

Subsidiary Legislation made under s.343.

FINANCIAL SERVICES (OFFICIAL LISTING) RULES 2020**LN.2020/036***Commencement* **15.1.2020**

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In exercise of the powers conferred upon the Minister by section 343 of the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and upon the Government by section 23(g)(ii) of that Act and by all other enabling powers, the Minister and the Government have made these Regulations.

**PART 1
PRELIMINARY**

Title and commencement.

- 1.(1) These Rules may be cited as the Financial Services (Official Listing) Rules 2020.
- (2) These Rules come into operation on the day of publication.

Interpretation.

- 2.(1) In these Rules, unless the context otherwise requires—

“admission” in relation to securities, means admission to official listing on a stock exchange situated or operating in Gibraltar;

“application” means an application for admission and “the applicant” means the issuer of the securities concerned;

“competent authority” in relation to another EEA State, means the competent authority appointed in that State for the purposes of the Listing Directive;

“issuer” in relation to securities which are the subject of an application or which are already listed, means the company or other legal person or undertaking whose securities they are;

“listed” means listed in the Official List;

“listing authority” means the listing authority specified in or designated under section 343(4) of the Financial Services Act 2019;

“the Official List” means the list of securities which is maintained by the listing authority and which lists the securities for the time being listed in accordance with these Rules; and

“securities” is to be construed in accordance with Rule 3.

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(2) Any reference in these Rules to a territory which is not an EEA State does not include a reference to a territory which forms part only of an EEA State or which is situated within the European Economic Area and is otherwise associated with an EEA State.

Securities to which these Rules apply.

3.(1) These Rules apply to securities which are the subject of an application or which are listed.

(2) Nothing in these Rules applies to—

- (a) units issued by collective investment undertakings other than the closed-end type; or
- (b) securities issued by, or by the regional or local authorities of, an EEA State;

and any reference to “securities” in the following provisions of these Rules is to be construed accordingly.

(3) In sub-rule (2) “collective investment undertakings other than the closed-end type” means unit trusts and investment companies—

- (a) the object of which is the collective investment of capital provided by the public and which operate on the principle of risk spreading; and
- (b) the units of which are, at the holders’ request, repurchased or redeemed, directly or indirectly, out of the assets of those undertakings; and, for this purpose, action taken by such an undertaking to ensure that the stock exchange value of its units does not significantly vary from their net asset value is to be regarded as equivalent to repurchase or redemption.

Application of Rules, adaptations and derogations.

4.(1) Admissions of securities consisting of shares are subject to the conditions in Parts 2 and 3.

(2) Admissions of debt securities are subject to the conditions in Part 2 and either Part 4 or Part 5.

(3) Certificates representing shares may be admitted to official listing subject to—

- (a) the issuer of the shares and the market capitalisation of the shares complying with the conditions in Rule 15;

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(b) the certificates complying with the conditions in Rules 16 to 18; and

(c) the issuer of the shares complying with the obligations in Part 6.

(4) Where particular requirements of these Rules are unsuited to a company's activities or circumstances, the listing authority must ensure that suitable adaptations are made to those requirements.

(5) Any derogations from the conditions for the admission of securities to official listing which may be authorised under Part 3, 4 or 5 must apply generally for all issuers where the circumstances justifying them are similar.

**PART 2
GENERAL CONDITIONS OF ADMISSION**

Application of Part 2.

5.(1) This Part applies to all securities which are the subject of an application.

(2) Securities must not be admitted to official listing except on condition that—

(a) the applicable provisions of these Rules are complied with; and

(b) at the time of the application and so long as the securities are listed, the issuers must comply with the obligations in these Rules which apply to them.

(3) Where the issuer of securities to which an application relates is a national of an EEA State, the application must be considered whether or not the securities are already admitted to official listing in another EEA State.

Decisions on admission.

6.(1) The listing authority must determine applications for the admission of securities to official listing on a stock exchange situated or operating in Gibraltar.

(2) Without limiting the listing authority's powers, the authority may reject an application if, in its opinion, the issuer's situation is such that admission would be detrimental to investors' interests.

(3) The listing authority may make the admission of a security to official listing subject to any special condition which the listing authority considers appropriate in the interests of protecting investors and of which it has informed the applicant.

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(4) The listing authority may refuse an application where the issuer already has securities listed in another EEA State and has failed to comply with the obligations to which it is subject by virtue of the listing.

Contemporary EEA Listing.

7.(1) An application must state whether—

- (a) the securities to which the application relates are already listed in another EEA State; or
- (b) a similar application for the official listing of the same securities has been, is being or will in the near future be made in another EEA State.

(2) In any case where an application is made and—

- (a) the securities to which the application relates are already listed in another EEA State; or
- (b) a similar application for the official listing of the same securities has been or is being made simultaneously in another EEA or will be made within a very short interval;

the listing authority must communicate with the competent authority in that State and make any arrangements that may be necessary to expedite the procedure and simplify so far as possible the formalities and any additional conditions required for admission of the security to official listing.

Applications in respect of certificates representing shares.

8. Where an application relates to certificates representing shares, the listing authority may only consider the application if in its opinion the issuer of the certificates is offering adequate safeguards for the protection of investors.

Information requested by the listing authority.

9.(1) An issuer whose securities are admitted to official listing must provide the listing authority with all the information which the authority considers appropriate in order to protect investors or ensure the smooth operation of the market.

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(2) Where protection of investors or the smooth operation of the market so requires, the listing authority may require an issuer to publish that information in the form and within the time limits that the authority considers appropriate.

(3) If an issuer fails to comply with a requirement of the listing authority under sub-rule (2), the authority may itself publish the information concerned but, before deciding to do so, the authority must take account of any representations made by or on behalf of the issuer.

Publication of issuer's failure to comply with obligations.

10. Without limiting any other action which the listing authority may contemplate in the event of a failure on the part of an issuer to comply with any obligations resulting from admission of its securities to official listing, the authority may make public, in the manner that it considers appropriate, the fact that the issuer is failing to comply with those obligations.

Suspension and discontinuance of listing.

11.(1) The listing authority may suspend the official listing of a security where the smooth operation of the market is or may be temporarily jeopardised or where the protection of investors so requires.

(2) The listing authority may discontinue the official listing of the security if it is satisfied that, owing to special circumstances, normal regular dealings in a security are no longer possible.

(3) The listing authority may suspend the listing of any securities under sub-rule (1) or discontinue the listing of any securities under sub-rule (2) on its own initiative or at the request of the issuer of those securities.

Suspension or discontinuance: procedure.

12.(1) A suspension or discontinuance by the listing authority on its own initiative takes effect—

- (a) immediately, if the notice under sub-rule (2) so provides; or
- (b) in any other case, on the date specified in that notice.

(2) If the listing authority on its own initiative—

- (a) proposes to suspend or discontinue the listing of any securities; or

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(b) suspends or discontinues the listing of any securities with immediate effect,

it must give written notice to the issuer of the securities.

(3) A notice under sub-rule (2) must inform the issuer of—

- (a) the details of the suspension or discontinuance;
- (b) the date on which the suspension or discontinuance took effect or will take effect;
- (c) the listing authority's reasons for—
 - (i) the suspension or discontinuance; and
 - (ii) choosing the date on which it took effect or takes effect;
- (d) the issuer's right to make representations to the listing authority within the period specified in the notice (which may be extended by the listing authority); and
- (e) the issuer's right of appeal under rule 14.

(4) If, having considered any representations made by the issuer, the listing authority decides—

- (a) to suspend or discontinue the listing of the securities; or
- (b) if the suspension or discontinuance has taken effect, not to cancel it,

the listing authority must give the issuer written notice of that decision and of the issuer's right of appeal under rule 14.

(5) If the listing authority decides—

- (a) not to suspend or discontinue the listing of the securities; or
- (b) if the suspension or discontinuance has taken effect, to cancel it,

the listing authority must give the issuer written notice of that decision.

(6) The cancellation of a discontinuance has the effect of readmitting the securities concerned to the official list.

(7) In this rule and rule 13—

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“discontinuance” means a discontinuance of listing under rule 11(2); and

“suspension” means a suspension of listing under rule 11(1).

Suspension or discontinuance at issuer’s request: procedure.

13.(1) A suspension or discontinuance by the listing authority at the request of the issuer takes effect–

- (a) immediately, if the notice under sub-rule (2) so provides; or
- (b) in any other case, on the date specified in that notice.

(2) If the listing authority suspends or discontinues the listing of securities at the request of the issuer, the listing authority must give written notice to the issuer of the date on which the suspension or discontinuance took effect or will take effect.

(3) If the listing authority–

- (a) proposes to refuse an issuer’s request for the suspension or discontinuance of the listing of securities; or
- (b) having suspended the listing of securities, proposes to refuse the issuer’s request for the discontinuance of the listing of those securities,

it must give written notice to the issuer of the securities.

(4) A notice under sub-rule (3) must inform the issuer of–

- (a) the listing authority's reasons for the proposed refusal;
- (b) the issuer’s right to make representations to the listing authority within the period specified in the notice (which may be extended by the listing authority); and
- (c) the issuer’s right of appeal under rule 14.

(5) If the listing authority, having considered any representations made by the issuer–

- (a) decides to grant the issuer’s request for suspension or discontinuance, it must give the issuer written notice of that decision; or

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- (b) decides to refuse the issuer's request, it must give the issuer written notice of that decision and of the issuer's right of appeal under rule 14.

Notification of decisions and appeals.

14.(1) Subject to sub-rule (2), within six months of the date of its receipt of a completed application in the form it requires, the listing authority must notify the applicant in writing of its decision on the application.

(2) If, at any time within six months of its receipt of a completed application, the listing authority gives notice in writing to the applicant requiring additional information, sub-rule (1) has effect as if a reference to the receipt of that information were substituted for the receipt of the application.

(3) If the listing authority fails to notify the applicant of its decision on an application within the period specified under sub-rules (1) and (2), for the purposes of these Rules the authority is to be regarded as having given notice in writing of its decision to reject the application.

(4) A person aggrieved may appeal to the Supreme Court against a decision of the listing authority—

- (a) to reject an application the official listing of a security;
- (b) to propose under rule 12(2) or decide under rule 12(4) to suspend or discontinue listing; or
- (c) to propose under rule 13(3) or decide under rule 13(5)(b) to refuse to suspend or discontinue listing.

(5) An appeal under sub-rule (4) must be made—

- (a) within 28 days of the day on which the listing authority made the decision; or
- (b) where the appeal is against a failure to issue a decision as referred to in sub-rule (3), within 28 days of the end of the period specified in sub-rule (1) or (2) within which a decision is to be notified.

**PART 3
ADDITIONAL CONDITIONS FOR THE ADMISSION OF SHARES**

Conditions relating to issuers of shares.

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15.(1) An issuer must be–

- (a) incorporated or otherwise validly established under the relevant laws of its place of incorporation or establishment; and
- (b) operating in accordance with its memorandum and articles of association or equivalent constitutional documents.

(2) The foreseeable market capitalisation of the shares for which admission is sought or, if it cannot be assessed, the company’s capital and reserves, including profit or loss from the last financial year, must be at least €1,000,000 or the sterling equivalent.

(3) Sub-rule (2) does not apply to the admission of a further block of shares of the same class as those already admitted.

(4) The listing authority may provide for admission if the condition in sub-rule (2) is not fulfilled where the authority is satisfied that there will be an adequate market for the shares concerned.

(5) The issuer must have published or filed its annual accounts in accordance with the national law under which it is incorporated or established for the last three financial years ending before the date of the application.

(6) The listing authority may exempt an issuer from the condition in sub-rule (5) if the authority is satisfied that–

- (a) doing so is desirable in the interests of the company or of investors; and
- (b) investors have the necessary information available to be able to arrive at an informed judgment on the company and the shares for which admission is sought.

(7) In sub-rule (1) the “sterling equivalent” means an amount expressed in sterling which is equivalent to €1,000,000 calculated in accordance with Articles 43.5 and 43.6 of the Listing Directive.

Conditions relating to the shares.

16.(1) To be listed, shares must–

- (a) conform with the relevant law of the applicant’s place of incorporation; and

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(b) be authorised in accordance with the applicant's memorandum and articles of association or equivalent constitutional documents.

(2) Subject to sub-rules (3) and (4), the shares must be freely negotiable.

(3) The listing authority may treat shares which are not fully paid up as freely negotiable if arrangements have been made to ensure that the negotiability of the shares is not restricted and that the public has been provided with all appropriate information to enable dealing to take place on an open and proper basis.

(4) In the case of shares which may only be acquired with the issuer's approval, the listing authority may disapply sub-rule (2) if it is satisfied that the use of the approval power would not disturb the market.

(5) Where the public issue of the shares precedes admission, the first listing may be made only after the end of the period during which subscription applications may be submitted.

Conditions relating to number of shares.

17.(1) Subject to the following provisions of this Rule, a sufficient number of shares must be distributed to the public in one or more EEA States not later than the time of admission.

(2) Sub-rule (1) does not apply where shares are to be distributed to the public through the stock exchange but, in that case, the listing authority may grant admission only if it is satisfied that a sufficient number of shares will be distributed through the stock exchange within a short period.

(3) Where admission is sought for a further block of shares of the same class, the listing authority may assess whether a sufficient number of shares has been distributed to the public in relation to all the shares issued and not only in relation to the further block.

(4) If the shares are admitted to official listing in one or more countries which are not EEA States, the listing authority may provide for their admission if a sufficient number of shares has been distributed to the public in that country or those countries.

(5) For the purposes of these Rules, a sufficient number of shares is to be treated as having been distributed either—

(a) when the shares in respect of which application to admission has been made are in the hands of the public to the extent of at least 25% of the subscribed capital represented by the class of shares concerned; or

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- (b) when, in view of the large number of shares of the same class and the extent of their distribution to the public, the market will operate properly with a lower percentage.
- (6) An application must cover all the shares of the same class already issued.
- (7) The listing authority may dispense with the condition in sub-rule (6) in the case of an application which does not cover all the shares of the same class because it excludes—
- (a) shares belonging to blocks serving to maintain control of the company; or
 - (b) shares which are not negotiable for a certain time under agreements.
- (8) The listing authority must not exercise the power under sub-rule (7) unless the public is informed of the situation and there is no risk of the situation prejudicing the interests of holders of the shares for which admission is sought.

Shares issued by companies outside Gibraltar.

18.(1) In the case of shares which have a physical form and are issued by companies which are nationals of another EEA State, it is a condition of admission that their physical form conforms with the standards laid down in that State.

(2) Where the physical form of any shares to which sub-rule (1) applies does not comply with the standards in force in Gibraltar, the listing authority must make that fact known to the public.

(3) It is a condition of admission of shares issued by companies which are nationals of a country which is not an EEA State, that the physical form of the shares affords sufficient safeguard for the protection of investors.

(4) Shares issued by a company which is not a national of an EEA State may not be admitted to official listing unless the shares are listed either in the country of origin or in the country in which the major proportion of the shares is held.

(5) The listing authority may dispense with the condition in sub-rule (4) if it is satisfied that the absence of listing in one or other of the countries referred to in that paragraph is not due to the need to protect investors.

**PART 4
ADDITIONAL CONDITIONS FOR THE ADMISSION OF DEBT SECURITIES
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Conditions relating to the debt securities.

19.(1) This Part applies to debt securities which are issued by an undertaking and are the subject of an application and any reference to “debt securities” in the following provisions of this Part is to be construed accordingly.

(2) To be listed, debt securities must—

- (a) conform with the relevant law of the applicant’s place of incorporation or establishment; and
- (b) be authorised in accordance with the applicant’s memorandum and articles of association or equivalent constitutional documents.

(3) Subject to sub-rule (4), the debt securities must be freely negotiable.

(4) The listing authority may treat debt securities which are not fully paid up as freely negotiable if arrangements have been made to ensure that the negotiability of the debt securities is not restricted and that the public has been provided with all appropriate information to enable dealing to take place on an open and proper basis.

(5) Where the public issue of the debt securities precedes admission, the first listing may be made only after the end of the period during which subscription applications may be submitted.

(6) Sub-rule (5) does not apply in the case of tap issues of debt securities where the closing date for subscription is not fixed.

(7) An application for the admission of debt securities must cover all debt securities ranking equally.

Condition relating to undertaking.

20. Where admission is sought for debt securities issued by an undertaking, the undertaking must be—

- (a) incorporated or otherwise validly established under the relevant laws of its place of incorporation or establishment; and
- (b) operating in accordance with its memorandum and articles of association or equivalent constitutional documents.

Debt securities issued by undertakings outside Gibraltar.

21.(1) In the case of debt securities which have a physical form and are issued by undertakings which are nationals of another EEA State, it is a condition of admission that their physical form complies with the standards laid down in that State.

(2) Where the physical form of any debt securities to which sub-rule (1) applies does not comply with the standards in force in Gibraltar, the listing authority must make that fact known to the public.

(3) The physical form of debt securities issued in a single EEA State must conform to the standards in force in that State.

(4) It is a condition of admission of debt securities issued by undertakings which are nationals of a country which is not an EEA State that the physical form of the securities affords sufficient safeguard for the protection of investors.

Other conditions.

22.(1) Except in the case of tap issues where the amount of the loan is not fixed, debt securities must not be admitted unless—

- (a) the amount of the loan is at least €200,000 or the sterling equivalent; or
- (b) sub-rule (2) applies.

(2) The listing authority may provide for admission where the condition in sub-rule (1)(a) is not fulfilled if the authority is satisfied that there will be an adequate market for the debt securities concerned.

(3) Convertible or exchangeable debentures and debentures with warrants may be admitted to official listing only if the related shares are already listed on the same stock exchange or on another regulated, regularly operating, recognised open market or are so admitted simultaneously.

(4) The listing authority may disapply sub-rule (3) if it is satisfied that holders of the debentures concerned have at their disposal all the information necessary to form an opinion concerning the value of the shares to which the debentures relate.

(5) In sub-rule (1) the “sterling equivalent” means an amount expressed in sterling which is equivalent to €200,000 calculated in accordance with Articles 58.3 and 58.4 of the Listing Directive.

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**ADDITIONAL CONDITIONS FOR THE ADMISSION OF DEBT SECURITIES
ISSUED BY CERTAIN PUBLIC BODIES**

Conditions relating to public debt securities.

23.(1) This Part applies to the admission of debt securities issued by–

- (a) a State, other than an EEA State; or
- (b) a public international body,

and any reference in the following provisions of this Rule to “public debt securities” is to be construed accordingly.

(2) Public debt securities must be freely negotiable.

(3) Where the public issue of the public debt securities precedes admission, the first listing may be made only after the end of the period during which subscription applications may be submitted.

(4) Sub-rule (3) does not apply where the closing date for subscription is not fixed.

(5) An application for the admission of public debt securities must cover all debt securities ranking equally.

(6) It is a condition of admission of public debt securities that the physical form of the securities affords sufficient safeguard for the protection of investors.

**PART 6
OBLIGATION OF COMPANIES WHOSE SHARES ARE ADMITTED TO
OFFICIAL LISTING**

Listing of newly issued shares of the same class.

24.(1) In the case of a new public issue of shares of the same class as those already officially listed, the company must apply for their admission to the same listing, within not more than a year after their issue or when they become freely negotiable.

(2) Sub-rule (1) does not apply where the new shares are automatically admitted.