

# MFSA

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### **Circular 01/2010 to all Company Secretaries and Stockbroking Firms**

**11<sup>th</sup> January 2010**

- Subject:**
- (a) Transposition of Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies;**
  - (b) Transposition of Directive 2006/46/EC relating to the requirement to prepare a corporate governance statement; and**
  - (c) Amendment to Listing Rule 8.56.**

#### **Introduction**

This circular relates to the issue of new as well as revised Listing Rules by the Listing Authority in terms of article 13 of the Financial Markets Act (Cap.345 of the Laws of Malta) to address the above captioned matters. The new/revised Listing Rules, which are set out in Appendices I and II to this circular as well as in section (c) of this circular, are effective as from the date of issue of this circular. There is, however, a transitory period for issuers in relation to compliance with Directive 2007/36/EC as set out in section (a), paragraph 4.0 of this circular, and in relation to compliance with the corporate governance statement requirement under Directive 2006/46/EC as set out in section (b), paragraph 3.4 of this circular.

#### **a) Transposition of Directive 2007/36/EC**

##### **[1.0 Background]**

The Shareholders' Rights Directive ("SRD") was adopted on 11 July 2007 and published in the Official Journal on 14 July 2007. Its scope is to improve the corporate governance regimes of listed companies in the EU Member States by enabling shareholders to exercise their voting rights and rights to information across borders. In particular, it seeks to achieve this objective by overcoming obstacles that shareholders in companies

registered in another Member State face when voting at general meetings. The SRD is a ‘minimum harmonisation’ Directive intended to establish a set of basic rules for the exercise of shareholder rights and the Member States may introduce further measures to facilitate the exercise by shareholders of the rights granted by the SRD.

## **[2.0 Shareholders’ Rights Directive]**

### **[2.1 Scope and application]**

The rationale for the introduction of the SRD is that current EU legislation does not sufficiently address cross-border voting issues. The Prospectus Directive (2003/71/EC) focuses on the information issuers have to disclose to the market and, therefore, does not deal with the shareholder voting process itself, whilst the Transparency Directive (2004.109/EC) imposes on issuers an obligation to make available certain information and documents relevant to general meetings, but such information and documents must be made available in the issuer’s home Member State.<sup>1</sup>

The SRD applies to companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market situated or operating within a Member State.<sup>2</sup> Article 1(2) of the SRD states, in fact, that the Member State competent to regulate matters covered by this Directive shall be the Member State in which the company has its registered office. Any reference throughout this explanatory note to a “company” or “issuer” shall be construed as referring to a company or companies falling within the scope of the SRD.

### **[2.2 Exemptions from the Shareholders’ Rights Directive]**

Article 1(3) of the SRD allows the Member States to exempt any of the following entities from the provisions of the SRD:-

- (a) collective investment undertakings within the meaning of Article 1(2) of Directive 85/611/EEC relating to undertakings for collective investment in transferable securities (UCITS);
- b) undertakings the sole object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading and which do not seek to take legal or management control over any of the issuers of their underlying investments, provided that these collective investment undertakings are authorised and subject to the supervision of competent authorities and that they have a depositary exercising functions equivalent to those under Directive 85/611/EEC; and
- (c) cooperative societies.

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<sup>1</sup> Recital (4) of the SRD.

<sup>2</sup> Article 1(1) of the SRD.

## **[2.3 Main provisions of the SRD]**

### **2.3.1 Sufficient advance notice and information prior to the general meeting**

Shareholders should be able to cast informed votes at, or in advance of, the general meeting, no matter where they reside. All shareholders should have sufficient time to consider the documents intended to be submitted to the general meeting and to determine how they will exercise their voting rights.<sup>3</sup> In view of this, article 5 of the SRD requires a minimum notice period of twenty one (21) days, except that meetings other than annual general meetings may be called at shorter notice – not less than fourteen (14) days – provided that the following conditions are met:-

- the company must offer the facility for shareholders to vote by electronic means accessible to all shareholders;
- the general meeting in relation to which the convocation is issued must not be an annual general meeting; and
- the decision to call a general meeting at shorter notice must be taken by a majority of not less than two thirds of the votes attaching to the shares or the subscribed capital represented and for a duration not later than the next annual general meeting.<sup>4</sup>

Furthermore, the minimum notice periods established by article 5 of the SRD may be waived for the second or subsequent convocation of a general meeting issued for lack of a quorum, provided that such minimum notice periods were complied with for the first convocation of the meeting, no new item is added on the agenda and at least 10 days elapse from the last convocation and the general meeting.

Article 5 also sets out the minimum information that the notice convening a general meeting should contain and obliges issuers to publish specified information on their website at least twenty one (21) days prior to the general meeting.

In determining which method is to be used for the issuing of the notice, article 5(2) obliges issuers to “use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community.” The Member States may not impose an obligation to use only media whose operators are established on its territory. Member States may, however, exempt issuers from the use of such media if they are in a position to identify the names and addresses of their shareholders from a current register of shareholders, provided that the issuer is under an obligation to send the convocation to each of its registered shareholders.<sup>5</sup>

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<sup>3</sup> Recital (6) of the SRD.

<sup>4</sup> Second paragraph of article 5(1) of the SRD.

<sup>5</sup> Second paragraph of article 5(2) of the SRD.

### **2.3.2 Right to put items on the agenda and to table draft resolutions**

Recital (7) of the SRD provides that:

*“Shareholders should, in principle, have the possibility to put items on the agenda of the general meeting and to table draft resolutions for items on the agenda.”*

Article 6(1) of the SRD grants the said rights to the shareholders but the Member States have the option to restrict the exercise to put items on the agenda to the annual general meeting, provided that shareholders, acting individually or collectively, have the right to call, or to require the company to call, a general meeting which is not an annual general meeting with an agenda including at least all the items requested by those shareholders.

An important principle in this regard is that any threshold imposed by Member States for the exercise of these rights should not exceed 5%.<sup>6</sup> Moreover, article 6(3) of the SRD requires Member States to establish a single deadline, with reference to a specified number of days prior to the general meeting or the notice, within which shareholders may exercise their rights to put items on the agenda and to table draft resolutions.

### **2.3.3 The abolition of share-blocking**

Share-blocking is a process where, on a specific date prior to a general meeting, shareholders are required to notify the company of their identity and intention to vote. After such date the shares involved cannot be traded and this affects the ability of equity markets to operate efficiently and increases financial risks. Thus, article 7 of the SRD requires Member States to establish a single record date for companies registered in their territory and whose shares are admitted to trading on a regulated market operating in their territory. Only those shareholders whose details are entered in the register of members on the record date are entitled to participate in the general meeting and to exercise their voting rights. The establishment of a record date does not prevent, however, trading in shares after the said date.

It is important to note that under article 7(3) of the SRD, the record date must not be more than thirty (30) days before the date of the general meeting to which it applies. Furthermore, in establishing the record date, each Member State must ensure that at least eight (8) days elapse between the latest permissible date for the convocation of the general meeting (i.e twenty one (21) days before the general meeting) and the record date. In calculating that number of days those two dates should not be included. In the case where the general meeting is adjourned due to a lack of a quorum, Member

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<sup>6</sup> Article 6(2) of the SRD.

States have the option to allow at least six (6) days between the latest permissible date for the second or subsequent convocation of the general meeting and the record date.

#### **2.3.4 Removal of legal obstacles to electronic participation**

Recital (9) of the SRD states that:

*“Companies should face no legal obstacles in offering to their shareholders any means of electronic participation in the general meeting. Voting without attending the general meeting in person, whether by correspondence or by electronic means, should not be subject to constraints other than those necessary for the verification of identity and the security of electronic communications”.*

In view of the above, article 8 of the SRD obliges Member States to allow companies to permit their shareholders to participate in the general meeting by electronic means and indicates some forms of electronic participation that companies may adopt.

#### **2.3.5 Right to ask questions**

Article 9 entitles every shareholder to ask questions related to items on the agenda of the general meeting and the company is obliged to answer the said questions. However, Member States may allow companies to introduce measures aimed at ensuring:-

- The identification of shareholders;
- The good order of general meetings and their preparation; and
- The protection of confidentiality and business interests of companies.

In addition to this, the SRD grants the option to Member States to allow companies to provide one overall answer to questions having the same content as well as to provide in their laws that an answer is deemed to be given if the relevant information is available on the company’s website in a question and answer format.

#### **2.3.6 Proxy voting**

Under article 10 of the SRD, Member States have the option to limit the appointment of proxy holders to a single meeting or to such meetings as may be held during a specified period. Saving those cases where a shareholder is acting as a nominee for and on behalf of third parties, the said provision of the SRD also allows Member States to limit the number of persons whom a shareholder may appoint as proxy holders in relation to any one general meeting. This limitation does not apply, however, to a

shareholder whose shares are held in more than one securities account. In such case, the said shareholder may appoint a separate proxy holder in respect of each securities account in relation to any one general meeting.

Apart from the above limitations, Member States may only restrict or allow companies to restrict the exercise of shareholders' rights through proxy holders for the purpose of addressing potential conflicts of interest between the proxy holder and the shareholder who appointed him. Article 10(3) specifies what requirements Member States may impose in order to address such conflicts of interest and lists some circumstances in which a conflict of interest between the proxy holder and the shareholder may arise.

Member States are also granted the option of requiring proxy holders to keep a record of the voting instructions for a defined minimum period and to confirm, upon request, that the voting instructions have been carried out. However, recital (10) of the SRD provides that "this Directive does not impose any obligation on companies to verify that proxy holders cast votes in accordance with the voting instructions of the appointing shareholders".

### **2.3.7 Formalities for proxy holder appointment and notification**

The SRD requires the appointment and removal of a proxy as well as the notification of such appointment or removal to the company to be made in writing. Furthermore, under article 11 of the SRD, shareholders are entitled to appoint and remove a proxy holder by electronic means and Member States shall allow companies to accept the notification of the proxy holder's appointment or removal by electronic means.

### **2.3.8 Voting by correspondence**

Article 12 of the SRD obliges Member States to permit companies to offer their shareholders the possibility of voting by correspondence in advance of the general meeting.

### **2.3.9 Voting results**

Under article 14 of the SRD companies have to establish for each resolution at least:

- The number of shares for which votes have been validly cast;
- The proportion of the share capital represented by those votes;
- The total number of votes validly cast;
- The number of votes cast in favour of and against each resolution; and
- Where applicable, the number of abstentions.

The voting results have to be published on the issuer's website within a period to be specified by the law of the Member State in which the issuer is registered, which period cannot exceed fifteen (15) days following the general meeting. Article 14, however, permits the Member States to provide or allow companies to provide that if no shareholder requests a full account of the voting, it is sufficient for the company to establish the voting results only to the extent necessary to ensure that the required majority for each resolution was reached.

### **[3.0 Implementation of the SRD]**

#### **[3.1 Introduction of new Chapter 19 of the Listing Rules]**

At the moment both the Companies Act and the Listing Rules contain provisions dealing with some of the matters governed by the SRD, such as the notice period and proxy voting. However, since EU Directives applying to listed companies have so far been transposed in the Listing Rules rather than the Companies Act, the members of the Working Committee (set up by the Listing Authority to review and amend the Listing Rules) agreed that the provisions of the SRD should be implemented by a new chapter 19 of the Listing Rules (attached as Appendix I to this circular).

On 28 October 2009 draft Chapter 19 of the Listing Rules which transposes Directive 2007/36/EC (the Shareholders' Rights Directive) was issued for consultation among the Forum of Company Secretaries and the Financial Services Consultation Council. The Listing Authority approved draft Chapter 19 of the Listing Rules in principle on 9 December 2009 and the said Chapter was further amended so as to take into account the feedback received from the industry.

Moreover, whilst transposing the SRD, the definitions list in the Listing Rules was slightly amended so as to adopt the definition of "proxy" contained in article 2(c) of the SRD. The SRD defines a proxy as "the empowerment of a natural or legal person by a shareholder to exercise some or all rights of that shareholder in the general meeting in his name.

Furthermore, in view of the fact that certain provisions of the SRD are in conflict with some provisions of the Companies Act, an amendment is being proposed to the Financial Markets Act so as to insert a provision which states that in the case of a conflict between the provisions of the Companies Act on the one hand, and the provisions of the Financial Markets Act and/or the Listing Rules, the Financial Markets Act and the Listing Rules shall prevail.

##### **3.1.1 Applicability of Chapter 19 of the Listing Rules**

The Authority has decided to avail itself of the option granted by article 1(3) of the SRD so as to exempt the following entities from Chapter 19 of the Listing Rules:-

- (a) collective investment undertakings as defined by Article 1(2) of Directive 85/611/EEC;
- (b) collective investment undertakings that do not fall within paragraph (a), with the exception of closed-end collective investment undertakings which are set up as a Company; and
- (c) cooperative societies.

The reason for excluding closed-end collective investment undertakings set up as a company from the exemption contained in paragraph (b) above is that both the Prospectus Directive and the Transparency Directive apply to closed-end collective investment undertakings.

Furthermore, the Authority has taken up the suggestion of the Forum of Company Secretaries and amended Listing Rule 19.1 so as to provide that Chapter 19 applies to all issuers notwithstanding anything contained in their memorandum and articles of association (once these are amended as required by paragraph 4.0 of this section) and that any provision of the memorandum and articles of association of an issuer shall, in case of a conflict with any of the provisions of Chapter 19, be construed and interpreted as if the relevant provisions of Chapter 19 were written into and form an integral part of the memorandum and articles of association of the issuer.

### **3.1.2 Transposition of article 5 of the SRD – Information prior to the general meeting**

Listing Rule 19.4 establishes the minimum notice period of twenty one (21) days prior to the general meeting but Listing Rule 19.5 allows a shorter notice period (not being less than fourteen (14) days before the general meeting) for a general meeting other than the annual general meeting upon satisfaction of the conditions prescribed by the second paragraph of article 5(1) of the SRD.

In addition to this, the Authority has transposed the third paragraph of article 5(1) of the SRD in Listing Rule 19.7 which allows the minimum notice periods laid down by the first two subparagraphs of article 5(1) to be disregarded for the second or subsequent notice of a general meeting that is issued due to lack of a quorum required for the meeting convened by the first notice. However, Listing Rule 19.7 will only apply if the said minimum notice periods were complied with for first convocation of the meeting, no new item is put on the agenda and at least ten (10) days elapse between the final convocation and the date of the general meeting.

As regards the method to be used by listed companies for issuing the notice to shareholders, Listing Rule 19.8 establishes the general principle that issuers must send the notice of the general meeting to their shareholders by pre-paid mail at their last known residential address. In order to encourage issuers to make use of electronic resources that ensure a fast and effective means of communication of information, Listing Rule 19.9 allows an issuer to publish the notice convening the general meeting either on its website or on the website of the regulated market on which its shares are listed. In order to avail itself of this option, the issuer must first send a notice by mail to its shareholders at their last known address requesting their consent to the publication of notices convening general meetings on the website indicated in the notice. Those shareholders who do not give their consent will remain entitled to receive notices convening general meetings of the issuer at their last known residential address in accordance with Listing Rule 19.8.

Since currently most listed companies in Malta are able to identify the names and addresses of their shareholders, the option granted by the second subparagraph of article 5(2) of the SRD was not taken up by the Authority as otherwise there would be no scope for introducing draft Listing Rule 19.9.

### **3.1.3 Transposition of article 6 of the SRD – Right to put items on the agenda of the general meeting and to table draft resolutions**

The Working Committee was of the view that shareholders should be granted the right to put items on the agenda and to table draft resolutions for items included or to be included on the agenda without restricting the exercise of the right to add items on the agenda solely to the annual general meeting, as provided by the second subparagraph of article 6(1) of the SRD.

Listing Rule 19.14 establishes the minimum threshold of 5% of the voting issued share capital in order for a shareholder or shareholders to be able to exercise the above rights. Article 6(3) of the SRD is implemented by Listing Rule 19.15 which requires the request for the addition of items on the agenda or the draft resolution to be submitted to the issuer concerned in hard copy or electronic form at least forty six (46) days prior to the general meeting. When determining the said period, the Working Committee took into account the fact that requests by the shareholders to put items on the agenda might require an amendment to the agenda which would have already been sent to the shareholders together with the notice of the general meeting. Furthermore, article 6(4) of the SRD requires the revised agenda to be sent in advance of the applicable record date or, if no record date applies, sufficiently in advance of the date of the general meeting so as to enable other shareholders to appoint a proxy or, where applicable, to vote by correspondence.

### **3.1.4 Transposition of article 7 of the SRD – Requirements for participation and voting in the general meeting**

Currently, the Companies Act does not lay down any record date which determines who is entitled to participate in and to vote at general meetings. Each company in Malta is free to establish its own record date. When discussing the record date to be established for companies subject to Chapter 19 of the Listing Rules, the Working Committee took into account the fact that under article 7(3) of the SRD, the record date cannot be more than thirty days before the date of the general meeting to which it applies and that at least eight (8) days must elapse between the latest permissible date for issuing the notice of the general meeting (twenty one (21) days before the general meeting) and the record date (not including those two dates).

Although originally the Working Committee had proposed that the record date for all companies should be ten (10) days prior to the general meeting, the Authority subsequently decided to adopt the proposal of the Forum of Company Secretaries for the record date to be thirty days (30) immediately preceding the date of the general meeting.

The second subparagraph of article 7(2) of the SRD allows the Member States not to apply the record date if the companies are able to identify the names and addresses of their shareholders from a current register of members on the day of the general meeting. Notwithstanding this article, the Working Committee expressed preference for the establishment of a single record date applicable to all companies and, therefore the second subparagraph of article 7(2) of the SRD was not transposed in Chapter 19 of the Listing Rules.

### **3.1.5 Transposition of article 8 of the SRD – Participation in the general meeting by electronic means**

Listing Rule 19.21 will now give companies the option to allow their shareholders to participate in the general meeting by electronic means.

### **3.1.6 Transposition of article 9 of the SRD – Right to ask questions**

Listing Rule 19.24 transposes article 9(1) of the SRD which entitles shareholders to ask questions that are pertinent and related to items on the agenda of a general meeting as well as to have such questions answered by the company subject to any reasonable measures that the company may take to ensure the identification of the shareholder. The right to ask questions is also applicable to proxy holders.

Furthermore, article 9(2) of the SRD has been transposed in draft Listing Rules 19.25 and 19.26. Listing Rule 19.25 allows companies to provide one overall answer to questions having the same content whilst Listing Rule 19.26 lists certain instances in which an answer to a question submitted by a shareholder is not required.

### **3.1.7 Transposition of article 10 of the SRD – Proxy voting**

With reference to the number of proxy holders that a shareholder can appoint, the Working Committee agreed that there can only be one proxy holder for each entry in the register of members.<sup>7</sup> This is without prejudice, however, to the right of a person acting as a nominee shareholder to grant a proxy to each of his clients or to any third party designated by a client. Such nominee shareholder is also entitled to cast votes attaching to some of the shares differently from the others.<sup>8</sup>

On the other hand, the Authority was of the view that the Listing Rules should not limit the appointment of a proxy holder to a single meeting or to such meetings as may be held during a specified period as provided in the first subparagraph of article 10(2) of the SRD. In this case the provisions of article 133 of the Companies Act would apply.

Furthermore, the Authority has implemented subparagraphs (a) and (c) of article 10(3) of the SRD whose scope is to address potential conflicts of interest between the proxy holder and the appointing shareholder. Thus, Listing Rule 19.29 (which transposes subparagraph (a) of article 10(3)) requires a proxy holder to disclose, prior to a general meeting, to the shareholder who appointed him any facts of which he is aware and which may be relevant for the said shareholder in assessing any risk that the proxy holder might pursue any interest other than the interest of such shareholder. Listing Rule 19.30 (which transposes subparagraphs (i) to (iv) of article 10(3) of the SRD) contains a non-exhaustive list of situations in which a conflict of interest between the proxy holder and the appointing shareholder may arise.

Subparagraph (c) of article 10(3) of the SRD which prohibits a proxy holder from transferring his proxy to another person is implemented by Listing Rule 19.31. This does not affect the right of a proxy holder which is a legal person to appoint a corporate representative to attend and vote on its behalf.

Listing Rule 19.32 transposes the requirement contained in article 10(4) of the SRD that the proxy holder has to vote in accordance with any instructions given by the appointing shareholder. The Authority has also accepted the proposal received from the financial services industry to adopt the option contained in article 10(4) of the SRD which requires a proxy holder to keep a record of the voting instructions and to confirm upon the request of the appointing shareholder that the voting instructions have been complied with. A minimum period of five years has been established for the keeping by proxy holders of such a record of voting instructions.

In addition to this, Listing Rule 19.32 also states that unless otherwise provided in the memorandum and articles of association of the issuer or the terms of issue of shares:

- a) on a show of hands a shareholder present in person or by proxy shall have one vote independently of the number of shares held or represented;
- b) on a poll a shareholder present in person shall have one vote for every share of which he is the holder; and

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<sup>7</sup> Listing Rule 19.27.

<sup>8</sup> Listing Rule 19.28.

c) on a poll a proxy holder shall have one vote for each share for which he holds a valid Proxy.

### **3.1.8 Transposition of article 11 of the SRD – Formalities for proxy holder appointment and notification**

The provisions of article 11 of the SRD are transposed in Listing Rules 19.34 to 19.37.

### **3.1.9 Transposition of article 12 of the SRD – Voting by correspondence**

Listing Rule 19.38 (which implements article 12 of the SRD) provides that the Memorandum and Articles of Association of a company may allow the casting of votes in advance of the general meeting.

### **3.1.10 Transposition of article 13 of the SRD – Removal of certain impediments to the effective exercise of voting rights**

Paragraphs (4) and (5) of article 13 are implemented by Listing Rule 19.28

### **3.1.11 Transposition of article 14 of the SRD – Voting results**

The provisions of article 14 of the SRD are implemented by Listing Rules 19.40 to 19.42. The Authority has adopted the suggestion received from the Forum of Company Secretaries for a distinction to be made between cases where a poll is taken at a general meeting and cases where voting takes place by a show of hands. In the case of a poll, an issuer would have to publish the information prescribed by article 14(1) of the SRD (transposed in Listing Rule 19.40) on its website by not later than fifteen (15) days after the date of the meeting if a shareholder requests a full account of the voting. Moreover, the Authority has availed itself of the option contained in the second subparagraph of article 14(1) of the SRD which allows companies to establish the voting results only to the extent necessary to ensure that the required majority is reached for each resolution if no shareholder requests a full account of the voting.<sup>9</sup>

Listing Rule 19.42 deals, on the other hand, with cases where voting on a particular item or resolution is conducted by a show hands. In that situation, where a shareholder requests a full account of the voting at a general meeting, it is not necessary for the issuer to publish the information required by Listing Rules 19.40.3 to 19.40.6 but it is sufficient for the chairman of the meeting to publish a statement indicating:

a) the total number of Shareholders entitled to vote present at the meeting; and

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<sup>9</sup> Listing Rule 19.41.

b) that upon a show of hands at the meeting it appeared that the resolution had either been carried or rejected.

#### **[4.0 Transitory period]**

The necessary changes to comply with the requirements of Directive 2007/36/EC, including changes to the Memorandum and Articles of Association of issuers, should be approved by not later than the annual general meeting to be held this year.

#### **b) Transposition of Directive 2006/46/EC**

##### **[1.0 Background]**

Directive 2006/46/EC (hereinafter referred to as the “Company Reporting Directive”) amends Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings.

##### **[2.0 Company Reporting Directive]**

###### **[2.1 Corporate Governance Statement]**

Article 1(7) of the Company Reporting Directive has introduced a new article 46a in Directive 78/660/EEC (Fourth Company Law Directive) that requires companies whose securities are admitted to trading on a regulated market to include a corporate governance statement in their annual report.

###### **[2.2 Content of the Corporate Governance Statement]**

According to Article 46a(1) of the Fourth Company Law Directive, the corporate governance statement has to be included in a specific section of the annual report and has to contain the following minimum information:-

(a) a reference to:-

- (i) the corporate governance code to which the company is subject; and/or
- (ii) the corporate governance code which the company may have voluntarily decided to apply; and/or

- (iii) all relevant information about the corporate governance practices applied beyond the requirements under national law.

Where points (i) and (ii) apply, the company must indicate where the relevant texts are publicly available and where point (iii) applies, the company shall make its corporate governance practices publicly available;

(b) to the extent to which a company, in accordance with national law, departs from a corporate governance code referred to under points (a)(i) or (ii), an explanation by the company as to which parts of the corporate governance code it departs from and the reasons for doing so. Where the company has decided not to apply any provisions of a corporate governance code referred to under points (a)(i) or (ii), it shall explain its reasons for doing so;

(c) a description of the main features of the company's internal control and risk management systems in relation to the financial reporting process;

(d) the information required by article 10(1), points (c), (d), (f), (h) and (i) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids where the company is subject to that Directive;

(e) unless that information is already fully provided for in national laws or regulations, the operation of the shareholder meeting and its key powers, and a description of shareholders' rights and how they can be exercised; and

(f) the composition and operation of the administrative, management and supervisory bodies and their committees.

### **[2.3 Other ways of publishing the corporate governance statement]**

New Article 46a(2) of the Fourth Company Law Directive allows Member States to permit the minimum information that the corporate governance statement has to contain to be set out (i) either in a separate report published together with the annual report or (ii) by means of a reference in the annual report where such document is publicly available on the company's website. Such provision also states that in the event of a separate report, the corporate governance statement may contain a reference to the annual report where the information required in paragraph 1, points (c) and (d) of article 46a of the Fourth Company Law Directive is made available.

Moreover, according to Article 46a(2), if the corporate governance statement is published as a separate document, the second subparagraph of article 51(1) of the Fourth Company Law Directive applies to the provisions of paragraph 1, points (c) and (d) of article 46a of the Fourth Company Law Directive. The second subparagraph of article 51(1) requires the statutory auditors to express an opinion concerning the consistency or otherwise of the annual report with the annual accounts for the same

financial year. As regards the remaining information referred to in Article 46a(1) of the Fourth Company Law Directive, the statutory auditor has to check that the corporate governance statement has been produced.

#### **[2.4 Exemption from the corporate governance statement requirement]**

Subarticle (3) of Article 46a of the Fourth Company Law Directive allows the Member States to exempt companies that have only issued securities other than shares admitted to trading on a regulated market from the application of the provisions of paragraph 1, points (a), (b) (e) and (f) of article 46a, unless such companies have issued shares which are traded in a multilateral trading facility, as defined in Article 4(1), point (15) of Directive 2004/39/EC.

#### **[3.0 Transposition of the Company Reporting Directive]**

##### **[3.1 Amendments to the Listing Rules]**

Currently Listing Rules 8.36 to 8.39 already require issuers listed in Malta to include in their report a statement of compliance providing an explanation of the extent to which they have adopted the Code of Principles of Good Corporate Governance contained in Appendix 8.1 to the Listing Rules. However, the said Listing Rules need to be amended so as to implement the provisions of the new article 46a of the Fourth Company Law Directive introduced by the Company Reporting Directive. The following are the amendments made to the Listing Rules:-

(a) The introduction of a new Listing Rule 8.35a which defines the term “national law” for the purposes of the corporate governance statement as the law of the country in which the registered office of the issuer is established.

(b) The substitution of Listing Rule 8.36 by a new rule that contains the general principle, found in Article 46a(1) of the Fourth Company Law Directive, requiring a company whose securities are admitted to trading on a regulated market operating in Malta to prepare a corporate governance statement.

(c) The insertion of new Listing Rule 8.36a providing that the requirement to prepare a corporate governance statement is not applicable to collective investment schemes, other than the closed-ended type. The Working Committee members decided to follow the approach of the Transparency Directive which does not exempt closed-ended funds from the applicability of its provisions.

(d) The introduction of new Listing Rules 8.36b to 8.36d so as to indicate which issuers are required to comply with Appendix 8.1 of the Listing Rules. These Listing Rules provide as follows:-

- (i) If an Issuer is registered in Malta and its securities are admitted to trading on a regulated market operating in Malta, Listing Rule 8.36b encourages it

to adopt the Principles contained in Appendix 8.1 and requires it to prepare a report explaining how it has complied with the provisions of the said Appendix. This will also apply to an Issuer whose securities are only admitted to trading on a regulated market operating in Malta.

- (ii) If an issuer is not registered in Malta but its securities are admitted to trading on a regulated market in Malta as well as on a regulated market in one or more EEA States, it may choose to report on its compliance either with Appendix 8.1 or with any other code of corporate governance to which it may be subject.<sup>10</sup>
- (iii) Listing Rule 8.36d refers to an issuer that is not registered in Malta but whose securities are admitted to trading on a market operating in a non-EEA State as well as on a regulated market operating in Malta. Such issuer is required to report on its compliance with the code of corporate governance to which it is subject and highlight, in such report, the significant ways in which its corporate governance regime differs from Appendix 8.1, unless the Listing Authority determines otherwise following the submission of an application by the said issuer to that effect.

The Working Committee members were of the opinion that Appendix 8.1 should apply to all issuers registered in Malta and having their securities admitted to trading on a regulated market in Malta. Moreover, it was considered reasonable to require an issuer whose securities have only been admitted to trading on a regulated market in Malta to endeavour to adopt Appendix 8.1 given that the securities are only traded in Malta.

On the other hand, a distinction has been made between EEA and non-EEA States since only those issuers whose securities are admitted to trading on a regulated market in an EEA State (apart from Malta) may choose whether to report on Appendix 8.1 or on any other corporate governance code to which they may be subject. Since all the Member States are required to transpose the Company Reporting Directive, this implies that there should be a level of harmonisation across the EU Member States as regards the content of the corporate governance statement.

With respect to issuers whose securities are admitted to trading on a market in a non-EEA State (apart from Malta), the Working Committee members decided that it would be better if such issuers are allowed to report on the corporate governance code to which they may be subject, provided that they highlight the significant differences between their applicable code and Appendix 8.1. However, in order to retain some flexibility and not to place too much burden on third country issuers whose corporate governance code may be stricter than Appendix 8.1, Listing Rule 8.36d grants a discretion to the Listing Authority to exempt a third country issuer from the requirement to highlight such differences.

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<sup>10</sup> New Listing Rule 8.36c.

(e) Listing Rule 8.37 has been substituted by new Listing Rule 8.37 which transposes Article 46a(1) of the Fourth Company Law Directive relating to the contents of the corporate governance statement. The same wording of the Directive has been adopted.

(f) Listing Rule 8.38 has been amended so as to provide that the issuer's auditors are to include a report in the annual report to shareholders on the corporate governance statement. This principle was previously contained in Listing Rule 8.39.

### **[3.2 Transposition of Article 46a(2) of the Fourth Company Law Directive]**

The Authority has availed itself of the option granted by the above provision of the Fourth Company Law Directive and new Listing Rule 8.39 was introduced which permits issuers to set out the information required by new Listing Rule 8.37 to be included either in a separate report that is published simultaneously with the annual report or by means of a reference in the annual report where such document is publicly available on the issuer's website.

The second part of Article 46a(2) of the Fourth Company Law Directive that refers to the second subparagraph of article 51(1) of the same Directive is transposed in the new Listing Rule 8.39a. The said Listing Rule provides that, if the corporate governance statement is contained in a separate report, such statement would have to include the auditor's report on such statement as well as an opinion of the auditors concerning the consistency or otherwise of the information prescribed by paragraph 1, points (c) and (d) of article 46a of the Fourth Company Law Directive (transposed in Listing Rules 8.37.4 and 8.37.5) with the annual report for the same financial year. This means that the issuer's auditors will always prepare a report on the corporate governance statement, irrespective of whether such statement is contained in the annual report or is published in a separate report.

As regards the remaining information which the corporate governance statement has to contain, the auditors shall simply check that such statement has been produced.

### **[3.3 Exemption from the requirement to prepare the corporate governance statement]**

The Authority has adopted the exemption granted to Member States by article 46a(3) of the Fourth Company Law Directive in respect of companies that have only issued securities other than shares admitted to trading on a regulated market. In the case of such companies, the corporate governance statement would only have to disclose the information prescribed by paragraph 1, points (c) and (d) of article 46a of the Fourth Company Law Directive (implemented by Listing Rules 8.37.4 and 8.37.5 as amended).

### **[3.4 Transitional period]**

Any changes which are necessary so that the Corporate Governance Statement published by issuers complies with the new Listing Rules transposing the Company Reporting

Directive should be included in the Annual Report covering the financial year ending 2010 to be presented at the annual general meeting to be held in 2011.

**c) Amendment to Listing Rule 8.56**

Article 41(1) of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts provides that:

“Each public-interest entity shall have an audit committee. The Member States shall determine whether audit committees are to be composed of non-executive members of the administrative body and/or members of the supervisory body of the audited entity and/or members appointed by the general meeting of shareholders of the audited entity.”

This article is already transposed in Listing Rule 8.56 as follows:

8.56 The issuer shall establish and maintain an audit committee of at least three (3) members all of whom shall be directors. The majority of such members shall be non-executive...”

The Listing Authority has approved an amendment to Listing Rule 8.56 so as to clarify the drafting and remove any doubts as to whether the audit committee should be composed entirely of directors of the listed entity. As a result of the said amendment, Listing Rule 8.56 reads as follows:

“The Issuer shall establish and maintain an audit committee composed entirely of Directors and having at least three (3) members. The majority of such members shall be non-executive Directors. At least one member of the audit committee shall be independent and shall be competent in accounting and/or auditing. The committee shall be chaired by a non-executive Director.”

## **APPENDIX I**

### **Chapter 19**

#### **Scope**

- 19.1 This Chapter applies to Issuers whose registered office is in Malta and whose Shares are admitted to trading on a Regulated Market situated or operating within a Member State or EEA State. Furthermore, these Listing Rules shall apply to all Issuers notwithstanding anything contained in the memorandum and articles of association of the Issuer and any provision in the memorandum and articles of an Issuer shall, in the event of conflict with any of the provisions of this Chapter, be construed and interpreted as if the relevant provisions of this Chapter were written into and form an integral part of the memorandum and articles of association of the Issuer.
- 19.2 These Listing Rules shall not apply to:
- 19.2.1 collective investment undertakings as defined by Article 1(2) of Directive 85/611/EEC;
  - 19.2.2 collective investment undertakings that do not fall within Listing Rule 19.2.1, with the exception of closed-end collective investment undertakings which are set up as a Company.
  - 19.2.3 cooperative societies.

#### **General meetings of shareholders**

- 19.3 Issuers shall ensure equal treatment for all Shareholders who are in the same position with regard to participation and the exercise of voting rights in the general meeting.

#### **Notice of general meetings**

- 19.4 Without prejudice to Listing Rules 18.36 and 18.56, the notice convening a general meeting shall be issued in the manner specified by Listing Rules 19.8 and 19.9 not later than the 21<sup>st</sup> day prior to the day when the meeting is due to be held.
- 19.5 Notwithstanding Listing Rule 19.4, the notice issued in the manner specified by Listing Rules 19.8 and 19.9 may be issued at least fourteen (14) days prior to the meeting provided that:
- 19.5.1 the general meeting is not an annual general meeting;

- 19.5.2 the Issuer offers the facility for Shareholders to vote by Electronic Means accessible to all Shareholders;
  - 19.5.3 a resolution reducing the period of notice to not less than fourteen (14) days has been duly passed by a majority of not less than two thirds of the shares having voting rights or the issued share capital represented at the meeting.
- 19.6 The resolution referred to in Listing Rule 19.5.3 shall be valid until the next annual general meeting.
- 19.7 Where a general meeting is adjourned due to lack of a quorum, the adjourned meeting may be convened by a shorter notice period than that required by Listing Rules 19.4 and 19.5 provided that:
- 19.7.1 the first meeting was duly convened in accordance with the requirements of Listing Rule 19.4 or 19.5;
  - 19.7.2 no new item is put on the agenda; and
  - 19.7.3 the adjourned meeting is held at least 10 days after the final convocation is issued.
- 19.8 The Issuer shall send the notice referred to in Listing Rules 19.4, 19.5 or 19.7 to Shareholders by pre-paid mail at their last known residential address.
- 19.9 Notwithstanding the provisions of Listing Rule 19.8, the Issuer may publish the notice referred to in Listing Rules 19.4, 19.5 or 19.7 either on its website or on the website of the Regulated Market on which its Shares are listed, provided that having sent a notice by mail at the last known address of each Shareholder requesting his consent to the publication of notices convening the general meetings of the Issuer on the website indicated in the notice, shareholders give their consent to receive notice by such means. Shareholders that do not give their consent shall remain entitled to receive notices convening general meetings of the Issuer by mail at their last known residential address in accordance with the provisions of Listing Rule 19.8.

#### **Contents of notice of the general meeting**

- 19.10 The notice convening a general meeting shall contain at least the following information:
- 19.10.1 the date, time of commencement of the meeting and venue of the general meeting together with the proposed agenda for the general meeting;

- 19.10.2 a clear and precise description of the procedures that Shareholders must comply with in order to be able to participate in and to vote at the general meeting, including information on:
- 19.10.2.1 either the rights available to shareholders under Listing Rule 19.14 to the extent that those rights can be exercised after the notice of the meeting is issued, and under Listing Rule 19.24 and the periods within which those rights may be exercised; or a notice stating only the deadlines within which the rights under Listing Rules 19.14 and 19.24 may be exercised, provided such notice contains a reference to more detailed information concerning those rights being made available on the website of the Issuer;
  - 19.10.2.2 the procedure for voting by proxy, notably the proxy forms to be used and the means by which the Issuer is prepared to accept electronic notifications of the appointment of proxy holders pursuant to Listing Rule 19.35 (if any); and
  - 19.10.2.3 where the Issuer offers the facility for Shareholders to vote in advance in terms of Listing Rule 19.38 or by Electronic Means, the procedures for doing so (including the date by which it must be done and details of any forms to be used);
- 19.10.3 state the record date referred to in Listing Rule 19.17 and explain that only those who are Shareholders on that date shall have the right to participate and vote in the general meeting;
- 19.10.4 indicate where and how the full, unabridged text of the documents referred to in Listing Rule 19.11.3 and draft resolutions referred to in Listing Rule 19.11.4 may be obtained, unless the draft resolutions are included as part of the notice itself; and
- 19.10.5 indicate the address of the internet site on which the information referred to in Listing Rule 19.11 will be made available.

**Publication of information in advance of general meeting**

- 19.11 An Issuer shall ensure that for at least a continuous period commencing on the 21<sup>st</sup> day immediately preceding the date scheduled for the general meeting and

including the day of the meeting, the following minimum information is made available to its Shareholders on its website:

- 19.11.1 a copy of the notice referred to in Listing Rule 19.4;
- 19.11.2 the total number of Shares and voting rights at the date of the notice (including separate totals for each Class of Shares where the Issuer's capital is divided into two or more Classes of Shares);
- 19.11.3 the documents to be submitted to the general meeting, including the Annual Report,
- 19.11.4 a draft resolution or, where no resolution is proposed to be adopted, a comment from the Directors of the Issuer for each item on the proposed agenda of the meeting, with an explanation of the reason why that item has been placed on the agenda of the meeting;
- 19.11.5 where applicable, the proxy forms and the forms to vote by correspondence, unless such forms are sent directly to each Shareholder:

Provided that where these forms cannot be made available on the Issuer's website for technical reasons, an indication of how a hard copy of the forms can be obtained and in such case, the Issuer shall send the forms by postal services and free of charge to every Shareholder who so requests.

- 19.12 Draft resolutions tabled by Shareholders and received by the Issuer after the date on which notice of the meeting is given shall be uploaded on the Issuer's internet site as soon as practicable after the Issuer has received them.
- 19.13 Where, pursuant to Listing Rule 19.5 above or Listing Rules 18.36 or 18.56, the notice of the general meeting is issued less than twenty one (21) days prior to the meeting, the period specified in Listing Rule 19.12 above shall be shortened accordingly.

**Right to put items on the agenda of the general meeting and to table draft resolutions**

- 19.14 Without prejudice to the provisions of Listing Rule 19.15, a Shareholder or Shareholders holding not less than 5% of the voting issued share capital of the Issuer may:

- 19.14.1 request the Issuer to include items on the agenda of the general meeting, provided that each item is accompanied by a justification or a draft resolution to be adopted at the annual general meeting; and
  - 19.14.2 table draft resolutions for items included in the agenda of a general meeting.
- 19.15 The request to put items on the agenda of the general meeting or the draft resolution referred to in Listing Rule 19.14 shall be submitted to the Issuer in hard copy form or in electronic form at least forty six (46) days before the date set for the general meeting to which it relates and shall be authenticated by the person or persons making it. The Issuer shall not be obliged to entertain any requests by shareholders after the lapse of the 46 day time limit set out above.
- 19.16 Where the right referred to in Listing Rule 19.14.1 requires a modification of the agenda for the general meeting that has already been communicated to Shareholders, the Issuer shall make available a revised agenda in the same manner as the previous agenda in advance of the applicable record date referred to in Listing Rule 19.17 or, if no such record date applies, sufficiently in advance of the date of the general meeting so as to enable other Shareholders to appoint a Proxy or, where applicable, to vote by correspondence.

#### **Requirements for participation and voting in the general meeting**

- 19.17 In this section ‘record date’ means the day falling thirty (30) days immediately preceding the date set for the general meeting to which it relates.
- 19.18 A person shall be entitled to receive notice of, participate in and vote at a general meeting if such person is entered as a shareholder on the register of Shareholders on the record date and any change to an entry on the said register after the record date shall be disregarded in determining the right of any person to attend and vote at the meeting.
- 19.19 Any provision of the Articles of Association of the Issuer is void in so far as it would have the effect of:
- 19.19.1 imposing a restriction on a right of a Shareholder to participate in and vote at a general meeting of the Issuer unless his Shares are deposited with, or transferred to, or registered in the name of, another person before the meeting; or
  - 19.19.2 imposing a restriction on the right of a Shareholder to sell or otherwise transfer Shares in the Issuer at any time between the record date and

the general meeting to which it applies if the right to sell would not otherwise be subject to a restriction.

- .19.20 Proof of qualification as a Shareholder may be required by an Issuer subject only to such requirements as are necessary to ensure the identification of Shareholders and only to the extent that they are proportionate to the achievement of that objective.

#### **Participation in the general meeting by electronic means**

- 19.21 Issuers may allow their Shareholders to participate in the general meeting by Electronic Means, including any or all of the following forms of participation:

19.21.1 real-time transmission of the general meeting;

19.21.2 real-time two-way communication enabling Shareholders to address the general meeting from a remote location;

19.21.3 a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting.

- 19.22 The use of Electronic Means pursuant to Listing Rule 19.21 may be made subject only to such requirements and constraints as are necessary to ensure the identification of Shareholders and the security of the electronic communication and only to the extent that they are proportionate to the achievement of those objectives.

- 19.23 The Shareholders shall be informed of any requirements or restrictions which an Issuer puts in place pursuant to Listing Rule 19.22.

#### **Right to ask questions**

- 19.24 Every Shareholder shall have the right to ask questions which are pertinent and related to items on the agenda of a general meeting and to have such questions answered by the Directors or such person as the directors may delegate for that purpose subject to any reasonable measures that the Issuer may take to ensure the identification of the Shareholder. The said right shall also be enjoyed by a proxy holder appointed by the Shareholder.

- 19.25 The Issuer may provide one overall answer to questions having the same content.

- 19.26 An answer to a question asked pursuant to Listing Rule 19.24 is not required where:

- 19.26.1 to give an answer would interfere unduly with the preparation for the meeting, involve the disclosure of confidential information or cause prejudice to the business interests of the Issuer;
- 19.26.2 the answer has already been given on the Issuer's website in the form of an answer to a question;
- 19.26.3 it is not in the interests of good order of the meeting that the question be answered; or
- 19.26.4 the Issuer is unable to provide an immediate reply, provided that such reply is subsequently posted on the website of the Issuer.

### **Proxy voting**

- 19.27 Without prejudice to Listing Rule 19.28, every person entered into the register of members kept by the Issuer shall be entitled to appoint one person to act as proxy holder to attend and vote at a general meeting instead of him. The proxy holder shall enjoy the same rights to speak and ask questions in the general meeting as those to which the member thus represented would be entitled.
- 19.28 Where a person whose details are entered into the register of members is holding the shares for and on behalf of third parties, such member is entitled to grant a proxy to each of his clients or to any third party designated by a client. The said member shall be entitled to cast votes attaching to some of the Shares differently from the others. Accordingly proxy forms shall be designed by Issuers to allow such split voting.
- 19.29 A proxy holder shall, prior to a general meeting disclose to the Shareholder who appointed him any facts of which he is aware and which may be relevant for that Shareholder in assessing any risk that the proxy holder might pursue any interest other than the interest of such Shareholder.
- 19.30 Without prejudice to the generality of Listing Rule 19.29, the facts that a proxy holder is required to disclose include:
  - 19.30.1 whether he is a controlling Shareholder of the Issuer, or is another entity controlled by such Shareholder;
  - 19.30.2 whether he is a Director of the Issuer, or of a controlling Shareholder or controlled entity referred to in Listing Rule 19.30.1;
  - 19.30.3 whether he is an employee or an auditor of the Issuer, or of a controlling Shareholder or controlled entity referred to in Listing Rule 19.30.1; and

- 19.30.4 whether he has a family relationship with a natural person referred to in Listing Rules 19.30.1 to 19.30.3.
- 19.31 A proxy holder appointed in terms of Listing Rule 19.27 shall not transfer his proxy to another person. Where, however, the proxy holder is a legal person, it may exercise the powers conferred upon it through a duly appointed corporate representative.
- 19.32 A proxy holder shall vote in accordance with any instructions given by the appointing Shareholder, keep a record of such instructions for at least five years and, confirm, upon a request of the appointing Shareholder, that the voting instructions have been complied with. Unless otherwise provided in the memorandum and articles of association of an Issuer or the terms of issue of shares:
- 19.32.1 on a show of hands a shareholder present in person or by proxy shall have one vote independently of the number of shares held or represented;
- 19.32.2 on a poll a shareholder present in person shall have one vote for every share of which he is the holder; and
- 19.32.3 on a poll a proxy shall have one vote for each share for which he holds a valid proxy form.
- 19.33 Any person acting as a proxy holder may hold a Proxy from more than one Shareholder without limitation as to the number of Shareholders so represented. Where a proxy holder holds Proxies from several Shareholders, he may cast votes for a certain Shareholder differently from votes cast for another Shareholder.

In the case of voting by a show of hands, a proxy who has been mandated by several shareholders and instructed to vote by some shareholders in favour of a resolution and by others against the same resolution, shall have one vote for and one vote against the resolution

#### **Formalities for the appointment of proxy holders and notification**

- 19.34 A Proxy shall be appointed by written notification to an Issuer or by Electronic Means.
- 19.35 A Shareholder shall be entitled to:
- 19.35.1 appoint a Proxy by Electronic Means, to an address specified by the Issuer,

- 19.35.2 have the electronic notification of such appointment accepted by the Issuer; and
- 19.35.3 have at least one effective method of notification of a Proxy by Electronic Means offered to it by an Issuer.
- 19.36 Listing Rules 19.34 and 19.35 shall apply *mutatis mutandis* to the revocation of the appointment of a Proxy.
- 19.37 The provisions of the articles of association of an Issuer relating to the appointment of a Proxy and the notification of such appointment to an Issuer may only contain such formal requirements as are necessary to ensure the identification of a Shareholder, or the Proxy. Likewise, any provision of the articles of association of an Issuer dealing with the issuing of voting instructions to a Proxy may contain only such formal requirements as are necessary to ensure the possibility of verifying the content of such voting instructions. In both cases, the said formal requirements shall be proportionate to the achievement of those objectives.

#### **Voting by correspondence**

- 19.38 An Issuer's articles of association may provide that on a vote on a resolution on a poll taken at a meeting, the votes may include votes cast in advance. Any such provision may be made subject only to such requirements and restrictions as are:
  - 19.38.1 necessary to ensure the identification of the person voting; and
  - 19.38.2 proportionate to the achievement of that objective.
- 19.39 Nothing in this section affects the power of an Issuer to require reasonable evidence of the entitlement of any person who is not a Shareholder to vote.

#### **Voting results**

- 19.40 Where a poll is taken at a general meeting of an Issuer and a request is made by a Shareholder for a full account of the poll, the Issuer shall publish the following information on its website by not later than fifteen (15) days after the day of the general meeting at which the voting result was obtained:
  - 19.40.1 the date of the meeting;
  - 19.40.2 the text of the resolution or, as the case may be, a description of the subject matter of the poll;

- 19.40.3 the number of shares for which votes have been validly cast;
  - 19.40.4 the proportion of the Issuer's issued share capital at close of business on the day before the meeting represented by those votes;
  - 19.40.5 the total number of votes validly cast; and
  - 19.40.6 the number of votes cast in favour of and against each resolution and, if counted, the number of abstentions.
- 19.41 Where no Shareholder requests a full account of the voting at a general meeting, it shall be sufficient for the Issuer to establish the voting results only to the extent necessary to ensure that the required majority is reached for each resolution.
- 19.42 Where voting on a particular item or resolution is conducted by a show of hands rather than by a poll, it shall not be necessary in the case where a Shareholder requests a full account of the voting at a general meeting for the Issuer to publish the information required under Listing Rules 19.40.3 to 19.40.6 (both included) and it shall be sufficient for the chairman of the meeting to publish a statement indicating:
- 19.42.1 the total number of Shareholders entitled to vote present at the meeting;
  - 19.42.2 that upon a show of hands at the meeting it appeared that the resolution had either been carried or rejected.

## APPENDIX II

### *Corporate Governance*

- 8.35a For the purposes of this section:  
“national law” means the law of the country where the registered office of the Issuer is established.
- 8.36 An Issuer whose securities are admitted to trading on a Regulated Market operating in Malta shall prepare a corporate governance statement in terms of Listing Rule 8.37.
- 8.36a This section is not applicable to Collective Investment Schemes, other than the closed-ended type.
- 8.36b An Issuer registered in Malta and having securities admitted to trading on a Regulated Market operating in Malta should endeavour to adopt the Principles outlined in Appendix 8.1 to this Chapter and shall prepare a report explaining how it has complied with the provisions of the said Appendix. The same rule shall also apply to an Issuer whose securities are only admitted to trading on a Regulated Market in Malta.
- 8.36c An Issuer not registered in Malta but whose securities are admitted to trading on a Regulated Market operating in Malta as well as on a Regulated Market operating in one or more EEA States shall have the option to report on its compliance either with Appendix 8.1 or with any other code of corporate governance to which it may be subject.
- 8.36d An Issuer not registered in Malta but whose securities are admitted to trading on a market operating in a non-EEA state as well as on a Regulated Market operating in Malta shall report on its compliance with the code of corporate governance to which it is subject and highlight, in its report, the significant ways in which its corporate governance regime differs from Appendix 8.1, unless the Listing Authority determines otherwise following the submission of an application by such Issuer to that effect.
- 8.37 Issuers shall include in a specific section of their Annual Financial Report a corporate governance statement which shall contain at least the following information:
- 8.37.1 a reference to the corporate governance code to which the Issuer is subject; and/or a reference to the corporate governance code which it may have voluntarily decided to apply, together with an indication of the place where the texts are available to the public; and/or
  - 8.37.2 all relevant information about the corporate governance practices applied beyond the requirements under national law;
  - 8.37.3 to the extent to which an Issuer departs from a corporate governance code referred to in Listing Rule 8.37.1, an explanation by the Issuer as to which parts of the corporate governance code it has departed from and the reasons for doing so and where the Issuer has decided not to apply any provisions of a corporate governance code referred to in Listing Rule 8.37.1, it shall explain its reasons for doing so;

- 8.37.4 a description of the main features of the Issuer's internal control and risk management systems in relation to the financial reporting process;
  - 8.37.5 the information referred to in Listing Rules 9.43.3, 9.43.4, 9.43.6, 9.43.8 and 9.43.9, where applicable;
  - 8.37.6 the manner in which the general meeting is conducted and its key powers together with a description of shareholders' rights and how they can be exercised; and
  - 8.37.7 the composition and operation of the Board of Directors or equivalent body, of the audit committee and of any other committee that may be established by the Board.
- 8.38 The Issuer's Auditors are to include a report in the annual report to shareholders on the corporate governance statement.
- 8.39 An Issuer may elect to set out the information required by Listing Rule 8.37 in a separate report published together with the annual report or by means of a reference in the annual report where such document is publicly available on the Issuer's website. In the event of a separate report, the corporate governance statement may contain a reference to the Annual Financial Report where the information required in Listing Rules 8.37.4 and 8.37.5 is made available.
- 8.39a Where the corporate governance statement is contained in a separate report, such statement shall include the Auditors' report referred to in Listing Rule 8.38 and, in addition to this, the Issuer's Auditors shall express an opinion concerning the consistency or otherwise of the information referred to in Listing Rules 8.37.4 and 8.37.5 with the Annual Financial Report for the same financial year. For the remaining information that is required to be disclosed under Listing Rule 8.37, the Auditors shall check that the corporate governance statement has been produced.
- 8.39b Issuers that only issue Securities other than Equity Securities shall be exempt from the requirement to disclose in their corporate governance statement the information prescribed by Listing Rules 8.37.1 to 8.37.3, 8.37.6 and 8.37.7, unless such Issuers have issued Equity Securities which are traded in a multilateral trading facility in terms of Article 4(1), point (15) of Directive 2004/39/EC.