

LISTING OF SECURITIES ORDINANCE 1998

Revoked by Act. 2006-43 as from 18.1.2007

Principal Ordinance

Ord. No. 1998-33	<i>Commencement (LN 1998/093)</i>	5.12.1998
	<i>Assent</i>	13.8.1998

Amending
enactments

Relevant current
provisions

Commencement
date

Ords.

English sources

None cited

ARRANGEMENT OF SECTIONS

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AN ORDINANCE TO TRANSPOSE INTO THE LAW OF GIBRALTAR THE PROVISIONS OF COUNCIL DIRECTIVE 79/279/EEC COORDINATING THE CONDITIONS FOR THE ADMISSION OF SECURITIES TO OFFICIAL STOCK EXCHANGE LISTING AND COUNCIL DIRECTIVE 80/390/EEC AS AMENDED ON COORDINATING THE REQUIREMENTS FOR THE DRAWING UP, SCRUTINY AND DISTRIBUTION OF THE LISTING PARTICULARS TO BE PUBLISHED FOR THE ADMISSION OF SECURITIES TO OFFICIAL STOCK EXCHANGE LISTING.

Title and commencement.

1. This Ordinance may be cited as the Listing of Securities Ordinance 1998 and comes into operation on the day appointed by the Government by notice in the Gazette and different days may be appointed for different purposes.

Definitions.

2. In this Ordinance –

“the competent authority” means such authority as may be designated by the Government by notice in the Gazette;

“issuer”, in relation to any securities, means the person in Gibraltar by whom they have been or are to be issued within the meaning of section 142(7) of the Financial Services Act 1986 as that section applies in the United Kingdom;

“listing rules” means such rules as may be prescribed by the Government by notice in the Gazette;

“the Official List” means the list maintained by the competent authority for the purposes of, or equivalent to, Part IV of the Financial Services Act 1986.

Applications for listing.

3.(1) An application for listing shall be made to the competent authority in such manner as the listing rules may require.

(2) No application for the listing of any securities shall be made except by or with the consent of the issuer of the securities.

General duty of disclosure.

4.(1) In addition to the information specified by listing rules or required by the competent authority as a condition of the admission of any securities to the Official List, any listing particulars submitted to the competent authority

must contain all such information as investors and their professional advisers reasonably need (and would reasonably require to find) for the purpose of making an informed assessment of –

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

(2) The information to be included by virtue of this section shall be such information as is mentioned in sub-section (1) which is within the knowledge of any person responsible for the listing particulars or which it would be reasonable for him to obtain by making enquiries.

(3) In determining what information is required to be included in listing particulars by virtue of this section, regard shall be had to –

- (a) the nature of the securities and of the issuer of the securities;
- (b) the nature of the persons likely to consider their acquisition;
- (c) the fact that certain matters may reasonably be expected to be within the knowledge of professional advisers of any kind who those persons may reasonably be expected to consult; and
- (d) any information available to investors or their professional advisers by virtue of requirements imposed on the issuer as a condition of admission to the Official List.

(4) The issuer need not include any information of which the competent authority authorises the omission.

Additional disclosure.

5.(1) If at any time after the preparation of listing particulars for submission to the competent authority under section 4 and before the commencement of dealings in the securities following their admission to the Official List –

- (a) there is a significant change affecting any matter contained in those particulars whose inclusion was required by section 4 or by listing rules or by the competent authority; or
- (b) a significant new matter arises the inclusion of information about which would have been so required if it had arisen when the particulars were prepared,

the issuer of the securities shall, in accordance with listing rules prescribed by the Government for the purposes of this section, submit to the competent

authority for its approval and, if approved, publish supplementary listing particulars of the change or new matter.

(2) In sub-section (1), “significant” means significant for the purposes of making an informed assessment of the matters mentioned in section 4(1).

(3) Where the issuer of the securities is not aware of the change or new matter in question he shall not be under any duty to comply with sub-section (1) unless he is notified of it by a person responsible for the listing particulars; but it shall be the duty of any person responsible for those particulars who is aware of such a matter to give notice of it to the issuer.

(4) Sub-section (1) applies also as respects matters contained in any supplementary listing particulars previously published under this section in respect of the securities in question.

Registration of listing particulars.

6.(1) On or before the date on which listing particulars or supplementary listing particulars are published as required by listing rules, a copy of the particulars shall be delivered to the Registrar of Companies in Gibraltar and a statement that a copy has been delivered to him shall be included in the particulars.

(2) If any particulars are published without having been so delivered, the issuer of the securities in and any person who is knowingly a party to the publication is guilty of an offence and liable on summary conviction to a fine up to level 5 on the standard scale.

Compensation for false or misleading particulars.

7.(1) Subject to section 8, the person or persons responsible for any listing particulars or supplementary listing particulars is liable to pay compensation to any person who has acquired any of the securities in question and suffered loss in respect of them as a result of any untrue or misleading statement in the particulars or the omission from them of any matter required to be included by section 5 or 6.

(2) Where listing rules require listing particulars to include information as to any particular matter on the basis that the particulars must include a statement either as to that matter or, if such is the case, that there is no such matter, the omission from the particulars of the information shall be treated for the purpose of subsection (1) as a statement that there is no such matter.

(3) Subject to section 8, a person who fails to comply with section 6 is liable to pay compensation to any person who has acquired any of the securities in question and suffered loss in respect of them as a result of the failure.

(4) This section does not affect any liability which any person may incur apart from this section.

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

Exemption from liability to pay compensation.

8.(1) A person shall not incur any liability under section 7(1) in respect of a statement or omission by him if he satisfies the court that at the time the particulars were submitted to the competent authority he reasonably believed, having made such (if any) enquiries as were reasonable, that the statement was true and not misleading or that the matter whose omission caused the loss was properly omitted and that –

- (a) he continued in that belief until the time when the securities were acquired;
- (b) they were acquired before it was reasonably practicable to bring a correction 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 a correction was brought to the attention of those persons; or
- (d) he continued in that belief until after the commencement of dealings in the securities following their admission to the Official List and that the securities were acquired after such a lapse of time that he ought to be reasonably excused.

(2) A person shall not incur any liability under section 7(1) for any loss in respect of securities caused by any statement purporting to be made by or on the authority of another person as an expert which is (and is stated to be) included in the particulars with that other person's consent if he satisfies the court that at the time the particulars were submitted to the competent authority he believed on reasonable grounds that the other person was competent to make or authorise the statement and had consented to its inclusion in the form and context in which it was included and that –

- (a) he continued in that belief until the time when the securities were acquired;
- (b) they 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 forthwith brought to the attention of those persons; or
- (d) he continued in that belief until after the commencement of dealings in the securities following their admission to the Official List and that the securities were acquired after such a lapse of time that he ought to be reasonably excused.

(3) Without prejudice to subsections (1) and (2), a person shall not incur any liability under section 7(1) for any loss in respect of any securities caused by any such statement or omission if he satisfies the court that –

- (a) before the securities were acquired a correction, or where the statement was such as is mentioned in subsection (2), 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 in question; or
- (b) 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.

(4) A person shall not incur any liability under section 7(1) for any loss resulting from a statement made by an official person or contained in a public official document which is included in the particulars if he satisfies the court that the statement is accurately and fairly reproduced.

(5) A person shall not incur any liability under section 7(1) or (3) if he satisfies the court that the person suffering the loss acquired the securities with knowledge that the statement was false or misleading, of the omitted matter or of the change or new matter, as the case may be.

(6) A person shall not incur any liability under section 7(3) if he satisfies the court that he reasonably believed that the change or new matter in question was not such as to call for supplementary listing particulars.

(7) In this section “expert” includes any engineer, valuer, accountant or other person whose profession, qualifications or experience give authority to a statement made by him; and references to the acquisition of securities include references to contracting to acquire them or an interest in them.

Persons responsible for particulars.

9.(1) In this Ordinance, the persons responsible for listing particulars or supplementary listing particulars are –

- (a) the issuer of the securities to which the particulars relate;
- (b) where the issuer is a corporate body, each person who is a director of that body at the time when the particulars are submitted to the competent authority;
- (c) where the issuer is a corporate body, each person who has authorised himself to be named, and is named, in the particulars 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 particulars as accepting, responsibility for, or for any part of, the particulars; and
- (e) each person not falling within paragraphs (a) to (d) who has authorised the contents of, or any part of, the particulars.

(2) A person is not responsible for any particulars by virtue of subsection (1)(b) if they are published without his knowledge or consent and on becoming aware of their publication he forthwith gives reasonable public notice that they were published without his knowledge or consent.

(3) Where a person has accepted responsibility, or authorised, only part of the contents of any particulars, he is responsible under subsection (1)(d) or (e) for only that part and only if it is included in (or substantially in) the form and context to which he has agreed.

(4) Nothing in this section shall be construed as making a person responsible for any particulars by reason of giving advice as to their contents in a professional capacity.

(5) Where by virtue of this section the issuer of any shares pays or is liable to pay compensation under section 7 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.

Advertisements in connection with listing applications.

10.(1) Where listing particulars are or are to be published in connection with an application for the listing of any securities, no advertisement or other information of a kind specified by listing rules shall be issued in

Gibraltar unless the contents of the advertisement or other information have been submitted to the competent authority and that authority has either –

- (a) approved those contents; or
- (b) authorised the issue of the advertisement or information without such approval.

(2) Subject to subsection (3), a person who contravenes this section is guilty of an offence and liable on summary conviction to a fine at level 5 on the standard scale.

(3) A person who, in the ordinary course of business other than investment business, issues an advertisement or other information to the order of another person is not guilty of an offence under this section if he proves that he believed on reasonable grounds that the advertisement or information had been approved or its issue authorised by the competent authority.

(4) Where information has been approved, or its issue authorised, under this section then neither the person issuing it nor any person responsible for, or for any part of, the listing particulars shall incur any civil liability because of any statement in, or omission from, the information if that information and the listing particulars, taken together, would not be likely to mislead persons of the kind likely to consider the acquisition of the relevant securities in question; the reference to civil liability in this subsection includes a reference to any other person being entitled as against that person to be granted any civil remedy or to rescind or repudiate any agreement.