

PROSPECTUSES ACT 2005**Principal Act**

Act. No. 2005-46	<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
2017/155	Sch. 4	3.8.2017
2019/141	ss. 2-28, Schs. 1-6	21.7.2019

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 GIVE FULL EFFECT IN GIBRALTAR TO REGULATION (EU) 2017/1129 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 14 JUNE 2017 ON THE PROSPECTUS TO BE PUBLISHED WHEN SECURITIES ARE OFFERED TO THE PUBLIC OR ADMITTED TO TRADING ON A REGULATED MARKET, AND REPEALING DIRECTIVE 2003/71/EC; AND FOR CONNECTED PURPOSES.

Title.

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

Preliminary

Overview.

2. This Act gives full effect in Gibraltar to the Prospectus Regulation, which lays down requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within an EEA State.

Interpretation.

- 3.(1) In this Act–

“EEA State” means a Member State of the European Economic Area listed in Schedule 3 to the European Communities Act and, where the context requires, includes Gibraltar;

“GFSC” means the Financial Services Commission established under section 3 of the Financial Services Commission Act 2007;

“MiFIR” means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, as amended from time to time;

“Minister” means the Minister with responsibility for financial services;

“Prospectus Regulation” means Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, as amended from time to time;

“relevant financial intermediary” means a financial intermediary commissioned by a relevant person to carry out an offer of securities to the public or seek admission to trading on a regulated market;

“relevant person” means the relevant issuer, offeror or person seeking admission to trading on a regulated market;

“the Transparency Directive” means 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 and amending Directive 2001/34/EC, as amended from time to time;

(2) Other expressions used in this Act which are also used in the Prospectus Regulation have the same meaning as in that Regulation and cognate expressions are to be construed accordingly.

(3) In this Act a monetary amount expressed in euro may be treated as a reference to the corresponding value in Sterling on 20th July 2017.

Competent authority

Competent Authority.

4.(1) The GFSC is designated as the competent authority in Gibraltar for the purposes of the Prospectus Regulation.

(2) The GFSC may, in accordance with Article 31.2 of the Prospectus Regulation, delegate the electronic publication of approved prospectuses and related documents.

(3) The GFSC’s immunity under section 19 of the Financial Services Commission Act 2007 applies to the discharge of its functions under this Act and the Prospectus Regulation and, in particular, no civil liability attaches to the GFSC in respect of any decision by a competent authority in another EEA State in relation to the approval of a prospectus where responsibility for that approval has been transferred to that competent authority by the GFSC in accordance with Article 20.8 the Prospectus Regulation.

Prospectuses

Obligation to publish prospectus.

5.(1) An offer of securities to the public made by an issuer whose home State is Gibraltar is exempt from the obligation to publish a prospectus under Article 3 of the Prospectus Regulation if–

- (a) the total consideration of the offer in the European Union is not more than EUR 8,000,000 calculated, over a period of 12 months; and
- (b) the offer is not subject to notification in accordance with Article 25 of that Regulation.

(2) Subsection (1) applies without affecting the right of an issuer, offeror or person seeking admission to trading on a regulated market to draw up a prospectus voluntarily in accordance with Article 4 of the Prospectus Regulation.

(3) The Minister may by regulations–

- (a) amend subsection (1)(a) so as to reduce the monetary amount specified in that subsection; or
- (b) impose proportionate disclosure requirements in respect of offers of securities to the public to which the exemption provided by Article 1.3 of the Prospectus Regulation applies (offers where the total consideration of in the European Union is less than EUR 1,000,000, calculated over a period of 12 months).

Responsibility for prospectus.

6.(1) Each of the following persons are responsible for the information provided in a prospectus–

- (a) the issuer or its administrative, management or supervisory body;
- (b) the offeror;
- (c) the person seeking the admission to trading on a regulated market; or
- (d) the guarantor.

(2) The persons responsible must be clearly identified in a prospectus, which must include–

- (a) their names and functions or, in the case of legal persons, their names and registered offices; and
- (b) declarations by them that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import.

(3) Section 9 provides for the person responsible for a prospectus to be liable to pay compensation to a person who has suffered loss as a consequence of false or misleading particulars in the prospectus.

(4) In this section, section 9 and the Schedule “prospectus” includes a supplement to a prospectus.

(5) A person has no civil liability solely on the basis of the summary of a prospectus or the specific summary of an EU Growth prospectus (within the meaning of Articles 7 and 15 of the Prospectus Regulations respectively), including any translation of such a summary, unless when read together with the other parts of the prospectus—

- (a) it is misleading, inaccurate or inconsistent; or
- (b) it does not provide key information in order to aid investors when considering whether to invest in the securities.

(6) The persons specified in subsection (1) are only responsible for the information provided in a registration document or universal registration document where the document is in use as a constituent part of an approved prospectus.

(7) Subsection (6) applies without limiting Articles 4 and 5 of the Transparency Directive where the information required under those Articles is included in a universal registration document.

Language.

7.(1) Where an offer of securities to the public is made or admission to trading on a regulated market is sought only in Gibraltar, the prospectus must 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 an EEA State other than Gibraltar and the prospectus has been approved in a language other than English, the GFSC may, in its discretion, require that the summary of the prospectus be translated into English.

Approval of prospectus.

8.(1) An application for approval of a prospectus must be made to the GFSC in the form and manner it may direct.

(2) The GFSC may, after receiving an application for the approval of a prospectus—

- (a) require the relevant person to include in the prospectus supplementary information, where necessary for investor protection;
- (b) require the relevant person or any person that controls or is controlled by the relevant person to provide to the GFSC any information and documents that it may reasonably require; or
- (c) require auditors and managers of the relevant person or a relevant financial intermediary to provide to the GFSC any information that it may reasonably require.

(3) The GFSC may—

- (a) suspend the scrutiny of a prospectus submitted for approval; or
- (b) suspend or restrict an offer of securities to the public or admission to trading on a regulated market,

where it has imposed a prohibition or restriction under Article 42 of MiFIR in respect of the same securities or a related financial instrument, structured deposit or financial activity or practice.

(4) A suspension or restriction imposed under subsection (3) applies until the relevant prohibition or restriction under MiFIR has ceased to apply.

(5) The GFSC may, for a period of not more than five years, refuse to approve any prospectus drawn up by a person who has repeatedly and severely infringed the Prospectus Regulation.

Compensation for false or misleading particulars.

9.(1) The person responsible for a prospectus is liable to pay compensation to a person who has—

- (a) acquired securities to which the prospectus applies; and
- (b) suffered loss in respect of them as a result of—

- (i) any untrue or misleading statement in the prospectus; or
- (ii) the omission from the prospectus of any matter required to be included by this Act or the Prospectus Regulation.

(2) Subsection (1) is subject to section 6(5) and the exemptions in the Schedule.

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

(4) A person ("P"), by reason of being a promoter of a company or otherwise, does not incur any liability for failing to disclose in a prospectus in respect of a company's securities information—

- (a) which P would not be required to disclose if P was responsible for those particulars; or
- (b) if P is responsible for them, which P is entitled to omit by virtue of any provision made by or under this Act or the Prospectus Regulation.

(5) In subsection (4) the reference to P incurring liability includes a reference to any other person being entitled as against P to be granted any civil remedy or to rescind or repudiate an agreement.

Investigations and intervention powers

Investigations.

10.(1) Where it appears to the GFSC that there are reasonable grounds for suspecting that this Act or the Prospectus Regulation has been or is being infringed, it may conduct an investigation or appoint one or more competent persons to do so on its behalf.

(2) Without limiting subsection (1), the GFSC may also—

- (a) disclose or require an issuer to disclose all material information which may effect the assessment of the securities admitted to trading, in order to ensure investor protection or the smooth operation of the market;
- (b) suspend or require a regulated market, MTF or OTF to suspend securities from trading where the GFSC considers that the issuer's situation is such that trading would be detrimental to investors' interests; or

- (c) carry out on-site inspections or investigations of any premises (other than a dwelling) under a warrant issued by a magistrate in accordance with section 12.

Intervention powers.

11.(1) For the purpose of regulating offers of securities to the public or admissions to trading on a regulated market in accordance with the Prospectus Regulation, the GFSC may–

- (a) suspend a public offer or admission to trading, for not more than 10 consecutive working days on any single occasion, where the GFSC reasonably suspects that the Prospectus Regulation has been infringed;
- (b) prohibit or suspend advertisements or require the relevant person or a relevant financial intermediary to cease or suspend advertisements, for not more than 10 consecutive working days on any single occasion, where the GFSC reasonably believes that the Prospectus Regulation has been infringed;
- (c) prohibit an offer of securities to the public or admission to trading on a regulated market where the GFSC finds that the Prospectus Regulation has been infringed or reasonably suspects that it would be infringed;
- (d) suspend or require a regulated market, MTF or OTF to suspend trading on a regulated market, for not more than 10 consecutive working days on any single occasion, where the GFSC reasonably believes that the Prospectus Regulation has been infringed;
- (e) prohibit trading on a regulated market, MTF or OTF where the GFSC is satisfied that the Prospectus Regulation has been infringed; or
- (f) disclose or require the disclosure to the public that a relevant person is failing to comply with its obligations under the Prospectus Regulation.

(2) The GFSC must give the person concerned–

- (a) a warning notice which complies with section 19(2), if the GFSC proposes to exercise any power under subsection (1); or

- (b) a decision notice which complies with section 20(1) to (3) (with any necessary modifications), if the GFSC decides to exercise any of those powers.
- (3) Subsection (2)(a) does not apply if the GFSC is satisfied that—
- (a) there is an immediate risk of substantial damage to—
 - (i) the interests of investors;
 - (ii) the public interest; or
 - (iii) the reputation of Gibraltar; and
 - (b) the exercise of a power under subsection (1) is—
 - (i) to a material extent, likely to avoid the occurrence or reduce the extent of that damage; and
 - (ii) proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the person concerned that may result from that direction.
- (4) A decision notice in respect of any decision to which subsection (3) applies has immediate effect.

Entry of premises under warrant.

12.(1) A magistrate may issue a warrant under this section if the magistrate is satisfied, on information on oath, that there are reasonable grounds for suspecting 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 or the Prospectus Regulation; and
 - (b) those documents or that information are to be found on the premises specified in the application for a warrant.
- (3) The second set of conditions is—
- (a) that a person has infringed or is infringing this Act or the Prospectus Regulation;

- (b) that there are on the premises specified in the application for a warrant, documents or information relevant to whether that infringement has been or is being committed; and
- (c) that if a request for information were made under this Act or the Prospectus Regulation—
 - (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) An application for a warrant under this section—
 - (a) may be made by a person acting under the authority of the GFSC or a constable; and
 - (b) must specify the premises to which it relates.
- (5) A warrant issued under this section—
 - (a) continues in force for one month beginning with the date on which it was issued; and
 - (b) authorises a person acting under the authority of the GFSC or a constable—
 - (i) to enter the premises specified in the warrant;
 - (ii) to search the premises and inspect any relevant information found on the premises;
 - (iii) to take copies of or seize and remove any relevant information found on the premises or take any other steps which may appear to be necessary for preserving or preventing interference with any relevant information;
 - (iv) to require any person on the premises to provide an explanation of any relevant information or to state where it may be found; and
 - (v) to use such force as may be reasonably necessary.
- (6) Any relevant information of which possession is taken under this section may be retained—
 - (a) for up to three months; or

- (b) if within that time the GFSC takes any steps which may lead to the imposition of a sanction in respect of an infringement of this Act or the Prospectus Regulation, until the conclusion of those steps.

(7) In this section “relevant information” means any document or information which a person acting under a warrant issued under this section reasonably believes may be required as evidence of an infringement of this Act or the Prospectus Regulation.

(8) A person who wilfully obstructs another person in the exercise of any power under this section commits an offence and is liable—

- (a) on summary conviction, to the statutory maximum fine; or
- (b) on conviction on indictment, to a fine.

Infringements and sanctions

Reporting of infringements.

13.(1) The GFSC must establish appropriate arrangements which enable any person to report an infringement or potential infringement of the Prospectus Regulation to the GFSC.

(2) The arrangements established under subsection (1) must include—

- (a) secure communication channels for the reporting of infringements;
- (b) specific procedures for the receipt and investigation of reported infringements; and
- (c) arrangements which accord with the Data Protection Act 2004 for the protection of the personal data of an individual who reports an infringement and any individual who is allegedly responsible for an infringement.

(3) The GFSC must treat information about the identity of a person who reports an infringement as confidential, except where its disclosure is necessary for the purpose of any further investigations or subsequent judicial proceedings.

(4) Employers who conduct regulated financial services activities (“financial services firms”) must establish appropriate internal procedures

for their employees to report infringements through a specific, independent and autonomous channel.

(5) An employee of a financial services firm who reports an infringement in accordance with arrangements established under subsection (1) or (4)–

- (a) is not to be considered to be in breach of any restriction on disclosure of information imposed by contract or by any law and any provision in an agreement is void in so far as it purports to preclude an employee from reporting an infringement; and
- (b) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the employee has reported an infringement.

(6) An employee who has been subjected to a detriment contrary to subsection (5)(b) may present a complaint to the Employment Tribunal as if the reporting of an infringement was a protected disclosure within the meaning of Part IVA of the Employment Act.

Sanctions.

14.(1) The GFSC may take any of the actions specified in sections 15 to 17 if it is satisfied that an infringement of the Prospectus Regulation or this Act is being or has been committed.

Public statement.

15.(1) The GFSC may publish a statement specifying–

- (a) the nature of the infringement; and
- (b) the identity of the person who has committed it.

(2) Publication under this section may take any form or combination of forms that the GFSC thinks appropriate.

Cease and desist order.

16. The GFSC may order a person–

- (a) to cease any conduct which constitutes an infringement; and
- (b) to desist from any repetition of that conduct.

Administrative penalties.

17.(1) The GFSC may by order impose a penalty for an infringement of an amount not exceeding whichever is the higher of the following—

- (a) where the benefit derived from the infringement can be determined, twice the amount of that benefit;
- (b) in the case of a legal person, EUR 5,000,000 or 3% of the total annual turnover according to the last available annual accounts approved by its management body; or
- (c) in the case of an individual, EUR 700,000.

(2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total turnover for the purpose of subsection (1)(b) is the total annual turnover, or the corresponding type of income in accordance with the relevant legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

(3) A penalty imposed under this section may be enforced as if it was a civil debt owed to the GFSC.

Exercise of powers to impose sanctions.

18. The GFSC must ensure that, in determining the type and level of sanction imposed for an infringement, all relevant circumstances are taken into account, including where appropriate—

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the person responsible;
- (c) the financial strength of the person responsible, for example, as indicated by a legal person's total turnover or an individual's net assets or annual income;
- (d) the impact of the infringement on retail investors' interests;
- (e) in so far as they can be determined—
 - (i) the importance of the profits gained or losses avoided by the person responsible; and
 - (ii) the losses for third parties caused by the infringement;

- (f) the level of cooperation with the GFSC of the person responsible (but without affecting the need to ensure disgorgement of profits gained or losses avoided by that person);
- (g) previous infringements by the person responsible; and
- (h) the measures taken by the person responsible after the infringement to prevent its repetition.

Notices

Warning notices.

19.(1) The GFSC must give the person concerned a warning notice before taking any action under sections 15 to 17 in respect of an infringement.

(2) A warning notice must—

- (a) be in writing;
- (b) state the action which the GFSC proposes to take;
- (c) give reasons for the proposed action; and
- (d) specify a reasonable period (which may not be less than 14 days) within which the person concerned may make representations.

(3) Subsection (1) does not apply if the GFSC is satisfied that a warning notice—

- (a) cannot be given because of urgency;
- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action to be taken;
or
- (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.

Decision notices.

20.(1) This section applies where the GFSC has—

- (a) issued a warning notice under section 19(1); or

(b) dispensed with the requirement to do so under section 19(3).

(2) After considering any representations made in accordance with section 19(2), the GFSC must issue a decision notice.

(3) A decision notice must—

- (a) be in writing;
- (b) state that the GFSC—
 - (i) will take the action specified in the warning notice;
 - (ii) does not propose to take that action; or
 - (iii) will take certain action specified in the warning notice but does not propose to take the remaining action specified in that notice;
- (c) give the GFSC's reasons for its decision; and
- (d) give an indication of any right to appeal against the decision and the procedure for doing so.

(4) A decision notice takes effect at the end of the period specified in section 22(2) within which an appeal may be made or, if an appeal is made, when the appeal is determined or withdrawn.

(5) Subsection (4) does not apply to a decision notice which has immediate effect in accordance with section 11(4).

Interim orders.

21. The GFSC may apply to the Supreme Court for permission to take action under this Act where a decision notice has been given and has not yet taken effect (whether or not a warning notice has been given).

Appeals

Appeals.

22.(1) A person may appeal to the Supreme Court against—

- (a) a decision taken by the GFSC under this Act or the Prospectus Regulation; or

- (b) failure by the GFSC to–
 - (i) reach a decision in respect of the approval of a prospectus; or
 - (ii) request changes to, or supplementary information in respect of, a prospectus,

within the time limits specified in Articles 20.2, 20.3 or 20.6 of the Prospectus Regulation.

- (2) An appeal must be brought within 28 days of–
 - (a) in the case of an appeal under subsection (1)(a), the date of the notice of the decision; or
 - (b) in the case of an appeal under subsection (1)(b), the date on which the GFSC should have reached a decision.

Publication and reporting of decisions

Publication of decisions.

23.(1) This section applies where the GFSC has taken action under sections 15 to 17 in respect of an infringement (other than measures of an investigatory nature).

(2) The GFSC must publish on its website details of any action taken in respect of a person under those sections without undue delay after that person is informed of that action.

(3) The information published under subsection (2) must include at least–

- (a) the type and nature of the infringement; and
- (b) the identity of the individual or legal person responsible for it.

(4) The GFSC must take one of the steps in subsection (5) where–

- (a) following an obligatory prior assessment, it considers that it would be disproportionate to publish in accordance with subsection (2)–
 - (i) the identity of the legal person involved; or
 - (ii) the personal data of the individual involved; or

- (b) it considers that publication in accordance with that subsection would jeopardise the stability of financial markets or an ongoing investigation.

(5) Those steps are–

- (a) to defer publication until the reasons for non-publication cease to exist;
- (b) to publish the decision on an anonymous basis if doing so ensures effective protection of the personal data concerned; or
- (c) not to publish the decision if the steps in paragraphs (a) and (b) are considered to be insufficient to ensure–
 - (i) that the stability of the financial markets would not be put in jeopardy; or
 - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

(6) In the case of a decision to publish on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication will cease to exist.

(7) Where a decision to which this section applies is subject to an appeal, the GFSC must publish information to that effect on its website without undue delay and revise that information to reflect the status and outcome of any appeal.

(8) The GFSC must ensure that any publication in accordance with this section is of proportionate duration and remains on its website for a minimum of five years, but that personal data is only retained on the website for so long as is necessary, in accordance with the Data Protection Act 2004.

Reporting sanctions to ESMA.

24. The GFSC must–

- (a) inform ESMA of–
 - (i) any administrative sanction the GFSC has imposed and disclosed to the public; or

- (ii) any administrative sanction the GFSC has imposed but, in accordance with section 23(5)(c), not published, including any appeal in relation to the sanction and its outcome; and
- (b) provide ESMA annually with aggregate information regarding all administrative sanctions imposed in accordance with sections 15 to 17.

Regulations

Regulations.

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

(2) Without limiting subsection (1), regulations under that subsection may prescribe the fees to be paid to the GFSC in connection with the exercise of any of its functions under this Act or the Prospectus Regulation.”.

SCHEDULE

Section 9

COMPENSATION: EXEMPTIONS**Statements believed to be true.**

1.(1) A person (“P”) is not liable under section 9 for loss caused by a statement if P satisfies the court—

- (a) that, at the time when the prospectus was submitted to the GFSC, P reasonably believed (having made such enquiries, if any, as were reasonable) that—
 - (i) the statement was true and not misleading; or
 - (ii) the matter whose omission caused the loss was properly omitted; and
- (b) that one or more of the conditions in sub-paragraph (2) are satisfied.

(2) The conditions are that—

- (a) P continued in that belief until the time when the securities in question were acquired;
- (b) the securities 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, P had taken all reasonable steps to secure that a correction was brought to the attention of those persons; or
- (d) P continued in that belief until after the commencement of dealings in the securities following their admission to trading and they were acquired after such a lapse of time that P 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 by or under this Act or the Prospectus Regulation.

Statements by experts.

2.(1) A person (“P”) is not liable under section 9 for loss in respect of any securities caused by an expert statement if P satisfies the court—

- (a) that, at the time when the prospectus was submitted to the GFSC, P reasonably believed that the other person—
 - (i) was competent to make or authorise the expert statement; or
 - (ii) had consented to its inclusion in the form and context in which it was included; and
- (b) that one or more of the conditions in sub-paragraph (2) are satisfied.

(2) The conditions are that—

- (a) P continued in that 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 P had taken all reasonable steps to secure that that fact was brought to the attention of those persons; or
- (d) P continued in that belief until after the commencement of dealings in the securities following their admission to trading and they were acquired after such a lapse of time that P ought in the circumstances to be reasonably excused.

(3) In this paragraph “expert 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.

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

Correction of statements.

3.(1) A person (“P”) is not liable under section 9 for loss caused by a statement if P 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 P took all reasonable steps to secure such publication and reasonably believed that it had taken place before the securities were acquired.

(2) This paragraph applies without 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 (“P”) is not liable under section 9 for loss caused by an expert statement if P 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 P took all reasonable steps to secure such publication and reasonably believed that it had taken place before the securities were acquired.

(2) This paragraph applies without affecting paragraph 2.

(3) In this paragraph “expert statement” has the same meaning as in paragraph 2.

Official statements.

5. A person (“P”) is not liable under section 9 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 P satisfies the court that the statement is accurately and fairly reproduced.

False or misleading information known about.

6. A person (“P”) is not liable under section 9 if P 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 (“P”) is not liable under section 9 if P satisfies the court that P reasonably believed that the change or new matter in question was not such as to call for supplementary prospectus.