

SCHEDULE 2

Section 5(1)

REGULATED ACTIVITIES

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REGULATED ACTIVITIES

PART 1
GENERAL

Interpretation of Schedule 2.

1. In this Schedule—

“electronic money” has the meaning given in Part 3 of this Schedule;

“foundation” has the same meaning as in the Private Foundations Act 2017;

“investment services and activities” has the meaning given in Chapter 2 of Part 6 of this Schedule;

“market operator” means a person or persons who manages and/or operates the business of a regulated market and may be the regulated market itself;

“money-market instruments” has the meaning given in Chapter 2 of Part 6 of this Schedule;

“multilateral system” means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system;

“regulated market” means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments (in the system and in accordance with its non-discretionary rules) in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly—

(a) in Gibraltar, in accordance with provisions contained in or made under this Act;

(b) in an EEA State, in accordance with Title III of the MiFID 2 Directive;

“trading venue” means a regulated market, an MTF or an OTF; and

“UCITS” has the meaning given in Part 18.

PART 2 DEPOSITS

General

Application and interpretation of Part 2 of this Schedule.

2.(1) This Part of this Schedule—

(a) has effect in relation to the item listed in section 5(2)(a) (deposits); and

(b) specifies the kind of activity carried on in relation to deposits which is to be a regulated activity.

(2) In this Part “deposit” means a sum of money, other than one excluded by any of paragraphs 4 to 10, paid on terms under which it will be repaid, with or without interest or premium, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it.

The regulated activity

Accepting deposits.

3. Accepting deposits is a specified kind of activity if—

(a) money received by way of deposit is lent to others; or

(b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on money received by way of deposit.

Exclusions

Sums paid by the Gibraltar Savings Bank, central banks etc.

4. A sum is not a deposit for the purposes of paragraph 3 if it is paid by—
- (a) the Gibraltar Savings Bank;
 - (b) the central bank of an EEA State or the European Central Bank;
 - (c) a public authority of Gibraltar; or
 - (d) a public international body of which an EEA State is a member.

Sums referable to property or services or the giving of security.

5. A sum is not a deposit for the purposes of paragraph 3 if it is paid—
- (a) by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;
 - (b) by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
 - (c) by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

Sums paid by certain persons.

- 6.(1) A sum is not a deposit for the purposes of paragraph 3 if it is—
- (a) paid by a person in the course of carrying on a business consisting wholly or to a significant extent of lending money;
 - (b) paid by one company to another at a time when both are members of the same group or when the same individual is a majority shareholder controller of both of them; or
 - (c) paid by a person who, at the time when it is paid, is a close relative of the person receiving it or who is, or is a close relative of, a director or manager of that person or who is, or is a close relative of, a controller of that person.

(2) For the purposes of sub-paragraph (1)(b), an individual is a majority shareholder controller of a company if—

- (a) the individual is a controller of the company by virtue of section 131(4)(a) or (b); and
- (b) the individual's holding of the shares or voting power described in either of those provisions is 50% or more.

(3) In the application of sub-paragraph (1)(c) to a sum paid by a partnership, that sub-paragraph has effect as if, for the reference the person paying the sum, there were substituted a reference to each of the partners.

(4) In sub-paragraph (1)(c), “close relative”, in relation to a person (“P”), means—

- (a) P's spouse or civil partner;
- (b) P's children and step children, P's parents and step-parents, P's sisters and brothers and P's step-sisters and step-brothers; and
- (c) the spouse or civil partner of any person within paragraph (b).

Sums received by practising lawyers.

7.(1) A sum is not a deposit for the purposes of paragraph 3 if it is received by a practising lawyer acting in the course of his or her profession.

(2) In sub-paragraph (1), “practising lawyer” means—

- (a) a person admitted or entitled to practise as a barrister or solicitor under section 28 or 29 of the Supreme Court Act, as the case may be; or
- (b) an EEA lawyer providing services in accordance with Part 4A of the Supreme Court Act.

Sums received by persons authorised to deal etc.

8.(1) For the purposes of sub-paragraph (2), “relevant persons” are—

- (a) an authorised person with permission under Part 7 of this Act to carry on an activity of a kind specified by—
 - (i) Chapter 2 of Part 6;
 - (ii) Chapter 2 of Part 11; or
 - (iii) Chapter 3 of Part 11; or

(b) an exempt person in relation to any such activity.

(2) A sum is not a deposit for the purposes of paragraph 3 if it is received by a relevant person in the course of, or for the purpose of, carrying on the activity in question (or any activity which would be such an activity but for any exclusion made by this Part) with or on behalf of the person by or on behalf of whom the sum is paid.

Sums received in exchange for electronic money.

9. A sum is not a deposit for the purposes of paragraph 3 if it is immediately exchanged for electronic money.

Funds received for payment services.

10.(1) A sum is not a deposit for the purposes of paragraph 3 if it is received by a person listed in sub-paragraph (2) from a payment service user with a view to the provision of payment services.

(2) The listed persons are—

- (a) a payment institution within meaning of the Payment Services Regulations;
- (b) a small payment institution within the meaning of those Regulations;
- (c) an EEA payment institution within the meaning of the Payment Services Regulations;
- (d) an authorised electronic money institution within the meaning of the Electronic Money Regulations;
- (e) a small electronic money institution within the meaning of the Electronic Money Regulations; or
- (f) an EEA authorised electronic money institution within the meaning of the Electronic Money Regulations.

(3) In this paragraph—

“the Electronic Money Regulations” means the Financial Services (Electronic Money) Regulations 2019;

“the Payment Services Regulations” means the Financial Services (Payment Services) Regulations 2019;

“payment services” has the meaning given in Part 4 of this Schedule; and

“payment service user” has the same meaning as in the Payment Services Regulations.

**PART 3
ELECTRONIC MONEY**

General

Application of Part 3 of this Schedule.

11. This Part of this Schedule—

- (a) has effect in relation to the item listed in section 5(2)(b) (electronic money); and
- (b) specifies the kind of activity carried on relation to electronic money which is to be a regulated activity.

Interpretation of Part 3 of this Schedule.

12.(1) In this Part “electronic money” means electronically (including magnetically) stored monetary value as represented by a claim on the electronic money issuer which—

- (a) is issued on receipt of funds for the purpose of making payment transactions as defined in Article 4(5) of the Payment Services Directive;
- (b) is accepted by a person other than the electronic money issuer; and
- (c) is not excluded by sub-paragraph (2).

(2) The following are not electronic money for the purposes of this Part—

- (a) monetary value stored on instruments that can be used to acquire goods or services only—
 - (i) in or on the electronic money issuer’s premises; or
 - (ii) under a commercial agreement with the electronic money issuer, either within a limited network of service providers or for a limited range of goods or services; or
- (b) monetary value that is used to make payment transactions executed by means of any telecommunication, digital or information technology (“IT”) device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

(3) “Payment service user” has the meaning given in Part 4 of this Schedule.

The regulated activity

Issuing electronic money.

13. Issuing electronic money is a specified kind activity.

**PART 4
PAYMENT SERVICES**

General

Application of Part 4 of this Schedule.

14.(1) This Part of this Schedule—

- (a) has effect in relation to the item listed in section 5(2)(c) (payment services);
- (b) specifies the kinds of payment services to which this Part applies; and
- (c) specifies the kind of activity carried on in relation to such payment services which is to be a regulated activity.

Interpretation of Part 4.

15. In this Part—

“branch” means a place of business, other than the head office, of—

- (a) a registered firm with permission under Part 7 of this Act to carry on an activity of a kind specified by paragraph 19;
- (b) a small payment institution which, in accordance with regulations made under section 61, is an exempt person in respect of that activity;
- (c) an account information service provider which, in accordance with regulations made under section 61, is an exempt person in respect of that activity;
- (d) an EEA firm exercising an EEA right in Gibraltar subject to the conditions of the Payment Services Directive; or
- (e) a person that is registered as an account information service provider in an EEA State under the Payment Services Directive;

“credit transfer” means a payment service for crediting a payee’s payment account with a payment transaction or a series of payment transactions from a payer’s payment account by the payment service provider which holds the payer’s payment account, based on an instruction given by the payer;

“direct debit” means a payment service for debiting a payer’s payment account, where a payment transaction is initiated by the payee on the basis of consent given by the payer to the payee, to the payee’s payment service provider or to the payer’s own payment service provider;

“funds” means banknotes, coins, scriptural money or electronic money;

“payee” means a person who is the intended recipient of funds which have been the subject of a payment transaction;

“payer” means a person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, who gives a payment order;

“payment account” means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

“payment instrument” means a personalised device or procedure agreed between a payment service user and a payment service provider and used in order to initiate a payment order;

“payment order” means an instruction by a payer or payee to its payment service provider requesting the execution of a payment transaction;

“payment service provider” means any of the following persons when carrying out payment services—

- (a) a registered firm with permission under Part 7 of this Act to carry on an activity of a kind specified by paragraph 19;
- (b) a small payment institution which, in accordance with regulations made under section 61, is an exempt person in respect of that activity;
- (c) an account information service provider which, in accordance with regulations made under section 61, is an exempt person in respect of that activity;
- (d) an EEA firm exercising an EEA right in Gibraltar subject to the conditions of the Payment Services Directive;
- (e) credit institutions within the meaning of Article 4(1) of the Capital Requirements Regulation, including branches of those institutions within the EEA, regardless of whether the head offices of those branches are located within the EEA or (in accordance with Article 47 of the Capital Requirements Directive) outside the EEA;
- (f) electronic money institutions within the meaning of the E-Money Directive, including branches within the EEA of electronic money institutions with head offices outside the EEA, so far as the payment services provided by those branches are linked to the issuance of electronic money;
- (g) post office giro institutions entitled under Gibraltar law to provide payment services;

- (h) the European Central Bank and the national central banks of EEA States, other than when acting in their capacity as a monetary authority or carrying out other functions of a public nature; and
- (i) EEA States and their regional or local authorities, other than when carrying out functions of a public nature;

“payment services” is to be understood in accordance with paragraph 16;

“payment service user” means a person making use of a payment service in the capacity of payer, payee, or both; and

“payment transaction” means an act, initiated by or on behalf of the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee.

Payment services to which Part 4 applies.

16. The payment services referred to in section 5(2)(c) to which this Part applies—

- (a) are any of the activities specified in paragraph 17; but
- (b) do not include any activity specified in paragraph 18.

Activities which are payment services.

17. The activities which are payment services are—

- (1) Services enabling cash to be placed on a payment account and all of the operations required for operating a payment account.
- (2) Services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account.
- (3) Execution of payment transactions, including transfers of funds on a payment account with the user’s payment service provider or with another payment service provider—
 - (a) execution of direct debits, including one-off direct debits;
 - (b) execution of payment transactions through a payment card or a similar device;
 - (c) execution of credit transfers, including standing orders.

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- (4) Execution of payment transactions where the funds are covered by a credit line for a payment service user—
- (a) execution of direct debits, including one-off direct debits;
 - (b) execution of payment transactions through a payment card or a similar device;
 - (c) execution of credit transfers, including standing orders.

- (5) Issuing of payment instruments and/or acquiring of payment transactions.

In point (5)—

- (a) “issuing of payment instruments” means a payment service by a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer’s payment transactions; and
- (b) “acquiring of payment transactions” means a payment service provided by a payment service provider contracting with a payee to accept and process payment transactions, which results in a transfer of funds to the payee.

- (6) Money remittance.

In point (6) “money remittance” means a payment service where funds are received from a payer, without any payment account being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee, to another payment service provider acting on the payee’s behalf or where the funds are received on behalf of and made available to the payee.

- (7) Payment initiation services.

In point (7)—

- (a) “payment initiation service” means a service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider; and
- (b) “payment order” means an instruction by a payer or payee to its payment service provider requesting the execution of a payment transaction.

- (8) Account information services.

In point (8) “account information services” means an online service to provide consolidated information on one or more payment accounts held by a payment service user with either another payment service provider or with more than one payment service provider.

Activities which are not payment services.

18. The activities which do not constitute payment services are–

- (a) Payment transactions executed wholly in cash and directly between the payer and the payee, without any intermediary intervention.
- (b) Payment transactions between the payer and the payee through a commercial agent authorised in an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of either the payer or the payee but not both the payer and the payee.
- (c) The professional physical transport of banknotes and coins, including their collection, processing and delivery.
- (d) Payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity.
- (e) Services where cash is provided by the payee to the payer as part of a payment transaction for the purchase of goods or services following an explicit request by the payer immediately before the execution of the payment transaction.
- (f) Cash-to-cash currency exchange operations where the funds are not held on a payment account.
- (g) Payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee–
 - (i) paper cheques governed by the Geneva Convention of 19 March 1931 providing a uniform law for cheques or similar paper cheques governed by the laws of EEA States which are not party to that Convention;
 - (ii) paper-based drafts governed by the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes or similar paper-based drafts governed by the laws of EEA States which are not party to that Convention;
 - (iii) paper-based vouchers;
 - (iv) paper-based traveller's cheques;
 - (v) paper-based postal money orders as defined by the Universal Postal Union.
- (h) Payment transactions carried out within a payment system or securities settlement system between payment service providers and settlement agents, central counterparties, clearing houses, central banks or other participants in the system.

In point (h) “payment system” means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and settlement of payment transactions.

- (i) Payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by the persons referred to in point (h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services or by any other entities allowed to have the custody of financial instruments.
- (j) Services provided by technical service providers, which support the provision of payment services, without the provider entering at any time into possession of the funds to be transferred—
 - (i) including—
 - the processing and storage of data;
 - trust and privacy protection services;
 - data and entity authentication;
 - information technology (IT) and communication network provision; and
 - the provision and maintenance of terminals and devices used for payment services; but
 - (ii) excluding payment initiation services or account information services.
- (k) Services based on specific payment instruments that can be used only in a limited way and meet one of the following conditions—
 - (i) instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer;
 - (ii) instruments which can be used only to acquire a very limited range of goods or services;
 - (iii) instruments valid only in a single EEA State, are provided at the request of an undertaking or a public sector entity and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers having a commercial agreement with the issuer.

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- (l) Payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service—
- (i) for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or
 - (ii) performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets;

where the value of any single payment transaction does not exceed EUR 50 and either the cumulative value of payment transactions for an individual subscriber does not exceed EUR 300 per month or, where a subscriber pre-funds its account with the provider of the electronic communications network or service, the cumulative value of payment transactions does not exceed EUR 300 per month.

In point (l)—

“electronic communications network” means a network as defined in Article 2(a) of Directive 2002/21/EC of the European Parliament and of the Council;

“electronic communications service” means a service as defined in Article 2(c) of Directive 2002/21/EC.

- (m) transactions carried out between payment service providers, or their agents or branches, for their own account.
- (n) Payment transactions and related services between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group.
- (o) Cash withdrawal services provided through automatic teller machines, where—
 - (i) the provider—
 - is acting on behalf of one or more card issuers;
 - is not party to the framework contract with the customer withdrawing money from a payment account; and
 - does not conduct any other payment service specified in paragraph 17 of this Schedule; and

- (ii) the customer using such services is provided, both before carrying out the withdrawal and on receipt of the cash, with such information as may be specified for the purposes of this provision by the Financial Services (Payment Services) Regulations 2019.

The regulated activity

Providing payment services.

19. Providing payment services is a specified kind of activity.

**PART 5
CONTRACTS OF INSURANCE**

**Chapter 1
General**

Application and interpretation of Part 5 of this Schedule.

20.(1) This Part of this Schedule—

- (a) has effect in relation to the item listed in section 5(2)(d) (contracts of insurance);
- (b) specifies the kinds of contracts of insurance to which Chapters 2, 3 and 4 of this Part apply; and
- (c) specifies the kinds of activity carried on relation to such contracts of insurance which are to be regulated activities.

(2) In this Part—

- (a) “contract of non-life insurance” has the meaning given in paragraph 21(a);
- (b) “contract of life insurance” has the meaning given in paragraph 21(b); and
- (c) “contract of insurance” (without more) means any contract of insurance within either paragraph (a) or (b).

Contracts of insurance to which Chapters 2, 3 and 4 apply.

21. The contracts of insurance referred to in section 5(2)(d) to which Chapters 2, 3 and 4 of this Part apply are—

- (a) any contract of insurance falling within a class listed in paragraph 22(1) (“contract of non-life insurance”); or

- (b) any contract of insurance falling within a class listed in paragraph 23 (“contract of life insurance”).

Classes of non-life insurance and classification of multiple classes.

22.(1) The following are the classes of non-life insurance.

1. Accident (including industrial injury and occupational diseases)

- fixed pecuniary benefits;
- benefits in the nature of indemnity;
- combinations of the two;
- injury to passengers.

2. Sickness

- fixed pecuniary benefits;
- benefits in the nature of indemnity;
- combinations of the two.

3. Land vehicles (other than railway rolling stock)

All damage to or loss of:

- land motor vehicles;
- land vehicles other than motor vehicles.

4. Railway rolling stock

All damage to or loss of railway rolling stock.

5. Aircraft

All damage to or loss of aircraft.

6. Ships (sea, lake and river and canal vessels)

All damage to or loss of:

- river and canal vessels;

– lake vessels;

– sea vessels.

7. Goods in transit (including merchandise, baggage, and all other goods)

All damage to or loss of goods in transit or baggage, irrespective of the form of transport.

8. Fire and natural forces

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to:

– fire;

– explosion;

– storm;

– natural forces other than storm;

– nuclear energy;

– land subsidence.

9. Other damage to property

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than that included in class 8.

10. Motor vehicle liability

All liability arising out of the use of motor vehicles operating on the land (including carrier's liability).

11. Aircraft liability

All liability arising out of the use of aircraft (including carrier's liability).

12. Liability of ships (sea, lake and river and canal vessels)

All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability).

13. General liability

All liability other than those referred to in classes 10, 11 and 12.

14. Credit

- insolvency (general);
- export credit;
- instalment credit;
- mortgages;
- agricultural credit.

15. Suretyship

- suretyship (direct);
- suretyship (indirect).

16. Miscellaneous financial loss

- employment risks;
- insufficiency of income (general);
- bad weather;
- loss of benefits;
- continuing general expenses;
- unforeseen trading expenses;
- loss of market value;
- loss of rent or revenue;
- other indirect trading loss;
- other non-trading financial loss;
- other forms of financial loss.

17. Legal expenses

Legal expenses and costs of litigation.

18. Assistance

Assistance for persons who get into difficulties while travelling, while away from their home or their habitual residence.

(2) Combinations of the classes of non-life insurance listed sub-paragraph (1) which are referred to in an entry in column 2 of the following Table are to be given the classification specified in column 3 of the same entry.

Table: Classification of multiple classes of non-life insurance

| <i>Column 1</i> | <i>Column 2</i> | <i>Column 3</i> |
|-----------------|---|---|
| Entry | Classes of non-life insurance | Classification |
| (a) | Classes 1 and 2 | Accident and Health Insurance |
| (b) | Classes 1 (fourth indent), 3, 7 and 10 | Motor Insurance |
| (c) | Classes 1 (fourth indent), 4, 6, 7 and 12 | Marine and Transport Insurance |
| (d) | Classes 1 (fourth indent), 5, 7 and 11 | Aviation Insurance |
| (e) | Classes 8 and 9 | Insurance against Fire and other Damage to Property |
| (f) | Classes 10, 11, 12 and 13 | Liability Insurance |
| (g) | Classes 14 and 15 | Credit and Suretyship Insurance |
| (h) | All classes. | General |

Classes of life insurance.

23. The following are the classes of life insurance.

I. Life and annuity

(i) Life insurance which comprises assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums.

(ii) Annuities.

(iii) Supplementary insurance underwritten in addition to life insurance, in particular, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness.

There is excluded from this Class any life insurance within Class III.

II. Marriage and birth

Marriage assurance, birth assurance.

III. Linked long term

The insurance referred to in paragraphs (i) or (ii) of Class I which are linked to investment funds.

IV. Permanent health

Types of permanent health insurance not subject to cancellation currently existing in Ireland and the United Kingdom.

V. Tontines

Tontines, namely operations by which associations of subscribers are set up with a view to capitalising their contributions jointly and subsequently distributing the assets thus accumulated among the survivors or among beneficiaries of the deceased.

VI. Capital redemption operations

Capital redemption operations based on actuarial calculation by which, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken.

VII. Pension fund management

(i) Management of group pension funds comprising the management of investments, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity.

(ii) The operations referred to in paragraph (i) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest.

VIII. Collective insurance etc.

Operations carried out by life insurance undertakings such as those referred to in Chapter 1, Title 4 of Book IV of the French 'Code des assurances'.

IX. Social insurance

Operations relating to the length of human life which are prescribed by or provided for in social insurance legislation, in so far as they are effected or carried out by life insurance undertakings at their own risk in accordance with the laws of an EEA State.

Chapter 2
Direct insurance and reinsurance

The regulated activities

Effecting and carrying out contracts of insurance.

24.(1) Effecting a contract of insurance as principal is a specified kind of activity.

(2) Carrying out a contract of insurance as principal is a specified kind of activity.

Exclusions

Exclusions from paragraph 24.

25. The kinds of activity specified by paragraph 24(1) and (2) are subject to the exclusions specified by paragraphs 26 and 27.

Community co-insurers.

26.(1) There is excluded from paragraph 24(1) and (2) the effecting and carrying out of contracts of insurance by an EEA firm falling within paragraph 1(1)(e) of Schedule 10 (authorised EEA insurance undertaking)—

- (a) other than through a branch in Gibraltar; and
- (b) under a Community co-insurance operation in which the firm is participating otherwise than as the leading insurer.

(2) “Community co-insurance operation” and “leading insurer” have the same meaning as in article 190 of the Solvency 2 Directive.

Breakdown insurance.

27.(1) There is excluded from paragraph 24(1) and (2) the effecting or carrying out, by a person who does not otherwise carry on an activity of the kind specified by that paragraph, of a contract of insurance which—

- (a) is a contract under which the benefits provided by that person (“the provider”) are exclusively or primarily benefits in kind in the event of accident to or breakdown of a road vehicle; and
- (b) limits the liability for the assistance to the following operations—
 - (i) an on-the-spot-breakdown service for which the provider uses, in most circumstances, its own staff and equipment; or

- (ii) the conveyance of the vehicle to the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers of the vehicle to the nearest location from which they may continue their journey by other means; and
- (iii) the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination.

(2) A contract does not fail to meet the condition in sub-paragraph (1)(a) solely because the provider may reimburse the person entitled to the assistance (“P”) for all or part of any sums paid by P in respect of assistance either because P failed to identify that P was entitled to the assistance or because P was unable to get in touch with the provider in order to claim the assistance.

(3) In this paragraph “breakdown” means an event—

- (a) which causes the driver of the relevant vehicle to be unable to start a journey in the vehicle or involuntarily to bring the vehicle to a halt on a journey because of some malfunction of the vehicle or failure of it to function, and
- (b) after which the journey cannot reasonably be commenced or continued in the relevant vehicle.

Chapter 3 Insurance management

Interpretation of Chapter 3 of Part 5.

28. In this Chapter “direct insurance or reinsurance firm” means a regulated firm which carries on an activity of a kind specified by paragraph 24(1) or (2).

The regulated activity

Insurance management.

29. Exercising managerial functions in relation to the business of a direct insurance or reinsurance firm is a specified kind of activity.

Exclusions

Exclusions from paragraph 29.

30. The kind of activity specified by paragraph 29 is subject to the exclusions specified by paragraphs 31 and 32.

Employees of a direct insurance or reinsurance firm.

31. There is excluded from paragraph 29 any managerial functions exercised in relation to the business of a direct insurance or reinsurance firm by a person who is an employee of that firm.

Firms carrying on other regulated activities.

32. There is excluded from paragraph 29 any activity which is carried on by a regulated firm with permission under Part 7 of this Act to carry on an activity of a kind specified by—

- (a) Chapter 4 of this Part;
- (b) Chapter 2 of Part 6;
- (c) Part 13.

Chapter 4 Insurance distribution and reinsurance distribution

Interpretation of Chapter 4 of Part 5.

33. In this Chapter—

“ancillary insurance intermediary” means any natural or legal person (“P”) who carries on the activity specified by paragraph 34 on an ancillary basis where—

- (a) the principal professional activity which P carries on does not otherwise consist of the carrying on of regulated activities;
- (b) P distributes certain insurance products that are complementary to a good or service; and
- (c) the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which P provides as its principal professional activity;

“insurance distribution”—

- (a) means the activities of—
 - (i) advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance;
 - (ii) concluding such contracts; or
 - (iii) assisting in the administration and performance of such contracts, in particular in the event of a claim; and
- (b) includes the provision of information concerning one or more contracts of insurance in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of a contract of insurance, when the customer is able to directly or indirectly conclude a contract of insurance using a website or other media;

“insurance intermediary” means any natural or legal person, other than an insurance undertaking or reinsurance undertaking or their employees and other than an ancillary insurance intermediary, who carries on the activity specified by paragraph 34;

“insurance undertaking” means an insurance undertaking (as defined in Article 13.1 of the Solvency 2 Directive) which has its head office in the European Union and is authorised within the meaning of Article 14 of that Directive;

“reinsurance” means the activity consisting in accepting risks ceded by a person carrying on an activity of a kind specified in Chapter 2 of this Part;

“reinsurance distribution” means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of reinsurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including when carried out by a reinsurance undertaking without the intervention of a reinsurance intermediary;

“reinsurance intermediary” means any natural or legal person, other than a reinsurance undertaking or its employees who carries on the activity specified by paragraph 35; and

“reinsurance undertaking” means an undertaking (as defined in Article 13.4 of the Solvency 2 Directive) which has its head office in the European Union and is authorised within the meaning of Article 14 of that Directive.

The regulated activities

Insurance distribution.

34. Taking up or pursuing insurance distribution in relation to a risk or commitment located in an EEA State is a specified kind of activity.

Reinsurance distribution.

35. Taking up or pursuing reinsurance distribution in relation to a risk or commitment located in an EEA State is a specified kind of activity.

*Exclusions***Exclusions from paragraphs 34 and 35.**

36. The kinds of activity specified by paragraphs 34 and 35 are subject to the exclusions specified by paragraphs 37 to 41.

Activities complementary to supply of certain goods or services.

37. There is excluded from paragraph 34 any activity carried out by an ancillary insurance intermediary in relation to an insurance product which—

- (a) is complementary to the good or service supplied by a provider;
- (b) covers the risk of—
 - (i) breakdown, loss of, or damage to, goods supplied by that provider;
 - (ii) the non-use of services supplied by that provider; or
 - (iii) damage to, or loss of, baggage and other risks linked to travel booked with that provider; and
- (c) has a premium of—
 - (i) 600 euro or less (calculated on a pro rata annual basis); or
 - (ii) where the insurance is complementary to a service referred to in subparagraph (a) and the duration of that service is equal to or less than 3 months, 200 euro or less.

Provision of information in course of another professional activity.

38. There is excluded from paragraphs 34 and 35 any activity consisting in the provision of information on an incidental basis in the context of another professional activity where—

- (a) the provider does not take any additional steps to assist in concluding or performing a contract of insurance; or
- (b) the purpose of that activity is not to assist the customer in concluding or performing a contract of reinsurance.

Claims management.

39. There is excluded from paragraphs 34 and 35 any activity consisting in the management of claims of an insurance undertaking or of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims.

Mere provision of information about potential policyholders.

40. There is excluded from paragraphs 34 and 35 any activity consisting in the mere provision of data and information on potential policyholders to insurance intermediaries, reinsurance intermediaries, insurance undertakings or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of a contract of insurance or a contract of reinsurance.

Mere provision of information to potential policyholders.

41. There is excluded from paragraphs 34 and 35 any activity consisting in the mere provision of information about insurance or reinsurance products, an insurance intermediary, a reinsurance intermediary, an insurance undertaking or a reinsurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of a contract of insurance or a contract of reinsurance.

Distribution activities carried on outside the EEA.

42. There is excluded from paragraphs 34 and 35 any activity carried on outside the EEA.

**PART 6
FINANCIAL INSTRUMENTS**

**Chapter 1
General**

Application of Part 6 of this Schedule.

43.(1) This Part of this Schedule has effect in relation to the item listed in section 5(2)(e) (financial instruments).

(2) Chapter 2 of this Part—

- (a) specifies the kinds of financial instruments to which Chapter 2 applies; and
- (b) specifies the kinds of activity carried on relation to such financial instruments which are to be regulated activities (investment services and investment activities).

(3) Chapter 3 of this Part—

- (a) specifies the kinds of financial instruments to which Chapter 3 applies; and
- (b) specifies the kinds of activity carried on relation to such financial instruments which are to be regulated activities (sending dematerialised instructions).

**Chapter 2
Investment services and investment activities**

Interpretation of Chapter 2 of Part 6. of this Schedule

44.(1) In this Chapter—

“algorithmic trading”—

- (a) means trading in financial instruments where a computer algorithm, with limited or no human intervention, automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission; but
- (b) does not include any system that is only used for—
 - (i) routing orders to one or more trading venues;
 - (ii) processing orders without determining any trading parameters;
 - (iii) confirming orders; or

(iv) the post-trade processing of executed transactions;

“ancillary services” means the services listed in paragraph 45(2);

“client” means any natural or legal person to whom an investment firm provides investment or ancillary services;

“the Commission Regulation” means Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing the MiFID 2 Directive as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;

“commodity” means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity;

“commodity derivatives” means those financial instruments defined in paragraph (c) of the definition below of “transferable securities” which relate to a commodity or an underlying referred to in—

(a) point (10) of paragraph 46; or

(b) points (5), (6), (7) and (10) of that paragraph;

“derivatives” means those financial instruments defined in paragraph (c) of the definition below of “transferable securities” and referred to in points (4) to (10) of paragraph 46;

“financial instrument” means a financial instrument of a kind specified by paragraph 46;

“high-frequency algorithmic trading technique” means an algorithmic trading technique characterised by—

(a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry—

(i) co-location;

(ii) proximity hosting; or

(iii) high-speed direct electronic access;

(b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and

(c) high message intraday rates which constitute orders, quotes or cancellations;

“investment services and activities” means—

- (a) any service in relation to financial instruments which is provided to third parties which is specified by any of paragraphs 48 to 56; or
- (b) any activity in relation to financial instruments which is specified by any such paragraph;

“market-maker” means a person who holds out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against that person’s proprietary capital at prices defined by that person;

“money-market instruments”—

- (a) means those classes of instruments which are normally dealt in on the money market such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment; and
- (b) includes the instruments specified in sub-paragraph (2); and

“transferable securities” means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as—

- (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
- (b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities; or
- (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

(2) Money-market instruments includes treasury bills, certificates of deposits, commercial papers and other instruments with substantively equivalent features where they have the following characteristics—

- (a) they have a value that can be determined at any time;
- (b) they are not derivatives; and
- (c) they have a maturity at issuance of 397 days or less.

Ancillary services.

45.(1) If a person carries on a regulated activity of a kind specified in any of paragraphs 48 to 56, and also carries on one or more ancillary services, those ancillary services are included in the regulated activity in question.

(2) The following are “ancillary services”.

1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management and excluding maintaining securities accounts at the top tier level (“central maintenance service”) referred to in point (2) of Section A of the Annex to the Regulation (EU) No 909/2014.
2. Granting credits or loans to an investor to allow the investor to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction.
3. Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings.
4. Foreign exchange services where these are connected to the provision of investment services.
5. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.
6. Services related to underwriting.
7. Investment services and activities specified by paragraphs 48 to 56, as well as ancillary services of the type listed in paragraph 45(2), related to the underlying of the derivatives listed in points (5), (6), (7) and (10) of paragraph 46 where these are connected to the provision of investment or ancillary services.

Financial instruments to which Chapter 2 applies.

46. The financial instruments referred to in section 5(2)(e) to which this Chapter applies are—

- (1) Transferable securities;
- (2) Money-market instruments;
- (3) Units in collective investment undertakings;

(4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

(5) Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;

(6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, an MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled;

(7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point (6) and not being for commercial purposes, which have the characteristics of other derivative financial instruments;

(8) Derivative instruments for the transfer of credit risk;

(9) Financial contracts for differences;

(10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in paragraph 46 of this Schedule, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, an OTF, or an MTF;

(11) Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme).

Terminology used in paragraph 46.

47. The provisions of paragraph 46 of this Schedule are to be read with extracts A to E (which give effect to relevant provisions of the Commission Regulation).

EXTRACT A*Wholesale energy products that must be physically settled
(Derived from Article 5 of the Commission Regulation)*

(1) For the purposes of point (6) of paragraph 46, a wholesale energy product must be physically settled where all the following conditions are satisfied:

- (a) it contains provisions which ensure that parties to the contract have proportionate arrangements in place to be able to make or take delivery of the underlying commodity; a balancing agreement with the Transmission System Operator in the area of electricity and gas shall be considered a proportionate arrangement where the parties to the agreement have to ensure physical delivery of electricity or gas;
- (b) it establishes unconditional, unrestricted and enforceable obligations of the parties to the contract to deliver and take delivery of the underlying commodity;
- (c) it does not allow either party to replace physical delivery with cash settlement;
- (d) the obligations under the contract cannot be offset against obligations from other contracts between the parties concerned, without prejudice to the rights of the parties to the contract, to net their cash payment obligations.

For the purposes of point (d), operational netting in power and gas markets shall not be considered as offsetting of obligations under a contract against obligations from other contracts.

(2) Operational netting shall be understood as any nomination of quantities of power and gas to be fed into a gridwork on being so required by the rules or requests of a Transmission System Operator as defined in Article 2(4) of Directive 2009/72/EC of the European Parliament and of the Council for an entity performing an equivalent function to a Transmission System Operator at the national level. Any nomination of quantities based on operational netting shall not be at the discretion of the parties to the contract.

(3) For the purposes of point (6) of paragraph 46, force majeure shall include any exceptional event or a set of circumstances which are outside the control of the parties to the contract, which the parties to the contract could not have reasonably foreseen or avoided by the exercise of appropriate and reasonable due diligence and which prevent one or both parties to the contract from fulfilling their contractual obligations.

(4) For the purposes of point (6) of paragraph 46, bona fide inability to settle shall include any event or set of circumstances, not qualifying as force majeure as referred to in sub-paragraph (3), which are objectively and expressly defined in the contract terms, for one or both parties to the contract, acting in good faith, not to fulfil their contractual obligations.

(5) The existence of force majeure or bona fide inability to settle provisions shall not prevent a contract from being considered as ‘physically settled’ for the purposes of point (6) of paragraph 46.

(6) The existence of default clauses providing that a party is entitled to financial compensation in the case of non- or defective performance of the contract shall not prevent the contract from being considered as ‘physically settled’ within the meaning of point (6) of paragraph 46.

(7) The delivery methods for the contracts being considered as ‘physically settled’ within the meaning of point (6) of paragraph 46 shall include at least:

- (a) physical delivery of the relevant commodities themselves;
- (b) delivery of a document giving rights of an ownership nature to the relevant commodities or the relevant quantity of the commodities concerned;
- (c) other methods of bringing about the transfer of rights of an ownership nature in relation to the relevant quantity of goods without physically delivering them including notification, scheduling or nomination to the operator of an energy supply network, that entitles the recipient to the relevant quantity of the goods.

EXTRACT B

*Energy derivative contracts relating to oil and coal and
wholesale energy products
(Derived from Article 6 of the Commission Regulation)*

- (1) For the purposes of point (6) of paragraph 46, energy derivative contracts relating to oil shall be contracts with mineral oil, of any description and petroleum gases, whether in liquid or vapour form, including products, components and derivatives of oil and oil transport fuels, including those with biofuel additives, as an underlying.
- (2) For the purposes of point (6) of paragraph 46, energy derivative contracts relating to coal shall be contracts with coal, defined as a black or dark- brown combustible mineral substance consisting of carbonised vegetable matter, used as a fuel, as an underlying.
- (3) For the purposes of point (6) of paragraph 46, derivative contracts that have the characteristics of wholesale energy products as defined in Article 2(4) of the REMIT Regulation.

EXTRACT C*Other derivative financial instruments
(Derived from Article 7 of the Commission Regulation)*

(1) For the purposes of point (7) of paragraph 46, a contract which is not a spot contract in accordance with sub-paragraph (2) below and which is not for commercial purposes as laid down in sub-paragraph (4) below shall be considered as having the characteristics of other derivative financial instruments where it satisfies the following conditions:

- (a) it meets one of the following criteria:
 - (i) it is traded on a third country trading venue that performs a similar function to a regulated market, an MTF or an OTF;
 - (ii) it is expressly stated to be traded on, or is subject to the rules of, a regulated market, an MTF, an OTF or such a third country trading venue;
 - (iii) it is equivalent to a contract traded on a regulated market, MTF, an OTF or such a third country trading venue, with regards to the price, the lot, the delivery date and other contractual terms;
- (b) it is standardised so that the price, the lot, the delivery date and other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

(2) A spot contract for the purposes of sub-paragraph (1) shall be a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods:

- (a) 2 trading days;
- (b) the period generally accepted in the market for that commodity, asset or right as the standard delivery period.

A contract shall not be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed within the period referred to in sub-paragraph (2).

(3) For the purposes of point (10) of paragraph 46, a derivative contract relating to an underlying referred to in point (10) or in the text contained in Extract D below shall be considered to have the characteristics of other derivative financial instruments where one of the following conditions is satisfied:

- (a) it is settled in cash or may be settled in cash at the option of one or more of the parties, otherwise than by reason of a default or other termination event;
- (b) it is traded on a regulated market, an MTF, an OTF, or a third country trading venue that performs a similar function to a regulated market, MTF or an OTF;
- (c) the conditions laid down in sub-paragraph (1) are satisfied in relation to that contract.

(4) A contract shall be considered to be for commercial purposes for the purposes of point (7) of paragraph 46, and as not having the characteristics of other derivative financial instruments for the purposes of points (7) and (10) of paragraph 46, where the following conditions are both met:

- (a) it is entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network;
- (b) it is necessary to keep in balance the supplies and uses of energy at a given time, including the case when the reserve capacity contracted by an electricity transmission system operator as defined in Article 2(4) of Directive 2009/72/EC is being transferred from one prequalified balancing service provider to another prequalified balancing service provider with the consent of the relevant transmission system operator.

EXTRACT D

Derivatives under point (10) of paragraph 46
(derived from Article 8 of the Commission Regulation)

D. In addition to derivative contracts expressly referred to in point (10) of paragraph 46, a derivative contract shall be subject to the provisions in point (10) where it meets the criteria set out in point (10) and in the text contained in Extract C and it relates to any of the following:

- (a) telecommunications bandwidth;
- (b) commodity storage capacity;
- (c) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means with the exception of transmission rights related to electricity transmission cross zonal capacities when they are, on the primary market, entered into with or by a transmission system operator or any persons acting as service providers on their behalf and in order to allocate the transmission capacity;
- (d) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources, except if the contract is already within the scope of point (4) of paragraph 46;
- (e) a geological, environmental or other physical variable, except if the contract is relating to any units recognised for compliance with the requirements of Directive 2003/87/EC of the European Parliament and of the Council;
- (f) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;
- (g) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;
- (h) an index or measure based on actuarial statistics.

EXTRACT E*Characteristics of other derivative contracts relating to currencies
(Derived from Article 10 of the Community Regulation)*

(1) For the purposes of point (4) of paragraph 46, other derivative contracts relating to a currency shall not be a financial instrument where the contract is one of the following:

- (a) a spot contract within the meaning of sub-paragraph (2) below;
- (b) a means of payment that:
 - (i) must be settled physically otherwise than by reason of a default or other termination event;
 - (ii) is entered into by at least a person which is not a financial counterparty within the meaning of Article 2(8) of Regulation (EU) No. 648/2012 of the European Parliament and of the Council;
 - (iii) is entered into in order to facilitate payment for identifiable goods, services or direct investment; and
 - (iv) is not traded on a trading venue.

(2) A spot contract for the purposes of sub-paragraph (1) shall be a contract for the exchange of one currency against another currency, under the terms of which delivery is scheduled to be made within the longer of the following periods:

- (a) 2 trading days in respect of any pair of the major currencies set out in sub-paragraph (3) below;
- (b) for any pair of currencies where at least one currency is not a major currency, the longer of 2 trading days or the period generally accepted in the market for that currency pair as the standard delivery period;
- (c) where the contract for the exchange of those currencies is used for the main purpose of the sale or purchase of a transferable security or a unit in a collective investment undertaking, the period generally accepted in the market for the settlement of that transferable security or a unit in a collective investment undertaking as the standard delivery period or 5 trading days, whichever is shorter.

A contract shall not be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the currency is to be postponed and not to be performed within the period set out in sub-paragraph (2)(a).

(3) The major currencies for the purposes of sub-paragraph (2) shall only include the US dollar, Euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Singapore dollar, Norwegian krone, Mexican peso, Croatian kuna, Bulgarian lev, Czech koruna, Danish krone, Hungarian forint, Polish złoty and Romanian leu.

(4) For the purposes of sub-paragraph (2), a trading day shall mean any day of normal trading in the jurisdiction of both the currencies that are exchanged under the contract for the exchange of those currencies and in the jurisdiction of a third currency where any of the following conditions are met:

- (a) the exchange of those currencies involves converting them through that third currency for the purposes of liquidity;
- (b) the standard delivery period for the exchange of those currencies references the jurisdiction of that third currency.

The regulated activities

Reception and transmission of orders.

48. Reception and transmission of orders in relation to one or more financial instruments is a specified kind of activity.

Execution of orders on behalf of clients.

49.(1) Execution of orders on behalf of clients is a specified kind of activity.

(2) “Execution of orders on behalf of clients”–

- (a) means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients; and
- (b) includes the conclusion of agreements to sell financial instruments issued by an investment firm or a credit institution at the moment of their issuance.

Dealing on own account.

50.(1) Dealing on own account is a specified kind of activity.

(2) “Dealing on own account” means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments.

Portfolio management.

51.(1) Portfolio management is a specified kind of activity.

(2) “Portfolio management” means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments.

Investment advice.

52.(1) Investment advice is a specified kind of activity.

(2) Investment advice means the provision of personal recommendations to a client, either on the client’s request or at the initiative of the person providing the advice, in respect of one or more transactions relating to financial instruments.

(3) A personal recommendation is—

- (a) a recommendation made to a 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;
- (b) a recommendation that that person does any of the following (whether as principal or agent)—
 - (i) buying, selling, subscribing for, exchanging, redeeming, holding or underwriting a particular financial instrument; or
 - (ii) exercising any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange or redeem a financial instrument; and
- (c) a recommendation that is—
 - (i) presented as suitable for the person to whom it is made, or
 - (ii) based on a consideration of the circumstances of that person.

(4) A recommendation is not a personal recommendation if it is issued exclusively to the public.

Underwriting or placing on a firm commitment basis.

53. Underwriting of financial instruments or placing of financial instruments on a firm commitment basis is a specified kind of activity.

Placing without a firm commitment basis.

54. Placing of financial instruments without a firm commitment basis is a specified kind of activity.

Operation of an MTF.

55.(1) Operating an MTF is a specified kind of activity.

(2) “MTF” (multilateral trading facility) means a multilateral system on which financial instruments are traded which brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way that results in a contract in accordance with Title II of the MiFID 2 Directive.

Operation of an OTF.

56.(1) Operating an OTF is a specified kind of activity.

(2) “OTF” (organised trading facility) means a multilateral system which is not a regulated market or an MTF and in which multiple buying and selling interests in bonds, structured finance products, emissions allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of the MiFID 2 Directive.

(3) For the purposes of sub-paragraph (2), “structured finance products” means those securities created to securitise and transfer credit risk that depend on the cash flow from the from the underlying assets.

*Exclusions***Exclusions from paragraphs 48 to 56.**

57. The kinds of activity specified by paragraphs 48 to 56 are subject to the exclusions specified by paragraphs 58 to 68.

Insurance etc. undertakings.

58. An insurance undertaking or an undertaking carrying out the reinsurance and retrocession activities referred to in the Solvency 2 Directive does not carry on an activity of a kind specified by paragraphs 48 to 56 when carrying out the activities referred to in that Directive.

Intra-group investment services.

59. There is excluded from paragraphs 48 to 56 any investment service provided by a person exclusively for the person's parent undertaking, its subsidiaries or for other subsidiaries of its parent undertakings.

Investment services incidental to another professional activity.

60.(1) There is excluded from paragraphs 48 to 56, any investment service provided by a person in an incidental manner in the course of a professional activity which is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service.

(2) For the purposes of sub-paragraph (1), an investment service is to be treated as being provided in an incidental manner in the course of a professional activity where the following conditions are satisfied—

- (a) a close and factual connection exists between the professional activity and the provision of the investment service to the same client, such that the investment service can be regarded as accessory to the main professional activity;
- (b) the provision of investment services to the clients of the main professional activity does not aim to provide a systematic source of income to the person providing the professional activity; and
- (c) the person providing the professional activity does not market or otherwise promote the person's ability to provide investment services, except where these are disclosed to clients as being accessory to the main professional activity.

Own-account dealing in specified financial instruments.

61.(1) In this paragraph—

“direct electronic access”—

- (a) means an arrangement where a member, participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue; and
- (b) includes—
 - (i) arrangements which involve the use by a person of the infrastructure of the member, participant or client, or any connecting system provided by the member, participant or client, to transmit the orders (direct market access); and

- (ii) arrangements where such an infrastructure is not used by a person (sponsored access);

“specified financial instruments” means financial instruments other than commodity derivatives or emission allowances or their derivatives.

(2) There is excluded from paragraphs 48 to 56 any dealing on own account in specified financial instruments by a person who is not providing any other investment services or performing any other investment activities in specified financial instruments.

(3) Sub-paragraph (2) does not apply to dealing carried on by—

- (a) a person who is a market maker;
- (b) a person who is either—
 - (i) a member of or participant in a regulated market or an MTF; or
 - (ii) has direct electronic access to a trading venue;

apart from non-financial entities who execute transactions on a trading venue which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups;

- (c) a person who applies a high-frequency algorithmic trading technique; or
- (d) a person who deals on own account when executing client orders.

(4) Any person carrying on an activity that is excluded from paragraphs 48 to 56 by virtue of paragraph 58, 62 or 65 is not required to meet the conditions specified by this paragraph.

Own-account dealing in other financial instruments.

62.(1) There is excluded from paragraphs 48 to 56—

- (a) any dealing on own account by a person (including by a market maker) in commodity derivatives or emission allowances or their derivatives; or
- (b) any provision by a person of investment services, other than dealing on own account, in commodity derivatives or emission allowances or their derivatives to the customers or suppliers of their main business.

(2) Sub-paragraph (1)(a) does not apply to dealing on own account by a person when executing client orders.

- (3) Sub-paragraph (1) applies only if the following conditions are met—
- (a) each of the activities in sub-paragraph (1)(a) and (b), when considered individually and in aggregate, is an ancillary activity to a person's main business, when considered on a group basis, and that main business is not the provision of—
 - (i) investment services within the meaning of this Chapter;
 - (ii) banking activities under the Capital Requirements Directive; or
 - (iii) acting as a market-maker in relation to commodity derivatives;
 - (b) the person does not apply a high-frequency algorithmic trading technique; and
 - (c) the person notifies annually the relevant competent authority that the person makes use of this exemption and on request reports to the competent authority the basis on which the person considers that the activity in sub-paragraph (1)(a) and (b) is ancillary to the person's main business.

Operators dealing in emission allowances.

63. An operator with compliance obligations under Directive 2003/87/EC does not carry on an activity of a kind specified by paragraphs 48 to 56 if, when dealing in emission allowances—

- (a) the operator does not execute client orders and does not provide any investment services or perform any investment activities other than dealing on own account; and
- (b) the operator does not apply a high-frequency algorithmic trading technique.

Administration of employee-participation schemes.

64.(1) There is excluded from paragraphs 48 to 56 any provision by a person of investment services which consist exclusively in the administration of employee-participation schemes.

(2) There is excluded from paragraphs 48 to 56 any investment services provided by a person which only involve both the administration of employee-participation schemes and the provision of investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings.

Collective investment undertakings.

65. There is excluded from paragraphs 48 to 56 any activity which is carried on by–

- (a) collective investment undertakings and pension funds whether coordinated at European Union level or not; or
- (b) the depositaries and managers of such undertakings.

Advice not specifically remunerated.

66. There is excluded from paragraphs 48 to 56 any investment advice provided by a person in the course of providing another professional activity not covered by this Chapter provided that the provision of such advice is not specifically remunerated.

Central securities depository.

67. There is excluded from paragraphs 48 to 56 any activity which is carried on by a central securities depository (CSD) except as provided for in Article 73 of Regulation (EU) No 909/2014.

Transmission system operators.

68.(1) A transmission system operator within the meaning of Directive 2009/72/EC or Directive 2009/73/EC does not carry on activities of a kind specified by any of paragraphs 48 to 56 when carrying out the operator's tasks under–

- (a) those Directives;
- (b) Regulation (EC) No 714/2009;
- (c) Regulation (EC) No 715/2009; or
- (d) network codes or guidelines adopted under those Regulations.

(2) A person acting as a service provider to, and carrying out tasks on behalf of, a transmission system operator under the legislative acts, codes or guidelines referred to in subparagraph (1)(a) to (d) does not carry on activities of a kind specified by paragraphs 48 to 56.

(3) An operator or administrator of an energy balancing mechanism, pipeline network or system to keep in balance the supplies and uses of energy does not carry on activities of a kind specified by paragraphs 48 to 56 when carrying out such tasks.

(4) Sub-paragraphs (1) to (3)–

- (a) only apply to a person who engages in the activities specified by the sub-paragraph in question when the investment services provided or the investment activities performed relate to commodity derivatives in order to carry out those activities; and
- (b) do not apply to the operation of a secondary market, including a platform for secondary trading in financial transmission rights.

Chapter 3
Sending dematerialised instructions

General

Interpretation of Chapter 3 of Part 6.

69.(1) In this Chapter—

“dematerialised instruction” means an instruction sent or received by means of relevant system;

“relevant system” means a computer-based system (and procedures) which enable title to units of securities to be evidenced and transferred without a written instrument and, in respect of which, the operator is authorised by a regulator outside Gibraltar having functions equivalent to those of the GFSC or by a prescribed authority in another territory;

“sovereign debt” means a debt instrument issued by a sovereign issuer;

“sovereign issuer” means any of the following that issues debt instruments—

- (a) the European Union;
- (b) an EEA State, including a government department, an agency, or a special purpose vehicle of the EEA State;
- (c) in the case of a federal EEA State, a member of the federation;
- (d) a special purpose vehicle for several EEA States;
- (e) an international financial institution established by two or more EEA States which has the purpose of mobilising funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems; or
- (f) the European Investment Bank;

“relevant financial instrument” means a financial instrument of a kind specified in paragraph 70;

“transferable securities” has the meaning given in Chapter 2 of this Part except that, in the application of that definition, “depository receipts” is to be understood as referring to those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted

to trading on a regulated market and traded independently of the securities of the non-domiciled issuer.

Financial instruments to which Chapter applies.

70. The financial instruments referred to in section 5(2)(e) to which this Chapter applies are—

- (a) transferable securities; and
- (b) sovereign debt.

The regulated activities

Sending etc. dematerialised instructions.

71.(1) Sending, on behalf of another person, dematerialised instructions relating to—

- (a) a relevant financial instrument; or
- (b) rights or interests in a relevant financial instrument,

is a specified kind of activity where those instructions are sent by means of a relevant system.

(2) Causing dematerialised instructions relating to a relevant financial instrument, or to rights or interests in a relevant financial instrument, to be sent is a specified kind of activity where—

- (a) those instructions are sent by means of a relevant system; and
- (b) the person causing them to be sent is responsible under an agreement with the GFSC for the operation of, and the maintenance of security over, a gateway.

(3) Agreeing to carry on an activity of the kind specified by sub-paragraph (1) or (2) is a specified kind of activity.

(4) “Gateway”, in relation to a relevant system, means the computer hardware and software by means of which instructions are authenticated and encrypted for processing by the relevant system.

Exclusions

Exclusions from paragraph 71.

72. The kinds of activity specified by paragraph 71 are subject to the exclusions specified by paragraphs 73 to 76.

Instructions on behalf of participating issuers.

73.(1) There is excluded from paragraph 71 the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is a participating issuer.

(2) “Participating issuer” means a person who has issued a relevant financial instrument where title to units of that instrument is permitted by an operator to be transferred by means of a relevant system.

Instructions on behalf of settlement banks.

74.(1) There is excluded from paragraph 71 the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is a settlement bank acting in its capacity as such.

(2) “Settlement bank”, in relation to a relevant system, means a person who has agreed to make payments in connection with transfers of title to uncertificated units of a relevant financial instrument by means of that system.

Instructions in connection with takeover offers.

75. There is excluded from paragraph 71 the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is an offeror making a takeover offer.

Instructions in the course of providing a network.

76. There is excluded from paragraph 71 the act of sending, or causing to be sent, a dematerialised instruction as a necessary part of the provision of a network for the purposes of a relevant system by a network provider who is accredited for that purpose by the GFSC.

**PART 7
STRUCTURED DEPOSITS**

General

Application and interpretation of Part 7 of this Schedule.

77.(1) This Part of this Schedule—

- (a) has effect in relation to the item listed in section 5(2)(f) (structured deposits); and
- (b) specifies the kinds of activity carried on relation to structured deposits which are to be regulated activities.

(2) In this Part “structured deposit” means a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as—

- (a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as Euribor or Libor;
- (b) a financial instrument or combination of financial instruments;
- (c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or
- (d) a foreign exchange rate or combination of foreign exchange rates.

The regulated activities

Selling or advising in relation to structured deposits.

78.(1) Selling structured deposits is a specified kind of activity.

(2) Advising clients in relation to structured deposits is a specified kind of activity.

(3) “Client” has the meaning given in Chapter 2 of Part 6.

Exclusions

Exclusions from paragraph 78.

79. The kinds of activity specified by paragraph 78 are subject to the exclusions specified by paragraphs 58 to 68.

**PART 8
BENCHMARKS**

General

Application of Part 8 of this Schedule.

80. This Part of this Schedule—

- (a) has effect in relation to the item listed in section 5(2)(g) (benchmarks); and
- (b) specifies the kind of activity carried on relation to benchmarks which are regulated activities.

Interpretation of Part 8.

81.(1) In this Part—

“benchmark” means any index which is used to—

- (a) determine the amount payable under a financial instrument or a financial contract, or the value of a financial instrument; or
- (b) measure the performance of an investment fund for the purpose of tracking the return of such index, defining the asset allocation of a portfolio or computing the performance fees;

“financial contract” means—

- (a) any credit agreement as defined in point (c) of Article 3 of Directive 2008/48/EC the Consumer Credit Directive;
- (b) any credit agreement as defined in point (3) of Article 4 of the Mortgage Credit Directive;

“financial instrument” means any financial instrument for which a request for admission to trading on a trading venue, has been made or which is traded on a trading venue or via a systematic internaliser;

“index” means any figure—

- (a) that is published or made available to the public;
- (b) that is regularly determined—

- (i) entirely or partially by the application of a formula or any other method of calculation, or by an assessment; and
- (ii) on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates, quotes and committed quotes, or other values or surveys;

“investment fund” means an AIF or a UCITS;

“systematic internaliser” means an investment firm which, on an organised, frequent systematic and substantial basis, deals on own account when executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system.

(2) For the purposes of the definition of “systematic internaliser” in sub-paragraph (1)–

- (a) the ‘frequent and systematic basis’ is to be measured by the number of over-the-counter (“OTC”) trades in the financial instrument carried out by the investment firm on own account when executing client orders;
- (b) the ‘substantial basis’ is to be measured either–
 - (i) by the size of the OTC trading carried out by the investment firm in relation to the total trading of the investment firm in a specific financial instrument; or
 - (ii) by the size of the OTC trading carried out by the investment firm in relation to the total trading in the European Union in a specific financial instrument; and
- (c) the definition of systemic internaliser applies only where the pre-set limits for a frequent and systematic basis and for a substantial basis are both crossed or where an investment firm chooses to opt-in under the systematic internaliser regime.

The regulated activity

Administering a benchmark.

82.(1) Administering a benchmark is a specified kind of activity.

(2) In sub-paragraph (1) “administering a benchmark” means acting as an administrator of a benchmark.

(3) For the purposes of sub-paragraph (2)–

“administrator” means a natural or legal person that has control over the provision of a benchmark;

“provision of a benchmark” means—

- (a) administering the arrangements for determining a benchmark;
- (b) collecting, analysing or processing input data for the purpose of determining a benchmark; and
- (c) determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose.

PART 9
MARKETS IN FINANCIAL INSTRUMENTS

Application of Part 9 of this Schedule.

83. This Part of this Schedule—

- (a) has effect in relation to the item listed in section 5(2)(h) (markets in connection with financial instruments);
- (b) specifies the kind of markets in connection with financial instruments to which this Part applies; and
- (c) specifies the kind of activity carried on relation to such markets which is to be a regulated activity.

Markets to which Part 9 applies.

84. The markets referred to in section 5(2)(h) to which this Part applies are any multilateral system—

- (a) operated and/or managed by a market operator (which may be the market itself);
- (b) relating to the financial instruments admitted to trading under the rules or systems of the market;
- (c) bringing together or facilitating the bringing together of multiple third-party buying and selling interests in financial instruments, in the system and in accordance with its non- discretionary rules, in a way that results in a contract; and
- (d) functioning regularly in accordance with regulations made under section 623 of the Act (regulated markets regulations).

The regulated activity

Operating a regulated market.

85. Operating a market of a kind specified in paragraph 84 is a specified kind of activity.

**PART 10
DATA REPORTING SERVICES**

General

Application of Part 10 of this Schedule.

86. This Part of this Schedule—

- (a) has effect in relation to the item listed in section 5(2)(i) (data reporting services); and
- (b) specifies the kinds of activity carried on in relation to different kinds of data reporting services which are to be regulated activities.

The regulated activities

Operating an APA.

87.(1) Providing the service of publishing trade reports on behalf of investment firms is a specified kind of activity.

(2) A regulated firm with permission under Part 7 of this Act to carry on the activity specified by sub-paragraph (1) is to be known as an “approved publication arrangement” (or “APA”).

Operating a CTP.

88.(1) Providing the service of—

- (a) collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12, 13, 20 and 21 of the Markets in Financial Instruments Regulation from regulated markets, MTFs, OTFs and APAs; and
- (b) consolidating them into a continuous live data stream providing price and volume data;

is a specified kind of activity.

(2) A regulated firm with permission under Part 7 of this Act to carry on the activity specified by sub-paragraph (1) is to be known as an “consolidated tape provider” (or “CTP”).

Operating an ARM.

89.(1) Providing the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms is a specified kind of activity.

(2) A regulated firm with permission under Part 7 of this Act to carry on the activity specified by sub-paragraph (1) is to be known as an “approved reporting mechanism” (or “ARM”).

Exclusions

Exclusions from paragraphs 87 to 89.

90. The kinds of activity specified by paragraphs 87 to 89 are subject to the exclusions specified by paragraphs 58 to 68.

**PART 11
PROPERTY OF ANY KIND**

**Chapter 1
General**

Application of Part 11 of this Schedule.

91. This Part of this Schedule–

- (a) has effect in relation to the item listed in section 5(2)(j) (property of any kind); and
- (b) specifies the kinds of activity carried on relation to property of any kind which are to be regulated activities.

**Chapter 2
Collective investment schemes**

Interpretation of Chapter 2 of Part 11.

92. In this Chapter “AIFM” means a legal person whose regular business is managing one or more AIFs.

The regulated activities

Managing a UCITS.

93.(1) Managing a UCITS is a specified kind of activity.

(2) A person manages a UCITS when the person carries on collective portfolio management of the UCITS.

(3) “Collective portfolio management”, in relation to a UCITS, includes the following functions–

- Investment management.
- Administration:
 - (a) legal and fund management accounting services;
 - (b) customer inquiries;
 - (c) valuation and pricing (including tax returns);
 - (d) regulatory compliance monitoring;

- (e) maintenance of unit-holder register;
- (f) distribution of income;
- (g) unit issues and redemptions;
- (h) contract settlements (including certificate dispatch);
- (i) record keeping.

- Marketing.

(4) If a person manages a UCITS and also carries on other activities in connection with or for the purposes of the management of that UCITS, those other activities are also included in the activity specified by paragraph (1).

Acting as depositary of a UCITS.

94.(1) Acting as the depositary of a UCITS which is authorised under Part 18 is a specified kind of activity.

(2) “Depositary” means a person to whom the assets of the UCITS are entrusted for safekeeping.

Managing an AIF (in-scope AIFM).

95.(1) Managing one or more AIFs is a specified kind of activity where—

- (a) the value of assets under management is equal to, or more than, either of the limits specified in paragraph 97(1)(a) or (b); or
- (b) those limits are not exceeded but the person managing the AIF or AIFs has exercised the option mentioned in Article 3.4 of the AIFM Directive to meet the full requirements of the Directive.

(2) A person manages an AIF when the person performs at least risk management or portfolio management for the AIF.

(3) A person (“P”) does not manage an AIF if—

- (a) the functions P performs for the AIF have been delegated to P by another person; and
- (b) that other person is not an AIFM which has delegated its functions to the extent of that it becomes a letter-box entity.

- (4) If a person manages an AIF and also carries on—
- (a) one or more of the additional activities for that AIF which are referred to in sub-paragraph (5); or
 - (b) one or more other activities in connection with or for the purposes of the management of that AIF,

those activities are included in the activity specified by sub-paragraph (1).

(5) Other functions that an AIFM may additionally perform in the course of the collective management of an AIF are—

- (a) Administration:
 - (i) legal and fund management accounting services;
 - (ii) customer inquiries;
 - (iii) valuation and pricing, including tax returns;
 - (iv) regulatory compliance monitoring;
 - (v) maintenance of unit-/shareholder register;
 - (vi) distribution of income;
 - (vii) unit/shares issues and redemptions;
 - (viii) contract settlements, including certificate dispatch;
 - (ix) record keeping;
- (b) Marketing;
- (c) Activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

Acting as depositary of an AIF with an in-scope AIFM.

96.(1) Acting as the depositary of an AIF managed by an in-scope AIFM.

(2) “In-scope AIFM” means a person who has permission under Part 7 of this Act to carry on an activity of the kind specified by paragraph 95.

Managing an AIF (small scheme manager).

97.(1) Managing one or more AIFs is a specified kind of activity where—

- (a) the value of assets under management (valued in accordance with sub-paragraph (2)) does not exceed—
 - (i) 500 million euros in total in cases where the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in each AIF; or
 - (ii) 100 million euros in total in other cases, including any assets acquired through the use of leverage; and
- (b) management is by an external manager, which is the legal person appointed by the AIF or on behalf of the AIF and which through this appointment is responsible for managing the AIF.

(2) For the purposes of sub-paragraph (1), the value of a person's assets under management is to be calculated in accordance with Article 2 of Regulation (EU) No 231/2013.

Acting as depositary of an AIF with a small scheme manager.

98.(1) Acting as the depositary of an AIF managed by a small scheme manager.

(2) "Small scheme manager" means a person who has permission under Part 7 of this Act to carry on an activity of the kind specified by paragraph 97.

Establishing etc. a collective investment scheme.

99. Establishing, operating or winding up a collective investment scheme is a specified kind of activity.

Acting as bank and/or broker of an experienced investor fund.

100.(1) Acting as a bank and/or broker under arrangements entered into with a relevant experienced investor fund is a specified kind of activity.

(2) "Relevant experienced investor fund" means an experienced investor fund (within the meaning of Part 18) which is internally managed.

Acting as depositary of a private scheme.

101.(1) Acting as the depositary of a private scheme.

(2) “Private scheme” has the meaning given in Part 18.

Acting as administrator of a collective investment scheme.

102. Acting as the administrator of a collective investment scheme is a specified kind of activity.

Exclusions

Exclusions from paragraph 99.

103. The kind of activity specified by paragraphs 99 is subject to the exclusions specified by paragraph 104.

Operating a collective investment scheme that is a UCITS or AIF.

104.(1) A person does not carry on an activity of the kind specified by paragraph 99 if–

- (a) the person carries on the activity in relation to a UCITS; and
- (b) at the time the person carries on the activity, the UCITS is managed by a regulated firm with permission under Part 7 of this Act to carry on an activity of the kind specified by paragraph 93.

(2) A person does not carry on an activity of the kind specified by paragraph 99 (operating a collective scheme) if–

- (a) the person carries on the activity in relation to an AIF; and
- (b) at the time the person carries on the activity, the AIF is managed by a regulated firm with permission under Part 7 of this Act to carry on an activity of the kind specified by paragraph 95 or 97.

Chapter 3 Pensions

Interpretation of Chapter 3 of Part 11.

105. In this Chapter “personal pension scheme” has the meaning given in Part 27.

The regulated activities

Establishing etc. a personal pension scheme.

106. Establishing, operating or winding up a personal pension scheme is a specified kind of activity.

Advising on personal or occupational pension schemes.

107.(1) Advising another person on the following is a specified kind of activity–

- (a) the merits of the person participating in, or being a member of, a personal pension scheme or an occupational pension scheme; or
- (b) the acquisition or disposal of any interests, rights, benefits or other entitlements under a personal pension scheme or occupational pension scheme.

(2) Agreeing to carry on an activity of the kind specified by sub-paragraph (1) is a specified kind of activity.

Exclusions

Exclusions from paragraphs 106 and 107.

108. The kinds of activity specified by paragraphs 106 and 107 are subject to the exclusions specified by paragraphs 109 to 114.

Operating a pension scheme in relation to a UCITS or AIF.

109. A person does not carry an activity of the kind specified by paragraph 106 if the activity–

- (a) is carried on by a regulated firm with permission under Part 7 of this Act to carry on an activity of the kind specified by paragraph 93 and is carried on with or for the purposes of managing a UCITS; or
- (b) is carried on by a regulated firm with permission under Part 7 of this Act to carry on an activity of the kind specified by paragraph 95 or 97 and is carried on with or for the purposes of managing an AIF.

Acting as a licensed insolvency practitioner.

110. A person does not carry an activity of the kind specified by paragraph 106 if the activity is carried on by a person acting as an insolvency practitioner who is licensed under Part 25.

Intra-group advice.

111.(1) There is excluded from paragraph 107 the giving of advice by a person (“P”) exclusively for P’s parent undertaking, P’s subsidiaries or for other subsidiaries of P’s parent undertaking.

(2) “Parent undertaking” and “subsidiary undertaking” have the same meaning as in Part VII of the Companies Act 2014.

Advice by trustees or personal representatives.

112. There is excluded from paragraph 107 the giving of advice by a person (“P”) acting as trustee or personal representative—

- (a) to a fellow trustee or personal representative for the purposes of the trust or estate; or
- (b) to a beneficiary under the trust, will or intestacy concerning the beneficiary’s interest in the trust fund or estate, unless P is remunerated for doing so in addition to any remuneration P receives for discharging P’s duties as trustee or personal representative.

Advice incidental to another professional activity.

113. There is excluded from paragraph 107 the giving of advice in an incidental manner in the course of a professional activity that is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the giving of advice.

Advice in newspapers etc.

114.(1) There is excluded from paragraph 107 the giving of advice in writing or other legible form if the advice is contained in a newspaper, journal, magazine or other periodical publication, or is given by way of a service comprising regularly updated news or information, if the principal purpose of the publication or service, taken as a whole and including any advertisements or other promotional material contained in it, is not that of leading or enabling persons to—

- (a) participate in or become a member of a personal pension scheme or occupational pension scheme; or

(b) acquire or dispose of interests, rights, benefits or other entitlements under a personal pension scheme or occupational pension scheme.

(2) There is excluded from paragraph 107 the giving of advice in any service consisting in the broadcast or transmission of television or radio programmes, if the principal purpose of the service, taken as a whole and including any advertisements or other promotional material contained in it, is neither of those mentioned in sub-paragraph (1)(a) or (b).

PART 12
MORTGAGE CREDIT AGREEMENTS

General

Application of Part 12 of this Schedule.

115. This Part of this Schedule—

- (a) has effect in relation to the item listed in section 5(2)(k) (credit agreements in connection with residential immovable property);
- (b) specifies the kinds of credit agreements to which this Part applies; and
- (c) specifies the kinds of activity carried on relation to such credit agreements which are to be regulated activities.

Interpretation of Part 12.

116. In this Part—

“annual percentage rate of charge” means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit which equates, on an annual basis, to the present value of all future or existing commitments (drawdowns, repayments and charges) agreed by the mortgage creditor and the consumer;

“consumer” means an individual acting for purposes which are outside the individual’s trade business or profession;

“credit agreement” means an agreement by which a person grants, or promises to grant, to a consumer a credit in the form of a deferred payment, loan or other similar financial accommodation;

“mortgage credit agreement” means a credit agreement specified in paragraph 117;

“mortgage credit intermediary” means a natural or legal person who carries on any activity specified by paragraph 119;

“mortgage creditor” means a natural or legal person who carries on the activity specified by paragraph 118;

“total amount of credit” means the ceiling or the total sums made available under a mortgage credit agreement;

“total cost of the credit to the consumer” means the total cost of the credit to the consumer as defined in point (g) of Article 3 of the Consumer Credit Directive, including the cost of any property valuation which is necessary to obtain the credit but excluding—

- (a) any registration fee for the transfer of ownership of the immovable property; and
- (b) any charge payable by the consumer for non-compliance with the commitments laid down in the mortgage credit agreement.

(2) In the application of the definition of “annual percentage rate of charge” in sub-paragraph (1) to any case where the opening or maintaining of an account is obligatory in order to obtain the credit or to obtain it on the terms and conditions marketed, the reference to the “total cost of credit” is to be read as including—

- (a) the costs of opening and maintaining a specific account;
- (b) the costs of using a means of payment for both transactions and drawdowns on that account; and
- (c) other costs relating to payment transactions.

Credit agreements to which this Part applies.

117.(1) The credit agreements in connection with residential immovable property which are referred to in section 5(2)(k) and to which this Part applies are—

- (a) a credit agreement which is secured by either—
 - (i) a mortgage (or other comparable security commonly used within the EEA) on residential immovable property; or
 - (ii) a right related to residential immovable property; or
- (b) a credit agreement which is for the purpose of acquiring or retaining property rights in land or in an existing or projected building.

(2) A credit agreement in connection with residential immovable property does not fall within sub-paragraph (1) if it is—

- (a) an equity release credit agreement where the mortgage creditor—
 - (i) contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the future sale of a residential immovable property or a right relating to residential immovable property; and

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- (ii) will not seek repayment of the credit until the consumer dies or leaves the property to move into long-term care, unless the consumer breaches a contractual obligation which allows the mortgage creditor to terminate the credit agreement;
 - (b) a credit agreement where the credit is granted by an employer to its employees as a secondary activity where such a credit agreement is offered free of interest or at an annual percentage rate of charge lower than those prevailing on the market and not offered to the public generally;
 - (c) a credit agreement where the credit is granted free of interest and without any other charges except those that recover costs directly related to the securing of the credit;
 - (d) a credit agreement in the form of an overdraft facility and where the credit has to be repaid within one month;
 - (e) a credit agreement which is the outcome of a settlement reached in court or before another statutory authority;
 - (f) a credit agreement which relates to the deferred payment (free of charge) of an existing debt and does not fall within the scope of sub-paragraph (1)(a).

The regulated activities

Granting credit by means of a mortgage credit agreement.

118.(1) Granting credit by means of a mortgage credit agreement is a specified kind of activity.

(2) Promising to carry on an activity of the kind specified in sub-paragraph (1) is a specified kind of activity.

Acting as a mortgage credit intermediary.

119.(1) Presenting or offering a mortgage credit agreement to a consumer is a specified kind of activity.

(2) Assisting a consumer by undertaking preparatory work or other pre-contractual administration in respect of a mortgage credit agreement (other than as referred to in sub-paragraph (1)) is a specified kind of activity.

(3) Concluding a mortgage credit agreement with a consumer on behalf of a mortgage creditor is a specified kind of activity.

Providing advisory services in connection with mortgage credit.

120. Providing personal recommendations to a consumer in respect of one or more transactions relating to a mortgage credit agreement is a specified kind of activity.

Exclusions

Exclusions from paragraphs 119 and 120.

121. The kinds of activity specified by paragraphs 119 and 120 are subject to the exclusions specified by paragraphs 122 to 124.

Mortgage creditors.

122. A person who acts as a mortgage creditor does not carry on any activity of a kind by specified paragraph 119.

Mere introducers.

123. A person who merely introduces, directly or indirectly, a consumer to a mortgage creditor or a mortgage credit intermediary does not carry on any activity of a kind by specified paragraph 119.

Recommendations relating to existing debt.

124. There is excluded from paragraph 120 any recommendations provided in the context of the managing of existing debt (but only in Gibraltar)–

- (a) by an insolvency practitioner who is licensed under Part 25; or
- (b) as part of a public or voluntary debt advisory service which does not operate on a commercial basis.

PART 13
COMPANIES, FOUNDATIONS, PARTNERSHIPS AND UNINCORPORATED ASSOCIATIONS

General

Application and interpretation of Part 13 of this Schedule.

125.(1) This Part of this Schedule—

- (a) has effect in relation to the item listed in section 5(2)(1) (companies, foundations, partnerships and unincorporated associations);
- (b) specifies the kind of activity carried on relation to companies, foundations, partnerships and unincorporated associations which is to be a regulated activity.

(2) It is immaterial for the purposes of this Part whether the company, foundation, partnership or unincorporated association is formed in or under the laws of Gibraltar or elsewhere.

(3) In this Part “partnership”, in relation to partnerships established in Gibraltar, means—

- (a) a partnership within the meaning of the Partnership Act;
- (b) a limited partnership formed under the Limited Partnerships Act;
- (c) a limited liability partnership within the meaning of the Limited Liability Partnerships Act 2009.

The regulated activity

Company etc. management.

126. Undertaking the administration of companies, foundations, partnerships or unincorporated associations (including in particular one or more of the following) is a specified kind of activity—

- (a) forming, managing or administering a company, foundation, partnership or unincorporated association;
- (b) providing it with corporate directors or individual directors;
- (c) providing it with individuals or companies to act as company secretary;
- (d) acting in any other capacity as an officer of it;
- (e) providing it with nominee services including, in particular, acting as or providing nominee shareholders;

- (f) providing it with a registered office;
- (g) in the case of a company or unincorporated association, acting as a director;
- (h) in the case of a partnership, acting as a partner.

Exclusions

Exclusions from paragraph 126.

127. The kind of activity specified by paragraph 126 is subject to the exclusions specified by paragraphs 128 and 129.

Companies or partnerships registered in Gibraltar.

128.(1) If all of the conditions specified by sub-paragraph (2) are met, the following activities are excluded from paragraph 126—

- (a) being a director of not more than 12 companies; and
- (b) acting as a partner in not more than 12 partnerships.

(2) The conditions are that—

- (a) the person in question is resident in Gibraltar;
- (b) each of the companies or partnerships is registered in Gibraltar; and
- (c) the business of each of the companies or partnerships is carried on in Gibraltar.

Provision of mail services.

129. A person does not carry on an activity of the kind specified by paragraph 126 by providing mail boxes or by forwarding mail.

**PART 14
TRUSTS AND FOUNDATIONS**

General

Application of Part 14 of this Schedule.

130.(1) This Part of this Schedule—

- (a) has effect in relation to the item listed in section 5(2)(m) (trusts and foundations); and
- (b) specifies the kinds of activities carried on relation to trusts and foundations which are to be regulated activities.

(2) References in this Part to a professional councillor of a foundation are to—

- (a) a member of the council of a foundation registered under the Private Foundations Act 2017; or
- (b) a person performing a corresponding role within a foundation (however described) established under the law of another jurisdiction.

The regulated activities

Acting as a professional trustee or foundation councillor.

131.(1) Acting as a professional trustee of a trust is a specified kind of activity.

(2) Acting as a professional trustee and a professional foundation councillor is a specified kind of activity.

(3) “Acting as a professional trustee” includes undertaking trust administration.

Exclusions

Exclusions from paragraph 131.

132. The kinds of activity specified by paragraph 131 are subject to the exclusions specified by paragraph 133.

Miscellaneous exclusions.

133. A person does not carry on an activity of the kind specified in paragraph 131 if—

- (a) the person is—
 - (a) a barrister or solicitor admitted and enrolled under the Supreme Court Act;
 - (b) a statutory auditor or audit firm who is approved under Part 24; or
 - (c) a trustee of one or more personal pension schemes (within the meaning of Part 27); and
- (b) the person is performing duties within the ambit of the person's profession which are carried out other than in connection with any other regulated activity.

PART 15
CURRENCY, PRECIOUS METALS AND CHEQUES

General

Application of Part 15 of this Schedule.

134. This Part of this Schedule–

- (a) has effect in relation to the items listed in section 5(2)(n) (foreign currency, precious metals and cheques); and
- (b) specifies the kind of activity carried on relation to foreign currency, precious metals and cheques which is to be a regulated activity.

The regulated activity

Acting as a bureau de change.

135.(1) Acting as a bureau de change is a specified kind of activity.

(2) “Acting as a bureau de change” means carrying out one or more of the following activities–

- (a) buying, selling or exchanging foreign currency;
- (b) buying, selling or exchanging precious metals;
- (c) cashing cheques which are payable to customers or third parties.

Exclusions

Exclusions from paragraph 135.

136. The kind of activity specified by paragraph 135 is subject to the exclusions specified by paragraph 137.

Miscellaneous exclusions.

137. There is excluded from paragraph 135 any activity carried on in relation to foreign currency, precious metals or cheques by–

- (a) a regulated firm with permission under Part 7 of this Act to carry on an activity of the kind specified by paragraph 3, 13 or 19; or
- (b) an electronically based foreign exchange trading platform.

PART 16
VALUE STORED OR TRANSMITTED BY DATABASE

General

Application of Part 16 of this Schedule.

138.(1) This Part of this Schedule—

- (a) has effect in relation to the item listed in section 5(2)(o) (value belonging to another which is stored or transmitted by means of a database system);
- (b) specifies the kind of activity carried on relation to value belonging to another which is stored or transmitted by means of a database system which is to be a regulated activity.

(2) In this Part—

“DLT” (distributed ledger technology) means a database system in which—

- (a) information is recorded and consensually shared and synchronised across a network of multiple nodes; and
- (b) all copies of the database are regarded as equally authentic;

“value” includes assets, holdings and other forms of ownership, rights or interests, with or without related information, such as agreements or transactions for the transfer of value or its payment, clearing or settlement.

The regulated activity

Providing distributed ledger technology services.

139. Using DLT for storage or transmission of value belonging to another is a specified activity.

Exclusions

Exclusions from paragraph 139.

140. The kind of activity specified by paragraph 139 is subject to the exclusions specified by paragraphs 141 and 142.

Activities incidental to carrying on other regulated activities.

141.(1) A person does not carry on an activity of the kind specified by paragraph 139 if both conditions A and B are met.

(2) Condition A is that the person—

- (a) is a regulated firm which has permission under Part 7 of this Act to carry on an activity of a kind specified by any other provision of this Schedule; or
- (b) is an EEA firm which carries on any such activity in Gibraltar in exercise of an EEA right.

(3) Condition B is that the person uses DLT only in the course of carrying on that activity.

Activities of persons subject to other forms of statutory regulation.

142.(1) A person does not carry on an activity of the kind specified by paragraph 139 if the person—

- (a) is approved, licensed or otherwise authorised to carry on an activity under—
 - (i) Part 24 (regulation of auditors) or 25 (regulation of insolvency practitioners);
 - (ii) the Gambling Act 2005;
 - (iii) the Insolvency Act 2011; or
 - (iv) such other enactments as the Minister may by regulations prescribe; and
- (b) uses DLT only in the course of carrying on that activity.

(2) A person does not carry on an activity of the kind specified by paragraph 139 if the person—

- (a) is established and authorised in the European Economic Area to carry on any activity equivalent to those subject to regulation under the enactments referred to in sub-paragraph (1);
- (b) carries on that activity in Gibraltar in exercise of rights arising under European Union law; and
- (c) uses DLT only in the course of carrying on that activity.