020 Revision)*, a minimum of two directors (or equivalent officers);
  - (e) a limited liability company formed and registered under the *Limited Liability Companies Law (2020 Revision)*, a minimum of two managers complying with the *Directors Registration and Licensing Law, 2014 [Law 10 of 2014]*; or
  - (f) a limited liability partnership formed and registered under the *Limited Liability Partnership Law, 2017 [Law 13 of 2017]*, a minimum of two managing partners.
- (5) Any alteration made in the senior officers of a registered person shall be notified to the Authority within twenty-one days of the alteration.

### **Powers and duties of the Authority**

**16.** (1) The Authority shall —

- (a) maintain a general review of securities investment business in the Islands, and submit an annual report thereon to the Cabinet;
- (b) be responsible for supervision and enforcement in respect of persons to whom this Law applies, and for the investigation of persons where the Authority reasonably believes that they are or have been in breach of section 5(1);
- (c) whenever the Authority considers it necessary, examine, by way of the receipt of regular returns, on-site inspections, auditors' reports or in such other manner as the Authority may determine, the affairs or business of any licensee or registered person for the purpose of —
  - (i) assessing whether a licensee or registered person is undertaking its authorised activities in accordance with this Law and any regulations made under this Law;
  - (ii) confirming that the provisions of the *Anti-Money Laundering Regulations (2020 Revision)* are being complied with;

- (iii) confirming that the licensee or registered person is in a sound financial position; or
  - (iv) carrying out any other functions of the Authority.
- (1A) The Authority may require —
- (a) from a registered person, information related to its securities investment business; or
  - (b) from any person who, in the opinion of the Authority, is conducting securities investment business in contravention of this Law information related to the person's securities investment business.
- (2) The Authority may in writing authorise any other person to assist it to perform its functions under this Law.
- (3) This Law is deemed to be a regulatory law for the purposes of the *Monetary Authority Law (2020 Revision)*.
- (4) A person who knowingly or recklessly provides any information to the Authority which is false or misleading in a material particular commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for six months.

### **Enforcement powers of the Authority**

- 17.** (1) Without prejudice to any other action that may be instituted or taken against a licensee or a registered person, if at any time it appears to the Authority that a licensee or a registered person has failed to comply with any of the requirements under this Law or any regulation made under it the Authority may by written notice direct the licensee or the registered person to ensure that the requirement is complied with within such period and on such terms and conditions as the authority may specify and the licensee or the registered person shall comply with the notice.
- (2) The Authority may carry out any of the actions specified in subsection (2A) if it knows or has reasonable grounds to believe that a licensee or a registered person —
- (a) is unable or appears likely to become unable to meet its obligations as they fall due;
  - (b) is carrying on business fraudulently or otherwise in a manner detrimental to the public interest, to the interest of its clients or to the interest of its creditors;
  - (c) has contravened any provision of this Law or the regulations or of the *Anti-Money Laundering Regulations (2020 Revision)*;
  - (d) has failed to comply with a condition of its licence or registration;





- (e) has not conducted the direction and management of its business in a fit and proper manner or has directors, senior officers, managers or persons who have acquired ownership or control who are not fit and proper persons; or
  - (f) has failed to comply with any lawful direction from the Authority.
- (2A) The actions referred to in subsection (2) are as follows —
- (a) revoke the licence or cancel the registration;
  - (b) impose conditions or further conditions upon the licence or registration or amend or revoke any such conditions;
  - (c) apply to the court for any order which is necessary to protect the interests of clients or creditors of the licensee or registered person such orders including an injunction or restitution or disgorgement order under section 18;
  - (d) publish in the Gazette and in any official publications of the Authority a breach by any person of this Law, of any regulations made hereunder or of any lawful direction issued by the Authority;
  - (e) at the expense of the licensee or registered person, require that an auditor's report be submitted to the Authority on the licensee's or registered person's anti-money laundering systems and procedures for compliance with the *Anti-Money Laundering Regulations (2020 Revision)*;
  - (f) require the substitution of any director or officer of the licensee or registered person whenever appointed or the divestment of ownership or control;
  - (g) at the expense of the licensee or registered person, appoint a person to advise the licensee or registered person on the proper conduct of its affairs and to report to the Authority thereon;
  - (h) at the expense of the licensee or registered person appoint a person to assume control of the licensee's or registered person's affairs who shall have all the powers necessary to administer the affairs of the licensee or registered person including the power to terminate the securities investment business of the licensee or registered person;
  - (i) in the case of a reasonable belief that the licensee or registered person has materially contravened the *Anti-Money Laundering Regulations (2020 Revision)*, report the same to the Director of Public Prosecutions; or
  - (j) require such action to be taken by the licensee or registered person as the Authority reasonably believes necessary for the purposes of dealing with the circumstances referred to in subsection (2)(a) to (f).
- (3) Where the Authority decides to take action under subsection (2A), it shall notify the licensee or registered person in writing, specifying the following —
- (a) the action that the Authority has taken or intends to take;

- (b) the reasons for the action, with reference to statutory provisions, and when it is to take effect;
  - (c) whether, in addition to (d), the licensee or registered person may make representations to the Authority within such period as may be specified in the notification; and
  - (d) the licensee's or registered person's right to appeal under sections 22 or 23 and the procedure therefor.
- (4) Where action is proposed to be taken by the Authority under subsection (2) and the licensee is a broker member of the Exchange, the Authority shall consult with the Exchange and provide it with a copy of any notification issued under subsection (3).
- (5) A person appointed under subsection (2A)(g) or (h) or whose appointment has been extended under subsection (6)(b) shall, from time to time at that person's discretion and in any case within three months of the date of that person's appointment or of the extension of that person's appointment, prepare and furnish to the Authority a report of the affairs of the licensee or registered person and of that person's recommendations thereon.
- (6) On receipt of a report under subsection (5), the Authority may —
- (a) revoke the appointment of the person appointed under subsection (2A)(g) or (h);
  - (b) extend the period of that person's appointment;
  - (c) subject to such conditions as the Authority may impose, allow the licensee or registered person to reorganise its affairs in a manner approved by it; or
  - (d) revoke the licence or cancel the registration and apply to the court for an order that the licensee or registered person, if either is a company, be wound up by the court in which case the provisions of the *Companies Law (2020 Revision)* relating to the winding up of a company shall apply.
- (7) Notwithstanding any other provision in this Law, the Authority may cancel a licence or registration if the licensee or registered person has ceased, or wishes to cease, to carry on securities investment business, or has not commenced business within one year of the date of the grant of the licence or registration.
- (8) Whenever the Authority revokes or cancels a licence or registration under this section or section 9 notice of such revocation or cancellation shall forthwith be published in the Gazette.

### **Injunctions and restitution and disgorgement orders**

- 18.** (1) If, on the application of the Authority the court is satisfied —
- (a) that there is a reasonable likelihood that a person will contravene section 5(1) or that a licensee or registered person will contravene this Law or any regulations hereunder;



- (b) that a person has contravened section 5(1) or that a licensee or registered person has contravened this Law or any regulations made hereunder and that there is a reasonable likelihood that the contravention will continue or be repeated; or
- (c) that a licensee or registered person has engaged in any fraudulent activity in relation to securities investment business,

it may grant an injunction restraining the contravention or anticipated contravention or the fraudulent activity.

- (2) If, on the application of the Authority, the court is satisfied that a person has entered into any transaction in contravention of section 5(1) or any other provision of this Law or any regulations made hereunder, the court may order that person, and any other person who appears to the court to have been knowingly concerned in the contravention, to take such steps as the court may direct for restoring the parties to the transaction to the position in which they were before the transaction was entered into.
- (3) The court may, on the application of the Authority, and subject to any other considerations the court finds relevant, make an order under subsection (4) if satisfied that a person has been carrying on securities investment business in contravention of this Law or any regulations made hereunder and —
  - (a) that profits have accrued to that person as a result of that person's contravention; or
  - (b) that one or more clients have suffered loss or been otherwise adversely affected as a result of that person's contravention.
- (4) The court may, under this section, order the person concerned to pay into court, or appoint a receiver to recover from that person, such sum as appears to the court to be just, having regard to —
  - (a) in a case within subsection (3)(a), the profits appearing to the court to have accrued;
  - (b) in a case within subsection (3)(b), the extent of loss or other adverse effect; or
  - (c) in a case within subsection (3)(a) and (b), the profits and the extent of loss or other adverse effect.
- (5) Any amount paid into court by, or recovered from, a person pursuant to an order under subsection (4) shall be distributed as the court may direct among those who appear to the court to have entered into transactions with that person as a result of which the profits or loss or other adverse effect in respect of the contravention occurred.
- (6) On an application under subsection (3) the court may require the person concerned to furnish it with such accounts or other information as it may require to establish whether any and if so what profits have accrued to that person as a

result of the contravention and for determining how any amounts are to be distributed under subsection (5); and the court may require such accounts or other information to be verified in such manner as it may direct.

- (7) Nothing in this section affects the right of any person other than the Authority to bring proceedings in respect of any of the matters to which this section applies.
- (8) Nothing in this section shall affect the rights of secured creditors.
- (9) The court shall not exercise the powers conferred on it by subsections (2) to (6) unless a reasonable opportunity has been given to persons affected to make representation to the court.

### **Duty of auditor**

- 19.** (1) If an auditor, in the course of carrying out an audit or producing a report under section 17(2A)(e) becomes aware of or has reasonable grounds to believe that the licensee or registered person —
  - (a) is or is likely to become unable to meet its obligations as they fall due;
  - (b) is carrying on business in breach of this Law or any regulations made hereunder;
  - (c) is carrying on or attempting to carry on business in a manner that is prejudicial to its clients or is winding up its business voluntarily in a manner that is prejudicial to its clients or creditors; or
  - (d) is carrying on or attempting to carry on business without maintaining any or sufficient accounting records or record keeping systems to enable the auditor to carry out an audit or produce a report under section 17(2A)(e),the auditor shall immediately give the Authority and the licensee or registered person written notice of that person's knowledge or belief giving reasons therefor, and an auditor who contravenes this provision is liable to removal by the Authority from its list of approved auditors.
- (2) A reference in this section to an auditor carrying out an audit or preparing a report on a licensee or registered person includes an auditor who was engaged to carry out such an audit or prepare such a report or who was in the course of so doing but resigned before completion or whose contract to carry out same was otherwise terminated.
- (3) No duty to which an auditor of a licensee or a registered person may be subject shall be regarded as contravened by reason of that person's communicating in good faith to the Authority any information or opinion on a matter specified in subsection (1) or providing any information or opinion in response to a request made by the Authority pursuant to a power conferred by this Law.
- (4) An auditor shall not be liable in damages for anything done or omitted to be done in the discharge or proposed discharge of that person's functions under this



Law in relation to the preparation of a report under section 17(2A)(e) or in relation to any notice given under subsection (1) unless it is shown that the act or omission was in bad faith.

### **Entry and search of premises**

- 20.** (1) If the court, on sworn information on oath, is satisfied that the conditions in subsection (2) are fulfilled and either —
- (a) that admission to the premises has been refused, or that a refusal is expected, and that reasonable notice of the intention to apply for the warrant has been given to the occupier; or
  - (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or that the occupier is temporarily absent,
- the court may, by warrant signed by a judge, authorise a constable of the rank of inspector or above to enter the premises, if need be by reasonable force.
- (2) The conditions referred to in subsection (1) are that there are reasonable grounds for suspecting that —
- (a) there is or has been, on the premises to which entry is sought, any contravention of this Law; or
  - (b) there is on those premises evidence of any contravention of this Law.
- (3) Every warrant granted under this section shall continue in force for a period of one month.
- (4) A constable entering any premises by virtue of this section or of a warrant issued under it, may be accompanied by such employees of, or advisers to, the Authority as may be necessary to ensure the successful execution of the warrant.
- (5) The constable authorised by any such warrant to search any premises may, if so authorised by the warrant, search every person who is found in those premises and may seize any documents found in the possession of any such person or in such premises which that person has reasonable ground for believing ought to have been produced pursuant to a lawful request from the Authority.
- (6) A person who wilfully obstructs a constable in the exercise of any powers conferred on that person by this section commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for five years.
- (7) The Rules Committee of the Court may make rules for the purposes of this section.

## Winding up

21. (1) The Authority may apply to the court for a licensee, former licensee or company that is or has been in contravention of section 5(1) to be wound up by the Court, notwithstanding any voluntary winding up proceedings that have commenced.
- (2) On an application under subsection (1), the court may make an order for the licensee to be wound up by the court if the court is of the opinion that the winding up would be in the public interest in all the circumstances of the case.
- (3) The Authority may apply to the court for an order that a person specified in Schedule 4 that has been in contravention of section 5(4) be wound up by the court, notwithstanding any voluntary winding up proceedings that have commenced.

## Appeals against decisions made under section 17(2A)(a) and (h)

22. (1) An appeal lies to the court from a decision of the Authority made under section 17(2A)(a) and (h).
- (2) An appeal against the decision of the Authority shall be by way of motion.
- (3) The appellant shall, within twenty-one days after the day on which the Authority has given its decision, serve a notice of motion signed by the appellant or that person's attorney-at-law on the Authority of that person's intention to appeal and of the general ground of that person's appeal.
- (4) A licensee or registered person aggrieved by a decision of the Authority may, upon notice to the Authority, apply to the court for leave to extend the time within which the notice of appeal prescribed by this section may be served and the court upon the hearing of such application may extend the time prescribed by this section as it considers fit.
- (5) The Authority shall, upon receiving the notice of appeal, transmit to the Clerk of the court without delay a copy of the decision and all papers relating to the appeal, but the Authority is not compelled to disclose any information if it is considered that the public interest would suffer by such disclosure.
- (6) At the hearing of the appeal the appellant shall, before going into the case, state all the grounds of appeal on which that person intends to rely and shall not, unless by leave of the court go into any matters not raised by such statements.
- (7) The court may adjourn the hearing of an appeal and may, upon the hearing thereof confirm, reverse, vary or modify the decision of the Authority or remit the matter with the opinion of the court thereon to the Authority.
- (8) An appeal against a decision of the Authority under this section shall not have the effect of suspending the execution of such decision.



**Appeals against other decisions of the Authority**

- 23.** (1) A licensee aggrieved by any decision of the Authority other than a decision under section 17(2A)(a), section 17(2A)(h), or section 6(2)(c) may, within twenty-one days of the communication of the decision to that person, or such longer period as may be allowed allow, appeal therefrom to the Cabinet and the decision made on such appeal shall be final.
- (2) A decision shall, if notice thereof is sent to a person by post, be deemed to have been communicated to that person at the time at which it would have been received in the ordinary course of post.
- (3) An appeal against a decision of the Authority under this section shall not have the effect of suspending the execution of such decision.
- (4) The Cabinet shall have power to regulate its own procedure for the purposes of this section.

**Part IV - False or Misleading Market and Insider Dealing****Creation of false or misleading market**

- 24.** A person who creates or does anything which is calculated to create a false or misleading appearance of active trading in any listed securities or a false or misleading appearance with respect to the market for, or the price of, any such securities commits an offence.

**Insider dealing**

- 25.** Subject to the defences available under this Law, any individual who has information as an insider commits an offence of insider dealing if —
- (a) he deals in listed securities that are price-affected securities in relation to the information;
  - (b) he encourages another person to deal in listed securities that are (whether or not that other knows it) price-affected securities in relation to the information; or
  - (c) he discloses the information otherwise than in the proper performance of the functions of that person's employment, office or profession, to another person.

**Defences**

- 26.** (1) An individual does not commit the offence of insider dealing by virtue of dealing in listed securities or encouraging another person to do so if that person shows —

- (a) that that person did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the listed securities;
  - (b) that at the time that person believed on reasonable grounds that the information had been disclosed widely enough to ensure that none of those taking part in the dealing in the listed securities would be prejudiced by not having the information; or
  - (c) that that person would have done what that person did even if that person had not had the information.
- (2) An individual does not commit the offence of insider dealing by virtue of a disclosure of information if that person shows —
- (a) that that person did not at the time expect any person, because of the disclosure, to deal in listed securities; or
  - (b) that, although that person had such an expectation at the time, that person did not expect the dealing to result in a profit attributable to the fact that the information was price-sensitive information in relation to listed securities.
- (3) References to a profit include avoidance of a loss.
- (4) The following special defences shall have effect for the purposes of this Part —
- (a) a person is not guilty of insider dealing by virtue of dealing in listed securities or encouraging another person to deal if that person shows that that person acted in good faith in the course of —
    - (i) his business as a market maker; or
    - (ii) his employment in the business of a market maker;
  - (b) a person is not guilty of insider dealing by virtue of dealing in listed securities or encouraging another to deal if that person shows that —
    - (i) the information which that person had as an insider was market information; and
    - (ii) it was reasonable for a person in that person's position to have acted as that person did despite having that information as an insider at the time, and in determining whether it is reasonable for an individual to do any act despite having market information at the time, there shall in particular be taken into account —
      - (A) the content of the information;
      - (B) the circumstances in which that person first had the information and in what capacity; and
      - (C) the capacity in which that person now acts;
  - (c) a person is not guilty of insider dealing by virtue of dealing in listed securities or encouraging another person to deal if that person shows —





- (i) that that person acted —
    - (A) in connection with an acquisition or disposal which was under consideration or the subject of negotiation, or in the course of a series of such acquisitions or disposals; and
    - (B) with a view to facilitating the accomplishment of the acquisition or disposal or the series of acquisitions or disposals; and
  - (ii) that the information which that person had as an insider was market information arising directly out of that person's involvement in the acquisition or disposal or series of acquisitions or disposals.
- (5) Market information is information consisting of one or more of the following facts —
- (a) that listed securities of a particular kind have been or are to be acquired or disposed of or that their acquisition or disposal is under consideration or the subject of negotiation;
  - (b) that listed securities of a particular kind have not been or are not to be acquired or disposed of;
  - (c) the number of listed securities acquired or disposed of or to be acquired or disposed of or whose acquisition or disposal is under consideration or the subject of negotiation;
  - (d) the price (or range of prices) at which listed securities have been or are to be acquired or disposed of or the price (or range of prices) at which listed securities whose acquisition or disposal is under consideration or the subject of negotiation may be acquired or disposed of; and
  - (e) the identity of the persons involved or likely to be involved in any capacity in the acquisition or disposal.

### **Territorial scope of offence of insider dealing**

- 27.** (1) An individual is not guilty of an offence falling within section 25(a) unless —
- (a) he was within the Islands at the time when that person is alleged to have done any act constituting or forming part of the alleged dealings; or
  - (b) the dealing occurred on the Exchange.
- (2) An individual is not guilty of an offence falling within section 25(b) or (c) unless —
- (a) he was within the Islands at the time when that person is alleged to have disclosed the information or encouraged the dealing; or
  - (b) the alleged recipient of the information or encouragement was within the Islands at the time when that person is alleged to have received the information or encouragement.

### Limits on section 25

28. (1) Section 25 does not apply to anything done by an individual acting on behalf of a public sector body in pursuit of monetary policies or policies with respect to the management of public debt or foreign exchange reserves.
- (2) No contract shall be void or unenforceable by reason only of section 25.

### Dealing in listed securities

29. A person deals in listed securities if —
- (a) he acquires or disposes of listed securities (whether as principal or agent); or
  - (b) he procures, directly or indirectly, an acquisition or disposal of listed securities by another person.

### Procuring the acquisition or disposal of a listed security

30. (1) A person procures the acquisition or disposal of a listed security if a listed security is acquired or disposed of by a person who is, in relation to the acquisition or disposal —
- (a) his agent;
  - (b) his nominee, or
  - (c) a person who is acting at that person's direction.
- (2) Subsection (1) is not exhaustive as to the circumstances in which a person may be regarded as procuring an acquisition or disposal of listed securities by another.
- (3) “**Acquisition**” or “**disposal**” in relation to a listed security includes agreeing to acquire or dispose of a listed security or entering into or terminating a contract which creates the listed security, as the case may be.

### Inside information

31. “**Inside information**” means information which —
- (a) relates to particular listed securities or to a particular issuer of listed securities or to particular issuers of listed securities and not to listed securities generally or to issuers of listed securities generally;
  - (b) is specific or precise;
  - (c) has not been made public; and
  - (d) is price sensitive.



**“Price-affected securities” and “price-sensitive information”**

- 32.** Listed securities are “**price-affected**” securities in relation to inside information, and inside information is “**price-sensitive**” in relation to listed securities, if and only if the information would, if made public, be likely to have a significant effect on the price or value of the listed securities.

**Information as an insider**

- 33.** An individual has information as an insider if and only if —
- (a) it is, and that person knows it is, inside information, and
  - (b) that person has it, and knows that that person has it, from an inside source, that is to say —
    - (i) by virtue of being a director, employee or shareholder of an issuer of listed securities;
    - (ii) by virtue of having access to the information through that person’s employment, office or profession; or
    - (iii) by virtue of the direct or indirect source of that person’s information being a person who has it in either of the ways set out in (i) or (ii).

**Definition of “made public”**

- 34.** (1) “**Made public**” shall be construed in accordance with subsections (2) and (3), but those provisions are not exhaustive as to the meaning of that expression.
- (2) Information is made public if —
- (a) it is published in accordance with the rules of the Exchange for the purpose of informing investors and their professional advisors;
  - (b) it is contained in records which by virtue of law are open to inspection by the public;
  - (c) it can be readily acquired by those likely to deal in any listed securities, or with any issuer of listed securities, to which the information relates; or
  - (d) it is derived from information which has been made public.
- (3) Information may be treated as made public even though —
- (a) it can be acquired only by persons exercising diligence or expertise;
  - (b) it is communicated to a section of the public and not the public at large;
  - (c) it can be acquired only by observation;
  - (d) it is communicated only on payment of a fee; or
  - (e) it is published only outside the Islands.

**Penalties**

- 35.** (1) Any person who commits an offence under section 24 or 25 is liable —



- (a) on summary conviction, to a fine of four thousand dollars and to imprisonment for one year; or
  - (b) on conviction on indictment, to a fine of ten thousand dollars and to imprisonment for seven years.
- (2) Proceedings with respect to offences under section 24 or 25 may only be instituted by the Director of Public Prosecutions.

## Part V - Broker Members

### Duty of Exchange and Authority in relation to broker members

36. (1) Where, in relation to a broker member of the Exchange, the Exchange becomes aware of a specified matter, the Exchange shall, as soon as practicable, submit a written report to the Authority thereon providing full details of the specified matter and send a copy of the report to the broker member.
- (2) In this section —  
“**specified matter**” means —
- (a) a matter which in the opinion of the Exchange has adversely affected or is likely to adversely affect the ability of the broker to meet that person’s obligations under the rules of the Exchange;
  - (b) any sustained or material contravention by the broker of the rules of the Exchange or of this Law or any material breach of a condition of the broker member’s licence;
  - (c) revocation by the Exchange of the broker’s membership; or
  - (d) any other material matter that the Exchange considers relevant to the Authority’s discharge of its functions under this Law.
- (3) The Authority shall similarly keep the Exchange informed of any material matters relating to the standing with the Authority of the Exchange’s broker members who are licensees of the Authority.
- (4) A person who, not being a broker member of the Exchange, passes themselves off as such commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.



## Part VI - General

### Offences by corporations

- 37.** (1) Where an offence under, or under any regulation made under, this Law which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any senior officer of the body corporate, or any person who was purporting to act in any such capacity, that person as well as the body corporate commits that offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with that person's functions of management as if that person were a director of the body corporate.

### Indemnity

- 38.** Neither the Cabinet, nor a director or officer of the Authority nor any person authorised in writing by the Authority to assist it in undertaking any of its functions under this Law or appointed pursuant to section 17 shall be liable in damages for anything done or omitted to be done in the discharge or purported discharge of their functions under this Law, unless it is shown that the act or omission was in bad faith.

### Offences

- 39.** A person who contravenes any provision or requirement of this Law for which no offence is specifically created commits an offence and is liable on summary conviction to a fine of four thousand dollars.

### Spent

- 40.** The transitional provision introduced by the *Securities Investment Business Law, 2001 [Law 44 of 2001]* is now spent.

### Amendment of the Schedules

- 41.** The Cabinet may, after consultation with the Authority, by Order amend the Schedules.

### Transitional

- 42.** (1) Any person who is registered with the Authority pursuant to paragraphs 1, 4 and 5 of Schedule 4 on the day immediately before 18th June, 2019, the commencement date of the *Securities Investment Business (Amendment) Law, 2019 [Law 8 of 2019]*, shall —
- (a) provide such information as the Authority may request by 15th August, 2019; and

- (b) take such steps to re-register with the Authority as a registered person by 15th January, 2020 if that person wishes to continue carrying on securities investment business.
- (2) A person described under subsection (1) who —
- (a) does not provide the required information to the Authority by 15th August, 2019; or
  - (b) does not complete the re-registration process under this section by 15th January, 2020,

shall cease conducting securities investment business in or from within the Islands and shall be deregistered by the Authority.



## SCHEDULE 1

(section 2)

### Securities

#### Shares

1. Any of the following securities —
  - (a) shares and stock of any kind in the share capital of a company;
  - (b) interests in a limited partnership established under the *Partnership Law (2013 Revision)*;
  - (c) interests in an exempted limited partnership as defined in the *Exempted Limited Partnership Law (2018 Revision)*;
  - (d) interests in a limited partnership, or an exempted limited partnership, constituted under the laws of a jurisdiction other than the Islands; and
  - (e) units of participation in a unit trust as defined in the *Mutual Funds Law (2020 Revision)*.

#### Instruments creating or acknowledging indebtedness

2. Debentures, debenture stock, loan stock, bonds, certificates of deposit and any other instruments creating or acknowledging indebtedness other than —
  - (a) 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) a check or other bill of exchange, a bankers draft or a letter of credit;
  - (c) a bank note, a statement showing a balance in a current, deposit or savings account, a lease or other disposition of property;
  - (d) a contract of insurance;
  - (e) any instrument creating or acknowledging indebtedness in respect of money raised by the Government of the Islands or any public authority created thereby; and
  - (f) an instrument creating or acknowledging indebtedness and creating security for that indebtedness over land.

#### Instruments giving entitlements to securities

3. Warrants and other instruments entitling the holder to subscribe for securities falling within paragraph 1 or 2.



### **Certificates representing certain securities**

4. Certificates or other instruments which confer contractual or proprietary rights —
  - (a) in respect of any security falling in paragraph 1, 2 or 3 being a security held by a person other than the person on whom the rights are conferred by the certificate or instrument; and
  - (b) the transfer of which may be effected without the consent of that person.

### **Options**

5. Options to acquire or dispose of —
  - (a) a security falling in any other paragraph of this Schedule;
  - (b) any currency;
  - (c) any precious metal; or
  - (d) an option to acquire or dispose of a security falling within this paragraph by virtue of subparagraph (a), (b) or (c) above.

### **Futures**

6. Rights under a contract for the disposal 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 other than a contract made for commercial and not investment purposes.
7. A contract is to be regarded as made for investment purposes if it is made or traded on a recognised securities exchange or made otherwise than on a recognised securities exchange but is 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.
8. A contract not falling within paragraph 7 is to be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within seven days.
9. The following are indications that a contract not falling within paragraph 7 or 8 is made for commercial purposes and the absence of them is an indication that it is made for investment purposes —
  - (a) one or more of the parties is a producer of the commodity or other property or uses it in that person's business; or
  - (b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.
10. It is an indication that a contract is made for commercial purposes that the prices, the lot, the delivery date or other terms are determined by the parties for the purposes of the particular contract and not by reference (or not solely by reference) to regularly published prices, to standard lots or delivery dates or to standard terms.





11. The following are indications that a contract is made for investment purposes —
  - (a) it is expressed to be as traded on a securities exchange;
  - (b) performance of the contract is ensured by a securities exchange or a clearing house; or
  - (c) there are arrangements for the payment or provision of margin.
12. For the purposes of paragraph 6, a price is to be taken to be agreed on when a contract is made —
  - (a) 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
  - (b) 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.

### **Contracts for differences**

13. Rights under —
  - (a) a contract for differences; or
  - (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —
    - (i) the value or price of property of any description; or
    - (ii) an index or other factor designated for that purpose in that contract; other than —
      - (A) rights under a contract if the parties intend that the profit is to be secured or the loss is to be avoided by one or more of the parties taking delivery of any property to which the contract relates; or
      - (B) rights under a contract under which money is received by way of deposit on terms that any interest or other return to be paid on the sum deposited will be calculated by reference to fluctuations in an index or other factor.

## SCHEDULE 2

(section 4)

### **Securities investment business - regulated activities**

The following activities are activities carried on in the course of securities investment business for the purposes of this Law —

1. **Dealing in securities**

- (a) buying, selling, subscribing for or underwriting securities as an agent; or
- (b) buying, selling, subscribing for or underwriting securities as principal where the person entering into that transaction —
  - (i) holds themselves out as willing, as principal, to buy, sell or subscribe for securities of the kind to which the transaction relates at prices determined by that persons generally and continuously rather than in respect of each particular transaction;
  - (ii) holds themselves out as engaging in the business of underwriting securities of the kind to which the transaction relates; or
  - (iii) regularly solicits members of the public with the purpose of inducing them, as principals or agents, to buy, sell, subscribe for or underwrite securities and such transaction is entered into as a result of such person having solicited members of the public in that manner.

2. **Arranging deals in securities**

Making arrangements with a view to —

- (a) another person (whether as a principal or an agent) buying, selling, subscribing for or underwriting securities; or
- (b) a person who participates in the arrangements buying, selling, subscribing for or underwriting securities.

3. **Managing securities**

Managing securities belonging to another person in circumstances involving the exercise of discretion.

4. **Advising on securities**

Advising a person on securities if the advice is —

- (a) given to the person in that person's capacity as an investor or potential investor or in that person's capacity as agent for an investor or a potential investor; and
- (b) advice on the merits of that person's doing any of the following (whether as principal or agent) —



- (i) buying, selling, subscribing for or underwriting a particular security;  
or
- (ii) exercising any right conferred by a security to buy, sell, subscribe for, or underwrite a security.

5. **Managing EU Connected Funds**

Performing investment management functions, comprising at least of risk or portfolio management, for one or more EU Connected Funds as notified to the relevant competent authority of the relevant Member State in accordance with the relevant laws and regulations implementing the AIFMD in the Member State.

6. **Marketing EU Connected Funds**

Marketing the shares, trust units or partnership interests of an EU Connected Fund to investors or potential investors in a Member State, as notified to the relevant competent authority of the relevant Member State in accordance with the relevant laws and regulations implementing the AIFMD in the Member State.

7. **Acting as Depositary of an EU Connected Fund**

Performing the function of a depositary for an EU Connected Fund in accordance with the relevant Laws and regulations implementing AIFMD in any Member State.

## SCHEDULE 2A

*(sections 4, 5 and 6)*

### Non-registrable persons

1. Persons described in paragraph 2 are persons for whom there is no requirement for registration under this Law and shall be referred to as “**non-registrable persons**”.
2. The persons referred to in paragraph 1 are as follows —
  - (a) A person participating in a joint enterprise (and where that person is a company any other company which is part of the same group of companies as that person) with the person carrying on the securities investment business where the activities constituting such securities investment business are to be carried on for the purposes of or in connection with that joint enterprise.
  - (b) The following persons —
    - (i) the Exchange;
    - (ii) the Authority; or
    - (iii) the Government of the Islands or any public authority created by the Government.
  - (c) A person carrying on securities investment business only in the course of acting in any of the following capacities —
    - (i) director;
    - (ii) partner;
    - (iii) manager of a limited liability company;
    - (iv) liquidator (including a provisional liquidator);
    - (v) trustee in bankruptcy;
    - (vi) receiver of an estate or company;
    - (vii) executor or administrator of an estate; or
    - (viii) a trustee acting together with co-trustees in their capacity as such, or acting for a beneficiary under the trust,provided that in each case that person is not separately remunerated for any of the activities which constitute the carrying on of such securities investment business otherwise than as part of any remuneration such person receives for acting in that capacity and either —
    - (A) does not hold themselves out as carrying on securities investment business other than as a necessary or incidental part of performing functions in that capacity, or



- (B) is acting on behalf of a company, partnership or trust that is otherwise licensed or exempted from licensing under this Law.
- (d) The conduct of securities investment business by a single family office.

## SCHEDULE 3

*(section 4)*

### Excluded activities

The activities specified in this Schedule are not considered securities investment business in the following circumstances —

#### 1. Dealing in securities

##### (1) Securities evidencing indebtedness:

Where a person as principal or agent buys, sells, subscribes for or underwrites securities and such securities create or acknowledge indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which such person or that person's principal has made, granted or provided.

##### (2) Issuing, redeeming or repurchasing securities:

Where a company, partnership or trust issues, redeems or repurchases any of its securities falling within paragraphs 1 to 3 of Schedule 1.

##### (2A) Disposing of treasury shares:

Where a company disposes of any of its treasury shares.

##### (3) Risk management:

Where a person buys, sells, subscribes for or underwrites securities and —

- (a) the transaction relates to securities falling within paragraph 5, 6 or 13 of Schedule 1;
- (b) none of the parties to the transaction are individuals;
- (c) the sole or main purpose for which the person concerned enters into the transaction (either by itself or in combination with other such transactions) is to limit the extent to which a relevant business will be affected by any identifiable risk arising otherwise than as a result of the carrying on of any activities specified in Schedule 2 and which is not excluded by virtue of this Schedule; and
- (d) the relevant business is a business other than securities investment business carried on by —
  - (i) the person entering into the transaction;
  - (ii) a company within the same group of companies as such person; or
  - (iii) another person who is or is proposing to become a participator in a joint enterprise with such person.

##### (4) Disposal of goods or supply of services:



Where a person buys, sells, subscribes for or underwrites securities for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply by a supplier to a customer and the supplier is acting —

- (a) as a principal; or
- (b) as an agent,

and the supplier does not hold themselves out generally as engaging in the buying, selling, subscribing for or underwriting of securities and does not regularly solicit members of the public to buy, sell, subscribe for or underwrite securities.

(5) Incidental activity:

Where a person buys, sells, subscribes for or underwrites securities in the course of carrying on any profession or business not otherwise constituting securities investment business and where such transaction is a necessary or incidental part of other services provided in the course of carrying on that profession or business and is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.

(6) Employee schemes:

Where an employer buys, sells, subscribes for or underwrites securities in connection with the operation of a share or pension scheme (and the employer is not or not yet subject to the provisions of the *National Pensions Law (2012 Revision)* for the benefit of employees or former employees, or of their spouses, widows, widowers or children or step-children under the age of eighteen.

(7) Application of proprietary assets:

Where a company, partnership or trust, acting as principal and dealing only on its own behalf buys, sells or subscribes for securities by applying its proprietary assets, otherwise than as described in paragraph 1(b) of Schedule 2.

## 2. Arranging deals in securities

(1) Arranging own deals:

Where a person makes arrangements relating to a transaction to which that person will themselves be a party as principal or which will be entered into by that person as agent for one of the parties to the transaction.

(2) Incidental activities:

Where a person makes arrangements and such arrangements are made in the course of carrying on any profession or business not otherwise constituting securities investment business and where the making of the arrangements is a necessary or incidental part of other services provided in the course of carrying

on that profession or business and is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.

(3) Enabling parties to communicate:

Where a person makes arrangements to provide means by which one party to a transaction (or potential transaction) is able to communicate with other parties to the transaction or potential transaction.

(4) Arrangements in connection with securities evidencing indebtedness:

Where a person makes arrangements in respect of a transaction referred to in paragraph 1 (1).

(5) Provision of finance:

Where a person makes arrangements for the sole purpose of providing finance to enable a person, as principal or agent, to buy, sell, subscribe for or underwrite securities.

(6) Introducing:

Where a person makes arrangements to introduce a person to another person and —

- (i) the person to whom introductions are to be made is a person referred to in Schedule 4; and
- (ii) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to securities generally or in relation to any class of securities to which the arrangements relate.

(7) Arrangements for the issue of securities:

Where a person makes arrangements in respect of a transaction referred to in paragraphs 1(1) and 1(7).

(8) Disposal of goods or supply of services:

Where a supplier makes arrangements made for, or with a view to, a transaction which is to be entered into by a customer for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply.

(9) Employee schemes:

Where a person makes arrangements in connection with the operation by an employer of a share or pension scheme for the benefit of employees or former employees, or of their spouse, widows, widowers or children or step-children under the age of eighteen (where the arrangements are not regulated by the *National Pensions Law (2012 Revision)*).





**3. Managing securities**

Where a person manages securities that are or are to be managed for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply by a supplier to a customer.

**4. Advising on securities****(1) Disposal of goods or supply of services:**

Where a supplier gives advice to that person's customer for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply.

**(2) Publications:**

Where a person gives advice in any communications media and —

- (a) the principal purpose is not to induce persons to buy, sell, subscribe for or underwrite particular securities; or
- (b) the person responsible does not derive any direct benefit from any such purchase, disposal, subscription or underwriting;

**(3) Incidental activities:**

Where a person gives legal, accounting or other advice and the advice is given in the course of carrying on any profession or business not otherwise constituting securities investment business and the giving of the advice is a necessary or incidental part of other services provided in the course of carrying on that profession or business and is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.

## SCHEDULE 4

*(sections 2, 5, 6 and 21)*

### **Persons required to be registered under section 5(4)**

1. A company within a group of companies carrying on securities investment business exclusively for one or more companies within the same group.
2. A person carrying on securities investment business exclusively for one or more of the following classes of persons —
  - (a) a sophisticated person;
  - (b) a high net worth person; or
  - (c) a company, partnership or trust (whether or not regulated as a mutual fund) of which the shareholders, unit holders or limited partners are one or more persons falling within (a) or (b),  
and who has a registered office or a place of business in the Islands for which services are provided by a person licensed to provide such services.
3. A person to whom section 4(1) applies but who is regulated in respect of securities investment business by a recognised overseas regulatory authority in the country or territory (other than the Islands) in which the securities investment business is being conducted.



## SCHEDULE 4A

(section 2)

### Connected Persons within a Single Family

1. The following persons are connected persons in relation to an individual within a single family —
  - (a) spouse;
  - (b) the descendants of the individual and their spouses;
  - (c) parents, including step-parents;
  - (d) grandparents;
  - (e) parents-in-law, including step-parents-in-law;
  - (f) brother, step-brother, sister, step-sister and their spouses;
  - (g) spouse's grandparents;
  - (h) spouse's brother, step-brother, sister, step-sister and their spouses and children;
  - (i) parent's brother, step-brother, sister, step-sister and their spouses;
  - (j) children of the brother, step-brother, sister or step-sister of the individual's parents, both present and future, including stepchildren, and their spouses; and
  - (k) children of the individual's brother, step-brother, sister or stepsister, both present and future, including step-children, and their spouses.
2. For any of the relationships listed in paragraph 1 that may be established by blood, that same relationship may also be established by adoption.
3. In paragraph 1(b), the term “**descendants of the individual**” means the individual's children, the children of that individual's children, the children of those children, and so on.
4. For the purpose of paragraph 3, the term “**children**” includes step-children.

**Publication in consolidated and revised form authorised by the Cabinet this 7th day of January, 2020.**

**Kim Bullings**  
*Clerk of Cabinet*





## ENDNOTES

### Table of Legislation History:

SL #	Law #	Legislation	Commencement	Gazette
	8/2019	Securities Investment Business (Amendment) Law, 2019	18-Jun-2019	LG21/2019/s2
		<b>Securities Investment Business Law (2019 Revision)</b>	21-Feb-2019	LG4/2019/s4
44/2018		Securities Investment Business (Amendment) Law, 2015 (Commencement) Order, 2018	31-Dec-2018	G99/2018/s2
	13/2015	Securities Investment Business (Amendment) Law, 2015	1-Jan-2019	GE73/2015/s3
		<b>Securities Investment Business Law (2015 Revision)</b>	17-Jul-2015	GE53/2015/s25
	24/2012	Securities Investment Business (Amendment) Law, 2012	11-Dec-2012	GE123/2012/s1
	19/2012	Director of Public Prosecutions (Miscellaneous Amendments) Law, 2012 (part)	17-Sep-2012	GE90/2012/s17
		<b>Securities Investment Business Law (2011 Revision)</b>	21-Nov-2011	G24/2011/s10
	15/2011	Securities Investment Business (Amendment) Law, 2011	27-Apr-2011	GE32/2011/s2
		<b>Securities Investment Business Law (2010 Revision)</b>	22-Nov-2010	G24/2010/s9
	26/2009	Securities Investment Business (Amendment) Law, 2009	26-Nov-2009	GE83/2009/s1
		<b>Securities Investment Business Law (2004 Revision)</b>	23-Aug-2004	G17/2004/s10
37/2003		Securities Investment Business Law, 2001 (Further Commencement) Order, 2003	28-Jul-2003	G15/2003/s17
32/2002		Securities Investment Business Law, 2001 (Commencement) Order, 2002	14-Aug-2002	GE29/2002/s1
		<b>Securities Investment Business Law (2003 Revision)</b>	14-Jul-2003	G14/2003/s8
21/2002		Securities Investment Business (Amendment) Order, 2002	15-Aug-2002	GE30/2002/s1
	44/2001	Securities Investment Business Law, 2001	29-Jul-2003	GE13/2002/s2





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