

**DISCLOSURE OF INTERESTS IN SHARES ACT****Principal Act**

<b>Act. No. 1998-35</b>	<i>Commencement</i>	22.4.1999
	<i>Assent</i>	13.8.1998

Amending enactments	Relevant current provisions	Commencement date
Act. 2014-04	ss. 14(10) & 28	27.2.2014

**English sources:**

None

**EU Legislation/International Agreements involved:**

Directive 77/780/EEC  
Directive 79/267/EEC  
Directive 83/349/EEC  
Directive 85/611/EEC  
Directive 88/627/EEC



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## DISCLOSURE OF INTERESTS IN SHARES ACT.

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AN ACT TO TRANSPOSE INTO THE LAW OF GIBRALTAR COUNCIL DIRECTIVE 88/627/EEC CONCERNING THE INFORMATION TO BE PUBLISHED WHEN A MAJOR HOLDING IN A LISTED COMPANY IS ACQUIRED OR DISPOSED OF.

## **Title and commencement.**

1. This Act may be cited as the Disclosure of Interests in Shares Act, 1998 and shall come into force on such day as the Governor may, by notice in the Gazette, appoint.

## **Interpretation.**

2. (1) In this Act, unless the context shall otherwise require—

“associated index”, in relation to a register of interests in shares, means the index kept in relation to that register in pursuance of section 16(5) or, as the case may be, section 18;

“authorised credit institution” means a credit institution as defined in Article 1 of Council Directive 77/780/EEC which is authorised to carry on the business of a credit institution by a competent authority in relation to a territory within the EEA, other than Gibraltar;

“authorised insurance undertaking” means an insurance undertaking which has been authorised in accordance with Article 6 or 27 of Council Directive 79/267/EEC, or is authorised under the law of a territory within the EEA to carry on insurance business restricted to re-insurance;

“authorised scheme” means a collective investment scheme which is the subject of a licence issued under section 8 of the Financial Services Act, 1989<sup>1</sup>;

“authorised unit trust scheme” means a unit trust scheme within the meaning of the Financial Services Act, 1989 which is an authorised scheme within the meaning of that Act;

“clearing house” means a clearing house licensed under Part IV of the Financial Services Act, 1989;

“company” and “share” have the same meanings as in the Companies Act<sup>2</sup>;

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<sup>1</sup> 1989-47

<sup>2</sup> 1930-07

“the court” means the Supreme Court;

“depository receipt” means a certificate or other record (whether or not in the form of a document)–

- (a) which is issued by or on behalf of a person who holds shares or who holds evidence of the right to receive shares, or has an interest in shares, in a particular company; and
- (b) which evidences or acknowledges that another person is entitled to rights in relation to those shares or shares of the same kind, which shall include the right to receive such shares (or evidence of the right to receive such shares) from the person mentioned in paragraph (a);

“derivatives” means–

- (a) options to acquire or dispose of shares; and
- (b) rights under a contract falling within paragraph 8 of Schedule 1 to the Financial Services Act 1989 (futures) where the property in question is shares;

“director” has the same meaning as in section 2(1) of the Companies Act;

“EEA” means the territories to which the EEA Agreement applies;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993;

“EEA State” means a State which is a Contracting Party to the EEA Agreement;

“listed company” means a company (other than an open-ended investment company) any of the shares in which are officially listed on a relevant stock exchange and “listed” shall be construed accordingly;

“open-ended investment company” has the same meaning for the purposes of this section as it has for the purposes of Part I of Schedule 3 to the Companies Act;

“recognised scheme” means a collective investment scheme recognised under section 24 or 26 of the Financial Services Act, 1989;

“register of interests in shares” means the register kept in pursuance of section 16 or, as the case may be, section 18;

“the Registrar of Companies” means the Registrar of Companies appointed under section 278 of the Companies Act and, subject to the provisions of that section, includes an Assistant Registrar of Companies;

“relevant investment exchange” means an exchange situated in or operating in a territory within the EEA on which derivatives are traded;

“relevant share capital” has the meaning given by section 3(2);

“relevant stock exchange” means a stock exchange situated in or operating in a territory within the EEA;

“securities” has the same meaning as in section 2(1) of the Financial Services Act, 1989;

“units” has the same meaning as in section 2(1) of the Financial Services Act, 1989.

(2) The Registrar of Companies shall be the competent authority in relation to Gibraltar for the purposes of Council Directive 88/627/EEC concerning the information to be published when a major holding in a listed company is acquired or disposed of.

## **Obligation of disclosure.**

3.(1) Where a person either—

- (a) to his knowledge acquires an interest in shares comprised in a listed company’s relevant share capital, or ceases to be interested in shares so comprised (whether or not retaining an interest in other shares so comprised); or
- (b) becomes aware that he has acquired an interest in shares so comprised or that he has ceased to be interested in shares so comprised in which he was previously interested,

then, subject to the provisions of sections 4 to 15, he shall be under an obligation (“the obligation of disclosure”) to make notification to the company with respect to his interests (if any) in its shares at the times specified in sections 4(4) and (5) .

(2) In relation to a listed company, "relevant share capital" means the company's issued share capital of a class carrying rights to vote in all circumstances at general meetings of the company.

(3) Where a company's relevant share capital is divided into different classes of shares, references in this Act to a percentage of the nominal value of its relevant share capital are to a percentage of the nominal value of the issued shares comprised in each of the classes taken separately.

(4) The temporary suspension of voting rights in respect of shares comprised in issued share capital of a company of any such class does not affect the application of this Act in relation to interests in those or any other shares comprised in that class.

(5) Where, otherwise than in circumstances within subsection (1), a person—

- (a) is aware at the time when it occurs of any change of circumstances affecting facts relevant to the application of section 4 to an existing interest of his in shares comprised in a company's share capital of any description; or
- (b) otherwise is or becomes aware of any such facts (whether or not arising from any such change of circumstances),

then, subject to the provisions of sections 4 to 15, he shall be under the obligation of disclosure.

(6) For the purposes of this section and sections 4, 7(2) and 11, a person who would reasonably be expected to know of or be aware of any facts or circumstances specified in those sections shall be deemed to know or be aware of such facts or such circumstances.

#### **Interests to be disclosed.**

4.(1) For the purposes of the obligation of disclosure, the interests to be taken into account are those in relevant share capital of the company concerned.

(2) A person has a notifiable interest at any time when he is interested in shares comprised in that share capital of an aggregate nominal value equal to or more than the percentage of the nominal value of that share capital which is a notifiable percentage level referred to in section 6.

(3) All facts relevant to determining whether a person has a notifiable interest at any time (or the percentage level of his interest) are taken to be what he knows the facts to be at that time.

(4) The obligation of disclosure arises under section 3(1) or (5) at the end of the relevant day if the person then has a notifiable interest but did not have such an interest at the end of the immediately preceding day.

(5) The obligation also arises under section 3(1) or (5) at the end of the relevant day where—

- (a) the person does not have a notifiable interest at the end of the relevant day, but had such an interest at the end of the immediately preceding day; or
- (b) he has a notifiable interest at the end of the relevant day, and had such an interest at the end of the immediately preceding day, but the notifiable percentage levels to which his notifiable interest relates in each case are not the same.

(6) For the purposes of this section and of sections 5 and 7(2)(a) “the relevant day” means the day during which—

- (a) in a case within subsection 3(1)(a) or (5)(a), the event or change of circumstances there mentioned occurs; and
- (b) in a case within subsection 3(1)(b) or (5)(b), the person became aware, or would reasonably be expected to have become aware, of the facts in question.

**“Percentage level” in relation to notifiable interests.**

5. (1) Subject to subsection (2), “percentage level”, in section 4(5)(b), means the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the share capital concerned in which the person is interested at the end of the relevant day or, as the case may be, at the end of the immediately preceding day as a percentage of the nominal value of that share capital and rounding that figure down, if it is not a whole number, to the next whole number.

(2) Where the nominal value of the share capital is greater at the end of the relevant day than it was at the end of the immediately preceding day, the percentage level of the person’s interest is determined in each case by reference to the larger amount.

**Notifiable percentage levels.**

6. Each of the following percentage levels is a notifiable percentage level—

- (a) 10 per cent;

- (b) 25 per cent;
- (c) 50 per cent;
- (d) 75 per cent.

**Particulars to be contained in notification.**

7. (1) Where notification is required by section 3 with respect to a person's interest (if any) in shares comprised in relevant share capital of a company, the obligation to make the notification must be performed within the period of seven days following the time at which the obligation arises; and the notification must be made in writing to the company.

(2) The notification must specify the share capital to which it relates, and must also—

- (a) specify the relevant day; and
- (b) state—
  - (i) the number of shares comprised in that share capital in which the person making the notification knows he was interested at the time when the obligation arose and the percentage level of his interest; or
  - (ii) in a case where the person no longer has a notifiable interest in shares comprised in that share capital, that he no longer has that interest.

(3) A notification (other than one stating that a person no longer has a notifiable interest) shall include the following particulars so far as known to the person making the notification at the date when it is made—

- (a) the identity of each registered holder of shares to which the notification relates and the number of such shares held by each of them; and
- (b) the number of such shares in which the interest of the person giving the notification is such an interest as is mentioned in section 13(7).

(4) A person who has an interest in shares comprised in a company's relevant share capital, that interest being notifiable, is under obligation to notify the company in writing—

- (a) of any particulars in relation to those shares which are specified in subsection (3); and
- (b) of any change in those particulars,

of which in either case he becomes aware at any time after any interest notification date and before the first occasion following that date on which he comes under any further obligation of disclosure with respect to his interest in shares comprised in that share capital.

(5) An obligation arising under subsection (4) must be performed within the period of seven days next following the day on which it arises.

(6) The reference in subsection (4) to an interest notification date, in relation to a person's interest in shares comprised in a listed company's relevant share capital, is to either of the following—

- (a) the date of any notification made by him with respect to his interest under this Act; and
- (b) where he has failed to make a notification, the date on which the period allowed for making it came to an end.

(7) A person who at any time has an interest in shares which is notifiable is to be regarded under subsection (4) as continuing to have a notifiable interest in them unless and until he comes under obligation to make a notification stating that he no longer has such an interest in those shares.

(8) An obligation to make any notification imposed on any person by this Act shall be treated as not being fulfilled unless the notice by means of which it purports to be fulfilled identifies him and gives his address and, in a case where he is a director of the company, is expressed to be given in fulfillment of that obligation.

### **Notification of family and corporate interests.**

8.(1) For the purposes of sections 3 to 7 a person is taken to be interested in any shares in which his spouse or any minor child of his is interested.

(2) For those purposes, a person is taken to be interested in shares if a body corporate is interested in them, and—

- (a) the person holds a majority of voting rights in that body corporate;

- (b) the person is a shareholder in or member of the body corporate and has the right to appoint or remove a majority of its board of directors; or
- (c) the person is a shareholder in or member of the body corporate and controls alone, subject to an agreement with other shareholders or members, a majority of voting rights in the body corporate.

(3) For the purposes of subsection (2), a person's rights as regards voting, appointment and removal in relation to a body corporate include any rights described in that subsection which are rights of that body corporate in relation to another body corporate.

**Agreements in relation to interests in a listed company.**

9. (1) Subject to the following provisions of this section, this section applies to an agreement between two or more persons which includes provisions imposing obligations or restrictions on any one or more of the parties to the agreement with respect to the use, retention or disposal of interests in shares comprised in relevant share capital of a particular listed company ("the target company").

(2) Subject to the following provisions of this section, this section applies to an agreement between two or more persons which includes provision for the acquisition by any one or more of the parties to the agreement of interests in shares comprised in relevant share capital of a particular listed company ("the target company"), if—

- (a) it also includes provisions imposing obligations or restrictions on any one or more of the parties to the agreement with respect to their use, retention or disposal of interests in that company's shares acquired in pursuance of the agreement (whether or not together with any other interests of theirs in that company's shares to which the agreement relates); and
- (b) any interest in the company's shares is in fact acquired by any of the parties in pursuance of the agreement.

(3) In relation to an agreement to which this section applies, references in this section, and in sections 10 and 11, to the target company are to the company which is the target company for that agreement in accordance with this section.

(4) The reference in subsections (1) and (2) to the use of interests in shares in the target company is to the exercise of any rights or of any control or (influence arising from those interests, including the right to enter into any

agreement for the exercise, or for control of the exercise, of any of those rights by another person).

(5) This section continues to apply to any agreement as is mentioned above irrespective of—

- (a) any change in the persons who are for the time being parties to it; and
- (b) any variation of the agreement,

so long as the agreement continues to include provisions of any description mentioned in subsection (1) or (2).

(6) References in subsection (5) to the agreement include any agreement having effect (whether directly or indirectly) in substitution for the original agreement.

(7) In this section, and also in references elsewhere in this Act to an agreement to which this section applies, “agreement” includes any agreement or arrangement; and references in this section to provisions of an agreement—

- (a) accordingly include undertakings, expectations or understandings operative under any arrangement; and
- (b) (without prejudice to the above) also include any provisions, whether express or implied and whether absolute or not.

(8) This section does not apply to an agreement which is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; nor does the section apply to an agreement to underwrite or sub-underwrite any offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.

### **Obligation of disclosure arising under section 9.**

10. (1) In the case of an agreement to which section 9 applies, each party to the agreement shall be taken (for the purposes of the obligation of disclosure) to be interested in all shares in the target company in which any other party to it is interested apart from the agreement.

(2) For those purposes, and for the purposes of section 11, an interest of a party to such an agreement in shares in the target company is an interest apart from the agreement if he is interested in those shares otherwise than by virtue of the application of section 9 and this section in relation to the agreement.

(3) Accordingly, any such interest of the person (apart from the agreement) includes for those purposes any interest treated as his under section 8 or by the application of section 9 and this section in relation to any other agreement with respect to shares in the target company to which he is a party.

(4) A notification with respect to his interest in shares in the target company made to that company under this Act by a person who is for the time being a party to an agreement to which section 9 applies shall—

- (a) state that the person making the notification is a party to such an agreement;
- (b) include the names and (so far as known to him) the addresses of the other parties to the agreement, identifying them as such; and
- (c) state whether or not any of the shares to which the notification relates are shares in which he is interested by virtue of section 9 and this section and, if so, the number of those shares.

(5) Where a person makes a notification to a company under this Act in consequence of ceasing to be interested in any shares of that company by virtue of the fact that he or any other person has ceased to be a party to an agreement to which section 9 applies, the notification shall include a statement that he or that other person has ceased to be a party to the agreement (as the case may require) and also (in the latter case) the name and (if known to him) the address of that other.

**Obligation of persons acting together to keep each other informed.**

11. (1) A person who is a party to an agreement referred to in section 9 shall be subject to the requirements of this section at any time when the facts are such that section 9 applies to that agreement and he knows that to be the case.

(2) Such a person shall make arrangements which ensure that every other party to the agreement is informed of the relevant particulars of his interest (if any) apart from the agreement in shares comprised in relevant share capital of the target company—

- (a) on his first becoming subject to the requirements of this section, and
- (b) on each occurrence after that time while he is still subject to those requirements of any event or circumstances within section

3(1) (as that section applies to his case otherwise than by reference to interests treated as his under section 10 as applying to that agreement).

- (3) The relevant particulars for the purposes of subsection (2) are—
- (a) the number of shares (if any) comprised in the target company's relevant share capital in which the person disclosing information under subsection (2) would be required to state his interest if that interest (apart from the agreement) were a notifiable interest for the purposes of section 4 immediately after the time when the obligation to disclose under subsection (2) arose, and
  - (b) the relevant particulars with respect to the ownership of those shares, so far as known to him at the time the information is disclosed.

(4) A person who is for the time being subject to the requirements of this section shall also make arrangements which ensure that every other party to the agreement is informed—

- (a) of any relevant particulars with respect to the ownership of any shares comprised in relevant share capital of the target company in which he is interested apart from the agreement, and
- (b) of any changes in those particulars,

of which in either case he becomes aware at any time after he first becomes subject to an obligation to disclose information under subsection (2) in respect of that share capital, and before the first occasion following that date on which he again becomes subject to such an obligation in respect of that share capital.

(5) A person who is a party to an agreement to which section 9 applies shall make arrangements which ensure that every other party to the agreement is informed of his current name and address—

- (a) on his first becoming subject to the requirements of this section, and
- (b) on any change in his name or address occurring after that time and while he is still subject to those requirements.

(6) A reference to relevant particulars with respect to the ownership of shares is to particulars of—

- (a) the identity of each registered holder of the shares and the number of such shares held by each of them, and
- (b) the number of such shares in which the interest of the person disclosing information under subsection (2) is such an interest as is mentioned in section 13(7).

(7) The arrangements referred to in this section must be such that any information which a person is under an obligation to disclose under this section is received by every other party to the agreement within the period of seven days next following the day on which that person first becomes subject to the obligation.

**Interests in shares by attribution.**

12. (1) Where section 3 or 4 refers to a person acquiring an interest in shares or ceasing to be interested in shares, that reference in certain cases includes his becoming or ceasing to be interested in those shares by virtue of another person's interest.

(2) This section applies where he becomes or ceases to be interested by virtue of section 8 or (as the case may be) section 10 whether—

- (a) by virtue of the fact that the other person who is interested in the shares becomes or ceases to be a person whose interests (if any) fall by virtue of either section to be treated as his; or
- (b) in consequence of the fact that such a person has become or ceased to be interested in the shares; or
- (c) in consequence of the fact that he himself becomes or ceases to be a party to an agreement to which section 9 applies to which the other person interested in the shares is for the time being a party; or
- (d) in consequence of the fact that an agreement to which both he and that other person are parties becomes or ceases to be one to which the said section 9 applies.

(3) The person shall be treated under section 3 as knowing he has acquired an interest in the shares or (as the case may be) that he has ceased to be interested in them, if and when he knows both—

- (a) the relevant facts with respect to the other person's interest in the shares; and

- (b) the relevant facts by virtue of which he himself has become or ceased to be interested in them in accordance with section 8 or 10.

(4) He shall be deemed to know the relevant facts referred to in subsection (3) (a) if he knows (whether contemporaneously or not) either of the subsistence of the other person's interest at any material time or of the fact that the other person has become or ceased to be interested in the shares at any such time.

(5) In subsection (4) "material time" means any time at which the other person's interests (if any) fall or fell to be treated as his under section 8 or 10.

(6) A person is to be regarded as knowing of the subsistence of another person's interest in shares or (as the case may be) that another person has become or ceased to be interested in shares if he has been notified under section 11 of facts with respect to the other's interest which indicate that he is or has become or ceased to be interested in the shares (whether on his own account or by virtue of a third party's interest in them).

### **Interests in shares which are to be notified.**

13. (1) Subject to section 14, this section applies in determining for purposes of sections 3 to 7 whether a person has a notifiable interest in shares.

(2) A reference to an interest in shares is to be read as including an interest of any kind in the shares.

(3) Without prejudice to the generality of subsection (2), there are to be disregarded any restraints or restrictions to which the exercise of any right attached to an interest in shares is or may be subject.

(4) Where property is held on trust and an interest in shares is comprised in the property, a beneficiary of the trust who apart from this subsection does not have an interest in the shares is to be taken as having such an interest.

(5) A person is taken to have an interest in shares if—

- (a) he enters into a contract for their purchase by him (whether for cash or other consideration); or
- (b) not being the registered holder, he is entitled to exercise any right conferred by the holding of the shares or is entitled to control the exercise of any such right.

(6) For the purposes of subsection (5)(b), a person is entitled to exercise or control the exercise of any right conferred by the holding of shares if he—

- (a) has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or
- (b) is under an obligation (whether so subject or not) the fulfillment of which would make him so entitled.

(7) A person is taken to have an interest in shares if, otherwise than by virtue of having an interest under a trust—

- (a) he has a right to call for delivery of the shares to himself or to his order; or
- (b) he has a right to acquire an interest in shares or is under an obligation to take an interest in shares,

whether in any case the right or obligation is conditional or absolute.

(8) Where persons have a joint interest each of them shall be taken to have that interest.

(9) It is immaterial that shares in which a person has an interest are unidentifiable.

**Interests to be disregarded and exemptions from obligation to disclose.**

14. (1) Subject to subsections (4) and (5), the following interests in shares shall be disregarded for the purposes of sections 3 to 7—

- (a) where property is held on trust and an interest in shares is comprised in that property, an interest of a person, being a discretionary interest or an interest in reversion or remainder or an interest of a bare trustee;
- (b) an interest which a person has by virtue of holding units in—
  - (i) an authorised scheme;
  - (ii) a recognised scheme; or
  - (iii) a UCITS;
- (c) an interest of a person which is an exempt security interest within the meaning of subsection (2);

- (d) an interest which a person has by virtue of his being a beneficiary under an occupational pension scheme;
- (e) an interest of a person which is an exempt custodian interest within the meaning of subsection (3);
- (f) an interest which a person has by virtue of his being a personal representative of any estate;
- (g) an interest which a person has—
  - (i) by virtue of his being a trustee of an authorised unit trust scheme; or
  - (ii) in relation to a recognised scheme or a UCITS, by virtue of him being entrusted with the custody of the property in question (whether or not under a trust).

(2) An interest in shares is an exempt security interest for the purposes of subsection (1)(c) if—

- (a) if it is held by—
  - (i) an authorised institution under the Financial Services (Banking) Act 1992<sup>3</sup>, an authorised credit institution, a person authorised under the law of a territory within the EEA other than Gibraltar to accept deposits who would, if he were to accept such deposits in Gibraltar require authorisation under the Financial Services (Banking) Act 1992, or an authorised insurance undertaking; or
  - (ii) a person authorised under the law of a territory within the EEA to deal in securities or derivatives, who deals with securities on a relevant stock exchange or derivatives on a relevant investment exchange, whether as a member or otherwise; or
  - (iii) a relevant investment exchange or a clearing house; or
  - (iv) the Bank of England or the central bank of a territory within the EEA other than Gibraltar, and
- (b) it is held by way of security only for the purposes of a transaction entered into by the person or body concerned in the ordinary course of business of such person or body,

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<sup>3</sup> 1992-11

and it is held by way of security only for the purposes of a transaction entered into in the ordinary course of his or its business as such a person.

(3) For the purposes of subsection (1)(e) an interest of a person is an exempt custodian interest if it is held by him—

- (a) as a custodian (whether under a trust or by a contract); or
- (b) under an arrangement pursuant to which he has issued, or is to issue, depository receipts in respect of the shares concerned.

(4) An interest referred to in any paragraph of subsection (1) (except for paragraph (c)) is disregarded only if the person referred to in the relevant paragraph or in subsection (3) is not entitled to exercise or control the exercise of voting rights in respect of the shares concerned; and for this purpose he is not so entitled if he is bound (whether by contract or otherwise) not to exercise the voting rights, or not to exercise them otherwise than in accordance with the instructions of another.

(5) In the case of an interest referred to in paragraph (c) of subsection (1), an interest of a person referred to in subsection (2) is disregarded only if that person—

- (a) is not entitled (within the meaning of subsection (4)) to exercise or control the exercise of voting rights in respect of the shares concerned; or
- (b) is so entitled, but has not evidenced any intention to exercise them or control their exercise nor taken any step to do so.

(6) For the purposes of subsections (4) and (5), voting rights which a person is entitled to exercise or of which he is entitled to control the exercise only in certain circumstances shall be taken into account only when the circumstances have arisen and for so long as they continue to obtain.

(7) An interest in shares of a company is also disregarded for the purposes of sections 3 to 7—

- (a) if it is held by a market maker in securities or derivatives for the purposes of his business, but
- (b) only in so far as it is not used by him for the purpose of intervening in the management of the company.

(8) For the purposes of subsection (7) a person is a market maker in securities or derivatives if he is authorised under the law of a territory within

the EEA to deal in securities or derivatives and so deals on a relevant stock exchange or on a relevant investment exchange (whether as a member or otherwise) and he holds an interest for the purposes of his business if he holds it for the purposes of a business carried on by him as market maker within the EEA.

(9) A person is not by virtue of section 13(5)(b) taken to be interested in shares by reason only that he has been appointed a proxy to vote at a specified meeting of a company or any class of its members and at any adjournment of that meeting, or has been appointed by a corporation to act as its representative at any meeting of a company or of any class of its members.

(10) Where a person is a member of a group of undertakings required under Directive 83/349/EEC to draw up consolidated accounts, the the Minister with responsibility for financial services may by regulations exempt that person from the obligation of disclosure and the obligation imposed by section 30 in such circumstances as may be provided in the regulations.

(11) In this section, UCITS means a collective investment scheme which is constituted in a territory within the EEA other than Gibraltar and complies with the conditions necessary for it to enjoy the rights conferred by Council Directive 85/611/EEC co-ordinating the laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

### **Other provisions relating to notification.**

15. (1) Where a person authorises any other person (“the agent”) to acquire or dispose of, on his behalf, interests in shares comprised in relevant share capital of a listed company, he shall secure that the agent notifies him immediately of acquisitions or disposals of interests in shares so comprised effected by the agent which will or may give rise to any obligation on his part to make a notification under this Act with respect to his interest in that share capital.

- (2) A person who—
- (a) fails to fulfill, within the proper period, an obligation to make any notification required by this Act; or
  - (b) in purported fulfillment of any such obligation makes to a company a statement which he knows to be false or recklessly makes to a company a statement which is false; or

- (c) fails to fulfill, within the proper period, an obligation to make arrangements to ensure that parties are informed as required by section 11; or
- (d) fails without reasonable excuse to comply with subsection (1),

is guilty of an offence and liable—

- (i) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (ii) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(3) It shall be a defence for a person charged with an offence under subsection (2)(c) to prove that it was not possible for him to make arrangements to ensure that parties are informed as required by section 11, and either—

- (a) that it has not, since the expiration of the period referred to in section 11(7), become possible for him to make the arrangements so required; or
- (b) that he made such arrangements as soon after the expiration of that period as it became possible for him to do so.

(4) Where a person—

- (a) fails to fulfill, within the proper period, an obligation to make any notification required by this Act; or
- (b) in purported fulfillment of any such obligation makes to a company a statement which he knows to be false or recklessly makes to a company a statement which is false; or
- (c) fails to fulfill, within the proper period, an obligation to make arrangements to ensure that parties are informed as required by section 11,

no right or interest of any kind whatsoever in respect of any shares in the company concerned, held by him, shall be enforceable by him, whether directly or indirectly, by action or legal proceeding.

(5) Where any right or interest is restricted under subsection (4), any person in default under that subsection or any other person affected by such restriction may apply to the court for relief against a disability imposed by or

arising out of subsection (4) and the court, on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular right or interest on such terms and conditions as it sees fit.

(6) Where an applicant for relief under subsection (5) is a person referred to in subsection (4), the court may not grant such relief if it appears that the default has arisen as a result of any deliberate act or omission on the part of the applicant.

(7) Subsection (4) shall not apply to an obligation relating to a person ceasing to be interested in shares in any company.

### **Register of interests in shares.**

16.(1) Every listed company shall keep a register for the purposes of sections 3 to 7 and when the company receives information from a person in consequence of the fulfillment of an obligation imposed on him by any of those sections, it is under obligation to inscribe in the register, against that person's name, that information and the date of the inscription.

(2) Without prejudice to subsection (1), where a company receives a notification under this Act which includes a statement that the person making the notification, or any other person, has ceased to be a party to an agreement to which section 9 applies, the company shall be under obligation to record that information against the name of that person in every place where his name appears in the register as a party to that agreement (including any entry relating to him made against another person's name).

(3) An obligation imposed by subsection (1) or (2) must be fulfilled within the period of seven days next following the day on which it arises.

(4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares.

(5) Unless the register is in such form as to constitute in itself an index, the company shall keep an index of the names entered in the register which shall in respect of each name contain a sufficient indication to enable the information entered against it to be readily found; and the company shall, within ten days after the date on which a name is entered in the register, make any necessary alteration in the index.

(6) If the company ceases to be a listed company it shall continue to keep the register and any associated index until the end of the period of six years

beginning with the day next following that on which it ceases to be such a company.

(7) Subject to subsection (8), the register and any associated index shall be available for inspection in accordance with section 24.

(8) Neither the register nor any associated index shall be available for inspection in accordance with section 24 in so far as—

- (a) the index or the register contains information with respect to a company, the disclosure of which would, in the opinion of the directors of the company, be seriously detrimental to the company, and
- (b) the Registrar of Companies is satisfied that the fact that the information is not available to the public is unlikely to mislead the public with regard to the facts and circumstances knowledge of which is necessary for the assessment of the interests in question.

(9) If default is made in complying with subsection (1) or (2), or subsections (5) or (6), the company and every officer of the company who is in default shall be liable, on summary conviction, to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

#### **Company investigations.**

17.(1) A listed company may by notice in writing require a person whom the company knows or has reasonable cause to believe to be or, at any time during the three years immediately preceding the date on which the notice is issued, to have been interested in shares comprised in the company's relevant share capital—

- (a) to confirm that fact or (as the case may be) to indicate whether or not it is the case; and
- (b) where he holds or has, during that time, held an interest in shares so comprised, to give such further information as may be required in accordance with subsection (2).

(2) A notice under this section may require the person to whom it is addressed—

- (a) to give particulars of his own past or present interest in shares comprised in relevant share capital of the company (held by him

at any time during the three year period mentioned in subsection (1));

- (b) where the interest is a present interest and any other interest in the shares subsists or, in any case, where another interest in the shares subsisted during that three year period at any time when his own interest subsisted, to give (so far as lies within his knowledge) such particulars with respect to that other interest as may be required by the notice;
- (c) where his interest is a past interest, to give (so far as lies within his knowledge) particulars of the identity of the person who held that interest immediately upon his ceasing to hold it.

(3) The particulars referred to in subsections (2)(a) and (2)(b) include particulars of the identity of persons interested in the shares in question and of whether persons interested in the same shares are or were parties to any agreement to which section 9 applies or to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.

(4) A notice under this section shall require any information given in response to the notice to be given in writing within such reasonable time as may be specified in the notice.

(5) Sections 8 to 10 and 13 apply for the purpose of construing references in this section to persons interested in shares and to interests in shares respectively, as they apply in relation to sections 3 to 6 (but with the omission of any reference to section 14).

(6) This section applies in relation to a person who has or previously had, or is or was entitled to acquire, a right to subscribe for shares in a listed company which would on issue be comprised in relevant share capital of that company as it applies in relation to a person who is or was interested in shares so comprised; and references in this section to an interest in shares so comprised and to shares so comprised are to be read accordingly in any such case as including respectively any such right and shares which would on issue be so comprised.

### **Registration of interests disclosed under section 17.**

18.(1) Every listed company shall keep a register for the purposes of section 17 and, when the company receives information to which this section applies relating to shares comprised in its relevant share capital, it is under obligation to enter in the register against the name of the registered holder of those shares,—

- (a) the fact that the requirement was imposed and the date on which it was imposed; and
- (b) any information to which this section applies received in pursuance of the requirement.

(2) This section applies to any information received in pursuance of a requirement imposed by section 17 which relates to the present interests held by any persons in shares comprised in relevant share capital of the company in question.

(3) Subsections (3) to (9) of section 16 apply in relation to the register maintained in accordance with subsection (1) of this section, reading references to subsection (1) of that section to include subsection (1) of this section.

**Company investigations on requisition by members.**

19.(1) A company may be required to exercise its powers under section 17 on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as carries at that date the right of voting at general meetings of the company.

- (2) The requisition must—
  - (a) state that the requisitionists are requiring the company to exercise its powers under section 17;
  - (b) specify the manner in which they require those powers to be exercised; and
  - (c) give reasonable grounds for requiring the company to exercise those powers in the manner specified,

and must be signed by the requisitionists and deposited at the company's registered office.

(3) The requisition may consist of several documents in like form each signed by one or more requisitionists.

(4) On the deposit of a requisition complying with this section the company shall exercise its powers under section 17 in the manner specified in the requisition.

(5) If default is made in complying with subsection (4), the company and every officer of the company who is in default is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

## **Company report to members.**

20.(1) On the conclusion of an investigation carried out by a company in pursuance of a requisition under section 19 it is the company's duty to cause a report of the information received in pursuance of that investigation to be prepared, and the report shall be made available at the company's registered office within a reasonable period after the conclusion of that investigation.

- (2) Where—
  - (a) a company undertakes an investigation in pursuance of a requisition under section 19, and
  - (b) the investigation is not concluded before the end of 3 months beginning with the date immediately following the date of the deposit of the requisition,

the company shall cause to be prepared, in respect of that period and each successive period of three months ending before the conclusion of the investigation, an interim report of the information received during that period in pursuance of the investigation.

(3) A report prepared in accordance with subsection (2) shall be made available at the company's registered office within a reasonable period after the end of the period to which it relates.

(4) The period for making any report prepared under this section available as required by subsection (1) or (3) shall not exceed fifteen days.

(5) The company shall, within three days of making any report prepared under this section available at its registered office, notify the requisitionists that the report is so available.

(6) An investigation carried out by a company in pursuance of a requisition under section 19 shall be regarded for the purposes of this section as concluded when the company has made all such inquiries as are necessary or expedient for the purposes of the requisition and, in the case of each such inquiry, either a response has been received by the company or the time allowed for a response has elapsed.

- (7) A report prepared under this section—

- (a) shall be kept at the company's registered office from the day on which it is first available there in accordance with subsection (1) or (3) until the expiration of six years beginning with the day next following that day; and
- (b) shall be available for inspection in accordance with section 24 so long as it is so kept.

(8) If default is made in complying with subsection (1), (2), (3), (4), (5) or (7)(a), the company and every officer of the company who is in default shall be guilty of an offence and liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

**Penalty for failure to provide information.**

21.(1) Subject to subsection (2), a person who fails to comply with a notice under section 17 or who, in purported compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular is guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(2) A person is not guilty of an offence by virtue of failing to comply with a notice under section 17 if he proves that the requirement to give the information was frivolous or vexatious.

**Removal of entries from register.**

22.(1) A company may remove an entry against a person's name from a register of interests in shares maintained by the company in accordance with section 18(1) if more than six years have elapsed since the date of the entry being made.

(2) A company may remove an entry against a person's name from a register of interests in shares maintained by the company in accordance with

section 16(1) if more than six years have elapsed since the date of the entry being made, and either—

- (a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under this Act in relevant share capital of the company; or
- (b) it has been superseded by a later entry made under section 16 against the same person's name;

and in a case within paragraph (a) the company may also remove that person's name from the register.

(3) If, in pursuance of an obligation imposed on him by any provision of this Act, a person gives to a company the name and address of any other person as being interested in shares in the company, the company shall, within fifteen days of the date on which it was given that information, notify that other person that he has been so named and shall include in that notification—

- (a) particulars of any entry relating to him made, in consequence of its being given that information, by the company in a register of interests in shares; and
- (b) a statement informing him of his right to apply to have the entry removed in accordance with the following provisions of this section.

(4) A person who has been notified by a company in pursuance of subsection (3) that an entry relating to him has been made in the company's register of interests in shares may apply in writing to the company for the removal of that entry from the register; and the company shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.

(5) If a person who is identified in a company's register of interests in shares as being a party to an agreement to which section 9 applies (whether by an entry against his own name or by an entry relating to him made against another person's name as mentioned in subsection (3)(a)) ceases to be a party to that agreement, he may apply in writing to the company for the inclusion of that information in the register; and if the company is satisfied that he has ceased to be a party to the agreement, it shall record that information (if not already recorded) in every place where his name appears as a party to that agreement in the register.

(6) If an application under subsection (4) or (5) is refused (in a case within subsection (5)) otherwise than on the ground that the information has

already been recorded, the applicant may apply to the court for an order directing the company to remove the entry in question from the register or (as the case may be) to include the information in question in the register; and the court may, if it thinks fit, make such an order.

(7) Where a name is removed from a company's register of interests in shares in pursuance of subsection (2) or (4) or an order under subsection (6), the company shall within fourteen days of the date of that removal make any necessary alteration in any associated index.

(8) If default is made in complying with subsection (3) or (7), the company and every officer of the company who is in default shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

#### **Entries, when not to be removed.**

23.(1) Entries in a company's register of interests in shares under this Act shall not be deleted except in accordance with section 22.

(2) If an entry is deleted from a company's register of interests in shares in contravention of subsection (1), the company shall restore that entry to the register as soon as is reasonably practicable.

(3) If default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

#### **Inspection of register and reports.**

24.(1) Any register of interests in shares and any report which is required by section 20(7) to be available for inspection in accordance with this section shall, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, but so that not less than two hours in each day are allowed for inspection) be open to the inspection of any member of the company or of any other person without charge at the company's registered office.

(2) Any such member or other person may require a copy of any such register or report, or any part of it, on payment of fifteen pence or such less sum as the company may prescribe, for every 100 words or fractional part of 100 words required to be copied; and the company shall cause any copy so required by a person to be sent to him before the expiration of the period of

10 days beginning with the day next following that on which the requirement is received by the company.

(3) If an inspection required under this section is refused or a copy so required is not sent within the proper period, the company and every officer of the company who is in default shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

(4) In the case of a refusal of an inspection required under this section of any register or report, the court may by order compel an immediate inspection of it; and in the case of failure to send a copy required under this section, the court may by order direct that the copy required shall be sent to the person requiring it.

### **Obligation to notify certain interests to the Registrar of Companies.**

25.(1) Where a person becomes aware that he has acquired or ceased to have an interest in shares which are comprised in relevant share capital of a listed company and, following that acquisition or disposal, the percentage level (within the meaning of section 5) of his interest in that share capital exceeds or falls below a notifiable percentage level referred to in section 6, he shall, in addition to the obligation of disclosure to which he is subject under section 3, be under an obligation to notify the Registrar of Companies of his interest in the shares following the acquisition or cessation, as the case may be.

(2) The provisions of this Act shall apply as regards the interests which are to be notified to the Registrar of Companies, and the manner in which they are to be so notified, as they apply to the interests to be notified to a company under this Act.

(3) Where the Registrar of Companies receives a notification under this section he shall, subject to subsections (4) and (5), publish, in such manner as he shall determine, and within nine days of its receipt, the information contained in that notification.

(4) The Registrar of Companies may decide not to publish the information contained in the notification if, but only if, he is satisfied—

- (a) that the disclosure of such information would be contrary to the public interest; or
- (b) that such disclosure would be seriously detrimental to the company or companies concerned:

Provided that–

- (i) the Registrar of Companies shall not decide not to publish the information under paragraph (b) unless he is satisfied that a decision not to do so would be unlikely to mislead the public with regard to the facts and circumstances knowledge of which is necessary for the assessment of the interests in question; and
- (ii) notwithstanding any decision taken under this subsection, the Registrar of Companies may publish the information later than three days after its receipt where he is satisfied that the considerations in paragraph (a) or (b) no longer apply.

(5) Where the Registrar of Companies decides to publish the information contained in a notification under this section, the Registrar shall ensure that the information is published in each territory within the EEA other than Gibraltar in which the shares of the company to which the notification relates are officially listed on a relevant stock exchange.

#### **Obligation of professional secrecy.**

26.(1) Information obtained by the Registrar of Companies or any person employed or formerly employed by the Registrar by virtue of the exercise by the Registrar of his functions under this Act shall not be disclosed except in accordance with law.

(2) Subsection (1) shall not prevent the Registrar of Companies from disclosing any information to a similar authority in an EEA State pursuant to section 27.

(3) Any person who contravenes subsection (1) shall be guilty of an offence.

#### **Co-operation between authorities in member States.**

27. In exercising his functions under section 25, the Registrar of Companies shall co-operate wherever necessary with the competent authorities designated by EEA States pursuant to Article 12 of Council Directive 88/627/EEC on the information to be published when a major holding in a listed company is acquired or disposed of, for the purpose of facilitating the performance of the duties of competent authorities under that Directive, and shall, in particular make available any information useful for that purpose.

#### **Fees payable to Registrar of Companies.**

28. The Minister with responsibility for financial services may by regulations require the payment to the Registrar of Companies of such fees as may be specified in the regulations in respect of the performance by the Registrar of such functions under this Act as may be so specified.

### **Prosecution of offences by or with consent of Attorney General.**

29. Proceedings shall not be instituted in respect of any offence under any of the provisions of this Act except by or with the consent of the Attorney General.

### **Transitional provisions.**

30.(1) At the first annual general meeting of a listed company to take place more than three months after this Act comes into force, a person who has a relevant interest in the relevant share capital of that company must notify the company and the Registrar of Companies of the proportion of the relevant share capital in which he has an interest unless he has already made notification in accordance with Article 7.

(2) In paragraph (1), “relevant interest” means an interest in shares comprised in the relevant share capital of a listed company of an aggregate nominal value which is equal to or more than ten per cent of the nominal value of the company’s relevant share capital.

(3) Where the Registrar of Companies receives a notification under this section he shall publish, in such manner as he may determine, the information contained in that notification.