

**PROSPECTUSES ORDINANCE 1998**

**Repealed by Ord. 2005-46 as from 2.8.2005**

**Principal Ordinance**

<b>Ord. No. 1998-42</b>	<i>Commencement</i>	5.11.1998
	<i>Assent</i>	27.8.1998

Amending enactments	Relevant current provisions	Commencement date
None		
English sources		
None cited		

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AN ORDINANCE TO TRANSPOSE INTO THE LAW OF GIBRALTAR COUNCIL DIRECTIVE 89/298/EEC ON THE CO-ORDINATION OF REQUIREMENTS FOR THE DRAWING UP, SCRUTINY AND DISTRIBUTION OF THE PROSPECTUS TO BE PUBLISHED WHEN TRANSFERABLE SECURITIES ARE OFFERED TO THE PUBLIC.

## **Title and commencement.**

1.(1) This Ordinance may be cited as the Prospectuses Ordinance 1998.

(2) This Ordinance comes into operation on such day as the Minister may appoint by notice in the Gazette and different days may be appointed for different purposes.

## **Interpretation.**

2.(1) In this Ordinance –

“approved exchange”, in relation to dealings in securities, means an investment exchange designated by the Minister or approved for the purposes of the Public Offers of Securities Regulations 1995 in the United Kingdom;

“convertible securities” means -

- (a) securities falling within paragraph 2 of Schedule I to the Financial Services Ordinance 1989 which can be converted into or exchanged for, or which confer rights to acquire, securities; or
- (b) securities falling within paragraph 4 or 5 of that Schedule;

“conversion” in relation to convertible securities means their conversion into or exchange for, or the exercise of rights conferred by them to acquire, other securities (“underlying securities”);

“issuer”, in relation to any securities, means the person by whom they have been or are to be issued;

“listed”, in relation to a security, means admitted to official listing in accordance with the Listing of Securities Ordinance, 1998 or the subject of an application for such listing in accordance with that Ordinance, and “unlisted” shall be construed accordingly;

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

“the Minister” means the Minister with responsibility for Trade and Industry;

“private company” has the meaning given in section 26 of the Companies Ordinance;

“recognised European prospectus” has the meaning given in section 16;

“recognised prospectus” has the meaning given in section 16;

“the relevant date”, in relation to an offer of securities, means the date on which the offer is first made;

“sale” includes any disposal for valuable consideration;

“security” means any investment which would fall within paragraph 1, 2, 4 or 5 of Schedule I to the Financial Services Ordinance 1989 if that Schedule were modified as mentioned in subsection (2).

(2) The modifications of Schedule 1 to the Financial Services Ordinance 1989 referred to in subsection (1) are –

- (a) the exclusion from paragraph 2 (debentures) of debentures having a maturity of less than one year from their date of issue;
- (b) the omission from paragraphs 4 and 5 (instruments entitling to shares or securities, and certificates representing securities) of references to investments within paragraph 3 (government securities); and
- (c) the insertion in paragraph 4 after the words “subscribe for” of the words “or acquire”.

**Registration and publication of prospectus.**

3.(1) When securities are offered to the public in Gibraltar for the first time, the offeror shall publish a prospectus, by making it available to the public, free of charge, at an address in Gibraltar, from the time he first offers the securities until the end of the period during which the offer remains open.

(2) The offeror shall, before the time of publication of the prospectus –

- (a) deliver a copy of it to the Registrar of Companies in Gibraltar for registration; and
- (b) deliver a copy of it to the Minister.

- (3) Where the securities are listed –
- (a) sections 5, 6 and 8 to 14 do not apply; but
  - (b) the prospectus must comply with the listing rules.

(4) Subsection (3) applies where a prospectus has been submitted for approval in accordance with rules prescribed by the Government which deal with the approval of a prospectus where there is no application for listing in Gibraltar or the United Kingdom.

### **Persons responsible for prospectus.**

4.(1) For the purposes of this Ordinance, the persons responsible for a prospectus or supplementary prospectus are –

- (a) the issuer of the securities to which the prospectus or supplementary prospectus relates;
- (b) where the issuer is a corporate body –
  - (i) each person who is a director of that corporate body at the time when the prospectus or supplementary prospectus is published; and
  - (ii) 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;
- (c) 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;
- (d) the offeror of the securities;
- (e) where the offeror is a corporate body, but is not the issuer and is not making the offer in association with the issuer, each person who is a director of the offeror at the time when the prospectus or supplementary prospectus is published; and
- (f) each person not falling within any of paragraphs (a) to (e) who has authorised the contents of, or of any part of, the prospectus or supplementary prospectus.

(2) A person is not responsible under subsection (1)(a) or (b) unless the issuer has made or authorised the offer in relation to which the prospectus or supplementary prospectus was published.

(3) A person is not responsible for a prospectus or supplementary prospectus by virtue of subsection (1)(b)(i) if –

- (a) it is published without his knowledge or consent; and
- (b) on becoming aware of its publication he forthwith gives reasonable public notice that it was published without his knowledge or consent.

(4) Where a person has accepted responsibility for or authorised only part of the contents of any prospectus or supplementary prospectus, he is only responsible under subsection (1)(c) or (f) for that part, and only to the extent it is included in the form and context to which he has agreed, or substantially so.

(5) A person is not 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 section the issuer of any shares pays or is liable to pay compensation under section 13 for loss suffered in respect of shares for which a person has subscribed, no account shall be taken of that payment or liability in determining –

- (a) the amount paid on subscription for those shares; or
- (b) the amount paid up or deemed to be paid up on them.

#### **Offers of securities.**

5.(1) A person is to be regarded as offering securities only if as principal he–

- (a) makes an offer which, if accepted, would give rise to a contract for the issue or sale of the securities by him or by another person with whom he has made arrangements for the issue or sale of the securities; or
- (b) invites a person to make such an offer.

(2) Except where the context otherwise requires, “offer” and “offeror” shall be construed in accordance with subsection (1).

#### **Offers to the public in Gibraltar.**

6.(1) A person offers securities to the public in Gibraltar if, to the extent that the offer is made to persons in Gibraltar, it is made to the public.

(2) For the purposes of subsection (1), an offer which is made to any section of the public (whether selected as members or debenture holders of a corporate body, as clients of the person making the offer or in any other manner) is to be regarded as made to the public.

### **Exemptions.**

7.(1) For the purposes of this Ordinance, an offer of securities is not an offer to the public in Gibraltar if, to the extent that the offer is made to persons in Gibraltar –

- (a) the condition specified in any paragraph of subsection (2) is satisfied in relation to the offer; or
- (b) the condition specified in any of paragraphs (a) to (g), (k) to (n), (p), (q) and (t) of subsection (2) is satisfied in relation to part of the offer and, in relation to each other part of the offer, the condition specified in another of those paragraphs is satisfied.

(2) Those conditions are –

- (a) the securities are offered to persons –
  - (i) whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses; or
  - (ii) who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses; or are otherwise offered to persons in the context of their trades, professions or occupations;
- (b) the securities are offered to no more than fifty persons;
- (c) the securities are offered to the members of a club or association (whether or not incorporated) and the members can reasonably be regarded as having a common interest with each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer;

- (d) the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer;
- (e) the securities are offered in connection with a bona fide invitation to enter into an underwriting agreement with respect to them;
- (f) the securities are the securities of a private company and are offered by that company to –
  - (i) members or employees, of the company;
  - (ii) members of the families of any such members or employees; or
  - (iii) holders of securities issued by the company which fall within paragraph 2 of Schedule 1 to the Financial Services Ordinance 1989;
- (g) the securities are transferable to securities issued by a government or a local or public authority (as defined in paragraph 3 of that Schedule);
- (h) the total consideration payable for the securities cannot exceed ECU 40,000 (or an equivalent amount);
- (i) the minimum consideration which may be paid for securities acquired pursuant to the offer is at least ECU 40,000 (or an equivalent amount);
- (j) the securities are denominated in amounts of at least ECU 40,000 (or an equivalent amount);
- (k) the securities are offered in connection with a takeover offer;
- (l) the securities are offered in connection with a merger within the meaning of Council Directive 78/855/EEC based on Article 54(3)(g) of the Treaty concerning mergers of public limited liability companies;
- (m) the securities are shares and are offered free of charge to any or all of the holders of shares in the issuer;
- (n) the securities are shares in a corporate body, or investments falling within paragraph 4 or 5 of Schedule 1 to the Financial Services Ordinance 1989 relating to such shares, and are



offered in exchange for shares in the same corporate body, and the offer cannot result in any increase in the issued share capital of the corporate body;

- (o) the securities are issued by a corporate body and offered –
  - (i) by the issuer;
  - (ii) only to qualifying persons; and
  - (iii) on terms that a contract to acquire any such securities may be entered into only by the qualifying person to whom they were offered or, if the terms of the offer so permit, any qualifying person;
- (p) the securities result from the conversion of convertible securities and listing particulars or a prospectus relating to the convertible securities were published in Gibraltar under or by virtue of the Listing of Securities Ordinance 1998, or this Ordinance;
- (q) the securities are issued by –
  - (i) a charity within the meaning of section 2 of the Charities Ordinance;
  - (ii) a society registered in accordance with Part II of the Co-operative Societies Ordinance; or
  - (iii) a non-profit making association or body, recognised by the country or territory in which it is established, with objectives similar to those of a body falling within any of sub-paragraphs (i) and (ii); and the proceeds of the offer will be used for the purposes of the issuer's objectives;
- (r) the securities offered are shares and ownership of the securities entitles the holder –
  - (i) to obtain the benefit of services provided by a building society, a society registered in accordance with Part II of the Co-operative Societies Ordinance or a body of a like nature established in a member State; or
  - (ii) to membership of such a body;
- (s) the securities offered are Euro-securities and are not the subject of advertising likely to come to the attention of persons who

are not professionally experienced in matters relating to investment;

- (t) the securities are of the same class, and were issued at the same time, as securities in respect of which a prospectus has been published under or by virtue of this Ordinance;
- (u) the securities are not transferable;
- (v) the securities represent units in a collective investment undertaking other than of the closed-end type as defined in Article 3(a) of Council Directive 89/298/EEC.

(3) In this section “shares”, except in relation to a takeover offer, means investments falling within paragraph 1 of Schedule 1 to the Financial Services Ordinance 1989.

(4) For the purposes of determining whether the condition specified in subsection (2)(b) or (h) is satisfied in relation to an offer, the offer shall be taken together with any other offer of securities of the same class which was—

- (a) made by the same person;
- (b) open at any time within the period of 12 months ending with the relevant date; and
- (c) not an offer to the public in Gibraltar by virtue of that condition being satisfied.

(5) In determining for the purposes of subsection (2)(d) whether a person is sufficiently knowledgeable to understand the risks involved in accepting an offer of securities, regard shall only be had to information supplied by the offeror, if –

- (a) it is about the issuer of the securities, or
- (b) in a case where the securities confer the right to acquire other securities, it is about the issuer of those other securities.

(6) For the purposes of subsection (2)(f) –

- (a) the members of a person’s family are the person’s husband or wife, widow or widower and children (including stepchildren) and their descendants, and any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is the person himself or herself, or any of those relatives; and

(b) section 2(2)(a) does not apply.

(7) For the purposes of subsection (2)(h), (i) or (j), an amount denominated wholly or partly in a currency or unit of account other than ECU is an equivalent amount to an amount denominated in ECU if it is calculated as of equal value at the latest practicable date before (but in any event not more than 3 days before) the relevant date; and “ECU” means the European currency unit as defined in Article 1 of Council Regulation No. 3320/94 on the consolidation of the existing Community legislation on the definition of the ECU following the entry into force of the Treaty on European Union.

(8) For the purposes of subsection 2(k) “a takeover offer” means –

- (a) an offer to acquire all the shares, or all the shares of any class or classes, in a company (other than shares which at the date of the offer are already held by the offeror), being an offer on terms which are the same in relation to all the shares to which the offer relates or, where those shares include shares of different classes, in relation to all the shares of each class;
- (b) an offer to all holders of shares, or shares of a particular class, in a company to acquire a specified proportion of these shares.

(9) For the purposes of subsection (2)(m), a person is a holder of shares if he holds them at the close of business on a date specified in the offer and falling within the period of 28 days ending with the relevant date.

(10) For the purposes of subsection (2)(o), a person is a “qualifying person”, in relation to an issuer, if he is a bona fide employee or former employee of the issuer or of another corporate body in the same group or the wife, husband, widow, widower or child or stepchild under the age of eighteen of such an employee or former employee.

(11) In subsection (2)(s) “Euro-securities” means investments which –

- (a) are to be underwritten and distributed by a syndicate at least two of the members of which have their registered offices in different countries or territories;
- (b) are to be offered on a significant scale in one or more countries or territories other than the country or territory in which the issuer has his registered office; and
- (c) may be acquired pursuant to the offer only through a credit institution (as defined in Article 1 of Council Directive 77/780/EEC on co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit

of the business of credit institutions) or other financial institution (as defined in Article 1 of Council Directive 89/646/EEC on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780).

**Content of prospectus.**

8.(1) Subject to sections 4 and 11, and to sub-sections (2), (4), (5) and (6), a prospectus published under section 4 shall contain the information specified in Schedule 1.

(2) Where any such information (the “required information”) is inappropriate to the issuer’s sphere of activity or to its legal form or to the securities to which the prospectus relates, the requirement that the prospectus contain the required information shall have effect as a requirement that the prospectus contain information equivalent to the required information, if any.

(3) The information a prospectus is required to contain shall be presented in as easily analysable and comprehensible a form as possible.

(4) The Minister may authorise the omission from a prospectus of information specified in paragraphs 41 to 47 of Schedule 1, where –

- (a) on the occasion of their admission to dealings on an approved exchange, securities falling within paragraph 1 of Schedule 1 to the Financial Services Ordinance 1989 are offered on a pre-emptive basis to some or all of the existing holders of such securities, and
- (b) up-to-date information equivalent to that which would otherwise be required by this section is available as a result of the requirements of that approved exchange.

(5) The Minister may authorise the making of an offer without a prospectus, if –

- (a) a class of securities falling within paragraph 1 of Schedule 1 to the Financial Services Ordinance 1989 has been admitted to dealings on an approved exchange,
- (b) the number or estimated market value or the nominal value or, in the absence of a nominal value, the accounting par value of the securities offered amounts to less than ten per cent. of the number or of the corresponding value of securities of the same class already admitted to dealings; and

- (c) up-to-date information equivalent to that required by this section is available as a result of the requirements of that approved exchange.

(6) Where a person –

- (a) makes an offer to the public in Gibraltar of securities which he proposes to issue; and
- (b) not more than 12 months before the relevant date published a full prospectus relating to a different class of securities which he has issued, or to an earlier issue of the same class of securities,

instead of a full prospectus he may publish an abbreviated prospectus which is accompanied by that full prospectus and any supplementary prospectus.

(7) For the purposes of sub-section (6) –

- (a) an abbreviated prospectus is one which contains only the differences which –
  - (i) have arisen since the publication of the full prospectus mentioned in sub-section (6)(b) and any supplementary prospectus, and
  - (ii) are likely to influence the value of the securities; and
- (b) a full prospectus is one which contains the information specified in the Schedule (other than any information whose omission is authorised by or under sub-section (2) or (4) or section 11).

(8) In this section and Schedule 1 –

“control” means the ability, in practice, to determine the actions of the issuer, and “joint control” means control exercised by two or more persons who have an agreement or understanding (whether formal or informal) which may lead to their adopting a common policy in respect of the issuer;

“debentures” means securities falling within paragraph 2 of Schedule 1 to the Financial Services Ordinance 1989;

“holding company” and “subsidiary” have the same meanings as in sections 118 and 119 of the Companies Ordinance;

“the last three years”, in relation to an undertaking whose accounts are required to be dealt with in a prospectus, means three completed financial years which immediately precede the date on which the offer is first made and which cover a continuous period of at least 35 months, disregarding any financial year which ends less than three months before the date on which the offer is first made and for which accounts have not been prepared by that date;

“state of affairs” means the state of affairs of an undertaking, in relation to its balance sheet, at the end of a financial year.

**General duty of disclosure in prospectus.**

9.(1) In addition to the information required by virtue of section 8 to be included in a prospectus published under section 4, such a prospectus shall, subject to this Ordinance, contain all such information as investors would reasonably require, and reasonably expect to find there, 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,

being information within the knowledge of any person responsible for the prospectus or which it would be reasonable for him to obtain by making inquiries.

(2) In determining what information is required to be included in a prospectus by virtue of this section, regard shall be had to the nature of the securities and of the issuer of the securities.

(3) For the purposes of this section, “issuer”, in relation to a certificate or other instrument falling within paragraph 5 of Schedule 1 to the Financial Services Ordinance 1989, means the person who issued or is to issue the securities to which the certificate or instrument relates.

**Supplementary prospectus.**

10.(1) Where a prospectus has been registered under this Ordinance in respect of an offer of securities and at any time while an agreement in respect of those securities can be entered into in pursuance of that offer –

- (a) there is a significant change affecting any matter contained in the prospectus whose inclusion was required by section 8 or 9; or

- (b) a significant new matter arises the inclusion of information in respect of which would have been so required if it had arisen when the prospectus was prepared; or
- (c) a significant inaccuracy in the prospectus is discovered,

the offeror shall deliver to the Registrar of Companies for registration and to the Minister, and publish in accordance with subsection (3), a supplementary prospectus containing particulars of the change or new matter or, as the case may be, correcting the inaccuracy.

(2) In subsection (1) “significant” means significant for the purpose of making an informed assessment of the matters mentioned in section 9(1)(a) and (b).

(3) Section 4(1) shall apply to a supplementary prospectus delivered for registration under subsection (1) as it applies to a prospectus, except that the obligation to publish the supplementary prospectus begins when it is delivered for registration to the Registrar of Companies.

(4) Subsections (1) and (3) only apply if the offeror is aware of the change, new matter or inaccuracy in question, but any person responsible for the prospectus who is aware of such a matter must give the offeror notice of it.

(5) Where a supplementary prospectus has been registered under this section in respect of an offer, subsections (1) to (4) apply as if any reference to a prospectus were a reference to the prospectus originally registered and that supplementary prospectus, taken together.

## **Exceptions.**

11.(1) The Minister may authorise the omission from a prospectus or supplementary prospectus of information whose inclusion would otherwise be required by this Ordinance if he considers that disclosure of that information would be contrary to the public interest.

(2) An offeror may omit from a prospectus or supplementary prospectus information with respect, to an issuer whose inclusion would otherwise be required by this Ordinance if –

- (a) he is not that issuer nor acting in pursuance of an agreement with that issuer;
- (b) the information is not available to him because he is not that issuer; and

(c) he has been unable to obtain the information, despite making such efforts (if any) as are reasonable.

(3) The Minister may authorise the omission from a prospectus or supplementary prospectus of information –

(a) which is of minor importance only, and is not likely to influence assessment of the issuer's assets and liabilities, financial position, profits and losses and prospects; or

(b) the disclosure of which would be seriously detrimental to the issuer and the omission of which would not be likely to mislead investors with regard to facts and circumstances necessary for an informed assessment of the securities.

(4) Section 9(3) applies for the purposes of subsection (3) as it applies for the purposes of that section.

(5) The Minister may make rules providing for the payment of fees for the discharge of his functions under subsection (3).

**Advertisements etc. in connection with offer of securities.**

12. A person proposing to make a public offer of securities for which a prospectus is or will be required under this ordinance shall not issue or cause the issue to the public in Gibraltar of an advertisement, notice, poster or document (other than a prospectus) announcing the offer, unless it –

(a) states that a prospectus is or, as the case may be, will be published; and

(b) gives an address in Gibraltar from which it can be obtained or will be obtainable.

**Compensation for false or misleading prospectus.**

13.(1) Subject to section 14, the person or persons responsible for a prospectus or supplementary prospectus shall be liable to pay compensation to any person who has acquired the securities to which it relates and suffered loss in respect of them as a result of any untrue or misleading statement in it or the omission from it of any matter required to be included by section 9 or 10.

(2) For the purposes of subsection (1) , where section 8 requires a prospectus to include information as to any particular matter in the form of a statement as to that matter or a statement that there is no such matter, the omission from the prospectus of the information shall be treated as a statement that there is no such matter.



(3) Subject to section 14, a person who fails to comply with section 10 shall be 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 otherwise incur.

(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.**

14.(1) A person shall not be liable under section 13(1) for any loss in respect of securities caused by any statement or omission, if he satisfies the court –

- (a) that at the time when the prospectus or supplementary prospectus was delivered for registration he reasonably believed, having made such enquiries (if any) as were reasonable, that the statement was true and not misleading or that the matter whose omission caused the loss was properly omitted; and
- (b) that either –
  - (i) he continued in that belief until the time when the securities were acquired;
  - (ii) before that time he had taken all such steps as it was reasonable for him to have taken to secure that a correction was forthwith brought to the attention of those persons or it was not reasonably practicable before that time to do so; or
  - (iii) the securities were acquired after such a lapse of time that in the circumstances he reasonably ought to be excused, and, if the securities are dealt in on an approved exchange, he continued in that belief until after the commencement of dealings in the securities on that exchange.

(2) A person shall not be liable under section 13(1) for any loss in respect of securities caused by a 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 prospectus or supplementary prospectus with that other person's consent if he satisfies the court –

- (a) that at the time when the prospectus or supplementary prospectus was delivered for registration 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
- (b) that either –
  - (i) he continued in that belief until the time when the securities were acquired; or
  - (ii) before that time he had taken all such steps as it was reasonable for him to have taken to secure that the fact that the expert was not competent or had not consented was forthwith brought to the attention of persons likely to acquire the securities, or it was not reasonably practicable to do so before that time; or
  - (iii) the securities were acquired after such a lapse of time that in the circumstances he reasonably ought to be excused and, if the securities are dealt in on an approved exchange, he continued in that belief until after the commencement of dealings in the securities on that exchange.

(3) Without prejudice to subsections (1) and (2) , a person shall not be liable under section 13(1) for any loss in respect of any securities caused by any statement or omission, if he satisfies the court –

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

(4) A person shall not be liable under section 13(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 prospectus or supplementary prospectus if he satisfies the court that the statement is accurately and fairly reproduced.

(5) A person shall not be liable under section 13 (1) or (3) if he satisfies the court that the person suffering the loss acquired the securities in question knowing that the statement was false or misleading or, as the case may be, knowing of the omitted matter, the change, the new matter or the inaccuracy.

(6) A person shall not be liable under section 13 (3) if he satisfies the court that he reasonably believed that the change, new matter or inaccuracy in question was not such as to call for a supplementary prospectus.

(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.

## **Contraventions.**

15.(1) If –

- (a) a person who is licensed under section 3 of the Financial Services Ordinance 1989 or authorised under section 6 of the Financial Services Ordinance 1998; or
- (b) a European institution carrying on home-regulated investment business in Gibraltar,

contravenes or assists another person to contravene section 3(1) or (2) or 12, that person or institution shall be treated as having contravened regulations made under Part II of the Financial Services Ordinance 1989.

(2) If a person who is not so licensed or such an institution contravenes or assists another person to contravene section 4(1) or (2) or 12, he shall be guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale.

(3) A person shall not be regarded as having contravened section 4 by reason only of a prospectus not having fully complied with the requirements of this Ordinance as to its form or content (but without prejudice to any liability he may have under section 13).

(4) Any contravention to which this section applies shall be 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.

(5) In this section “home-regulated investment business” and “European institution” have the same meanings as in the Banking Ordinance.

**Recognition of prospectuses approved in the United Kingdom or other Member States.**

16.(1) This Ordinance shall apply to a recognised prospectus and a recognised European prospectus as it applies to other prospectuses, except that –

- (a) for the purposes of section 4(1), a recognised prospectus or a recognised European prospectus shall be deemed to comply with sections 8 and 9;
  - (b) in the case of a recognised prospectus, in sections 9(1), 10(1)(a) and 13(2) the references to information or any matter required to be included in a prospectus by this Ordinance shall be taken to be references –
    - (i) to information or any matter required to be included by virtue of the legislation relating to the contents of prospectuses of the approving State; and
    - (ii) to information or any matter falling within subsection (2)(d); and
  - (c) in the case of a recognised European prospectus, in sections 9 (1), 10 (1) (a) and 13 (2) the references to information or any matter required to be included in a prospectus by this Ordinance shall be taken to be references to information or to any matter whose inclusion was required by the legislation relating to the contents of prospectuses of the member State where the European document forming part of the recognised European document was approved.
- (2) In this section “recognised prospectus” means a prospectus –
- (a) which has been approved in the United Kingdom or another member State (“the approving State”) in accordance with Article 20 of Council Directive 89/298/EEC;
  - (b) which, if the prospectus so approved was written in a language other than English, has been translated into English;
  - (c) which relates to an offer of securities which is made in Gibraltar simultaneously with the making of the offer in the approving State or within 3 months after the making of that offer;
  - (d) which includes –

- (i) a summary of the tax treatment relevant to Gibraltar resident holders of the securities;
- (ii) the names and addresses of the paying agents for the securities in Gibraltar (if any); and
- (iii) a statement of how notice of meetings and other notices from the issuer of the securities will be given to Gibraltar resident holders of the securities,

(whether that information was included in the prospectus so approved or has been added to it); and

- (e) as to which, if it reflects a partial exemption or partial derogation granted in the approving State pursuant to Council Directive 89/298/EEC, the conditions mentioned in subsection (3) are satisfied;

and, in a case where paragraph (b) applies, the English version is the recognised prospectus.

(3) The conditions referred to in subsection (2) (e) are that –

- (a) the partial exemption or partial derogation is of a type for which a corresponding partial exemption or partial derogation is made in this Ordinance; and
- (b) the circumstances that justify that exemption or derogation also exist in Gibraltar.

(4) In this section –

“European document” means a prospectus –

- (a) which has been approved by the competent authority in another member State;
- (b) which Article 21 of Council Directive 89/298/EEC requires or paragraph 4 of that article permits to be recognised; and
- (c) which relates to securities which are the subject of an application for listing in the Gibraltar and which are to be offered in Gibraltar prior to admission to listing in Gibraltar or the United Kingdom by means of the prospectus; and

“recognised European prospectus” means a prospectus –

- (a) consisting of a European document submitted to the Gibraltar authority pursuant to an application for listing under section 3 of the Listing of Securities Ordinance, 1998;
- (b) if information is required to be added to it in accordance with listing rules under Part IV of that Act, including that information; and
- (c) in any case where the document so submitted is a translation into English of the document approved by the competent authorities in another member State, being the translated document.

(5) Where, prior to the delivery for registration to the Registrar of Companies of a recognised prospectus which has been approved as mentioned in subsection (2) (a), a supplement to the prospectus has been approved pursuant to Article 23 of Council Directive 80/390/EEC coordinating the requirements for the drawing up, scrutiny and distribution of the listings particulars to be published for the admission of securities to official stock exchange listing or Article 18 of Council Directive 89/298/EEC in the approving State, the references in subsections (1) and (2) to a prospectus shall be taken to be references to the prospectus taken together with the supplement.

(6) Where, prior to the delivery of a recognised European prospectus for registration to the Registrar of Companies, any supplement to the European document has been approved pursuant to Article 23 of Council Directive 80/390/EEC or Article 18 of Council Directive 89/298/EEC by the competent authority which approved the prospectus, the references in this section to a European document shall be taken to be references to the European document taken together with the supplement.

**Designations.**

17. For the purposes of Articles 11, 12, 13, 14, 18, 19, 20, 21 and 22 of Council Directive 89/298/EEC the Minister is the designated body.

**Consequential provisions.**

18. Schedule 2 to this Ordinance has effect for the purposes of making consequential provisions.

**SCHEDULE 1**

Section 8

**CONTENT OF PROSPECTUS**

**PART I**

**GENERAL REQUIREMENTS**

1. The name of the issuer and the address of its registered office.
2. If different, the name and address of the person offering the securities.
3. The names and functions of the directors of the issuer.
4. The date of publication of the prospectus.
5. A statement that a copy of the prospectus has been delivered for registration to the Registrar of Companies in accordance with section 3(2) of this Ordinance.
6. A statement that the prospectus has been drawn up in accordance with this Ordinance.
7. A statement in the following words or words to the same effect –

“If you are in any doubt about the contents of this document you should consult a person licensed under section 3 of the Financial Services Ordinance 1989 who specialises in advising on the acquisition of shares and other securities”.

**PART II**

**THE PERSONS RESPONSIBLE FOR THE PROSPECTUS AND ADVISERS**

8. The names, addresses (home or business) and functions of those persons responsible for the prospectus (within the meaning of section 3 of the Ordinance) or for any part of the prospectus, specifying any such part.
9. A declaration by the directors of the issuer (or, if the offeror is not the issuer, by the directors of the offeror) that to the best of their knowledge –

- (a) the information contained in the prospectus is in accordance with the facts, and
- (b) the prospectus makes no omission likely to affect the import of such information.

10. Without prejudice to paragraph 45, a statement by any person who accepts responsibility for the prospectus, or any part of it, that he does so.

### **PART III**

#### **THE SECURITIES TO WHICH THE PROSPECTUS RELATES AND THE OFFER**

11. A description of the securities being offered, including the class to which they belong and a description of the rights attaching to them including (where applicable) –

- (a) if the securities are shares, rights as regards –
  - (i) voting;
  - (ii) dividends;
  - (iii) return of capital on the winding up of the issuer;
  - (iv) redemption;

and a summary of the consents necessary for the variation of any of those rights;

- (b) if the securities are debentures, rights as regards –
  - (i) interest payable;
  - (ii) repayment of principal;
- (c) if the securities are convertible securities –
  - (i) the terms and dates on which the holder of the convertible securities is entitled to acquire the related underlying securities;
  - (ii) the procedures for exercising the entitlement to the underlying securities; and



- (iii) such information relating to the underlying securities as would have been required under paragraph (a) or (b) if the securities being offered had been the underlying securities.

12. The date or dates (if any) on which entitlement to dividends or interest arises.

13. Particulars of tax on income from the securities withheld at source, including tax credits.

14. The procedure for the exercise of any right of pre-emption attaching to the securities.

15. Any restrictions on the free transferability of the securities being offered.

16.(1) A statement as to whether –

- (a) the securities being offered have been admitted to dealings on a recognised investment exchange; or
- (b) an application for such admission has been made.

(2) Where no such application for dealings has been made, or such an application has been made and refused, a statement as to whether or not there are, or are intended to be, any other arrangements for there to be dealings in the securities and, if there are, a brief description of such arrangements.

17. The purpose for which the securities are being issued.

18. The number of securities being issued.

19. The number of securities being offered.

20. The total proceeds which it is expected will be raised by the offer, and the expected net proceeds of the offer after deduction of the expenses.

21. Where the prospectus relates to shares which are offered for subscription, particulars as to –

- (a) the minimum amount which, in the opinion of the directors of the issuer, must be raised by the issue of those shares in order to provide the sums (or, if any part of them is to be defrayed in any other manner, the balance of the sums) required to be provided in respect of each of the following –

- (i) the purchase price of any property purchased, or to be purchased, which is to be defrayed in whole or in part out of the proceeds of the issue;
  - (ii) any preliminary expenses payable by the issuer and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the issuer;
  - (iii) the repayment of any money borrowed by the issuer in respect of any of the foregoing matters;
  - (iv) working capital; and
- (b) the amounts to be provided in respect of the matters mentioned otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.
22. The names of any persons underwriting or guaranteeing the offer.
23. The amount or the estimated amount of the expenses of the offer and by whom they are payable, including a statement as to any commission payable by the issuer to any person in consideration of his agreeing to subscribe for securities to which the prospectus relates or of his procuring or agreeing to procure subscriptions for such securities.
24. The names and addresses of the paying agents (if any).
25. The period during which the offer of the securities is open.
26. The price at which the securities are offered or, if appropriate, the procedure, method and timetable for fixing the price.
27. The arrangements for payment for the securities being offered and the arrangements and timetable for their delivery.
28. The arrangements during the period prior to the delivery of the securities being offered relating to the money received from applicants including the arrangements for the return of money to applicants where their applications are not accepted in whole or in part and the timetable for the return of such money.

**PART IV**

**GENERAL INFORMATION ABOUT THE ISSUER AND ITS  
CAPITAL**

29. The date and place of incorporation of the issuer and, in the case of an issuer not incorporated in Gibraltar, the address of its principal place of business in Gibraltar (if any).
30. The place of registration of the issuer and the number with which it is registered.
31. The legal form of the issuer, the legislation under which it was formed and (if different) the legislation now applicable to it.
32. A summary of the provisions in the issuer's memorandum of association (or equivalent) determining its objects.
33. If the liability of the members of the issuer is limited, a statement of that fact.
34. The amount of the issuer's authorised share capital and any limit on the duration of the authorisation to issue such share capital.
35. The amount of the issuer's issued share capital.
36. The number and particulars of any listed and unlisted securities issued by the issuer not representing shares.
37. The number of shares of each class making up each of the authorised and issued share capital, the nominal value of such shares and, in the case of the issued share capital, the amount paid up on the shares.
38. The amount of any outstanding listed and unlisted convertible securities issued by the issuer, the conditions and procedures for their conversion and the number of shares which would be issued as a result of their conversion.
39. If the issuer is a member of a group, a brief description of the group and of the issuer's position in it, stating, where the issuer is a subsidiary, the name of its holding company.
40. In so far as the offeror has the information, an indication of the persons, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer, and particulars of the proportion of the issuer's voting capital held by such persons.

## **PART V**

### **THE ISSUER'S PRINCIPAL ACTIVITIES**

41. A description of the issuer's principal activities and of any exceptional factors which have influenced its activities.
42. A statement of any dependence of the issuer on patents or other intellectual property rights, licences or contracts, where any of these are of fundamental importance to the issuer's business.
43. Information regarding investments in progress where they are significant.
44. Information on any legal or arbitration proceedings, active, pending or threatened against, or being brought by, the issuer or any member of its group which are having or may have a significant effect on the issuer's financial position.

## **PART VI**

### **THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES**

- 45.(1) If the issuer is a company to which sections 114 to 126 of the Companies Ordinance apply –
- (a) the issuer's annual accounts for the last three years together with –
    - (i) a statement by the directors of the issuer that the accounts have been prepared in accordance with the law, and that they accept responsibility for them, or a statement why they are unable to make such a statement;
    - (ii) the names and addresses of the auditors of the accounts;
    - (iii) a copy of the auditors' reports on the accounts; and
    - (iv) a statement by the auditors that they consent to the inclusion of their reports in the prospectus and accept responsibility for them, and have not become aware, since the date of any report, of any matter affecting the validity of that report at that date, or a statement why they are unable to make such a statement; or
  - (b) a report by a person qualified to act as an auditor with respect to the state of affairs and profit or loss shown by the issuer's annual accounts for the last three years together with –

- (i) the name and address of the person responsible for the report;
- (ii) if different, the name and address of the person who audited the accounts on which the report is based; and
- (iii) a statement by the person responsible for the report that in his opinion the report gives a true and fair view of the state of affairs and profit or loss of the issuer and its subsidiary undertakings, and that he consents to the inclusion of his report in the prospectus and accepts responsibility for it; or a statement why he is unable to make such a statement.

(2) If the issuer is not a company to which sections 114 to 126 of the Companies Ordinance apply –

- (a) the issuer's accounts (and, if it is a parent undertaking, its subsidiary undertakings' accounts) for the last three years, prepared in accordance with the applicable law, together with -
  - (i) the name and address of the person responsible for the accounts;
  - (ii) a statement by the person responsible for the accounts that they have been properly prepared in accordance with the applicable law, and that he accepts responsibility for them, or a statement why he is unable to make such a statement;
  - (iii) the names and addresses of the auditors of the accounts and their reports; and
  - (iv) a statement by the auditors that they consent to the inclusion of their reports in the prospectus and accept responsibility for them, and have not become aware, since the date of any report, of any matter affecting the validity of that report at that date; or a statement why they are unable to make such a statement; or
- (b) a report by a person qualified to act as an auditor with respect to the state of affairs and profit or loss shown by the issuer's accounts (and, if the issuer is a parent undertaking, by its subsidiary undertakings' accounts) for the last three years, such report to be drawn up in accordance with the applicable law, or as if the provisions of the Companies Ordinance relating to annual accounts applied to the issuer, together with –

- (i) the name and address of the person responsible for the report;
- (ii) if different, the name and address of the person who audited the accounts on which the report is based; and
- (iii) a statement by the person responsible for the report that in his opinion the report gives a true and fair view of the state of affairs and profit or loss of the issuer and its subsidiary undertakings and that he consents to the inclusion of his report in the prospectus and accepts responsibility for it; or a statement why he is unable to make such a statement.

(3) If, in accordance with the law applicable to it, the accounts of an issuer falling within sub-paragraph (2) consist only of consolidated accounts with respect to itself and its subsidiary undertakings, that sub-paragraph does not require the prospectus –

- (a) to include separate accounts for each undertaking, or
- (b) to include a report which deals with the accounts of each undertaking separately.

(4) If, in the case of an issuer falling within sub-paragraph (1) or (2), the prospectus would, but for this subparagraph, include both separate accounts for the issuer and its subsidiary undertakings and consolidated accounts, either the separate accounts or the consolidated accounts may be omitted from the prospectus if their inclusion would not provide any significant additional information.

(5) If an issuer falling within sub-paragraph (2) is not required by the law applicable to it to have its accounts audited –

- (a) if the accounts have not been audited –
  - (i) the prospectus shall contain a statement to that effect; and
  - (ii) sub-paragraph (2)(a)(iii) and (iv) or, as the case may be, sub-paragraph (2)(b)(ii) shall not apply to the issuer; and
- (b) if the accounts have been audited, the prospectus shall contain a statement to that effect.

(6) If the issuer has not been in existence for the whole of the last three years, then, subject to sub-paragraph (7) –

- (a) the requirement in sub-paragraphs (1)(a) and (2)(a) that the prospectus contain accounts for the last three years shall be construed as a requirement that the prospectus contain the required accounts or, as the case may be, the required report; and
- (b) the requirement in sub-paragraphs (1)(b) and (2)(b) that the prospectus contain a report with respect to the state of affairs and profit or loss for the last three years shall be construed as a requirement that the prospectus contain a report with respect to the required accounts or, as the case may be, the required report.

(7) For the purposes of sub-paragraph (6) –

- (a) in relation to an undertaking which was required (by its constitution or by the law under which it is established) to prepare accounts for financial years during its existence, disregarding a financial year which ends less than three months before the relevant date and for which accounts have not been prepared by that date, the required accounts are those accounts, and
- (b) in relation to an undertaking which was not so required, the required report is a report by a person qualified to act as an auditor which includes –
  - (i) details of the profit or loss of the undertaking in respect of the period beginning with the date of its formation and ending on the latest practicable date before (but not in any event more than three months before) the relevant date, and of its state of affairs at that latest practicable date; and
  - (ii) a statement by the person responsible for the report that in his opinion it gives a true and fair view of the state of affairs and profit or loss of the undertaking and that he consents to the inclusion of his report in the prospectus and accepts responsibility for it, or a statement why he is unable to make such a statement.

(9) If the issuer is a parent undertaking, the requirements of sub-paragraph (1) or, as the case may be, sub-paragraph (2), shall apply to each subsidiary undertaking in respect of any part of the last three years for which information is not otherwise required by those sub-paragraphs.

(10) Where at the relevant date more than nine months have elapsed since the end of the last financial year in respect of which accounts or a report are

required to be included in the prospectus by this paragraph (“the last required year”), the prospectus shall also include –

- (a) interim accounts of the undertaking concerned (which need not be audited but which shall otherwise be prepared to the standard applicable to accounts required for each financial year) covering the period beginning at the end of the last required year and ending with the latest practicable date before (but not in any event more than three months before) the relevant date, together with the name and address of the person responsible for the interim accounts and a statement by him that the interim accounts have been properly prepared in accordance with the law applicable to the undertaking, and that he consents to the inclusion of the accounts and statement in the prospectus and accepts responsibility for them; or a statement why he is unable to make such a statement; or
- (b) a report by a person qualified to act as an auditor covering the same period with respect to the state of affairs and profit or loss of the undertaking concerned, prepared in accordance with the law applicable to the undertaking, together with the name and address of the person responsible for preparing the report, and a statement by him that he consents to the inclusion of the report in the prospectus and accepts responsibility for it; or a statement why he is unable to make such a statement.

(11) If any interim accounts of the issuer have been published since the end of the last required year (other than interim accounts included in a prospectus in accordance with subparagraph (10)), they shall be included in the prospectus, together with -

- (a) an explanation of the purpose for which the accounts were prepared;
- (b) a reference to the legislation in accordance with which they were prepared; and
- (c) the name and address of the person responsible for them, and a statement from him that he consents to the inclusion of the accounts in the prospectus and accepts responsibility for them.

## **PART VII**

### **THE ISSUER’S ADMINISTRATION, MANAGEMENT AND SUPERVISION**



46. A concise description of the directors' existing or proposed service contracts with the issuer or any subsidiary of the issuer (excluding contracts expiring, or determinable by the employing company without payment of compensation within one year) or an appropriate negative statement.

47.(1) The aggregate remuneration paid and benefits in kind granted to the directors of the issuer during the last completed financial year of the issuer, together with an estimate of the aggregate amount payable and benefits in kind to be granted to the directors and proposed directors for the current financial year under the arrangements in force at the relevant date.

(2) The interests of each director of the issuer in the share capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement.

## **PART VIII**

### **RECENT DEVELOPMENTS IN THE ISSUER'S BUSINESS AND PROSPECTS**

48. The significant recent trends concerning the development of the issuer's business since the end of the last completed financial year of the issuer.

49. Information, to the extent significant, on the issuer's prospects for at least the current financial year of the issuer.

## **PART IX**

### **CONVERTIBLE SECURITIES AND GUARANTEED DEBENTURES**

50. Where –

- (a) the prospectus relates to convertible securities, and
- (b) the issuer of the related underlying securities is not the same as the issuer of the convertible securities,

the information specified in this Schedule shall be given in respect of the issuer of the convertible securities, and the information specified in paragraph 1 and Parts IV, V, VI, VII and VIII of this Schedule shall be given in respect of the issuer of the underlying securities.

51. Where the prospectus relates to debentures which are guaranteed by one or more persons, the name and address and the information specified in Parts IV, V, VI, VII and VIII of this Schedule must also be given in respect of any guarantor who is not an individual.

**SCHEDULE 2**

Section 18

**CONSEQUENTIAL PROVISIONS**

1. Sections 34 to 38 and 296 to 298 of and Schedule 3 to the Companies Ordinance shall not apply in the case of any offer to the public of securities or prospectus to which this Ordinance applies.
2. Sections 39 and 92 (a) and (d) of the Companies Ordinance do not apply to a recognised prospectus or a recognised European prospectus and such a prospectus shall be deemed to comply with section 43(1)(c)(i).
3. The Financial Services (Advertisements) Regulations 1991 do not apply to any prospectus to which this Ordinance applies.