

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE
No. 3917 of 8 March, 2012**

LEGAL NOTICE NO. 28 OF 2012.

COMPANIES ACT

**COMPANIES (CROSS-BORDER MERGERS) (AMENDMENT)
REGULATIONS 2012**

In exercise of the powers conferred on him by section 385 of the Companies Act and in order to transpose into the law of Gibraltar Article 4 of Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC of the European Parliament and of the Council as regards reporting and documentation requirements in the case of mergers and divisions, the Minister has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Companies (Cross-Border Mergers) (Amendment) Regulations 2012 and come into operation on the day of publication.

Amendments to the Companies (Cross-Border Mergers) Regulations 2010.

2. The Companies (Cross-Border Mergers) Regulations 2010 (the Principal Regulations) are amended in accordance with regulations 3 to 8.

Amendment to regulation 6.

3. Regulation 6 of the Principal Regulations is amended by inserting the following sub-regulation after sub-regulation (2)-

“(3) In a case falling within regulation 9A, the court may determine, or make provision for the determination of, the consideration to be given for securities acquired under that regulation.”.

Amendment to regulation 9.

4. Regulation 9(1) of the Principal Regulations is amended by substituting the following paragraph for paragraph (b)-

“(b) the conditions in regulation 9A are met; or”.

Insertion of regulation 9A.

5. The Principal Regulations are amended by inserting the following regulation after regulation 9-

“Circumstances in which independent expert’s report not required.

9A.(1) The requirement to draw up a report in accordance with regulation 9 does not apply if the conditions in sub-regulations (2) to (4) are met.

(2) The first condition is that the cross-border merger is a merger by absorption where 90% or more, but not all, of the relevant securities of the transferor company, or, if there is more than one transferor company, of each of them, are held by or on behalf of the transferee company.

(3) The second condition is that the draft terms of merger provide that every other holder of relevant securities has the right to require the transferee company to acquire those securities.

(4) The third condition is that, if a holder of securities exercises that right, the consideration to be given for those securities is fair and reasonable.

(5) In this regulation-

“other holder” means a person who holds securities of the transferor company otherwise than on behalf of the transferee company, and does not include the transferee company itself;

“relevant securities”, in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.”.

Amendment to regulation 12.

6. Regulation 12 of the Principal Regulations is amended by inserting the following sub-regulation after sub-regulation (6)–

“(7) The requirements in sub-regulations (1) to (4), so far as they relate to the draft terms of the merger, are subject to regulation 12A.”.

Insertion of regulation 12A.

7. The Principal Regulations are amended by inserting the following regulation after regulation 12–

“Publication of draft terms of merger on company website.

12A.(1) The following requirements of regulation 12 do not apply where the conditions in sub-regulations (2) to (6) are met–

- (a) the requirement in sub-regulation (1)(b); and
 - (b) the requirement in sub-regulation (3), so far as it relates to the draft terms of merger.
- (2) The first condition is that the draft terms of merger are made available on a website which–
- (a) is maintained by or on behalf of the Gibraltar merging company; and
 - (b) identifies the company.
- (3) The second condition is that neither access to the draft terms of merger on the website nor the supply of a hard copy of them from the website is conditional on payment of a fee or otherwise restricted.
- (4) The third condition is that the directors of the company deliver to the Registrar a notice giving details of the website.

- (5) The fourth condition is that the Registrar publishes the notice in the Gazette at least one month before the date of the first meeting of the members, or any class of members, of the company pursuant to regulation 13.
- (6) The fifth condition is that the draft terms of merger remain available on the website throughout the period beginning one month before, and ending not earlier than the conclusion of the first meeting of members of the transferor company.
- (7) A failure to make the draft terms available on the website throughout the period specified in sub-regulation (6) is to be disregarded if—
 - (a) they are made available on the website for part of that period; and
 - (b) the failure to make them available throughout that period is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.”.

Amendments to regulation 13.

8. Regulation 13 of the Principal Regulations is amended—

- (a) in sub-regulation (4)(a), by inserting “or 12A” after “regulation 12”;
- (b) in sub-regulation (4), by substituting the following paragraph for paragraph (b)—
 - “(b) sub-regulations (5) or (6) is satisfied for each of the documents listed in regulation 10(3) in relation to all the merging companies; and”;
- (c) by inserting the following sub-regulations after sub-regulation (4)—
 - “(5) This sub-regulation is satisfied for a document if the members of the transferee company were able during

the period beginning one month before, and ending not earlier than the conclusion of any such meeting–

- (a) to inspect at the registered office of the transferee company a copy of the document; and
 - (b) to obtain copies of it or any part of it on request.
- (6) This sub-regulation is satisfied for a document if–
- (a) the document is made available on a website which is maintained by or on behalf of the transferee company and identifies the company;
 - (b) access to it on the website is not conditional on the payment of a fee or otherwise restricted;
 - (c) it remains available on the website throughout the period beginning one month before, and ending not earlier than the conclusion of the first meeting of members of the transferor company; and
 - (d) members of the transferee company were able, during that period, to obtain copies of it or any part of it on request.
- (7) A failure to make a document available on the website throughout the period specified in sub-regulation (6)(c) is to be disregarded if–
- (a) the document is made available on the website for part of that period; and
 - (b) the failure to make it available throughout that period is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.”.

Dated 8th March, 2012.

F R PICARDO,
Minister with responsibility for finance.

EXPLANATORY MEMORANDUM

These Regulations transpose into the law of Gibraltar Article 4 of Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC of the European Parliament and of the Council as regards reporting and documentation requirements in the case of mergers and divisions.

