

**PROSPECTUSES ACT 2005****Principal Act**

<b>Act. No. 2005-46</b>	<i>Commencement</i>	2.8.2005
	<i>Assent</i>	2.8.2005

Amending enactments	Relevant current provisions	Commencement date
LN. 2012/163	ss. 2(1), (2) & (3), 3, 4(2), 5(2), 6(1), (3), (4) & (10), 7(4), (5), (9) & (12), 8(1) & (3), 9(1), (2) & (3), 12(4), 13(2)(c), (2A) & (4), 20(2)(c), Schs. 4 & 5	15.11.2012
2012/172	ss. 2, 10(5A), 6(a) & (a)(ii), 11(3) & (4), 12(3), (3A), (6) & (7), 13(1), 15(7), 16(1) & (2), 20(3), 24(4A) & (4B)	22.11.2012
2015/212	s. 2(1)(c)	26.11.2015
2015/047	s. 7(12), (13), (14)	1.1.2016

English sources  
None cited

**Transposing:**

Directive 98/26/EC	Directive 2006/48/EC
Directive 2002/87/EC	Directive 2006/49/EC
Directive 2003/6/EC	Directive 2009/65/EC
Directive 2003/41/EC	Directive 2009/138/EC
Directive 2003/71/EC	Directive 2010/73/EC
Directive 2004/39/EC	Directive 2010/78/EU
Directive 2004/109/EC	Directive 2014/51/EU
Directive 2005/60/EC	

**EU Legislation/International Agreements involved:**

Regulation (EU) No 1095/2010

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AN ACT TO TRANSPOSE INTO THE LAW OF GIBRALTAR DIRECTIVE 2003/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 4 NOVEMBER 2003, ON THE PROSPECTUS TO BE PUBLISHED WHEN SECURITIES ARE OFFERED TO THE PUBLIC OR ADMITTED TO TRADING; AND MATTERS CONNECTED THERETO.

**Title.**

1. This Act may be cited as the Prospectuses Act 2005.

*Preliminary*

**Interpretation.**

- 2.(1) In this Act, save where the context otherwise requires—

“approval” means the positive act at the outcome of the scrutiny of the completeness of the prospectus by the competent authority including the consistency of the information given and its comprehensibility;

“base prospectus” means a prospectus containing all relevant information as specified in section 7, and section 8 in case there is a supplement, concerning the issuer and the securities to be offered to the public or admitted to trading, and, at the choice of the issuer, the final terms of the offering;

“company with reduced market capitalisation” means a company listed on a regulated market that had an average market capitalisation of less than EUR 100,000,000 on the basis of end year quotes for the previous 3 calendar years;

“competent authority” and “Gibraltar competent authority” means, the Minister or such person or persons as the Minister may, from time, to time, see fit to designate for any purpose connected with the carrying into effect of this Act either generally or in respect of any material particular or case;

“credit institution” shall be construed in accordance with the provisions of the Financial Services (Banking) Act;

“delegated act” means such legal instrument as may be adopted by the European Commission in accordance with the provisions of the prospectuses directive;

“EEA State” means, subject to subsection (6), any State which is a contracting Party to the EEA Agreement: and a reference to an

EEA State shall be construed, save where the context otherwise requires, as including a reference to Gibraltar;

“equity securities” means shares and other securities equivalent to shares in companies, as well as any other type of securities giving the right to acquire any of the aforementioned securities as a consequence of their being converted or the rights conferred by them being exercised, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer;

“ESMA” means the European Securities and Markets Authority established by the ESMA Regulation;

“ESMA Regulation” means Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC;

“financial instrument” means—

- (a) securities;
- (b) units in collective investment undertakings;
- (c) money-market instruments;
- (d) financial-futures contracts, including equivalent cash-settled instruments;
- (e) forward interest-rate agreements;
- (f) interest-rate, currency and equity swaps;
- (g) options to acquire or dispose of any instrument falling into these categories, including equivalent cash-settled instruments (this category includes, in particular, options on currency and on interest rates);
- (h) derivatives on commodities;
- (i) any other instrument admitted to trading on a regulated market in a Member State or for which a request for admission to trading on such a market has been made;

“home Member State” means—

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- (a) for all Community issuers of securities which are not mentioned in paragraph (ii), the Member State where the issuer has its registered office;
  - (b) for any issues of non-equity securities whose denomination per unit amounts to at least EUR 1,000, and for any issues of non-equity securities giving the right to acquire any securities or to receive a cash amount as a consequence of their being converted or the rights conferred by them being exercised, provided that the issuer of the non-equity securities is not the issuer of the underlying securities or an entity belonging to the group of the latter issuer, the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public, at the choice of the issuer, the offeror or the person asking for admission, as the case may be. The same regime shall be applicable to non-equity securities in a currency other than euro, provided that the value of such minimum denomination is nearly equivalent to EUR 1,000;
  - (c) for all issuers of securities incorporated in a third country which are not mentioned in paragraph (b), the Member State where the securities are intended to be offered to the public for the first time after the date of entry into force of Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC or where the first application for admission to trading on a regulated market is made, at the choice of the issuer, the offeror or the person asking for admission, as the case may be, subject to a subsequent election by issuers incorporated in a third country in the following circumstances—
    - (i) where the home Member State was not determined by their choice, or

- (ii) in accordance with Point (1)(i)(iii) of Article 2 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

“host Member State” means the State where an offer to the public is made or admission to trading is sought, when different from the home Member State;

“investment firm” shall be construed in accordance with the provisions of the Financial Services (Markets in Financial Instruments) Act 2006;

“investment services directive” means Directive 93/22/EEC of the Council of 10 May 1993 on investment services in the securities field;

“issuer” means a legal entity who issues or proposes to issue securities;

“key information” means essential and appropriately structured information which is to be provided to investors with a view to enabling them to understand the nature and the risks of the issuer, guarantor and the securities that are being offered to them or admitted to trading on a regulated market and, without prejudice to section 7(4)(b), to decide which offers of securities to consider further, and in light of the offer and securities concerned, the key information shall include the following elements–

- (a) a short description of the risks associated with and essential characteristics of the issuer and any guarantor, including the assets, liabilities and financial position;
- (b) a short description of the risks associated with and essential characteristics of the investment in the relevant security, including any rights attaching to the securities;
- (c) general terms of the offer, including estimated expenses charged to the investor by the issuer or the offeror;
- (d) details of the admission to trading;
- (e) reasons for the offer and use of proceeds;

“listed securities” means anything which has been admitted to the official list;



“listing” means being included in the official list;

“market operator” means a person who manages or operates the business of a regulated market;

“Member State” includes, subject to subsection (6), an EEA State and a reference to a Member State shall be construed, save where the context otherwise requires, as including a reference to Gibraltar;

“Minister” means the Minister responsible for financial services;

“money market instruments” means those classes of instruments which are normally dealt in on the money market;

“multilateral trading facility” means a multilateral system, operated by an investment firm (within the meaning of Article 1.2 of the investment services directive) or a market operator, which brings together multiple third-party buying and selling interests in financial instruments in accordance with non-discretionary regulations so as to result in a contract;

“non-equity securities” means all securities that are not equity securities;

“offer of securities to the public” has the meaning given in subsection (4);

“offering programme” means a plan which would permit the issuance of non-equity securities, including warrants in any form, having a similar type and/or class, in a continuous or repeated manner during a specified issuing period;

“offeror” means a legal entity or individual which offers securities to the public;

“open-ended collective investment scheme” means unit trusts and investment companies—

- (a) the object of which is the collective investment of capital provided by the public, and which operate on the principle of risk-spreading;
- (b) the units of which are, at the holder’s request, repurchased or redeemed, directly or indirectly, out of the assets of these undertakings;

the “official list” shall be construed in accordance with the Listing of Securities Act 1998 as amended or replaced from time to time;

“prospectus” means, in relation to securities issued by an issuer whose home Member State is Gibraltar, a document in such form and containing such information as may be required in accordance with this Act (and Schedule 5 in particular) and the prospectus directive;

“the prospectus directive” means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading, as the same may be amended from time to time;

“prospectus regulations” has the meaning given in section 27(2);

“qualified investor” means persons or entities-

- (a) falling within the categories described in Part I, paragraphs 1 to 4 of Schedule 2 of the Financial Services (Markets in Financial Instruments) Act 2006;
- (b) who request that they should be treated as professionals in accordance with Part II of Schedule 2 of the Financial Services (Markets in Financial Instruments) Act 2006; or
- (c) recognised as eligible counterparties under section 24 of the Financial Services (Markets in Financial Instruments) Act 2006;

unless, where permitted, any such person or entity has requested that they be treated as non-professional. Investment firms and credit institutions shall communicate their clarification on request to the issuer without prejudice to the Data Protection Act 2004. Investment firms authorised to continue considering professionals as such in accordance with section 61(6) of the Financial Services (Markets in Financial Instruments) Act 2006 shall be authorised to treat those clients as qualified investors;

“registration document” shall be construed in accordance with Schedule 5;

“regulated market”-

- (a) in any Member State, shall be such market as that Member State may establish;

- (b) in Gibraltar, shall be such market as the Minister may designate from time to time by notice in the Gazette,

in accordance with the provisions of article 1(13) of Council Directive 93/22/EEC as set out in Schedule 6;

“securities” means transferable securities as follows–

- (a) shares in companies and other securities equivalent to shares in companies which are negotiable on the capital market;
- (b) bonds and other forms of securitised debt which are negotiable on the capital market;
- (c) any other securities normally dealt in giving the right to acquire any such transferable securities by subscription or exchange or giving rise to a cash settlement,

excluding money market instruments having a maturity of less than 12 months;

“securities issued in a continuous or repeated manner” means issues on tap or at least two separate issues of securities of a similar type and/or class over a period of 12 months;

“securities note” shall be construed in accordance with Schedule 5;

“small and medium-sized enterprises” means companies, which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding EUR 43,000,000 and an annual net turnover not exceeding EUR 50,000,000;

“summary note” shall be construed in accordance with Schedule 5;

“supplementary prospectus” has the meaning given in section 8(1);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank or public holiday under the Banking and Financial Dealings Act or the Interpretation and General Clauses Act as the case may be.

(2) *Revoked.*

(3) *Revoked.*

(4) An offer of securities to the public means a communication in any form and by any means to any person, presenting sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to buy or subscribe for those securities and includes the placing of securities through any financial intermediary.

(5) Where in this Act there is a reference to an amount denominated in euros this may be deemed to be a reference to an amount of equal value (an “equivalent amount”) denominated wholly or partly in another currency or unit of account. The equivalent amount is to be calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made.

(6) This Act shall apply in relation to the United Kingdom only to the extent that the Minister may so provide by notice in the Gazette.

3. *Revoked.*

#### *Application*

#### **Application of Act.**

4.(1) Subject to the provisions of this Act, and, in particular, to Schedule 4–

- (a) any offer of securities to the public in Gibraltar shall be subject to the prior publication of a prospectus;
- (b) no person may offer securities to the public in Gibraltar or seek the admission of securities to trading on a regulated market in Gibraltar unless a prospectus which has the prior approval of the home Member State has been published in relation to those securities.

(2) This Act shall not apply to–

- (a) units issued by collective investment undertakings other than the closed-end type;
- (b) non-equity securities issued by a Member State or by one of a Member State’s regional or local authorities, by public international bodies of which one or more Member States are members, by the European Central Bank or by the central banks of the Member States;
- (c) shares in the capital of central banks of the Member States;

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- (d) securities unconditionally and irrevocably guaranteed by a Member State or by one of a Member State's regional or local authorities;
  - (e) securities issued by associations with legal status or non-profit-making bodies, recognised by a Member State, with a view to their obtaining the means necessary to achieve their non-profit-making objectives;
  - (f) non-equity securities issued in a continuous or repeated manner by credit institutions provided that these securities—
    - (i) are not subordinated, convertible or exchangeable;
    - (ii) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument;
    - (iii) materialise reception of repayable deposits;
    - (iv) are covered by a deposit guarantee scheme under Directive 94/19/EC of the European Parliament and of the Council on deposit-guarantee schemes;
  - (g) non-fungible shares of capital whose main purpose is to provide the holder with a right to occupy an apartment, or other form of immovable property or a part thereof and where the shares cannot be sold on without this right being given up;
  - (h) securities included in an offer where the total consideration of the offer in the European Union is less than EUR 5,000,000, which limit shall be calculated over a period of 12 months;
  - (i) “bostadsobligationer” issued repeatedly by credit institutions in Sweden whose main purpose is to grant mortgage loans, provided that -
    - (i) the “bostadsobligationer” issued are of the same series;
    - (ii) the “bostadsobligationer” are issued on tap during a specified issuing period;
    - (iii) the terms and conditions of the “bostadsobligationer” are not changed during the issuing period;
    - (iv) the sums deriving from the issue of the said “bostadsobligationer”, in accordance with the articles of

association of the issuer, are placed in assets which provide sufficient coverage for the liability deriving from securities;

- (j) non-equity securities issued in a continuous or repeated manner by credit institutions where the total consideration for the offer in the European Union is less than EUR 75,000,000, which limit shall be calculated over a period of 12 months, provided that these securities–
  - (i) are not subordinated, convertible or exchangeable;
  - (ii) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument.

(3) Notwithstanding subsection (2)(b), (d), (h), (i) and (j), an issuer, an offeror or a person asking for admission to trading on a regulated market shall be entitled to draw up a prospectus in accordance with this Act when securities are offered to the public or admitted to trading.

#### *Prospectuses*

#### **Prospectuses consisting of separate documents.**

5.(1) An issuer who already has a registration document approved by the competent authority shall be required to draw up only the securities note and the summary note when securities are offered to the public or admitted to trading on a regulated market.

(2) Where subsection (1) applies, the securities note shall provide information that would normally be provided in the registration document, where there has been a material change or recent development which could affect investors' assessments since the latest updated registration document, unless such information is provided in a supplement in accordance with section 8. The securities and summary notes shall be subject to a separate approval.

(3) Where an issuer has only filed a registration document without approval, the entire documentation, including updated information, shall be subject to approval by the competent authority.

#### **Validity and approval of prospectus.**

6.(1) A prospectus shall be valid for 12 months after its approval for offers to the public or admissions to trading on a regulated market, provided that

the prospectus is completed by any supplements required pursuant to section 8.

(2) In the case—

- (a) of an offering programme, the base prospectus, previously filed, shall be valid for a period of up to 12 months;
- (b) of non-equity securities, the prospectus shall be valid until no more of the securities concerned are issued in a continuous or repeated manner.

(3) A registration document, as referred to in section 7(9), previously filed and approved, shall be valid for a period of up to 12 months. The registration document, updated in accordance with section 5(2) or section 8, accompanied by the securities note and the summary note shall be considered to constitute a valid prospectus.

(4) The following types of offers shall not be deemed to be offers of securities to the public—

- (a) where the offer is addressed only to qualified investors;
- (b) where the offer is addressed to fewer than 150 persons per Member State, other than qualified investors;
- (c) where the minimum consideration which may be paid by any person for securities acquired by him pursuant to the offer is at least 100,000 Euros (or an equivalent amount);
- (d) where the securities being offered are denominated in amounts of at least 100,000 Euros (or an equivalent amount); or
- (e) where the total consideration payable in the European Union for the securities being offered is less than 100,000 Euros (or an equivalent amount), which limit is calculated over a period of 12 months.

(5) Notwithstanding the above, any subsequent resale of securities which were previously the subject of one or more of the types of offer mentioned in this subsection shall be regarded as a separate offer and section 2(4) shall apply for the purpose of deciding whether that resale is an offer of securities to the public. The placement of securities through financial intermediaries shall be subject to publication of a prospectus if none of the conditions in subsection (4) are met for the final placement.

(6) For the purposes of this section, the making of an offer of securities to trustees of a trust or members of a partnership in their capacity as such, or the making of such an offer to any two or more persons jointly, is to be treated as the making of an offer to a single person.

(7) For the purposes of this section, an amount (in relation to an amount denominated in Euros) is an “equivalent amount” if it is an amount of equal value, calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made or approval is granted (whichever is the earlier), denominated wholly or partly in another currency or unit of account.

(8) The persons responsible for prospectuses are to be determined in accordance with Schedule 2.

(9) Any contravention of this section is actionable, at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(10) Another prospectus is not required in any such subsequent resale of securities or final placement of securities through financial intermediaries as long as a valid prospectus is available in accordance with this section and the issuer or the person responsible for drawing up such prospectus consents to its use by means of a written agreement.

#### **Application for approval.**

7.(1) Applications to the competent authority for approval of a prospectus shall be made in such manner as the Minister may prescribe by notice in the Gazette.

(2) The competent authority may not approve a prospectus unless it is satisfied that—

- (a) Gibraltar is the home State in relation to the issue of the securities to which it relates;
- (b) the prospectus contains the necessary information; and
- (c) all of the other requirements imposed by or in accordance with this Act have been complied with (so far as these requirements apply to a prospectus for the securities in question).

(3) A prospectus submitted to the competent authority for approval shall contain all such information presented in an easily analysable and comprehensible form which, having regard to the particular nature of the



securities and their issuer, is necessary to enable investors to make an informed assessment of—

- (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities and of any guarantor thereof; and
- (b) the rights attaching to the securities.

(4) The prospectus shall contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market. It shall also include a summary that, in a concise manner and in non-technical language, provides key information in the language in which the prospectus was originally drawn up. The format and content of the summary of the prospectus shall provide, in conjunction with the prospectus, appropriate information about essential elements of the securities concerned in order to aid investors when considering whether to invest in such securities. The summary shall be drawn up in a common format in order to facilitate comparability of the summaries of similar securities and its content should convey the key information of the securities concerned in order to aid investors when considering whether to invest in such securities. The summary shall also contain a warning that—

- (a) it should be read as an introduction to the prospectus;
- (b) any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor;
- (c) where a claim relating to the information contained in a prospectus is brought before a court, the plaintiff investor might, under the provisions of this Act, have to bear the costs of translating the prospectus before the legal proceedings are initiated; and
- (d) clearly states that civil liability attaches to those persons who have tabled the summary including any translation thereof, and applied for its notification, but only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus or it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities.

(5) Where the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 100,000, there shall be no requirement to provide a summary except when requested by the competent authority.

(6) Save in subsection (4), “prospectus” shall include a supplementary prospectus.

(7) A prospectus shall include details of the final offer price and amount of securities to be offered to the public.

Provided that, and subject to subsection (8), where a prospectus for which approval is sought does not include the final offer price and amount of securities which will be offered to the public, the criteria, or the conditions in accordance with which the above elements will be determined or, in the case of price, the maximum price, are to be disclosed in the prospectus.

(8) Where the proviso to subsection (7) applies, a person may withdraw his acceptance at any time before the end of the period of 2 working days beginning with the date on which the competent authority is informed of the information in accordance with subsection (12).

(9) The issuer, offeror or person asking for the admission to trading on a regulated market may draw up the prospectus as a single document or separate documents. A prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary note. The registration document shall contain the information relating to the issuer. The securities note shall contain the information concerning the securities offered to the public or to be admitted to trading on a regulated market.

(10) For the following types of securities, the prospectus can, at the choice of the issuer, offeror or person asking for the admission to trading on a regulated market, consist of a base prospectus containing all relevant information concerning the issuer and the securities offered to the public or to be admitted to trading on a regulated market—

- (a) non-equity securities, including warrants in any form, issued under an offering programme;
- (b) non-equity securities issued in a continuous or repeated manner by credit institutions—
  - (i) where the sums deriving from the issue of the said securities, under national legislation, are placed in assets which provide sufficient coverage for the liability deriving from securities until their maturity date;
  - (ii) where, in the event of the insolvency of the related credit institution, the said sums are intended, as a priority, to repay the capital and interest falling due.

(11) The information given in the base prospectus shall be supplemented, if necessary, with updated information on the issuer and on the securities to be offered to the public or to be admitted to trading on a regulated market.

(12) Where the final terms of the offer are not included in either the base prospectus or a supplement, the final terms shall be—

- (a) made available to investors;
- (b) filed with the Gibraltar competent authority; and
- (c) communicated by the Gibraltar competent authority to the competent authority of the host Member State,

as soon as practicable upon the making of a public offer and, where possible, before the beginning of the public offer or admission to trading.

(13) The Gibraltar competent authority shall communicate final terms filed under subsection (12)(b) to ESMA.

(14) Final terms that fall within the scope of subsection (12)—

- (a) must only contain information that relates to the securities note;
- (b) must not be used to supplement the base prospectus; and
- (c) are subject to the proviso to subsection (7).

#### **Supplementary prospectus.**

8.(1) Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, whichever occurs later, shall be mentioned in a supplement to the prospectus. Such a supplement shall be approved in the same way in a maximum of 7 working days and published in accordance with at least the same arrangements as were applied when the original prospectus was published. The summary, and any translations thereof, shall also be supplemented, if necessary, to take into account the new information included in the supplement.

(2) Subsection (1) shall apply also to matters contained in any supplementary prospectus published under this section.

(3) Where the prospectus relates to an offer of securities to the public, investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within two working days after the publication of the supplement, to withdraw their acceptances, provided that the new factor, mistake or inaccuracy referred to in subsection (1) arose before the final closing of the offer to the public and the delivery of the securities. That period may be extended by the issuer or the offeror. The final date of the right of withdrawal shall be stated in the supplement.

(4) Section 7(1) and (2) applies to a supplementary prospectus as it applies to a prospectus.

**Exemptions from disclosure.**

9.(1) The competent authority may, whether generally in prospectus regulations or in a particular case, authorise the omission from a prospectus or a supplementary prospectus of any information, the inclusion of which would otherwise be required under this Act or by a delegated act, on the ground—

- (a) that its disclosure would be contrary to the public interest;
- (b) that its disclosure would be seriously detrimental to the issuer, provided that the omission would be unlikely to mislead the public with regard to any facts or circumstances which are essential for an informed assessment of the issuer, offeror or guarantor, if any, and of the rights attached to the securities to which the prospectus relates; or
- (c) that the information is only of minor importance for a specific offer to the public or admission to trading on a regulated market and unlikely to influence the assessment of the financial position and prospects of the issuer, offeror or guarantor, if any.

(2) Without prejudice to the adequate information of investors, where, exceptionally, certain information required to be included by a delegated act referred to in Article 7 of the prospectuses directive in a prospectus is inappropriate to the issuer's sphere of activity or to the legal form of the issuer or to the securities to which the prospectus relates, the prospectus shall contain information equivalent to the required information. If there is no such information, this requirement shall not apply.

(3) Where securities are guaranteed by a Member State, an issuer, an offeror or a person asking for admission to trading on a regulated market,

when drawing up a prospectus in accordance with section 4(3), shall be entitled to omit information about such guarantor.

**Decision on application.**

10.(1) The competent authority shall notify the applicant in writing of its decision on an application for approval of a prospectus before the end of the period of 10 working days beginning with the date on which the application is received.

(2) The period mentioned in subsection (1) shall be extended to 20 working days where the applicant does not have securities admitted to trading on a regulated market and has not previously offered securities to the public.

(3) Where the competent authority reasonably requires further information in connection with an application, it shall notify the applicant to that effect before the end of the period of 10 working days beginning with the date on which the application is received and the time-limits mentioned in subsections (1) and (2) shall apply only from the date on which such further information is received.

(4) The competent authority shall notify the applicant in writing of its decision on an application for approval of a supplementary prospectus before the end of the period of 7 working days beginning with the date on which the application is received.

(5) If the competent authority fails to comply with the time limits mentioned in subsection (1), (2) or (4), the failure shall not be deemed to constitute approval of the application.

(5A) The competent authority shall—

- (a) notify ESMA of the approval of any prospectus and any supplement thereto at the same time as that approval is notified to the issuer, the offeror or the person asking for admission to trading on a regulated market, as the case may be; and
- (b) provide ESMA with a copy of such prospectus and any supplement thereto.

(6) The Gibraltar competent authority may—

- (a) subject to prior notification of ESMA transfer an application for the approval of a prospectus to the competent authority of another Member State, provided—

- (i) the transferee authority agrees; and
  - (ii) the applicant is informed within three working days beginning with the first working day after the date of the transfer and the time limit referred to in subsection (1) shall apply from that date and Article 28(4) of the ESMA Regulation shall not apply to the transfer of the approval of the prospectus in accordance with this paragraph;
- (b) agree to the transfer to it of an application for the approval of a prospectus made to the competent authority of another Member State, following which—
  - (i) Gibraltar is to be treated for the purposes of this Act as the home State in relation to the issuer of the securities to which the prospectus relates; and
  - (ii) this Act applies to the application as if it had been made to the competent authority but with the modification in subsection (7)(b).
- (7) For the purposes of—
  - (a) subsection (6)(a), the competent authority ceases to have functions under this Act in relation to the application once the transfer has been carried into effect;
  - (b) subsection (6)(b)(ii), this Act shall apply as if the date of the transfer were the date on which the application was received by the competent authority.
- (8) Where the competent authority proposes to refuse to approve a prospectus, it must give the applicant written notice. The notice must –
  - (a) give the competent authority's reasons for refusing the application; and
  - (b) inform the applicant of his right to refer the matter to the Supreme Court.
- (9) Nothing in this Act shall affect the competent authority's liability to applicants under any statutory provision or rule of law, which shall apply only to approvals of prospectuses.

**Prospectus approved in a Member State.**

11.(1) The Gibraltar competent authority shall not take any steps to approve a prospectus or any supplements thereto where the prospectus or supplement has already been approved by the competent authority of a home Member State who has supplied the Gibraltar competent authority with—

- (a) a copy of the prospectus as approved;
- (b) a certificate stating that the prospectus has been drawn up in accordance with the prospectus directive; and
- (c) a summary of the prospectus (including a translation), where this has been required by the competent authority.

(2) The certificate mentioned in subsection (1)(b) shall mention where the competent authority of a home Member State has authorised, pursuant to article 8(2) of the prospectus directive, the omission of information which would otherwise have been required, together with its justification for that omission.

(3) Where Gibraltar is host State and the competent authority finds that irregularities have been committed by the issuer or by the financial institutions in charge of a public offer or that an issuer has breached its obligations by reason of the fact that securities are admitted to trading on a regulated market, it shall refer those findings to the competent authority of the home Member State and to ESMA.

(4) Where subsection (3) applies and, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the issuer or the financial institution in charge of the public offer persists in breaching the relevant legal or regulatory provisions the competent authority, after informing the competent authority of the home Member State and ESMA, shall take all appropriate measures in order to protect investors and shall inform the European Commission and ESMA at the earliest opportunity.

(5) In this section, “prospectus” includes a supplementary prospectus.

#### **Community scope of approvals.**

12.(1) Where an offer to the public or admission to trading on a regulated market is approved by the competent authority, the prospectus approved and any supplements thereto shall be valid for the public offer or the admission to trading in any number of host Member States, provided that the ESMA and the competent authority of each host Member State is notified in accordance with the provisions of subsection (4).

(2) Subject to subsection (3), where an offer to the public or admission to trading on a regulated market is approved in one or more Member States, the prospectus approved by the other Member State and any supplements thereto shall be valid for the public offer or the admission to trading in Gibraltar, provided that the competent authority is notified in accordance with the provisions of this Act. The competent authority shall not undertake any approval or administrative procedures relating to prospectuses.

(3) Where significant new factors, material mistakes or inaccuracies come to light after approval of the prospectus, the competent authority shall require the publication of a supplement to be approved in accordance with section 10(1).

(3A) In a case to which the factors set out in subsection (3) apply and where Gibraltar is acting as host State in relation to a prospectus approved by a home State, the competent authority may inform the competent authority of the home Member State of the need for new information.

(4) The competent authority shall, at the request of the issuer or the person responsible for drawing up the prospectus or any supplement thereto, and within 3 working days following receipt of that request or, where the request is submitted together with the draft prospectus, within 1 working day after the approval of the prospectus, notify the competent authority of the host Member State with a certificate of approval attesting that the prospectus has been drawn up in accordance with this Act and with a copy of that prospectus, and, if applicable, that notification shall be accompanied by a translation of the summary produced under the responsibility of the issuer or person responsible for drawing up the prospectus. The issuer or the person responsible for drawing up the prospectus shall also be notified of the certificate of approval at the same time as the competent authority of the host Member State.

(5) The application of the provisions of section 9(1) and (2) shall be stated in the certificate, as well as its justification.

(6) The competent authority shall notify ESMA of any certificate of approval of the prospectus issued under subsection (4), at the same time as it notifies the competent authority of the host Member State.

(7) When Gibraltar is acting as host State in relation to a prospectus approved by a home State, the competent authority shall publish on its website the list of certificates of approval of prospectuses and any supplements thereto, which are notified in accordance with Article 18 of the prospectus directive, including, if applicable, a hyperlink to those documents published on the website of the competent authority of the home State, on the website of the issuer, or on the website of the regulated market



and the published list shall be kept up-to-date and each item shall remain on the website for a period of at least 12 months.

**Publication of the prospectus.**

13.(1) Once approved, the prospectus shall be filed with the competent authority and shall be accessible to the ESMA through the competent authority and shall be made available to the public by the issuer, offeror or person asking for admission to trading on a regulated market as soon as practicable and in any event, at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved. In addition, in the case of an initial public offer of a class of shares not already admitted to trading on a regulated market that is to be admitted to trading for the first time, the prospectus shall be available at least six working days before the end of the offer.

(2) The prospectus shall be deemed available to the public for the purpose of subsection (1) when published either—

- (a) by insertion in one or more newspapers circulated throughout, or widely circulated in, Gibraltar and, if the case may be, in the Member State in which the offer to the public is made or the admission to trading is sought; or
- (b) in a printed form to be made available, free of charge, to the public at the offices of the market on which the securities are being admitted to trading, or at the registered office of the issuer and at the offices of the financial intermediaries placing or selling the securities, including paying agents; or
- (c) in an electronic form on the issuer's website or, if applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents; or
- (d) in an electronic form on the website of the regulated market where the admission to trading is sought; or
- (e) in electronic form on the website of the competent authority where the said authority has decided to offer this service.

(2A) Issuers or the persons responsible for drawing up a prospectus that publish their prospectus in accordance with subsection (2)(a) or (b) shall also publish their prospectus electronically in accordance with subsection (2)(c).

(3) The competent authority shall publish on its website over a period of 12 months, at its choice, all the prospectuses approved, or at least the list of

prospectuses approved, including, if applicable, a hyperlink to the prospectus published on the website of the issuer, or on the website of the regulated market.

(4) Information may be incorporated in the prospectus by reference to one or more previously or simultaneously published documents that have been approved by the competent authority or filed with it in accordance with this Act or the Financial Services (Listing of Securities) Act 2006 or any Rules made under the latter Act. Such information shall be the most recent available to the issuer. The summary shall not incorporate information by reference.

(5) The text and the format of the prospectus, or the supplements to the prospectus, published or made available to the public, shall at all times be identical to the original version approved by the competent authority.

(6) Where the prospectus is made available by publication in electronic form, a paper copy must nevertheless be delivered to the investor, upon his request and free of charge, by the issuer, the offeror, the person asking for admission to trading or the financial intermediaries placing or selling the securities.

#### **Use of languages in prospectuses.**

14.(1) Where an offer to the public is made or admission to trading on a regulated market is sought in Gibraltar, the prospectus shall be drawn up in English.

(2) Where an offer to the public is made or admission to trading on a regulated market is sought in a Member State other than Gibraltar and the prospectus has been approved in a language other than English, the competent authority may, in its discretion, require that the summary of the prospectus be translated into English.

#### **Powers of the competent authority.**

15.(1) The competent authority may, as a condition of approving a prospectus—

- (a) require an issuer or offeror to include in the prospectus such supplementary information necessary for investor protection as it may require;
- (b) require any such person mentioned in paragraph (a) or any person controlling, or controlled by, any such person to provide such information or documents as it may require;

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- (c) require an auditor or manager of an issuer or offeror, or any financial intermediary commissioned to assist either in carrying out the offer to the public to provide such information or documents as it may require.
- (2) The competent authority may—
- (a) require an issuer, offeror or person seeking admission to trading on a regulated market to suspend the public offer during the period when it is available to be accepted (or, as the case may be, the process of seeking admission to trading on a regulated market) for a period not exceeding 10 consecutive working days on any single occasion if it has reasonable grounds for knowing or suspecting that any provision of the prospectus directive has been infringed;
  - (b) if it has reasonable grounds for knowing or suspecting that any provision of the prospectus directive has been infringed, suspend for a period not exceeding 10 consecutive working days on any single occasion, or prohibit any advertisement published in connection with a prospectus;
  - (c) prohibit a public offer if any provision of the prospectus directive has been infringed or if it has reasonable grounds for knowing or suspecting that any such provision is likely to be infringed;
  - (d) require a market operator to suspend trading on a regulated market for a period not exceeding 10 consecutive working days on any single occasion if it has reasonable grounds for knowing or suspecting that any provision of the prospectus directive has been infringed;
  - (e) require a market operator to prohibit trading on a regulated market in any provision of the prospectus directive has been infringed;
  - (f) where it considers that any person has failed to comply with his obligations, publish a statement to that effect.
- (3) A requirement, prohibition, suspension or other action under subsection (2) shall take effect immediately, if the notice under subsection (4) states that that is the case and in any other case, on such date as may be specified in that notice.
- (4) If the competent authority proposes to exercise any of the powers in subsection (2) in relation to any person, or exercises any of the powers in

subsection (2) in relation to any person with immediate effect, it shall give that person written notice which shall—

- (a) give details of its action or proposed action;
- (b) state its reasons for taking the action in question and for choosing the date on which it took effect or shall take effect;
- (c) inform the recipient that he may make representations to the competent authority within such period as may be specified in the notice;
- (d) inform him of the date on which the action in question took effect or shall take effect; and
- (e) inform him of his right of appeal under section 24.

(5) The competent authority may extend the period during which representations may be made to it.

(6) If, having considered any representations made to it, the competent authority decides to maintain, vary or revoke its earlier decision, it shall give written notice to that effect to the person mentioned in subsection (4) and inform him, where relevant, of his right to appeal under section 24.

(7) The competent authority shall—

- (a) cooperate with ESMA for the purposes of this implementation of the prospectuses directive, in accordance with the ESMA Regulation; and
- (b) without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of the ESMA Regulation.

**Delegation by competent authority.**

16.(1) The competent authority, except in relation to the publication on the Internet of approved prospectuses and the filing of prospectuses, may, until 31 December 2011, delegate tasks to such person as it may deem appropriate. Any delegation shall be made in a specific manner stating the tasks to be undertaken and the conditions under which they are to be carried out which shall include a clause obliging the entity in question to act and be organised in such a manner as to avoid conflict of interest and so that information obtained from carrying out the delegated tasks is not used unfairly or to prevent competition.

(2) The competent authority shall ensure that the Commission, ESMA and the competent authorities of the Member States are informed of any arrangements entered into with regard to delegation of tasks, including the precise conditions regulating such delegation.

### *Advertising*

#### **Advertisements.**

17.(1) Any type of advertisement relating either to an offer to the public of securities or to an admission to trading on a regulated market shall observe the principles contained in subsections (2) to (5). Subsections (2) to (4) shall apply only to cases where the issuer, the offeror or the person applying for admission to trading is covered by the obligation to draw up a prospectus.

(2) Advertisements shall state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it.

(3) Advertisements shall be clearly recognisable as such. The information contained in an advertisement shall not be inaccurate or misleading. This information shall also be consistent with the information contained in the prospectus, if already published, or with the information required to be in the prospectus, if the prospectus is published afterwards.

(4) In any case, all information concerning the offer to the public or the admission to trading on a regulated market disclosed in an oral or written form, even if not for advertising purposes, shall be consistent with that contained in the prospectus.

(5) When according to this Act no prospectus is required, material information provided by an issuer or an offeror and addressed to qualified investors or special categories of investors, including information disclosed in the context of meetings relating to offers of securities, shall be disclosed to all qualified investors or special categories of investors to whom the offer is exclusively addressed. Where a prospectus is required to be published, such information shall be included in the prospectus or in a supplement to the prospectus.

(6) The competent authority shall ensure compliance with the principles referred to in subsections (2) to (5). To that end, the competent authority shall have the power to ensure that an advertisement or disclosure in a manner not consistent with this section may be withdrawn, amended, republished or re-disclosed in such manner and with such amendments as the competent authority may deem appropriate.

(7) A person contravening the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine at level 5 on the standard scale.

#### *Compensation*

#### **Compensation for false or misleading particulars.**

18.(1) Subject to schedule 3, the person responsible for the prospectus shall be liable to pay compensation to a person who has acquired securities to which a prospectus applies and suffered loss as a result of any untrue or misleading statement or the omission from the particulars of any matter required to be included in the prospectus pursuant to this Act.

(2) If the prospectus is required to include information about the absence of a particular matter, the omission from the particulars of that information shall be treated as a statement in the prospectus that there is no such matter.

(3) No person shall, by reason of being a promoter of a company or otherwise, incur any liability for failing to disclose information which he would not be required to disclose in a prospectus in respect of a company's securities if he were responsible for those particulars or if he is responsible for them, which he is entitled to omit pursuant to this Act.

(4) The reference in subsection (3) to a person incurring liability includes a reference to any other person being entitled as against that person to be granted any civil remedy or to rescind or repudiate an agreement.

(5) "Prospectus", in this section and Schedule 3, includes a supplementary prospectus.

(6) No person shall be liable to pay compensation solely on the basis of a summary included in a prospectus unless the summary is misleading, inaccurate or inconsistent when read with the rest of the prospectus.

(7) This section shall not affect any liability which may be incurred apart from this section.

(8) References in this section to the acquisition by a person of securities include references to his contracting to acquire them or any interest in them.

#### *Penalties*

#### **Penalties for breach of requirements.**

19.(1) If the competent authority considers in relation to a financial instrument that—

- (a) an issuer who has requested or approved the admission of the instrument to trading on a regulated market;
- (b) a person discharging managerial responsibilities within such an issuer; or
- (c) a person connected to such a person discharging managerial responsibilities; or
- (d) an offeror, person seeking admission to trading on a regulated market, any other applicant for approval of a prospectus or a supplementary prospectus or any other person to whom the prospectus directive applies,

has contravened any provision of the regulations made under this Act, it may impose on him a penalty of such amount as it considers appropriate.

(2) If, in the case of a contravention by a person referred to in subsection (1)(a) the competent authority considers that another person who was at the material time a director of the former person was knowingly concerned in the contravention, it may impose on him a penalty of such amount as it considers appropriate.

(3) The competent authority may, instead of imposing a penalty on a person under this section in respect of a particular matter, publish a statement censuring him.

(4) Nothing in this section shall prevent the competent authority from taking any other steps which it has power to take under this Act.

(5) A penalty under this section is payable to the Consolidated Fund.

(6) The competent authority may not take action against a person under this section after the end of the period of two years beginning with the first day on which it knew of the contravention unless proceedings against that person, in respect of the contravention, were begun before the end of that period.

(7) For the purposes of subsection (6), the competent authority shall be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.

#### *Supplementary*

#### **Investigations.**

20.(1) If it appears to the competent authority that there are circumstances suggesting that—

- (a) there may have been a breach of any provision of regulations made under this Act; or
- (b) a person who was at the material time a director of—
  - (i) a person responsible for a prospectus;
  - (ii) any applicant for approval of a prospectus or supplementary prospectus (“relevant body”);

has been knowingly concerned in a breach of those regulations or any requirement otherwise imposed by or under the prospectus directive, by that issuer, applicant or relevant body; or

- (c) there may have been a contravention of section 6,

it may appoint one or more competent persons to conduct an investigation on its behalf and to report to it the findings of that investigation.

(2) Without prejudice to subsection (1), the competent authority shall also, once the prospectus is issued be empowered to—

- (a) require the issuer to disclose all material information which may have an effect on investor protection or the smooth operation of the market;
- (b) suspend or ask the relevant regulated market to suspend the securities from trading if, in its opinion, the issuer’s situation is such that trading would be detrimental to investors’ interests;
- (c) carry out on-site inspections, on the strength of a warrant from a justice of the peace, in order to verify compliance with the provisions of this Act the prospectuses directive and any delegated acts.

(3) Where the competent authority, in conjunction with one or more competent authority conducts an on-site inspection pursuant to subsection (2)(c), in accordance with Article 21 of the ESMA Regulation, ESMA shall be entitled to participate in that inspection.

#### **Fees.**

21. The Minister may, by notice in the Gazette, set such fees in respect of—



- (a) applications under this Act;
- (b) the continued inclusion of securities in the official list;
- (c) applications for approval of a prospectus or a supplementary prospectus,

as it considers appropriate will enable it to meet the expenses incurred in carrying out its functions under this Act or for any incidental purposes.

**Exemption from liability in damages.**

22.(1) Neither—

- (a) the competent authority; nor
- (b) any person who is or is acting as a member, officer or member of staff of the competent authority; nor
- (c) any person to whom any task may have been delegated pursuant to section 16,

shall be liable in damages for anything done or omitted in the discharge, or purported discharge, of the competent authority's functions.

(2) Subsection (1) does not apply if the act or omission is shown to have been in bad faith.

**Professional secrecy and cooperation.**

23.(1) Subject to the following provisions of this section, any person who works or has worked for the competent authority and for entities to which competent authorities may have delegated certain tasks shall not disclose to any other person or authority any information he may have come across in his professional capacity except in accordance with the provisions of this Act.

(2) The competent authority—

- (a) shall cooperate with, and render assistance to, the competent authorities of other Member States whenever necessary for the purpose of carrying out their duties and making use of their powers;
- (b) in particular, it shall exchange information and cooperate when an issuer has more than one home competent authority because

of its various classes of securities, or where the approval of a prospectus has been transferred to the competent authority of a home Member State; and

- (c) shall closely cooperate when requiring suspension or prohibition of trading for securities traded in Gibraltar in order to ensure a level playing field between trading venues and protection of investors.

(3) Where appropriate—

- (a) the competent authority may request the assistance of the competent authority of the home Member State; or
- (b) the competent authority may afford assistance to the competent authority of the home Member State,

including information specific to the relevant market, from the stage at which a case is scrutinised, in particular as regards a new type or rare forms of securities.

(4) The competent authority may consult with operators of regulated markets as necessary and, in particular, when deciding to suspend, or to ask a regulated market to suspend or prohibit trading.

(4A) The competent authority may refer to ESMA situations where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time.

(4B) Nothing in this section shall prevent the competent authority from exchanging confidential information or from transmitting confidential information to ESMA or the European Systemic Risk Board (hereinafter the “ESRB”), subject to constraints relating to firm-specific information and effects on third countries as provided for in the ESMA Regulation and Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board respectively and information so exchanged between competent authorities and ESMA or ESRB shall be covered by the same obligation of professional secrecy to which the persons employed or formerly employed by the competent authorities receiving the information are already subject.

(5) Information exchanged under this section shall be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject pursuant to subsection (1).

**Appeals.**

24. Any person aggrieved by a decision of the competent authority under this Act may appeal to the Supreme Court on a point of law in the manner provided by rules of court; and where the court grants an appeal the court shall—

- (a) quash the decision of the competent authority; and
- (b) remit the case to the competent authority; and
- (c) direct the competent authority to proceed as it would have been required to do if it had decided the relevant question of law correctly as established by the court.

**Entry of premises under warrant.**

25.(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the competent authority that there are reasonable grounds for believing that the first or second set of conditions is satisfied.

(2) The first set of conditions is—

- (a) that a person has failed (wholly or in part) to comply with a request for information made under this Act; and
- (b) that on the premises specified in the warrant—
  - (i) there are documents which have been required; or
  - (ii) there is information which has been required.

(3) The second set of conditions is—

- (a) that an offence under this Act has been (or is being) committed by any person;
- (b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed; and
- (c) that if a request for information were made under this Act—
  - (i) it would not be complied with; or

- (ii) the documents or information to which it related would be removed, tampered with or destroyed.

(4) A warrant under this section shall authorise a constable or other person authorised by the competent authority—

- (a) to enter the premises specified in the warrant;
- (b) to search the premises and take possession of any documents or information appearing to be documents or information or a kind in respect of which a warrant under this section was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
- (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found;
- (e) to use such force as may be reasonably necessary.

(5) Any document of which possession is taken under this section may be retained—

- (a) for a period of three months; or
- (b) if within that period proceedings to which the document is relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.

#### **Offences.**

26.(1) Any act or omission contrary to the provisions of this Act and in respect of which no provision has been made for a penalty shall be an offence and liable on summary conviction to a fine at level 5 on the standard scale.

(2) Subsection (1) does not apply to the competent authority or an agent or delegate of the competent authority.

#### **Regulations.**

27.(1) The Minister may make regulations in respect of any matter and for any purpose relating to the subject matter of this Act.

(2) Without prejudice to the generality of the foregoing, the Minister may make regulations by notice in the Gazette (“prospectus regulations”) in relation to offers of securities to the public and admission of securities to trading on a regulated market.

(3) Prospectus regulations may, in particular, make further provision—

- (a) for the form and content of a prospectus (including a summary);
- (b) for the period of validity of a prospectus;
- (c) where the final offer price or the amount of securities to be offered to the public is not included in the prospectus, for disclosing the maximum price or the criteria or conditions according to which these matters are to be determined;
- (d) for cases where a summary need not be included in a prospectus;
- (e) for the form and content of other summary documents relating to a prospectus;
- (f) for making public a prospectus once it has been approved;
- (g) for the disclosure of such information as the competent authority may reasonably require;
- (h) for the languages in which a prospectus (including a summary) and other summary documents are to be written;
- (i) for attaching conditions to the approval of a prospectus which has been approved by a non-Member State;
- (j) for advertisements relating to an offer of securities to the public or admission of securities to trading on a regulated market.

(4) In this section, “prospectus” includes a supplementary prospectus.

## **Repeal and consequential amendments.**

28.(1) The Prospectuses Act 1998 is repealed.

(2) Schedule 1 shall have effect.

**SCHEDULE 1**

Section 28(2)

**CONSEQUENTIAL AMENDMENTS**

1. Sections 52 to 56 and 366 to 368 of and Schedule 3 to the Companies Act shall not apply in the case of any offer to the public of securities or prospectus to which this Act applies.
2. Sections 57 and 144(a) and (d) of the Companies Act do not apply to a recognised prospectus or a recognised European prospectus and such a prospectus shall be deemed to comply with section 69(1)(c)(i).
3. The Financial Services (Advertisements) Regulations 1991 do not apply to any prospectus to which this Act applies.

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**SCHEDULE 2**

Section 6(8)

**Persons responsible for prospectus.**

1. For the purposes of this Act, the persons responsible for a prospectus or supplementary prospectus shall be—
  - (a) the issuer of the securities to which the prospectus or supplementary prospectus relates;
  - (b) where the issuer is a body corporate, each person who is a director of that body corporate at the time when the prospectus or supplementary prospectus is published;
  - (c) where the issuer is a body corporate, each person who has authorised himself to be named, and is named, in the prospectus or supplementary prospectus as a director or as having agreed to become a director of that body either immediately or at a future time;
  - (d) each person who accepts, and is stated in the prospectus or supplementary prospectus as accepting, responsibility for, or for any part of, the prospectus or supplementary prospectus;
  - (e) the offeror of the securities, where he is not the issuer;

- (f) where the offeror is a body corporate, but is not the issuer and is not making the offer in association with the issuer, each person who is a director of that body corporate at the time when the prospectus or supplementary prospectus is published; and
  - (g) each person not falling within any of the foregoing paragraphs who has authorised the contents of, or of any part of, the prospectus or supplementary prospectus.
2. A person shall not be responsible under paragraph 1(a), (b) or (c) unless the issuer has made or authorised the offer in relation to which the prospectus or supplementary prospectus was published; and a person shall not be responsible for a prospectus or supplementary prospectus by virtue of paragraph 1(b) if it is published without his knowledge or consent and on becoming aware of its publication he forthwith gives reasonable public notice that it was published without his knowledge or consent.
3. A person shall not be responsible under paragraph 1(e) as the offeror of the securities if—
- (a) the issuer is responsible for the prospectus or supplementary prospectus in accordance with this regulation;
  - (b) the prospectus or supplementary prospectus was drawn up primarily by the issuer, or by one or more persons acting on behalf of the issuer; and
  - (c) the offeror is making the offer in association with the issuer.
4. Where a person has accepted responsibility for, or authorised, only part of the contents of any prospectus or supplementary prospectus, he shall be responsible under paragraph 1(d) or (g) only for that part and only if it is included in (or substantially in) the form and context to which he has agreed.
5. Nothing in this schedule shall be construed as making a person responsible for any prospectus or supplementary prospectus by reason only of giving advice as to its contents in a professional capacity.
6. Where by virtue of this schedule the issuer of any shares pays or is liable to pay compensation under section 18 for loss suffered in respect of shares for which a person has subscribed no account shall be taken of that liability or payment in determining any question as to the amount paid on subscription for those shares or as to the amount paid up or deemed to be paid up on them.

**SCHEDULE 3**

Section 18

**EXEMPTION FROM LIABILITY TO PAY COMPENSATION****Statements believed to be true.**

1.(1) A person shall not incur any liability under section 18(1) for loss caused by a statement if he satisfies the court that, at the time when the prospectus was submitted to the competent authority, he reasonably believed (having made such enquiries, if any, as were reasonable) that—

- (a) the statement was true and not misleading, or
- (b) the matter whose omission caused the loss was properly omitted,
- (c) and that one or more of the conditions set out in sub-paragraph (2) are satisfied.

(2) The conditions are that—

- (a) he continued in his belief until the time when the securities in question were acquired;
- (b) they were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire them;
- (c) before the securities were acquired, he had taken all such steps as it was reasonable for him to have taken to secure that a correction was brought to the attention of those persons;
- (d) he continued in his belief until after the commencement of dealings in the securities following their admission to the official list and they were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused.

(3) In this paragraph “statement” means—

- (a) any untrue or misleading statement in a prospectus; or
- (b) the omission from a prospectus of any matter required to be included pursuant to this Act.

**Statements by experts.**



2.(1) A person shall not incur any liability under section 18(1) for loss in respect of any securities caused by a statement if he satisfies the court that, at the time when the prospectus was submitted to the competent authority, he reasonably believed that the other person—

- (a) was competent to make or authorise the statement;
- (b) had consented to its inclusion in the form and context in which it was included; and
- (c) that one or more of the conditions set out in sub-paragraph (2) are satisfied.

(2) The conditions are that—

- (a) he continued in his belief until the time when the securities were acquired;
- (b) the securities were acquired before it was reasonably practicable to bring the fact that the expert was not competent, or had not consented, to the attention of persons likely to acquire the securities in question;
- (c) before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that that fact was brought to the attention of those persons;
- (d) he continued in his belief until after the commencement of dealings in the securities following their admission to the official list and they were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused.

(3) In this paragraph “statement” means a statement included in a prospectus which—

- (a) purports to be made by, or on the authority of, another person as an expert; and
- (b) is stated to be included in the prospectus with that other person’s consent.

**Correction of statements.**

3.(1) A person shall not incur liability under section 18(1) for loss caused by a statement if he satisfies the court—

- (a) that before the securities in question were acquired, a correction had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities; or
  - (b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.
- (2) Nothing in this paragraph is to be taken as affecting paragraph 1.
- (3) In this paragraph “statement” has the same meaning as in paragraph 1.

**Correction of statements by experts.**

4.(1) A person shall not incur liability under section 18(1) for loss caused by a statement if he satisfies the court—

- (a) that before the securities in question were acquired, the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities; or
  - (b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.
- (2) Nothing in this paragraph is to be taken as affecting paragraph 2.
- (3) In this paragraph “statement” has the same meaning as in paragraph 2.

**Official statements.**

5. A person shall not incur any liability under section 18(1) for loss resulting from—

- (a) a statement made by an official person which is included in the prospectus; or
- (b) a statement contained in a public official document which is included in the prospectus;

if he satisfies the court that the statement is accurately and fairly reproduced.

**False or misleading information known about.**

6. A person shall not incur any liability under section 18(1) if he satisfies the court that the person suffering the loss acquired the securities in question with knowledge—

- (a) that the statement was false or misleading;
- (b) of the omitted matter; or
- (c) of the change or new matter;

as the case may be.

**Belief that supplementary prospectus not called for.**

7. A person shall not incur any liability under section 18 where he satisfies the court that he reasonably believed that the change or new matter in question was not such as to call for supplementary prospectus.

**Meaning of “expert”.**

8. In this schedule, “expert” includes any engineer, valuer, accountant or other person whose profession, qualifications or experience give authority to a statement made by him.

**SCHEDULE 4**

Section 4(1)

**EXEMPTIONS FROM THE OBLIGATION TO PUBLISH A PROSPECTUS**

1. The obligation to publish a prospectus shall not apply to offers of securities to the public of the following types of securities -

- (a) shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital;
- (b) securities offered in connection with a takeover by means of an exchange offer, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of Community legislation;
- (c) securities offered, allotted or to be allotted in connection with a merger or division, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of European Union legislation;
- (d) dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
- (e) securities offered, allotted or to be allotted to existing or former directors or employees by their employer or by an affiliated undertaking provided that the company has its head office or registered office in the European Union and provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer;
- (f) the provisions of subparagraph (e) shall also apply to a company established outside the European Union whose securities are admitted to trading either on a regulated market or on a third-country market. In the latter case, the exemption shall apply provided that adequate information, including the document referred to in subparagraph (e), is available at least in a language customary in the sphere of international finance and

provided that the European Commission has adopted an equivalence decision regarding the third-country market concerned;

- (g) the Gibraltar competent authority may request the European Commission to adopt an equivalence decision in accordance with the procedure referred to in Article 24(2) of the prospectuses directive and in so doing it shall indicate why it considers that the legal and supervisory framework of the third country concerned is to be considered equivalent and shall provide relevant information to this end;
- (h) a third-country legal and supervisory framework may be considered equivalent where that framework fulfils at least the following conditions–
  - (i) the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis;
  - (ii) the markets have clear and transparent rules regarding admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;
  - (iii) security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and
  - (iv) market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation.

2. The obligation to publish a prospectus shall not apply to the admission to trading on a regulated market of the following types of securities–

- (a) shares representing, over a period of 12 months, less than 10 per cent of the number of shares of the same class already admitted to trading on the same regulated market;
- (b) shares issued in substitution for shares of the same class already admitted to trading on the same regulated market, if the issuing of such shares does not involve any increase in the issued capital;
- (c) securities offered in connection with a takeover by means of an exchange offer, provided that a document is available containing information which is regarded by the competent

authority as being equivalent to that of the prospectus, taking into account the requirements of Community legislation;

- (d) securities offered, allotted or to be allotted in connection with a merger or a division, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of European Union legislation.
- (e) shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
- (f) securities offered, allotted or to be allotted to existing or former directors or employees by their employer or an affiliated undertaking, provided that the said securities are of the same class as the securities already admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the securities and the reasons for and detail of the offer;
- (g) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market;
- (h) securities already admitted to trading on another regulated market, on the following conditions–
  - (i) that these securities, or securities of the same class, have been admitted to trading on that other regulated market for more than 18 months;
  - (ii) that, for securities first admitted to trading on a regulated market after the date of entry into force of the prospectus directive, the admission to trading on that other regulated market was associated with an approved prospectus made available to the public in conformity with the provisions of this Act;

- (iii) that, except where (ii) applies, for securities first admitted to listing after 30 June 1983, listing particulars were approved in accordance with the Listing of Securities Act, 1998;
- (iv) that the ongoing obligations for trading on that other regulated market have been fulfilled;
- (v) that the person seeking the admission of a security to trading on a regulated market under this exemption makes a summary document available to the public in a language accepted by the competent authority of the Member State of the regulated market where admission is sought;
- (vi) that the summary document referred to in (v) is made available to the public in the Member State of the regulated market where admission to trading is sought in the manner set out in this Act; and
- (vii) that the contents of the summary document shall comply with the provisions of this Act. Furthermore the document shall state where the most recent prospectus can be obtained and where the financial information published by the issuer pursuant to his ongoing disclosure obligations is available.

**SCHEDULE 5**

Section 2

**MISCELLANEOUS FORMS****PART I****PROSPECTUSES****Summary.**

1. The summary shall provide in a few pages the most important information included in the prospectus, covering at least the following items—

- A. identity of directors, senior management, advisers and auditors
- B. offer statistics and expected timetable
- C. essential information concerning selected financial data; capitalisation and indebtedness; reasons for the offer and use of proceeds; risk factors
- D. information concerning the issuer—
  - history and development of the issuer
  - business overview
- E. operating and financial review and prospects—
  - research and development, patents and licences, etc.
  - trends
- F. directors, senior management and employees
- G. major shareholders and related-party transactions
- H. financial information -
  - consolidated statement and other financial information
  - significant changes
- I. details of the offer and admission to trading—



- offer and admission to trading
  - plan for distribution
  - markets
  - selling shareholders
  - dilution (equity securities only)
  - expenses of the issue
- J. additional information–
- share capital
  - memorandum and articles of association
  - documents on display.

**Identity of directors, senior management, advisers and auditors.**

2. The purpose is to identify the company representatives and other individuals involved in the company's offer or admission to trading; these are the persons responsible for drawing up the prospectus as required by section 7 of the Act and those responsible for auditing the financial statements.

**Offer statistics and expected timetable.**

3. The purpose is to provide essential information regarding the conduct of any offer and the identification of important dates relating to that offer.

- A. Offer statistics
- B. Method and expected timetable

**Essential information.**

4. The purpose is to summarise essential information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data must also be restated.

- A. Selected financial data

- B. Capitalisation and indebtedness
- C. Reasons for the offer and use of proceeds
- D. Risk factors

**Information on the company.**

5. The purpose is to provide information about the company's business operations, the products it makes or the services it provides, and the factors which affect the business. It is also intended to provide information regarding the adequacy and suitability of the company's properties, plant and equipment, as well as its plans for future capacity increases or decreases.

- A. History and development of the company
- B. Business overview
- C. Organisational structure
- D. Property, plant and equipment

**Operating and financial review and prospects.**

6. The purpose is to provide the management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are expected to have a material effect on the company's financial condition and results of operations in future periods.

- A. Operating results
- B. Liquidity and capital resources
- C. Research and development, patents and licences, etc.
- D. Trends

**Directors, senior management and employees.**

7. The purpose is to provide information concerning the company's directors and managers that will allow investors to assess their experience, qualifications and levels of remuneration, as well as their relationship with the company.

- A. Directors and senior management
- B. Remuneration
- C. Board practices
- D. Employees
- E. Share ownership

**Major shareholders and related-party transactions.**

8. The purpose is to provide information regarding the major shareholders and others that may control or have an influence on the company. It also provides information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company.

- A. Major shareholders
- B. Related-party transactions
- C. Interests of experts and advisers

**Financial information.**

9. The purpose is to specify which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature. The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined in accordance with international accounting and auditing standards.

- A. Consolidated statements and other financial information
- B. Significant changes

**Details of the offer and admission to trading details.**

10. The purpose is to provide information regarding the offer and the admission to trading of securities, the plan for distribution of the securities and related matters.

- A. Offer and admission to trading
- B. Plan for distribution

- C. Markets
- D. Holders of securities who are selling
- E. Dilution (for equity securities only)
- F. Expenses of the issue

**Additional information.**

11. The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

- A. Share capital
- B. Memorandum and articles of association
- C. Material contracts
- D. Exchange controls
- E. Taxation
- F. Dividends and paying agents
- G. Statement by experts
- H. Documents on display
- I. Subsidiary information

**PART II**

**REGISTRATION DOCUMENT**

**Identity of directors, senior management, advisers and auditors.**

12. The purpose is to identify the company representatives and other individuals involved in the company's offer or admission to trading; these are the persons responsible for drawing up the prospectus and those responsible for auditing the financial statements.

**Essential information about the issuer.**

13. The purpose is to summarise essential information about the company's financial condition, capitalisation and risk factors. If the financial statements

included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data must also be restated.

- A. Selected financial data
- B. Capitalisation and indebtedness
- C. Risk factors

**Information on the company.**

14. The purpose is to provide information about the company's business operations, the products it makes or the services it provides and the factors which affect the business. It is also intended to provide information regarding the adequacy and suitability of the company's properties, plants and equipment, as well as its plans for future capacity increases or decreases.

- A. History and development of the company
- B. Business overview
- C. Organisational structure
- D. Property, plants and equipment

**Operating and financial review and prospects.**

15. The purpose is to provide the management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are expected to have a material effect on the company's financial condition and results of operations in future periods.

- A. Operating results
- B. Liquidity and capital resources
- C. Research and development, patents and licences, etc.
- D. Trends

**Directors, senior management and employees.**

16. The purpose is to provide information concerning the company's directors and managers that will allow investors to assess their experience, qualifications and levels of remuneration, as well as their relationship with the company.

- A. Directors and senior management
- B. Remuneration
- C. Board practices
- D. Employees
- E. Share ownership

**Major shareholders and related-party transactions.**

17. The purpose is to provide information regarding the major shareholders and others that may control or have an influence on the company. It also provides information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company.

- A. Major shareholders
- B. Related-party transactions
- C. Interests of experts and advisers

**Financial information.**

18. The purpose is to specify which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature. The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined in accordance with international accounting and auditing standards.

- A. Consolidated statements and other financial information
- B. Significant changes

**Additional information.**

19. The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

- A. Share capital
- B. Memorandum and articles of association
- C. Material contracts
- D. Statement by experts
- E. Documents on display
- F. Subsidiary information

### **PART III**

#### **SECURITIES NOTE**

##### **Identity of directors, senior management, advisers and auditors.**

20. The purpose is to identify the company representatives and other individuals involved in the company's offer or admission to trading; these are the persons responsible for drawing up the prospectus and those responsible for auditing the financial statements.

##### **Offer statistics and expected timetable.**

21. The purpose is to provide essential information regarding the conduct of any offer and the identification of important dates relating to that offer.

- A. Offer statistics
- B. Method and expected timetable

##### **Essential information about the issuer.**

22. The purpose is to summarise essential information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data must also be restated.

- A. Capitalisation and indebtedness
- B. Reasons for the offer and use of proceeds
- C. Risk factors

##### **Interests of experts.**

23. The purpose is to provide information regarding transactions the company has entered into with experts or advisers employed on a contingent basis.

**Details of the offer and admission to trading.**

24. The purpose is to provide information regarding the offer and the admission to trading of securities, the plan for distribution of the securities and related matters.

- A. Offer and admission to trading
- B. Plan for distribution
- C. Markets
- D. Selling securities holders
- E. Dilution (for equity securities only)
- F. Expenses of the issue

**Additional information.**

25. The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

- A. Exchange controls
- B. Taxation
- C. Dividends and paying agents
- D. Statement by experts
- E. Documents on display

**PART IV**

**SUMMARY NOTE**

26. The summary note shall provide in a few pages the most important information included in the prospectus, covering at least the following items—

- identity of directors, senior management, advisers and auditors



- offer statistics and expected timetable
- essential information concerning selected financial data; capitalisation and indebtedness; reasons for the offer and use of proceeds; risk factors
- information concerning the issuer
- history and development of the issuer
- business overview
- operating and financial review and prospects
- research and development, patents and licences, etc.
- trends
- directors, senior management and employees
- major shareholders and related-party transactions
- financial information
- consolidated statement and other financial information
- significant changes
- details on the offer and admission to trading
- offer and admission to trading
- plan for distribution
- markets
- selling shareholders
- dilution (for equity securities only)
- expenses of the issue
- additional information
- share capital

- memorandum and articles of incorporation
- documents available for inspection

## SCHEDULE 6

Section 2(1)

**“REGULATED MARKET” AS DEFINED IN ARTICLE 1(13) OF  
DIRECTIVE 93/22 EEC**

“regulated market shall mean a market for the instruments listed in Section B of the Annex which:

- appears on the list provided for in Article 16 drawn up by the Member State which is the home Member State as defined in Article 1 (6) (c),
- functions regularly,
- is characterized by the fact that regulations issued or approved by the competent authorities define the conditions for the operation of the market, the conditions for access to the market and, where Directive 79/279/EEC is applicable, the conditions governing admission to listing imposed in that Directive and, where that Directive is not applicable, the conditions that must be satisfied by a financial instrument before it can effectively be dealt in on the market,
- requires compliance with all the reporting and transparency requirements laid down pursuant to Articles 20 and 21;”.