

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3840 of 17 March, 2011

LEGAL NOTICE NO. 28 OF 2011.

FINANCIAL SERVICES (LISTING OF SECURITIES) ACT 2006

OFFICIAL LISTING (AMENDMENT) RULES 2011

In exercise of the powers conferred on him by section 3 of the Financial Services (Listing of Securities) Act 2006, and in order to transpose into the law of Gibraltar Article 32 of 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 by Directive 2008/22/EC of the European Parliament and of the Council of 11 March 2008, and in order to also transpose Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC, the Minister with responsibility for financial services has made the following Rules—

Title and commencement.

1. These Rules may be cited as the Official Listing (Amendment) Rules 2011 and come into operation on the day of publication.

Amendment of the Official Listing Rules 2007.

2.(1) The Official Listing Rules 2007 are amended in accordance with the provisions of this rule.

(2) Rule 2(1) is amended by deleting the definitions of “annual accounts” and “net turnover”.

(3) Rule 2(8) is revoked.

(4) Rule 4(3) and (4) are revoked.

(5) Rules 23 to 32, rules 35 to 41 are revoked.

(6) Rules 29 and 43 are revoked.

(7) The following is inserted after Part IV–

“PART V

**MATTERS INCIDENTAL TO THE OPERATION
OF THE ACT**

Procedural arrangements for the choice of the home Member State.

44. Where, for purposes of the definition of “home Member State” in section 8(1) of the Act, the issuer makes a choice of home Member State, that choice shall be disclosed in accordance with the same procedure as regulated information.

Minimum content of half-yearly non-consolidated financial statements.

45.(1) This rule makes further provision for the purposes of section 11(3)(b).

(2) The minimum content of the condensed set of half-yearly financial statements, where that set is not prepared in accordance with international accounting standards adopted pursuant to the procedure provided for under Article 6 of Regulation (EC) No 1606/2002, shall be in accordance with sub-rules (3) and (4).

(3) The condensed balance sheet and the condensed profit and loss account shall show each of the headings and subtotals included in the most recent annual financial statements of the issuer. Additional line items shall be included if, as a result of their omission, the half-yearly financial statements would give a misleading view of the assets, liabilities, financial position and profit or loss of the issuer. In addition, the following comparative information shall be included–

(a) balance sheet as at the end of the first six months of the current financial year and comparative balance sheet as at the end of the immediate preceding financial year;

- (b) profit and loss account for the first six months of the current financial year with, from two years after the date of entry into force of this rule, comparative information for the comparable period for the preceding financial year.
- (4) The explanatory notes shall include the following–
- (a) sufficient information to ensure the comparability of the condensed half-yearly financial statements with the annual financial statements;
 - (b) sufficient information and explanations to ensure a user's proper understanding of any material changes in amounts and of any developments in the half-year period concerned, which are reflected in the balance sheet and the profit and loss account.

Major related parties' transactions.

- 46.(1) This rule makes further provision for the purposes of section 11(4).
- (2) In the interim management reports, issuers of shares shall disclose as major related parties' transactions, as a minimum, the following–
- (a) related parties' transactions that have taken place in the first six months of the current financial year and that have materially affected the financial position or the performance of the undertaking during that period;
 - (b) any changes in the related parties' transactions described in the last annual report that could have a material effect on the financial position or performance of the undertaking in the first six months of the current financial year.
- (3) Where the issuer of shares is not required to prepare consolidated accounts, it shall disclose, as a minimum, the

related parties' transactions referred to in Schedules 7 and 11 of the Companies (Accounts) Act 1999.

Maximum length of the usual "short settlement cycle".

- 47.(1) This rule makes further provision for the purposes of section 15(4).
- (2) The maximum length of the usual "short settlement cycle" shall be three trading days following the transaction.

Control mechanisms by the regulatory as regards market makers.

- 48.(1) This rule makes further provision for the purposes of section 15(5).
- (2) The market maker seeking to benefit from the exemption provided for in section 15(5) shall notify to the regulatory authority of the home Member State of the issuer, at the latest within the time limit laid down in section 17(2), that it conducts or intends to conduct market making activities on a particular issuer. Where the market maker ceases to conduct market making activities on the issuer concerned, it shall notify that competent authority accordingly.
- (3) Without prejudice to the application of section 28, where in case the market maker seeking to benefit from the exemption provided for in section 15(5) is requested by the competent authority of the issuer to identify the shares or financial instruments held for market making activity purposes, that market maker shall be allowed to make such identification by any verifiable means. Only if the market maker is not able to identify the shares or financial instruments concerned, he may be required to hold them in a separate account for the purposes of that identification.
- (4) Where a market-making agreement between the market maker and the stock exchange or the issuer is required by the regulatory authority, the market maker shall upon request of the regulatory authority provide the agreement to such authority.

Calendar of trading days.

- 49.(1) For the purposes of section 17(2) and (6) and section 18. the calendar of trading days in Gibraltar apply, where Gibraltar is the home Member State of the issuer.
- (2) The regulatory authority shall publish in its website the calendar of trading days of the different regulated markets situated or operating in Gibraltar.

Shareholders and natural persons or legal entities referred to in section 16 required to make the notification of major holdings.

- 50.(1) For the purposes of section 17(2), the notification obligation which arises as soon as the proportion of voting rights held reaches, exceeds or falls below the applicable thresholds following transactions of the type referred to in section 16 shall be an individual obligation incumbent upon each shareholder, or each natural person or legal entity as referred to in section 16, or both in case the proportion of voting rights held by each party reaches, exceeds or falls below the applicable threshold. In the circumstances referred to section 16(a), the notification obligation shall be a collective obligation shared by all parties to the agreement.
- (2) In the circumstances referred to in section 16(h)–
- (a) if a shareholder gives the proxy in relation to one shareholder meeting, notification may be made by means of a single notification at the moment of giving the proxy provided that it is made clear in the notification what the resulting situation in terms of voting rights will be when the proxy may no longer exercise the voting rights at its discretion;
- (b) if the proxy holder receives one or several proxies in relation to one shareholder meeting, notification may be made by means of a single notification at the moment of receiving the proxies provided that it is made clear in the notification what the resulting

situation in terms of voting rights will be when the proxy may no longer exercise the voting rights at its discretion.

- (3) Where the duty to make a notification lies with more than one natural person or legal entity, notification may be made by means of a single common notification. However, use of a single common notification may not be deemed to release any of the natural persons or legal entities concerned from their responsibility in relation to notification.

Circumstances under which the notifying person should have learned of acquisition or disposal or of possibility to exercise voting rights.

51. For the purposes of section 17(2)(a) the shareholder, or the natural person or legal entity referred to in section 16, shall be deemed to have knowledge of the acquisition, disposal or possibility to exercise voting rights no later than two trading days following the transaction.

Conditions of independence to be complied with by management companies and investment firms involved in individual portfolio management.

- 52.(1) For the purposes of the exemption to the aggregation of holdings provided for in section 17(4)(a) and (5), a parent undertaking of a management company or of an investment firm shall comply with the following conditions—
 - (a) it must not interfere by giving direct or indirect instructions or in any other way in the exercise of the voting rights held by that management company or investment firm;
 - (b) that management company or investment firm must be free to exercise, independently of the parent undertaking, the voting rights attached to the assets it manages.
- (2) A parent undertaking which wishes to make use of the exemption shall, without delay, notify the following to the

regulatory authority where Gibraltar is the home Member State of an issuer whose voting rights are attached to holdings managed by the management companies or investment firms–

- (a) a list of the names of those management companies and investment firms, indicating the competent authorities that supervise them or that no competent authority supervises them, but with no reference to the issuer concerned;
- (b) a statement that, in the case of each such management company or investment firm, the parent undertaking complies with the conditions laid down in sub-rule (1),

and the parent undertaking shall update the list referred to in paragraph (a) on an ongoing basis.

- (3) Where the parent undertaking intends to benefit from the exemptions only in relation to the financial instruments referred to in section 17(8), it shall, where Gibraltar is the home Member State of the issuer, only notify to the regulatory authority the list referred to in sub-rule (2)(a).
- (4) A parent undertaking of a management company or of an investment firm shall be able to demonstrate to the regulatory authority, where Gibraltar is the home Member State of the issuer, on request that–
 - (a) the organisational structures of the parent undertaking and the management company or investment firm are such that the voting rights are exercised independently of the parent undertaking;
 - (b) the persons who decide how the voting rights are to be exercised act independently;
 - (c) if the parent undertaking is a client of its management company or investment firm or has holding in the assets managed by the management company or investment firm, there is a clear written mandate for an arms-length customer relationship between the

parent undertaking and the management company or investment firm,

and the requirement in paragraph (a) shall imply as a minimum that the parent undertaking and the management company or investment firm must have established written policies and procedures reasonably designed to prevent the distribution of information between the parent undertaking and the management company or investment firm in relation to the exercise of voting rights.

(5) For the purposes of sub-rule (1)(a)–

“direct instruction” means any instruction given by the parent undertaking, or another controlled undertaking of the parent undertaking, specifying how the voting rights are to be exercised by the management company or investment firm in particular cases;

“indirect instruction” means any general or particular instruction, regardless of the form, given by the parent undertaking, or another controlled undertaking of the parent undertaking, that limits the discretion of the management company or investment firm in relation to the exercise of the voting rights in order to serve specific business interests of the parent undertaking or another controlled undertaking of the parent undertaking.

Types of financial instruments that result in an entitlement to acquire, on the holder’s own initiative alone, shares to which voting rights are attached

53.(1) For the purposes of section 17(8)–

- (a) transferable securities, and options, futures, swaps, forward rate agreements and any other derivative contracts, as referred to in Section C of Schedule 1 of the Financial Services (Markets in Financial Instruments) Act 2006, shall be considered to be financial instruments, provided that they result in an entitlement to acquire, on the holder's own initiative alone, under a formal agreement, shares to which

voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market;

- (b) the instrument holder must enjoy, on maturity, either the unconditional right to acquire the underlying shares or the discretion as to his right to acquire such shares or not,

and a formal agreement means an agreement which is binding under the applicable law.

- (2) For the purposes of section 17(8), the holder shall aggregate and notify all financial instruments within the meaning of sub-rule (1) relating to the same underlying issuer.
- (3) The notification required under section 17(8) shall include the following information—
 - (a) the resulting situation in terms of voting rights;
 - (b) if applicable, the chain of controlled undertakings through which financial instruments are effectively held;
 - (c) the date on which the threshold was reached or crossed;
 - (d) for instruments with an exercise period, an indication of the date or time period where shares will or can be acquired, if applicable;
 - (e) date of maturity or expiration of the instrument;
 - (f) identity of the holder;
 - (g) name of the underlying issuer,

and for the purposes of paragraph (a), the percentage of voting rights shall be calculated by reference to the total number of voting rights and capital as last disclosed by the issuer under section 19.

- (4) The notification period shall be the same as laid down in section 17(2) and the related implementing provisions.
- (5) The notification shall be made to the issuer of the underlying share and to the regulatory authority, where Gibraltar is the home Member State of such issuer, and where a financial instrument relates to more than one underlying share, a separate notification shall be made to each issuer of the underlying shares.

Minimum Standard.

- 54.(1) The dissemination of regulated information for the purposes of section 25(1) shall be carried out in compliance with the minimum standards set out in sub-rules (2) to (5).
- (2) Regulated information shall be made publicly available by electronic means.
- (3) Regulated information shall be communicated to the media in unedited full text. However, in the case of the reports and statements referred to in sections 10,11 and 12 this requirement shall be deemed fulfilled if the announcement relating to the regulated information is communicated to the media and indicates on which website, in addition to the officially appointed mechanism for the central storage of regulated information referred to in section 25, the relevant documents are available.
- (4) The following provisions apply–
 - (a) regulated information shall be communicated to the media in a manner which ensures the security of the communication, minimises the risk of data corruption and unauthorised access, and provides certainty as to the source of the regulated information;
 - (b) security of receipt shall be ensured by remedying as soon as possible any failure or disruption in the communication of regulated information;

- (c) the issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent shall not be responsible for systemic errors or shortcomings in the media to which the regulated information has been communicated;
- (d) regulated information shall be communicated to the media in a way which makes clear that the information is regulated information, identifies clearly the issuer concerned, the subject matter of the regulated information and the time and date of the communication of the information by the issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent; and
- (e) upon request, the issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent shall be able to communicate to the regulatory authority, in relation to any disclosure of regulated information, the following—
 - (i) the name of the person who communicated the information to the media;
 - (ii) the security validation details;
 - (iii) the time and date on which the information was communicated to the media;
 - (iv) the medium in which the information was communicated;
 - (v) if applicable, details of any embargo placed by the issuer on the regulated information.

Requirements equivalent to section 10(2)(b).

55. A non-European Union country shall be deemed to set requirements equivalent to those set out in section 10(2)(b) for the purposes of section 27(1) where, under the law of that country, the annual management report is required to include at least the following information—

- (a) a fair review of the development and performance of the issuer's business and of its position, together with a description of the principal risks and uncertainties that it faces, such that the review presents a balanced and comprehensive analysis of the development and performance of the issuer's business and of its position, consistent with the size and complexity of the business;
- (b) an indication of any important events that have occurred since the end of the financial year;
- (c) indications of the issuer's likely future development,

and the analysis referred to in paragraph (a) shall, to the extent necessary for an understanding of the issuer's development, performance or position, include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business.

Requirements equivalent to section 11(4).

56. A non-European Union country shall be deemed to set requirements equivalent to those set out in section 11(4) for the purposes of section 27(1) where, under the law of that country, a condensed set of financial statements is required in addition to the interim management report, and the interim management report is required to include at least the following information—

- (a) review of the period covered;
- (b) indications of the issuer's likely future development for the remaining six months of the financial year;
- (c) for issuers of shares, and if already not disclosed on an ongoing basis, major related parties transactions.

Requirements equivalent to sections 10(2)(c) and 11(2)(c).

57.. A non-European Union country shall be deemed to set requirements equivalent to those set out in sections 10(2)(c)

and 11(2)(c) for the purposes of section 27(1) where, under the law of that country, a person or persons within the issuer are responsible for the annual and half-yearly financial information, and in particular for the following—

- (a) the compliance of the financial statements with the applicable reporting framework or set of accounting standards;
- (b) the fairness of the management review included in the management report.

Requirements equivalent to section 12.

58. A non-European Union country shall be deemed to set requirements equivalent to those set out in Article 6 of Directive 2004/109/EC for the purposes of section 27(1) where, under the law of that country, an issuer is required to publish quarterly financial reports.

Requirements equivalent to section 10(3)(a).

59. A non-European Union country shall be deemed to set requirements equivalent to those set out in section 10(3)(a) for the purposes of section 27(1) where, under the law of that country, the provision of individual accounts by the parent company is not required but the issuer whose registered office is in that country is required, in preparing consolidated accounts, to include the following information—

- (a) for issuers of shares, dividends computation and ability to pay dividends;
- (b) for all issuers, where applicable, minimum capital and equity requirements and liquidity issues,

and for the purposes of equivalence, the issuer must also be able to provide the regulatory authority with additional audited disclosures giving information on the individual accounts of the issuer as a standalone, relevant to the elements of information referred to under paragraphs (a) and (b). Those

disclosures may be prepared under the accounting standards of the non-European Union country.

Requirements equivalent to section 10(3)(b).

60. The following provisions apply–

- (a) a non-European Union country shall be deemed to set requirements equivalent to those set out in section 10(3)(b) for the purposes of section 27(1) in relation to individual accounts where, under the law of a non-European Union country, an issuer whose registered office is in that country is not required to prepare consolidated accounts but is required to prepare its individual accounts in accordance with international accounting standards recognised pursuant to Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council as applicable within the European Union or with national accounting standards in that country that are equivalent to those standards;
- (b) for the purposes of equivalence, if such financial information is not in line with those standards, it must be presented in the form of restated financial statements; and
- (c) in addition, the individual accounts must be audited independently.

Requirements equivalent to section 17(6).

61. The following provisions apply–

- (a) a non-European Union country shall be deemed to set requirements equivalent to those set out in section 17(6) for the purposes of section 27(1) where, under the law of that country, the time period within which an issuer whose registered office is in that country must be notified of major holdings and within which it must disclose to the public those major holdings is in total equal to or shorter than seven trading days;

- (b) the time frames for the notification to the issuer and for the subsequent disclosure to the public by the issuer may be different from those set out in section 17(2) and (6).

Requirements equivalent to section 18.

62. A non-European Union country shall be deemed to set requirements equivalent to those set out in section 18 for the purposes of section 27(1) where, under the law of that country, an issuer whose registered office is in that country is required to comply with the following conditions–

- (a) in the case of an issuer allowed to hold up to a maximum of 5% of its own shares to which voting rights are attached, it must make a notification whenever that threshold is reached or crossed;
- (b) in the case of an issuer allowed to hold up to a maximum of between 5% and 10% of its own shares to which voting rights are attached, it must make a notification whenever a 5% threshold or that maximum threshold is reached or crossed;
- (c) in the case of an issuer allowed to hold more than 10% of its own shares to which voting rights are attached, it must make a notification whenever the 5% threshold or the 10% threshold is reached or crossed,

and for the purposes of equivalence, notification above the 10% threshold need not be required.

Requirements equivalent to section 19.

63. A non-European Union country shall be deemed to set requirements equivalent to those set out in section 19 for the purposes of section 27(1) where, under the law of that country, an issuer whose registered office is in that country is required to disclose to the public the total number of voting rights and capital within 30 calendar days after an increase or decrease of such total number has occurred.

Requirements equivalent to sections 21(2)(a) and 22(2)(a)(i).

64. A non-European Union country shall be deemed to set requirements equivalent to those set out in sections 21(2)(a) and 22(2)(a)(i) for the purposes of section 27(1), as far as the content of the information about meetings is concerned, where, under the law of that country, an issuer whose registered office is in that country is required to provide at least information on the place, time and agenda of meetings.

Equivalence in relation to the test of independence for parent undertakings of management companies and investment firms.

- 65.(1) A non-European Union country shall be deemed to set conditions of independence equivalent to those set out in section 17(4) and (5) for the purposes of section 27(4) where, under the law of that country, a management company or investment firm as referred to in section 27(4) is required to meet the following conditions—
- (a) the management company or investment firm must be free in all situations to exercise, independently of its parent undertaking, the voting rights attached to the assets it manages;
 - (b) the management company or investment firm must disregard the interests of the parent undertaking or of any other controlled undertaking of the parent undertaking whenever conflicts of interest arise.
- (2) The parent undertaking shall comply with the notification requirements laid down in rule 52(2)(a) and (3), and, in addition, it shall make a statement that, in the case of each management company or investment firm concerned, the parent undertaking complies with the conditions laid down in sub-rule (1).
- (3) Without prejudice to the application of section 28, the parent undertaking shall be able to demonstrate to the regulatory authority, where Gibraltar is the home Member State of the

issuer, on request that the requirements laid down in rule 52(4) are met.”.

Dated 17th March, 2011.

P R CARUANA,
Minister with responsibility for financial services.

EXPLANATORY MEMORANDUM

These Rules transpose into the law of Gibraltar Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004, as amended by Directive 2008/22/EC of the European Parliament and of the Council of 11 March 2008, and Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC

The Rules update disclosure requirements by issuers of equity and debt securities with a listing in a stock exchange.