

FSC Newsletter

Advertising And The "Internet"

A lot of hype and attention has recently been focused on the "Information Super-Highway" or the "Internet". Every development in technology brings with it its own problems and challenges. The Internet has provided a particularly challenging one for regulators of financial services.

So What Is The Internet?

Basically, the Internet or "The Net" is a network of computers through which users can gain access to a wealth of information and services which is put out by both individuals and other establishments. Many companies are embracing the Net as an extension to their normal marketing media.

Users can gain access to the Net by the use of a computer, a modem and a telephone line through an account operated via an Internet Service Provider ("ISP"). The Net is basically divided into a number of main areas, but probably the best known are the World Wide Web ("WWW") and E-Mail.

The "WWW" is a set of pages that users may publish subject to any restrictions that the ISP may provide. Generally, however, the contents of the page are not vetted by the ISP and neither is there any form of editorial exercised by the ISP. The Web pages may be located on a server either at the ISP's jurisdiction or any other country in the world. Similarly, the Web pages may be accessed by users from anywhere in the world with access to the Internet.

E-Mail is a system whereby users can send and receive electronic messages in much the same manner as a letter or a fax.

What Does This Have To Do With The Financial Services Ordinance?

Regulation 3 of the Financial Services (Advertisements) Regulations prohibits a person from issuing an investment advertisement or advertisement for and in connection with financial services business in Gibraltar other than a licensee (with some exceptions).

Regulation 5 requires such advertisements to comply with the Schedule to these Regulations.

"Advertising" is defined in Regulation 2 as including every form of advertising.

It is, therefore, evident that, if a person was to publish a Web Page containing an advertisement in relation to investment business or a controlled activity being carried on in or from within Gibraltar, a licence would be required under the Financial Services Ordinance and the advertisement would need to comply with the requirements of the Schedule to the Advertisement Regulations.

The situs of the server is not a material consideration. If the advertisement is directed to persons in Gibraltar or is issued in or from within Gibraltar, a licence is required.

Similarly, a person who solicits investment business or a controlled activity in or from within Gibraltar by E-Mail through the Internet would be carrying on a licensable activity because of the situs of the person soliciting or targeted and not the situs of the server or the location of the Internet Service Provider.

The purpose of this Newsletter is to bring to the attention of licensees the fact that any advertisement issued or caused to be issued by them, either through the World Wide Web or through E-Mail postings, is required to comply with the requirements of the Schedule to the Financial Services (Advertisements) Regulations.

The Financial Services Commission has already detected some cases where local financial services providers have been advertising on the Net. By the same token, the Financial Services Commission will be "surfing" the Net to ensure that Gibraltar is not used as a base for the advertising and mailshots of E-Mail for provision of financial services without a licence.

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