

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4748 GIBRALTAR Thursday 6th August 2020

LEGAL NOTICE NO. 278 OF 2020

COMPANIES ACT 2014

INTERPRETATION AND GENERAL CLAUSES ACT

LISTED COMPANIES (MEMBERS' RIGHTS) (AMENDMENT) REGULATIONS 2020

In exercise of the powers conferred on the Minister by section 487 of the Companies Act 2014, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and on the Government by section 23(g)(ii) of that Act, and of all other enabling powers, and in order to transpose into the law of Gibraltar Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement, the Minister and the Government have made these Regulations—

Title and commencement.

1. These Regulations may be cited as the Listed Companies (Members' Rights) (Amendment) Regulations 2020.

(2) These Regulations come into operation on the day of publication.

Amendment of 2011 Regulations.

2. The Listed Companies (Members' Rights) Regulations 2011 are amended in accordance with Regulations 3 to 9.

Insertion of heading to Part I.

3. Before Regulation 1, insert the heading "PART I – GENERAL"

Amendment of Regulation 2.

4. In regulation 2, at the appropriate places, insert the following definitions—

““director” means—

- (a) any member of the administrative, management or supervisory bodies of a company;

- (b) where they are not members of the administrative, management or supervisory bodies of a company, the chief executive officer and, if such function exists in a company, the deputy chief executive officer; or
- (c) other persons who perform functions similar to those performed under point (a) or (b);”;

““information regarding shareholder identity” means information allowing the identity of a shareholder to be established, including at least the following information–

- (a) name and contact details (including full address and, where available, email address) of the shareholder, and, where it is a legal person, its registration number, or, if no registration number is available, its unique identifier, such as legal entity identifier;
- (b) the number of shares held; and
- (c) only insofar they are requested by the listed company, one or more of the following details: the categories or classes of the shares held or the date from which the shares have been held;”;

““Intermediary” means a person, such as an investment firm as defined by Article 4(1) of Directive 2014/65/EU, credit institution as defined by Article 4(1) of Regulation (EU) 575/2013 or central securities deposit as defined by Article 2(1) of Regulation (EU) 909/2014, which provides services of safekeeping of shares, administration of shares or maintenance of securities accounts on behalf of shareholders or other persons;”;

““related party” has the same meaning as in the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002;”.

Amendments to Regulation 3.

5.(1) At the end of Regulation 3(1), insert the words “and to the exercise of certain rights concerning the identification of listed companies shareholders.”

(2) In Regulation 3(2), for “These” substitute “Save as otherwise provided for in this Regulation, these”.

(3) In Regulation 3(2), after paragraph (a) insert the following–

“(ba) Collective investment undertakings within the meaning of point (a) of Article 4(1) of Directive 2011/61/EU;”.

(4) After regulation 3(3) insert the following–

“(4) Part III shall apply to intermediaries in so far they provide services to shareholders or other intermediaries with respect to shares of companies which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State.”.

Insertion of heading to Part II.

6. After Regulation 3, insert the heading “PART II – GENERAL MEETINGS OF SHAREHOLDERS”.

Insertion of Regulations 9A to 9C.

7. After Regulation 9, insert the following–

“Right to vote on remuneration policies.

9A.(1) Listed Companies shall establish a remuneration policy as regards directors which complies with sub-regulation (9).

(2) Shareholders shall have the right to vote on the remuneration policy at a general meeting and, subject to sub-regulations (3) and (4), such vote will be binding on the listed company.

(3) Listed companies may provide for the vote at a general meeting to be advisory but they shall–

(a) remunerate their directors only in accordance with the proposed remuneration policy submitted at such a meeting; and

(b) where the vote at such a meeting rejects the proposed remuneration policy, the listed company shall submit a revised policy to a vote at the following general meeting.

(4) Listed companies may, only in exceptional circumstances, derogate from the remuneration policy provided always that the policy includes procedural conditions by which such a derogation can take place and specifies the elements of the policy from which a derogation is possible.

(5) Listed companies shall remunerate their directors only in accordance with the remuneration policy that has been approved by the general meeting.

(6) Where no remuneration policy has been approved by shareholders at a general meeting, the listed company may continue to pay remuneration to its directors in accordance with existing practices and shall submit a revised policy for approval at the following general meeting.

(7) Where an approved remuneration policy exists and a new remuneration policy is proposed but rejected at a general meeting, the listed company shall continue to

remunerate its directors in accordance with the existing approved policy and shall submit a revised policy for approval at the following general meeting.

(8) Listed companies shall submit the remuneration policy to a vote at a general meeting—

- (a) Whenever there is a material change to the policy; and
- (b) Every 4 years.

(9) The remuneration policy shall—

- (a) contribute to the listed company's business strategy and long-term interests and sustainability and shall explain how it does so;
- (b) be clear and understandable and describe the different components of fixed and variable remuneration, including all bonuses and other benefits in whatever form, which can be awarded to directors and indicate their relative proportion;
- (c) explain how the pay and employment conditions of employees of the listed company were taken into account when establishing the remuneration policy;
- (d) where it includes variable remuneration, include clear, comprehensive and varied criteria for the award of the variable remuneration;
- (e) indicate the financial and non-financial performance criteria, including, where appropriate, criteria relating to corporate social responsibility, and explain how they contribute to the objectives described at (a), as well as the methods to be applied to determine to which extent the performance criteria has been fulfilled;
- (f) specify information on any deferral periods and on the possibility for the listed company to reclaim variable remuneration;
- (g) where it includes share-based remuneration, specify vesting periods and where applicable retention of shares after vesting and explain how the share based remuneration contributes to the objectives described at (a) above;
- (h) indicate the duration of the contracts or arrangements with directors and the applicable notice periods, the main characteristics of supplementary pension or early retirement schemes and the terms of the termination and payments linked to termination;
- (i) explain the decision-making process followed for its determination, review and implementation, including, measures to avoid or manage

conflicts of interests and, where applicable, the role of the remuneration committee or other committees concerned; and

- (j) where it is revised, describe and explain all significant changes and how it takes into account the votes and views of shareholders on the policy and reports since the most recent vote on the remuneration policy by the general meeting of shareholders.

(10) Following the vote on the remuneration policy at a general meeting, the policy together with the date and the results of the vote shall be made public without delay on the website of the listed company and shall be publicly available and free of charge.

(11) In sub-regulation (4), “exceptional circumstances” shall only cover situations in which the derogation from the remuneration policy is necessary to serve the long-term interests of the listed company as a whole or to ensure its viability.

Information to be provided in and right to vote on remuneration report.

9B.(1) Listed companies shall prepare a clear and understandable remuneration report which complies with sub-regulation (2) and (3).

(2) The remuneration report shall provide a comprehensive overview of the remuneration, including all benefits in whatever form, awarded or due during the most recent financial year to individual directors, including to newly recruited and to former directors in accordance with the remuneration policy referred to in regulation 9A.

(3) Where applicable, the remuneration report shall contain the following information regarding each individual director’s remuneration–

- (a) the total remuneration split out by component, the relative proportion of fixed and variable remuneration, an explanation how the total remuneration complies with the adopted remuneration policy, including how it contributes to the long-term performance of the listed company, and information on how the performance criteria were applied;
- (b) the annual change of remuneration, of the performance of the listed company, and of average remuneration on a full-time equivalent basis of employees of the listed company other than directors over at least the five most recent financial years, presented together in a manner which permits comparison;
- (c) any remuneration from any undertaking belonging to the same group as defined in point (11) of Article 2 of Directive 2013/34/EU;

- (d) the number of shares and share options granted or offered, and the main conditions for the exercise of the rights including the exercise price and date and any change thereof;
- (e) information on the use of the possibility to reclaim variable remuneration;
- (f) information on any deviations from the procedure for the implementation of the remuneration policy referred to in Article 9A(9) and on any derogations applied in accordance with Article 9A(4), including the explanation of the nature of the exceptional circumstances and the indication of the specific elements derogated from.

(4) Listed companies shall not include special categories of personal data in the remuneration report within meaning of Article 9(1) of Regulation 2016/679 or personal data which refers to the family situation of individual directors.

(5) Without prejudice to regulation 5(6), the remuneration report–

- (a) must be made publicly available on its website, free of charge, for a period of 10 years beginning with the date it is first made available; and
- (b) may be kept available for a longer period if it does not contain personal data within the meaning of the Data Protection Act 2004.

(6) Save as set out in sub-regulation (7), shareholders shall have the right to hold an advisory vote at the general meeting on the remuneration report of the most recent financial year.

(7) Small and medium listed companies (as defined in Articles 3(2) and (3) of Directive 2013/34/EC) may, as an alternative to the advisory vote, provide the remuneration report of the most recent financial year for discussion in the general meeting as a separate item of the agenda.

(8) Where an advisory vote is held in accordance with sub-regulation (6) or the remuneration report is discussed in accordance with sub-regulation (7), the listed company shall explain in the following remuneration report how the vote or discussion has been taken into account.

Transparency and approval of related party transactions.

9C.(1) For the purposes of this regulation, a transaction is a “material transaction” if–

- (a) it concerns a related party;
- (b) its omission or misstatement could influence the economic decisions of the shareholders (including minority shareholders) or the listed company; and

- (c) Is in excess of 1% income of the listed company.
- (2) Listed companies shall publicly announce all material transactions at least upon the conclusion of the transaction.
- (3) The announcement at sub-regulation (2) shall at least contain–
- (a) information on the nature of the related party relationship;
 - (b) the name of the related party;
 - (c) the date and the value of the transaction; and
 - (d) any other information necessary to assess whether or not the transaction is fair and reasonable from the perspective of the listed company and of the shareholders who are not a related party, including minority shareholders
- (4) Where a listed company carries out more than one transaction with a related party within the same financial year, these material transactions shall be aggregated for the purposes of this regulation.
- (5) Material transactions shall be approved by either–
- (a) the shareholders by way of vote at a general meeting; or
 - (b) the listed company's administrative or supervisory body according to procedures which prevent any related party from taking advantage of its position and with a view to providing adequate protection for the interests of the listed company and the shareholders who are not related parties.
- (6) Where the material transaction involves a director or shareholder of the listed company, that director or shareholder shall not take part in the approval set out at sub-regulation (4).
- (7) This regulation shall not apply to material transaction which are–
- (a) transactions entered into in the ordinary course of business and concluded on normal market terms;
 - (b) transactions entered into between a listed company and its subsidiaries provided that they are wholly owned or that no other related party of the listed company has an interest in the subsidiary undertaking or that national law provides for adequate protection of interests of the listed company, of the subsidiary and of their shareholders who are not a related party, including minority shareholders in such transactions;

- (c) clearly defined types of transactions for which legislation requires approval by the general meeting;
- (d) transactions regarding remuneration of directors, or certain elements of remuneration of directors, awarded or due in accordance with regulation 9A;
- (e) transactions entered into by credit institutions on the basis of measures, aiming at safeguarding their stability;
- (f) transactions offered to all shareholders on the same terms where equal treatment of all shareholders and protection of the interests of the listed company is ensured.

(8) for the purposes of sub-regulation (6)(a), the listed company's administrative or supervisory body shall establish an internal procedure to periodically assess whether the conditions therein are fulfilled but no related parties shall not take part in this assessment."

Amendment to Regulation 11.

8.(1) Re-number Regulation 11 as Regulation 11(1).

(2) After Regulation 11(1), insert the following—

“(2) Where votes are cast electronically an electronic confirmation of receipt of the votes is sent to the person that casts the votes.

(3) Save where the information is readily available to the shareholder, listed companies shall ensure that after the general meeting the shareholder or a third party nominated by the shareholder can obtain, upon request not later than 3 months from the date of the vote, confirmation that their votes have been validly recorded and counted by the listed company.”.

Insertion of Part III.

9. After Regulation 13, insert the following—

**“PART III
IDENTIFICATION OF SHAREHOLDERS, TRANSMISSION OF
INFORMATION AND FACILITATION OF EXERCISE OF SHAREHOLDER
RIGHTS**

Identification of Shareholders.

14.(1) Subject to sub-regulation (2), listed companies shall have a right to identify their shareholders.

(2) Listed companies shall have no right to request information regarding shareholder identity where the shareholder holds a shareholding equivalent to or less than 0.5%.

(3) Intermediaries shall communicate the information regarding shareholder identity upon the request of a listed company or a third party nominated by the listed company without delay.

(4) Where there is more than one intermediary in a chain of intermediaries, the request for information set out at sub-regulation (3), shall be transmitted between intermediaries without delay.

(5) The information requested at sub-regulation (4) shall be provided directly to the listed company by the intermediary who holds the requested information without delay.

(6) Listed companies may–

- (a) request the central securities deposit or other intermediary or service provider to collect the information regarding shareholder identity (including from the intermediaries in a chain of intermediaries) and transmit it directly to the listed company; and
- (b) request itself or through a nominated third party from an intermediary the identity of the next intermediary in a chain of intermediaries.

(7) Save as otherwise provided in this Regulation or other legislation, listed companies and intermediaries shall not store the personal data of shareholders transmitted to them for longer than 12 months after they have become aware that the shareholder concerned has ceased to be a shareholder.

Transmission of information.

15.(1) Save where the listed company transmits information to its shareholders directly, intermediaries shall transmit the following information from the listed company to the shareholder or to a third party nominated by the shareholder without delay–

- (a) the information which the listed company is required to provide to the shareholder, to enable the shareholder to exercise rights flowing from its shares, and which is directed to all shareholders in shares of that class; or
- (b) where the information referred to in point (a) is available to shareholders on the website of the listed company, a notice indicating where on the website that information can be found.

(2) The information to be transmitted in sub-regulation (1) shall be transmitted from the listed company to the intermediary in a timely and standardised manner.

(3) Intermediaries shall transmit to the listed companies the information received from the shareholders related to the exercise of the rights flowing from their shares without delay.

(4) Where there is more than one intermediary in a chain of intermediaries, the information referred to in sub-regulations (1) and (3) shall be transmitted between intermediaries without delay, save where the information can be transmitted directly to the listed company, the shareholder or a third party nominated by the shareholder.

Facilitation of the exercise of shareholder rights.

16.(1) Intermediaries shall facilitate the exercise of the rights of the shareholder including the right to participate and vote in general meetings in that they shall—

- (a) make the necessary arrangements for the shareholder or a third party nominated by the shareholder to be able to exercise themselves the rights; or
- (b) exercise the rights flowing from the shares upon the explicit authorisation and instruction of the shareholder and for the shareholder's benefit.

(2) Where an intermediary receives a voting confirmation as set out in regulation 11(2) it shall transmit it without delay to the shareholder or a third party nominated by the shareholder.

(3) Where there is more than one intermediary in the chain of intermediaries the confirmation shall be transmitted between intermediaries without delay, unless the confirmation can be directly transmitted to the shareholder or a third party nominated by the shareholder.

Non-discrimination, proportionality and transparency of costs.

17.(1) Intermediaries shall disclose publicly any applicable charges for services provided under this Part.

(2) Any charges levied by an intermediary on shareholders, companies and other intermediaries shall be non-discriminatory and proportionate in relation to the actual costs incurred for delivering the services provided under this Part.

(3) Any differences between charges levied between domestic and cross-border exercise of rights shall be permitted only where duly justified and where they reflect the variation in actual costs incurred for delivering the services.

Penalties.

18.(1) Subject to sub-regulation (2), A person who, being a director of a listed company, fails to take all reasonable steps to secure compliance by the listed

company with the requirements of these Regulations, or has by his own wilful act been the cause of any default by the listed company thereunder, shall be liable, in respect of each offence, on summary conviction to imprisonment for 6 months or to a fine at level 4 on the standard scale.

(2) A person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed knowingly.”.

Dated: 6th August 2020

F R PICARDO
Chief Minister
and for the Government

EXPLANATORY MEMORANDUM

These Regulations transpose into the law of Gibraltar Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017, which amends Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.