

## CHAPTER 8

### Continuing Obligations

This chapter deals with the Issuers' continuing obligations and one of its objectives is to implement the relevant provisions of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are Admitted to Trading on a regulated market and Directive 2007/14/EC of 8 March 2007. These requirements do not exclude any other ongoing obligations which may be contained in other chapters of these Listing Rules.

*Preliminary*

- 8.1 Once an Issuer's Securities have been duly authorised as admissible to listing on a Regulated Market in Malta, the Issuer shall be responsible for ensuring compliance with the continuing obligations of these Listing Rules at all times.
- 8.2 The Listing Authority may, at any time, require an Issuer to publish such information in such form and within such time limits as it considers appropriate to protect investors or to ensure the smooth operation of the market.
- 8.3 If an Issuer fails to comply with the requirement under Listing Rule 8.2, the Listing Authority may itself publish the information, if the same is available to it, after giving the Issuer an opportunity to make representations as to why it should not be published.<sup>1</sup>
- 8.4 Where Malta is the home Member State, the Listing Authority may subject Issuers to obligations more stringent than those provided for hereafter or to additional obligations, provided that they apply generally to all Issuers or to all Issuers of a given Class.<sup>2</sup>
- 8.5 The provisions of this Chapter shall not apply to Units issued by collective investment undertakings other than the closed-end type, or to Units acquired or disposed of in such collective investment undertakings.<sup>3</sup>
- 8.5a Subject to any exemptions set out herein, this Chapter applies to an Issuer:
- 8.5a.1 whose Securities are admitted to listing on a Regulated Market; and
  - 8.5a.2 whose Home Member State is Malta.
- 8.5b For the purposes of Listing Rule 8.5a, "Home Member State" means:
- 8.5b.1 in the case of an Issuer of Debt Securities the denomination per unit of which is less than one thousand (1,000) Euros or an Issuer of shares:
    - 8.5b.1.1 where the Issuer is incorporated in the Community, the Member State in which it has its registered office;
    - 8.5b.1.2 where the Issuer is incorporated or registered in a non-Member or EEA State:
      - (i) in the case of issues of Non-equity Securities whose denomination per unit amounts to at least one thousand (1,000) Euros as well as issues of Non-equity Securities giving the right to acquire any transferable securities or to receive a cash amount, as a consequence of their being converted or the rights conferred by them being exercised, provided that the issuer of the Non-equity Securities is not the issuer of the underlying securities or an entity belonging to the Group of the latter issuer, the Member State where the Securities were or are to be Admitted to Trading on a Regulated Market or where the securities are offered to the public, at the choice of the Issuer, the offeror or the person asking for admission, as the case may be;

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<sup>1</sup> Listing Rules 8.2 and 8.3 are already covered by Listing Rules 1.10 and 1.13.

<sup>2</sup> Article 3(1) of TD.

<sup>3</sup> Article 1(2) of TD.

- (ii) in the case of issues of Securities not mentioned in (i), the Member State where the Securities are intended to be offered to the public for the first time after the date of entry into force of Directive 2003/71/EC or where the first application for admission to trading on a Regulated Market is made, at the choice of the Issuer, the offeror or the person asking for admission, as the case may be, subject to a subsequent election by the Issuer incorporated in a non-Member or EEA State if the Home Member State was not determined by their choice:

Provided that the definition of ‘Home Member State’ shall be applicable to Debt Securities in a currency other than Euro, provided that the value of such denomination per unit is, at the date of the issue, less than one thousand (1,000) Euros, unless it is nearly equivalent to one thousand (1,000) Euros.

- 8.5b.2 in the case of an Issuer not covered by Listing Rule 8.5b.1, the Member State chosen by the Issuer from among the Member State in which the Issuer has its registered office and those Member States which have admitted its Securities to trading on a Regulated Market on their territory.<sup>4</sup>
- 8.5c For the purposes of this Chapter, Malta shall be deemed to be the “Host Member State” where it is not the Home Member State of the Issuer and securities are Admitted to Trading on a Regulated Market in Malta.<sup>5</sup>
- 8.5d Where, pursuant to these Listing Rules, the Issuer is entitled to choose its Home Member State, the Issuer may choose only one Member State as its Home Member State. Its choice shall remain valid for at least three years unless its Securities are no longer admitted to trading on any Regulated Market in the Community.<sup>6</sup>
- 8.5e The choice referred to in Listing Rule 8.5b.2 shall be disclosed in terms of Listing Rules 8.141d to 8.141j<sup>7</sup>
- 8.5f Issuers which have only Debt Securities authorised as Admissible to Listing shall comply with this Chapter but need not comply with the following Listing Rules of this Chapter:<sup>8</sup>

Listing Rule

8.7.4	Board Decisions
8.7.8	Notification of major holdings
8.7.9	Total number of voting rights
8.7.10	Proportion of the Issuer’s holding in own equity
8.48 - 8.49	Directors’ Service Contracts
8.79- 8.87a	Related Parties Transactions
8.44g	Preliminary Statement of Annual Results
8.44x	Annual Financial Report – material contracts

<sup>4</sup> Definition of ‘home Member State’ in Article 2(1)(i) of TD.

<sup>5</sup> Definition of ‘host Member State’ in Article 2(1)(j) of TD.

<sup>6</sup> Article 2(1)(i)(ii) of TD.

<sup>7</sup> Art 2 of Directive 2007/14/EC.

<sup>8</sup> UKLA.

- 8.5g Issuers which have only fixed income Shares which are Admissible to Listing must comply with this Chapter but need not comply with the following Listing Rules of this Chapter:<sup>9</sup>

Listing Rule

8.18-8.21	Information on Directors and Senior Officers
8.48-8.49	Directors' Service Contracts
8.79-8.87a	Transactions with Related Parties

*Company Announcements*

- 8.6 The object of a Company Announcement is to bring useful and relevant facts to the attention of the market. Issuers shall be responsible to ensure that a Company Announcement is precise, clear and truthful, and does not contain promotional, ambiguous, irrelevant or confusing material.
- 8.6a The information which is required to be published by the Issuer or a person who has applied for admission to trading on a Regulated Market without the Issuer's consent through a Company Announcement shall not be disclosed to the public before it has been so announced.
- 8.6b Company Announcements shall be made in the English or Maltese language without delay through a Regulated Market.
- 8.7 The information which has to be disclosed by means of a Company Announcement includes, but is not limited to, the following:
- 8.7.1 price-sensitive facts which arise in the Issuer's sphere of activity and which are not public knowledge;
  - 8.7.2 any information concerning the Issuer or any of its Subsidiaries necessary to avoid the establishment of a false market in its Securities<sup>10</sup>;
  - 8.7.3 the date fixed for any board meeting of the Issuer at which a dividend on Securities Admitted to Listing is expected to be declared or recommended, or at which any announcement of the profits or losses is to be approved;
  - 8.7.4 any decision by the board of Directors of the Issuer relating to the declaration or otherwise of dividends or other distributions on Securities Admitted to Listing or relating to profits;<sup>11</sup>
  - 8.7.5 any change in the board of Directors, company secretary or any other senior officers of the Issuer, which announcement shall contain the information required in terms of Listing Rules 8.16 to 8.19<sup>12</sup>
  - 8.7.6 the filing of a winding-up application;
  - 8.7.7 any resolution by the board of Directors for the merger or division of the Issuer and any agreement entered into in connection with any acquisition or realisation of assets or any transaction outside the ordinary course of business of the Issuer and/or its Subsidiaries which is likely to materially affect the price of its Securities;

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<sup>9</sup> UKLA.

<sup>10</sup> Article 68.1 of CARD (repealed by Directive 2003/6/EC).

<sup>11</sup> MSE 6.05.04(iii)

<sup>12</sup> MSE 6.05.04(iv)

- 8.7.8 the information contained in the notification submitted by a Shareholder in terms of Listing Rule 8.117;<sup>13</sup>
- 8.7.9 the total number of voting rights and capital at the end of each calendar month during which an increase or decrease of such total number has occurred;<sup>14</sup>
- 8.7.10 the proportion of the Issuer's holding in its own Shares, following an acquisition or sale of its own Shares where that proportion reaches, exceeds or falls below the thresholds of 5% or 10% of the voting rights<sup>15</sup>;
- 8.7.11 any material change to its capital structure including the structure of its Debt Securities Admitted to Listing, except that notification of a new issue may be delayed while an offer or underwriting is in progress<sup>16</sup>;
- 8.7.12 any new issue of Debt Securities;
- 8.7.12a any guarantee or security provided in respect of an issue of Debt Securities, together with a statement, where applicable, indicating where the audited Annual Accounts of any guarantor are available to the public:
- 8.7.13 any change in the rights;
- 8.7.13.1 attaching to the various classes of Shares, including changes in the rights attaching to derivative Securities issued by the Issuer itself and giving access to the Shares of that Issuer;<sup>17</sup>
- 8.7.13.2 of holders of Securities other than Shares, including changes in the terms and conditions of these Securities which could indirectly affect those rights, resulting in particular, from a change in loan terms or in interest rates.<sup>18</sup>
- 8.7.14 the effect, if any, of any issue of further Securities on the terms of the exercise of rights under options, warrants and convertible Securities;<sup>19</sup>
- 8.7.15 the results of any new issue or Public Offer of Securities;<sup>20</sup>
- 8.7.16 any sale of Shares in a material Subsidiary resulting in that company ceasing to be a Subsidiary and any acquisition of shares of an unquoted Company resulting in that company becoming a material Subsidiary;<sup>21</sup>
- 8.7.17 all resolutions put to a general meeting of an Issuer which are not Ordinary Business and immediately after such meeting whether or not the resolutions were carried;<sup>22</sup>
- 8.7.18 any decision by the board of Directors to recommend the discontinuation of listing of the Issuer's securities in terms of Listing Rule 1.22;

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<sup>13</sup> Article 21(6) of TD.

<sup>14</sup> Article 15 of TD.

<sup>15</sup> Article 14(1) of TD.

<sup>16</sup> UKLA.

<sup>17</sup> Article 16(1) of TD.

<sup>18</sup> Article 16(2) of TD.

<sup>19</sup> UKLA.

<sup>20</sup> UKLA.

<sup>21</sup> MSE 6.05.04(vii)

<sup>22</sup> MSE 6.05(ii), MSE 6.08.01(v)(c)

- 8.7.19 the matters referred to in Listing Rules 8.44g (preliminary results), 8.37 (profit forecast) and 8.45a (half-yearly reports);
  - 8.7.20 a statement indicating where the Annual Financial Report has been made available to the public;
  - 8.7.21 the choice of Home Member State that an Issuer may be entitled to make in terms of Listing Rule 8.5b.2;
  - 8.7.22 the appointment of a person as both Chairman and Chief Executive Officer of the Issuer;
  - 8.7.23 where the board of Directors determines that the results in respect of any published financial information materially differ by ten percent (10%) or more from any published forecast or estimate or financial projections by the Issuer, in which case the company announcement must contain an explanation of such difference; and
  - 8.7.24 the matters referred to in Listing Rule 8.108.2.
- 8.8 The Company Announcement containing the information prescribed by Listing Rule 8.7.10 shall be made by not later than four trading days following the acquisition or sale<sup>23</sup>. The proportion of the Issuer's holding in its own shares shall be calculated on the basis of the total number of Equity Securities to which voting rights are attached.
- 8.9 Without prejudice to the Prevention of Market Abuse Act, Listing Rules 8.7.12 and 8.7.12a shall not apply to a public international body of which at least one Member State is a member.<sup>24</sup>
- Exemption*
- 8.10 Should the Issuer consider that announcements and/or disclosure to the public of information required by these Listing Rules might prejudice the Issuer's legitimate interests, the Issuer may seek an exemption from the relevant requirement by notice in writing to the Listing Authority:<sup>25</sup>
- Provided that this Listing Rule shall not apply to announcements and/or disclosure to the public of Regulated Information.
- 8.11 Intentionally left blank
- 8.12 Intentionally left blank
- 8.13 Intentionally left blank.
- 8.14 Intentionally left blank.
- 8.15 Intentionally left blank.
- Officers of the Issuer*
- 8.16 A Company Announcement made in terms of Listing Rule 8.7.5 shall contain the following information in respect of any new Director appointed to its board of Directors, company secretary or any other senior officer, unless such details have

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<sup>23</sup> Article 14(1) of TD.

<sup>24</sup> Article 16(3) of TD.

<sup>25</sup> CARD 68,81 (no longer in force).

already been disclosed in a Prospectus or other Circular published by the Issuer in the immediately preceding twelve months;<sup>26</sup>

- 8.16.1 the full name and, if relevant, any former name or names, residential address and function in the Issuer and an indication of the principal activities performed by them outside the Issuer where these are significant with respect to the Issuer;
  - 8.16.2 details of all Directorships held by such Director or senior officer in any other Issuer at any time in the previous five (5) years, indicating whether or not the individual is still a Director;
  - 8.16.3 the effective date of change or a statement that the effective date is not yet known or has not yet been determined. In the latter case, the effective date of change should be announced by the Issuer once it is known;<sup>27</sup>
  - 8.16.4 in the case of an appointment of a Director, a statement indicating the nature of any specific function or responsibility of the position and whether the position is executive or non-executive;
  - 8.16.5 any pending criminal proceedings in respect of any crimes affecting public trust or theft or of fraud or of knowingly receiving property obtained by theft or fraud;
  - 8.16.6 details of any discharged bankruptcies over the last five years;
  - 8.16.7 details of any creditors' voluntary winding-up, winding-up by the court or reconstruction of any Company or other commercial partnership where such person was a partner or Director with an executive function at the time of or within the twelve (12) months preceding such events;
  - 8.16.8 details of any public criticisms of such person by statutory or regulatory authorities, including recognised professional bodies, which have not been subsequently withdrawn by the relevant authority or body and whether such person has ever been disqualified by law or by a court from acting as a Director of a Company or from acting in the management or conduct of the affairs of any Body Corporate; and
  - 8.16.9 whether such person was the subject of any order, judgement or ruling of any court of competent jurisdiction, tribunal or any other regulatory authority in Malta or overseas, permanently or temporarily prohibiting him from engaging in any type of business practice or activity.
- 8.17 Should there be no information to be disclosed in terms of Listing Rules 8.16.5 to 8.16.9, an appropriate negative statement to that effect shall be made.
- 8.18 Intentionally left blank.
- 8.19 Intentionally left blank.

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<sup>26</sup> UKLA.

<sup>27</sup> UKLA.

### *Rights of Holders of Securities*

- 8.20 An Issuer having Equity Shares authorised as Admissible to Listing shall ensure equality of treatment for all holders of such Equity Shares who are in the same position.<sup>28</sup>
- 8.21 An Issuer having Debt Securities authorised as Admissible to Listing shall ensure equality of treatment for all holders of such Securities of the same Class in respect of all rights attaching to such Securities.<sup>29</sup>
- 8.22 An Issuer must obtain the consent of the holders of its Equity Shares before any major Subsidiary Undertaking of the Issuer makes any issue for cash of Equity Securities so as materially to dilute the Issuer's percentage interest in Equity Shares or Equity Securities of that Subsidiary Undertaking.<sup>30</sup>
- 8.23 Shareholders shall not be prevented from exercising their rights by proxy, subject to the law of the country in which the Issuer is incorporated.<sup>31</sup>

### *Proxy Forms*

- 8.23a A proxy form must:
- 8.23a.1 be sent with the notice convening a meeting of holders of Securities authorised as Admissible to Listing to each person entitled to vote at the meeting;
  - 8.23a.2 provide for two-way voting on all resolutions intended to be proposed (except that it is not necessary to provide proxy forms with two-way voting on procedural resolutions);
  - 8.23a.3 state that a shareholder is entitled to appoint a proxy of his own choice and provide a space for insertion of the name of such proxy; and
  - 8.23a.4 state that if it is returned without an indication as to how the proxy shall vote on any particular matter, the proxy will exercise his discretion as to whether, and if so, how he votes.
- 8.23b Where the resolutions to be proposed include the re-election of retiring Directors, the proxy form:
- 8.23b.1 must allow shareholders to vote for individual candidates irrespective of whether they are new candidates or retiring incumbents of the post; and
  - 8.23b.2 may give shareholders the opportunity to vote for the re-election of the retiring Directors as a whole.

### *Information requirements for Issuers whose shares are Admitted to Trading on a Regulated Market*

- 8.24 An Issuer shall ensure that all the facilities and information necessary to enable holders of shares to exercise their rights are available in Malta, where Malta is the Home Member State and that the integrity of data is preserved.<sup>32</sup>

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<sup>28</sup> Article 17(1) of TD.

<sup>29</sup> Article 18(1) of TD.

<sup>30</sup> UKLA.

<sup>31</sup> Article 17(2) of TD.

<sup>32</sup> Article 17(2) of TD.



- 8.25 The Issuer shall<sup>33</sup>;
- 8.25.1 provide information on the place, time and agenda of meetings, the total number of shares and voting rights and the rights of holders entitled to participate in meetings;
  - 8.25.2 make available a proxy form in terms of Listing Rules 8.23a and 8.23b, on paper or, where applicable, by Electronic Means, to each person entitled to vote at a shareholders' meeting, together with the notice concerning the meeting or, on request, after an Announcement of the meeting;
  - 8.25.3 designate as its agent a financial or credit institution through which such shareholder may exercise his financial rights; and
  - 8.25.4 publish notices or distribute Circulars concerning the allocation and payment of dividends and the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion.
- 8.26 If a Circular is issued to the holders of any particular Class of Security, the Issuer must issue a copy or summary of that Circular to all other holders of its Securities which are authorised as Admissible to Listing unless the contents of that Circular are irrelevant to them.<sup>34</sup>
- 8.27 Intentionally left blank.
- 8.28 The Issuer's obligation of circulating any Regulated Information to shareholders other than the Annual Accounts shall be duly satisfied if the Issuer sends a notice to the registered address of each Shareholder by means of the postal service advising that such information has been posted on a website designated therein and that such document is available in printed format upon written request made by any shareholder.<sup>35</sup>
- 8.29 The Issuer shall use Electronic means to circulate Regulated Information other than the Annual Accounts, provided such a decision is taken at a general meeting and meets at least the following conditions:<sup>36</sup>
- 8.29.1 the use of Electronic means shall in no way depend upon the location of the seat or residence of the Shareholder or, in the cases referred to in Listing Rule 8.111, of the natural or legal persons;
  - 8.29.2 identification arrangements shall be put in place so that the shareholders, or the natural or legal persons entitled to exercise or to direct the exercise of voting rights, are effectively informed;
  - 8.29.3 shareholders, or in the cases referred to in Listing Rule 8.111, the natural or legal persons entitled to acquire, dispose of or exercise voting rights, shall be contacted in writing to request their consent for the use of Electronic means for conveying information and, if they do not object within a reasonable period of time, their consent shall be deemed to be given. They shall be able to request, at any time in the future, that information be conveyed in writing; and

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<sup>33</sup> Article 17(2) of TD.

<sup>34</sup> UKLA.

<sup>35</sup> To check with shareholders' rights Directive.

<sup>36</sup> Article 17(3) of TD.

- 8.29.4 any apportionment of the costs entailed in the conveyance of such information by Electronic means shall be determined by the Issuer in compliance with the principle of equal treatment.

*Information requirements & venue for Issuers whose Debt Securities are Admitted to Trading on a Regulated Market*

- 8.30 An Issuer of Debt Securities shall ensure that all the facilities and information necessary to enable Debt Securities holders to exercise their rights are publicly available in Malta, when Malta is the Home Member State and the integrity of data is preserved.<sup>37</sup>
- 8.31 Debt Securities holders shall not be prevented from exercising their rights by proxy, subject to the law of country in which the Issuer is incorporated.<sup>38</sup>
- 8.32 The Issuer shall, where applicable<sup>39</sup> -
- 8.32.1 publish notices or distribute Circulars concerning the place, time and agenda of meetings of Debt Securities holders, the payment of interest, the exercise of any conversion, exchange, subscription or cancellation rights, and repayment, as well as the right of those holders to participate therein;
  - 8.32.2 make available a proxy form in terms of Listing Rules 10.16 and 10.17 on paper or by electronic means, to each person entitled to vote at a meeting of Debt Securities holders, together with the notice concerning the meeting or, on request, after an Announcement of the meeting; and
  - 8.32.3 designate as its agent a financial or credit institution through which the Debt Securities holder may exercise his financial rights.
- 8.33 If only holders of Debt Securities whose denomination per unit amounts to at least €50,000 or, in the case of Debt Securities denominated in currency other than Lm whose denomination per unit is, at the date of the issue, equivalent to at least €50,000, are to be invited to a meeting, the Issuer may choose as venue any Member or EEA State, provide that all the facilities and information necessary to enable such holders to exercise their rights are made available in that Member or EEA State.<sup>40</sup>
- 8.34 For the purposes of conveying Regulated Information to Debt Securities holders, the Issuer shall use Electronic Means, provided such a decision is taken at a general meeting and meets at least the following conditions:<sup>41</sup>
- 8.34.1 the use of Electronic means shall in no way depend upon the location of the seat or residence of the debt security holder or of a proxy representing that holder;
  - 8.34.2 identification arrangements shall be put in place so that Debt Securities holders are effectively informed;
  - 8.34.3 Debt Securities holders shall be contacted in writing to request their consent for the use of Electronic means for conveying information and if they do not object within a reasonable period of time, not exceeding fourteen (14) days, their consent shall be deemed to be given. They

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<sup>37</sup> Article 18(2) of TD.

<sup>38</sup> Article 18(2) of TD.

<sup>39</sup> Article 18(2) of TD.

<sup>40</sup> Article 18(3) of TD.

<sup>41</sup> Article 18(4) of TD.

shall be able to request, at any time in the future, that information be conveyed in writing; and

- 8.34.4 any apportionment of the costs entailed in the conveyance of information by Electronic means shall be determined by the Issuer in compliance with the principle of equal treatment.
- 8.35 The provisions of Listing Rules 8.7.12, 8.32, 8.33 and 8.34 shall not apply to securities Admitted to Trading on a Regulated Market issued by Member or EEA States or their regional or local authorities.<sup>42</sup>

*Periodic financial reporting*

- 8.36 Where an Issuer publishes financial information in cases other than those provided for in these Listing Rules, the Issuer shall comply with generally accepted accounting principles and practice as defined by the Accountancy Profession Act or regulations issued in terms thereof.

*Profit Forecasts and Estimates*

- 8.37 Whenever a profit forecast or estimate is made by an Issuer it must contain:-
- 8.37.1 a statement setting out the principal assumptions upon which the Issuer has based its forecast or estimate and clearly distinguishing between assumptions about factors which the Directors of the Issuer can influence and assumptions about factors which are exclusively outside the influence of the Directors; and
- 8.37.2 a report prepared by independent Accountants or Auditors stating that in their opinion the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit or estimate is consistent with the accounting policies of the Issuer.
- 8.38 The assumptions referred to in Listing Rule 8.37.1 must be readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the profit forecast.
- 8.39 The profit forecast or estimate must be prepared on a basis comparable with the historical financial statements published by the Issuer.

*Pro Forma Financial Information*

- 8.40 If an Issuer publishes pro forma financial information, that information must be presented in the manner laid down by Listing Rule 8.44.
- 8.41 The pro forma financial information must include a description of the transaction, the businesses or entities involved and the period to which it refers, and must clearly state the following:
- 8.41.1 the purpose for which it has been prepared;
- 8.41.2 that it has been prepared for illustrative purposes only; and
- 8.41.3 that because of its nature, the pro forma financial information addresses a hypothetical situation and, therefore, does not represent the Issuer's actual financial position or results.

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<sup>42</sup> Article 1(3) of TD.

- 8.42 In order to present pro forma financial information, a balance sheet and profit and loss account, and accompanying explanatory notes, depending on the circumstances, may be included.
- 8.43 The pro forma financial information must also provide investors with information about the impact of the transaction the subject of the document by illustrating how that transaction might have affected the financial information presented in the document had the transaction been undertaken at the commencement of the period being reported on or, in the case of a pro forma balance sheet or net asset statement, at the date reported. The pro forma financial information presented must not be misleading, must assist investors in analysing the future prospects of the Issuer and must include all appropriate adjustments permitted by Listing Rule 8.44d, of which the Issuer is aware, necessary to give effect to the transaction as if the transaction had been undertaken at the commencement of the period being reported on or, in the case of a pro forma balance sheet or net asset statement, at the date reported on.
- 8.44 The pro forma information must be presented in columnar format showing separately the historical unadjusted financial information, the pro forma adjustments and the resulting pro forma financial information in the final column. The sources of the pro forma financial information have to be stated and, if applicable, the financial statements of the acquired businesses or entities must be included.
- 8.44a The pro forma financial information must be prepared in a manner consistent with both the format and accounting policies adopted by the Issuer in its last or next financial statements and must identify:
- 8.44a.1 the basis upon which it is prepared; and
- 8.44a.2 the source of each item of information and adjustment.
- Pro forma figures must be given no greater prominence in the document than audited figures.
- 8.44b Pro forma financial information may only be published in respect of:
- 8.44b.1 the current Financial Year;
- 8.44b.2 the most recently completed Financial Year; and/ or
- 8.44b.3 the most recent interim period for which relevant unadjusted information has been or will be published or is being published in the same document;
- and, in the case of a pro forma balance sheet or net asset statement, as at the date on which such periods end or ended.
- 8.44c The unadjusted information must be derived from the most recent:
- 8.44c.1 audited published Accounts or preliminary statement;
- 8.44c.2 Accountants' Report or comparative table;
- 8.44c.3 previously published pro forma financial information reported on in accordance with Listing Rule 8.44e; or
- 8.44c.4 published profit forecast or estimate.
- 8.44d Pro forma adjustments related to the pro forma financial information must be:
- 8.44d.1 clearly shown and explained;

- 8.44d.2 directly attributable to the transaction concerned and not relating to future events or decisions;
  - 8.44d.3 factually supportable; and
  - 8.44d.4 in respect of a pro forma profit or cash flow statement, clearly identified as to those adjustments which are expected to have a continuing impact on the Issuer and those which are not.
- 8.44e The pro forma financial information must be accompanied by a report prepared by independent accountants or auditors who must report that, in their opinion:
- 8.44e.1 the pro forma financial information has been properly compiled on the basis stated;
  - 8.44e.2 such basis is consistent with the accounting policies of the Issuer; and
  - 8.44e.3 the adjustments are appropriate for the purposes of the pro forma financial information as disclosed pursuant to Listing Rule 8.43.
- 8.44f Where pro forma earnings per Share information is given for a transaction which includes the issue of Securities, the calculation should be based on the weighted average number of Shares outstanding during the period, adjusted as if that issue had taken place at the beginning of the period.

*Preliminary Statement of Annual Results*

- 8.44g If an Issuer publishes a preliminary statement of annual results it shall include:
- 8.44g.1 a condensed balance sheet;
  - 8.44g.2 a condensed income statement;
  - 8.44g.3 a condensed statement of changes in equity;
  - 8.44g.4 a condensed cash flow statement;
  - 8.44g.5 explanatory notes and any significant additional information necessary of the purpose of assessing the results being announced;
  - 8.44g.6 a statement that the annual results have been agreed with the Auditors and if the Auditors' report is likely to be qualified, give details of the nature of the qualification; and
  - 8.44g.7 any decision to pay or make any dividend or other distribution on Equity Securities authorised as Admissible to Listing or to withhold any dividend or interest payment on Securities authorised as Admissible to Listing giving details of:
    - 8.44g.7.1 the exact net amount payable per Share;
    - 8.44g.7.2 the payment date; and
    - 8.44g.7.3 the cut off date when the Register is closed for the purpose of distribution

*Annual Financial Report*

- 8.44i The Annual Financial Report shall include:

- 8.44i.1 the annual financial statements together with the Directors' Report or equivalent report and the auditors' report thereon;<sup>43</sup>
  - 8.44i.2 a statement of responsibility, provided that the requirement to include such a statement shall apply to Annual Financial Report relating to financial periods commencing on or after 1 January 2007;<sup>44</sup>
  - 8.44i.3 a report by the Directors on the compliance by the Issuer with the Code of principles for Good Corporate Governance as required by Listing Rule 8.45x;
  - 8.44i.4 the information prescribed by Listing Rule 8.44x;
  - 8.44i.5 a report by the auditors on the compliance by the Issuer with the Code of principles for Good Corporate Governance; and
- 8.44j An Issuer must ensure that its Annual Financial Report is made available to the public as soon as it has been approved by the Directors. The Annual Financial Report shall be approved and made available to the public by not later than four (4) months after the end of each financial year, and shall remain publicly available for a period of at least five (5) years.<sup>45</sup>

*Annual financial statements*

- 8.44k If an Issuer is required to prepare Consolidated Accounts, the annual financial statements shall comprise:
- 8.44k.1 consolidated accounts prepared according to international accounting standards as adopted by the EU ;and
  - 8.44k.2 annual accounts of the parent company prepared in accordance with the national law of the Member State in which the parent company is registered or incorporated.<sup>46</sup>
- 8.44l If an Issuer is not required to prepare consolidated accounts, the annual financial statements shall comprise accounts prepared in accordance with the national law of the Member State in which the Issuer is registered or incorporated.<sup>47</sup>

*Annual financial statements of guarantors*

- 8.44m The annual financial statements of any guarantor referred to in Listing Rule 8.7.12a shall be drawn up as follows:
- 8.44m.1 where the guarantor is a company registered in Malta, it shall prepare its Annual Financial Statements in accordance with Generally Accepted Accounting Principles and Practice;
  - 8.44m.2 where the guarantor is a Company registered in a non-EU Member or EEA State, it shall prepare its Annual Financial Statements in accordance with Generally Accepted Accounting Principles and Practice or with national accounting standards which are equivalent to

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<sup>43</sup> Article 4(2)(a) & (b) of TD.

<sup>44</sup> Article 4(2)(c) of TD.

<sup>45</sup> Article 4(1) of TD.

<sup>46</sup> Article 4(3) of TD.

<sup>47</sup> Article 4(3) of TD.

these standards. If the national accounting standards are not equivalent to these standards, the financial information must be presented in the form of restated financial statements.

- 8.44n Listing Rules 8.44y and 8.44z shall also apply to the annual financial statements of a guarantor.
- 8.44o The annual financial statements of a guarantor shall be approved and made available to the public within the period prescribed by Listing Rule 8.44j.

*The Directors' Report*

- 8.44p If the Issuer is a company registered in Malta, the Directors' Report shall be drawn up in accordance with the CA and should contain a statement by the Directors that the business is a going concern with supporting assumptions or qualifications as necessary; such statement to be reviewed by the Auditors before publication;
- 8.44q If the Issuer is not a company registered in Malta but Malta is its Home Member State, the Directors' Report shall be drawn up in accordance with Article 46 of Directive 78/660/EEC and if the Issuer is required to prepare consolidated accounts in accordance with Article 36 of Directive 83/349/EEC.<sup>48</sup>
- 8.44r In the case of an Issuer established as a limited liability company and having listed Securities carrying voting rights, the Directors' Report shall indicate the following information:
- 8.44r.1 the structure of its Capital, including securities which are not Admitted to Trading on a Regulated Market in a Member State, where appropriate with an indication of the different Classes of shares and, for each Class of shares, the rights and obligations attaching to it and the percentage of total share capital that it represents;
  - 8.44r.2 any restrictions on the transfer of securities, such as limitations on the holding of securities or the need to obtain the approval of the Company or other holders of securities;
  - 8.44r.3 any direct and indirect shareholdings, including indirect shareholdings through pyramid structures and cross-shareholdings, in excess of 5% of the share Capital;
  - 8.44r.4 the holders of any securities with special control rights and a description of those rights;
  - 8.44r.5 the system of control of any employee share scheme where the control rights are not exercised directly by the employees;
  - 8.44r.6 any restriction on voting rights, such as limitations of the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby, with the company's cooperation, the financial rights attaching to securities are separated from the holding of securities;
  - 8.44r.7 any agreements between shareholders which are known to the Company and may result in restrictions on the transfer of securities and/or voting rights;
  - 8.44r.8 the rules governing the appointment and replacement of Directors and the amendment of the Memorandum and Articles of Association;

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<sup>48</sup> Article 4(5) of TD.

- 8.44r.9 the powers of the Directors, and in particular the power to issue or buy back shares;
- 8.44r.10 any significant agreement to which the Company is a party and which take effect, alter or terminate upon a change of control of the Company following a takeover bid, and the effects thereof, except where their nature is such that their disclosure would be seriously prejudicial to the Company and this without prejudice to duty of the Company to disclose such information on the basis of other legal requirements;
- 8.44r.11 any agreements between the Company and its Directors or employees providing for compensation if they resign or are made redundant without valid reason or if their employment ceases because of a takeover bid.<sup>49</sup>
- 8.44s The Board shall present an explanatory report to the Annual General Meeting of shareholders on the matters referred to above.<sup>50</sup>
- 8.44t The provisions of Listing Rules 8.44r and 8.44s shall apply to accounting periods commencing on or after 20 May 2006.
- Statement of Responsibility*
- 8.44u The statement of responsibility referred to in Listing Rule 8.44i.2 shall be made by the Directors of the Issuer, or in the case where the Issuer is not a Company, by the persons responsible within the Issuer.<sup>51</sup>
- 8.44v The statement of responsibility must set out that, to the best of the knowledge of the person or persons making the statement:
- 8.44v.1 the financial statements, prepared in accordance with the applicable accounting standards, give a true and fair view of the assets, liabilities, financial position and profit or loss of the Issuer and the undertakings included in the consolidation taken as a whole; and
- 8.44v.2 the Directors' report includes a fair review of the performance of the business and the position of the Issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.<sup>52</sup>
- 8.44w The name and function of each of the persons responsible for making the statement of responsibility must be clearly indicated in the said statement.<sup>53</sup>
- 8.44x The Annual Financial Report shall also contain the following:-
- 8.44x.1 the nature and details of any material contract together with the names of the parties to the contract, irrespective of whether the transaction is a related party transaction or not, subsisting during the period under review, to which the Issuer, or one of its Subsidiary Undertakings, is a party and in which a Director of the Issuer is or was directly or indirectly interested; and
- 8.44x.2 the name of the company secretary of the Issuer, the registered address and any other relevant contact details of the Issuer;

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<sup>49</sup> Article 10(1) of Directive 2004/25/EC (takeover bids).

<sup>50</sup> Article 10(3) of Directive 2004/25/EC.

<sup>51</sup> Article 4(2)(c) & 7 of TD.

<sup>52</sup> Article 4(2)(c) of TD.

<sup>53</sup> Article 4(2)(c) of TD.



*Audit report on the financial statements*

- 8.44y If the Issuer is a company registered in Malta, the financial statements shall be audited in accordance with the CA.
- 8.44z If the Issuer is not a company registered in Malta but Malta is its Home Member State, the financial statements shall be audited in accordance with Articles 51 and 51a of Directive 78/660/EEC and if the Issuer is required to prepare consolidated accounts in accordance with Article 37 of Directive 83/349/EEC.<sup>54</sup>
- 8.45 The audit report shall be signed by the person or persons responsible for auditing the financial statements and shall be published in full together with the Annual Financial Report.<sup>55</sup>

*Half-Yearly Report*

- 8.45a The Issuer of shares or debt securities shall make public a half-yearly financial report covering the first six months of each financial year.<sup>56</sup>
- 8.45b The half-yearly financial report shall contain at least the following items:
- 8.45b.1 the condensed set of financial statements;
  - 8.45b.2 an interim directors' report, provided that the requirements of an interim directors' report in terms of Listing Rules 8.45h to 8.45k and a statement in terms of Listing Rule 8.45b.3, shall apply to half-yearly financial reports relating to financial periods commencing on or after 1 January 2007;
  - 8.45b.3 statements made by the persons responsible within the Issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the condensed set of financial statements which has been prepared in accordance with the applicable set of accounting standards gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer, or the undertakings included in the consolidation as a whole and that the interim directors report includes a fair review of the information required in terms of Listing Rules 8.45h to 8.45k;
  - 8.45b.4 when the half-yearly financial report has been audited or reviewed, the Auditors' report shall be reproduced in full, together with any reasoned qualifications which may have been made; and
  - 8.45b.5 if the half-yearly financial report has not been audited or reviewed, the Issuer shall make a statement to that effect in its report.<sup>57</sup>

*Condensed set of financial statements*

- 8.45c Where the Issuer is required to prepare Consolidated Accounts in accordance with Generally Accepted Accounting Principles, the condensed set of financial statements referred to in Listing Rule 8.45b.1 shall be prepared in accordance with

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<sup>54</sup> Article 4(4) of TD.

<sup>55</sup> Article 4(4) of TD.

<sup>56</sup> Article 5(1) of TD.

<sup>57</sup> Article 5(2) & (5) of TD.

the international accounting standard applicable to interim financial reporting as adopted by the EU.<sup>58</sup>

8.45d Where the Issuer is not required to prepare Consolidated Accounts, the condensed set of financial statements shall at least contain:

- 8.45d.1 a condensed balance sheet;
- 8.45d.2 a condensed profit and loss account;
- 8.45d.3 explanatory notes on these accounts.
- 8.45d.4 a condensed statement of cash flows; and
- 8.45d.5 a condensed statement of changes in equity

Provided that when preparing the condensed balance sheet and the condensed profit and loss account, the Issuer shall follow the same principles for recognition and measurement as when preparing annual audited financial statements.<sup>59</sup>

8.45e The condensed balance sheet and the condensed profit and loss account referred to in Listing Rules 8.45d.1 and 8.45d.2 shall show each of the headings and subtotals included in the most recent annual financial statements of the Issuer. Additional line items shall be included if, as a result of their omission, the half-yearly financial statement would give a misleading view of the assets, liabilities, financial position and profit or loss of the Issuer.<sup>60</sup>

8.45f The condensed set of financial statements prepared in terms of Listing Rule 8.45d shall also contain the following comparative information:

- 8.45f.1 a balance sheet as at the end of the first six months of the current financial year and a comparative balance sheet as at the end of the immediate preceding year;
- 8.45f.2 a profit and loss account for the first six months of the current financial year and with effect from 1<sup>st</sup> March 2009, comparative information for the comparable period for the preceding financial year.<sup>61</sup>

8.45g The explanatory notes referred to in Listing Rule 8.45d.3 shall include the following:

- 8.45g.1 sufficient information to ensure the comparability of the half-yearly financial statement with the annual financial statement;
- 8.45g.2 sufficient information and explanations to ensure a user's proper understanding of any material changes in amounts and of any developments in the half-year period concerned, which are reflected in the balance sheet and the profit and loss account.<sup>62</sup>

#### *Interim Directors' Report*

8.45h The Interim Directors' Report shall include at least an indication of important events that have occurred during the first six months of the financial year, and their impact on the condensed set of financial statements, together with a

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<sup>58</sup> Article 5(3) of TD.

<sup>59</sup> Article 5(3) of TD.

<sup>60</sup> Article 3(2) of Directive 2007/14/EC.

<sup>61</sup> Article 3(2) of Directive 2007/14/EC.

<sup>62</sup> Article 3(3) of Directive 2007/14/EC.

description of the principal risks and uncertainties for the remaining six months of the financial year.<sup>63</sup>

- 8.45i In the Interim Directors' Report, Issuers of shares shall at least disclose as major related parties' transactions:
- 8.45i.1 related parties' transactions that have taken place in the first six months of the current financial year and that have materially affected the financial position or performance of the Issuer during that period;
  - 8.45i.2 any changes in the related parties' transactions described in the last Annual Financial Report that could have a material effect on the financial position or performance of the Issuer in the first six months of the current financial year.<sup>64</sup>
- 8.45j Where the Issuer of shares is not required to prepare Consolidated Accounts, it shall disclose, as a minimum, the following information with respect to material related party transactions which have not been concluded under normal market conditions:
- 8.45j.1 the amount of such transactions;
  - 8.45j.2 the nature of the related party relationship; and
  - 8.45j.3 other information about the transactions necessary for an understanding of the financial position of the Issuer.<sup>65</sup>
- 8.45k In relation to the transactions referred to in Listing Rule 8.45j information about individual related party transaction may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the Issuer.<sup>66</sup>
- 8.45l The half-yearly financial report shall be made available to the public as soon as it has been approved by the Directors. Such report shall be approved and made available to the public as soon as possible after the end of the relevant period, but not later than two months thereafter. The Issuer shall ensure that the half-yearly financial report remains available to the public for at least five years.<sup>67</sup>

*Interim Directors statements*

- 8.45m Without prejudice to the provisions of the Prevention of Financial Markets Abuse Act, an Issuer whose shares are Admitted to Trading on a Regulated Market shall make public a statement by its Directors during the first six-month period of the Financial Year and another statement by its Directors during the second six-month period of the financial year:
- Provided that the requirement to make public the interim directors' statement shall apply to those statements relating to financial periods commencing on or after 1 January 2007.<sup>68</sup>
- 8.45n Such statement shall be made in a period between ten weeks after the beginning and six weeks before the end of the relevant six-month period.<sup>69</sup>

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<sup>63</sup> Article 5(4) of TD.

<sup>64</sup> Article 4(1) of Directive 2007/14/EC.

<sup>65</sup> Article 4(2) of Directive 2007/14/EC.

<sup>66</sup> Article 43(1)(7b) of Directive 78/660/EEC.

<sup>67</sup> Article 5(1) of TD.

<sup>68</sup> Article 6(1) of TD.

<sup>69</sup> Article 6(1) of TD.

- 8.45o The interim Directors' statement shall contain information covering the period between the beginning of the relevant six-month period and the date of publication of the statement and shall provide:
- 8.45o.1 an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the Issuer and its Controlled Undertakings, and
- 8.45o.2 a general description of the financial position and performance of the Issuer and its Controlled Undertakings during the relevant period.<sup>70</sup>

*Exemptions*

- 8.45p The obligation to draw up and make available to the public the annual financial report, the half-yearly financial report and the interim Directors' statement shall not apply to:
- 8.45p.1 a State, a regional or local authority of a State, a public international body of which at least one Member State is a member, the European Central Bank and Central Banks of EU or Member States whether or not they issue shares or other securities; and
- 8.45p.2 an Issuer exclusively of Debt Securities admitted to trading on a Regulated Market, the denomination per unit of which is at least €50, 000 or, in the case of Debt Securities denominated in a currency other than Lm, the value of such denomination per unit is, at the date of the issuer, equivalent to at least €50, 000.<sup>71</sup>
- 8.45q The obligation to draw up and make available to the public the half-yearly financial report shall not apply to;
- 8.45q.1 Credit Institutions whose shares are not Admitted to Trading on a Regulated Market and which have, in a continuous or repeated manner, only issued Debt Securities provided that the total nominal amount of all such Debt Securities remains below €100, 000,000 and that they have not published a Prospectus in terms of the Prospectus Directive;<sup>72</sup>
- 8.45q.2 Issuers already existing at the date of the entry into force of the Prospectus Directive which exclusively issue Debt Securities unconditionally and irrevocably guaranteed by the Home Member State or by one of its regional or local authorities, on a Regulated Market.<sup>73</sup>

*Change of Accounting Reference Date*

- 8.45r If an Issuer which has Securities authorised as Admissible to Listing changes its accounting reference date it must notify the Listing Authority without delay of the new accounting reference date. If the effect of the change in the accounting reference date is to extend the accounting period to more than fourteen (14) months, the Issuer must prepare and publish a second interim report in accordance with the provisions of 8.45a to 8.45k in respect of either the period up to the old

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<sup>70</sup> Article 6(1) of TD.

<sup>71</sup> Article 8(1) of TD.

<sup>72</sup> Article 8(2) of TD.

<sup>73</sup> Article 8(3) of TD.

accounting reference date or the period up to a date not more than six (6) months prior to the new accounting reference date.

*Corporate Governance*

- 8.45s For the purposes of this section:  
“national law” means the law of the country where the registered office of the Issuer is established.  
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 8.45x.
- 8.45t This section is not applicable to Collective Investment Schemes, other than the closed-ended type.<sup>74</sup>
- 8.45u An Issuer registered in Malta and having securities Admitted to Trading on a Regulated Market operating in Malta should endeavour to adopt the Code of Principles of Good Corporate Governance contained 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.
- 8.45v 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.
- 8.45w 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.
- 8.45x Issuers shall include in a specific section of their Annual Financial Report a corporate governance statement which shall contain at least the following information<sup>75</sup>:
- 8.45x.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
  - 8.45x.2 all relevant information about the corporate governance practices applied beyond the requirements under national law;
  - 8.45x.3 to the extent to which an Issuer departs from a corporate governance code referred to in Listing Rule 8.45x.1, an explanation by the Issuer as

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<sup>74</sup> MSE 6.05.07(i).

<sup>75</sup> Article 1(7) of Directive 2006/46/EC.

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 8.45x.1, it shall explain its reasons for doing so;

- 8.45x.4 a description of the main features of the Issuer's internal control and risk management systems in relation to the financial reporting process;
  - 8.45x.5 the information referred to in Listing Rules 8.44r.3, 8.44r.4, 8.44r.6, 8.44r.8 and 8.44r.9, where the Issuer is subject to Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;
  - 8.45x.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
  - 8.45x.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.
- 8.45y The Issuer's Auditors are to include a report in the Annual Financial Report to shareholders on the corporate governance statement.
- 8.45z An Issuer may elect to set out the information required by Listing Rule 8.45x 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.<sup>76</sup> In the event of a separate report, the corporate governance statement may contain a reference to the annual report where the information required in Listing Rules 8.45x.4 and 8.45x.5 is made available.
- 8.46 Where the corporate governance statement is contained in a separate report, such statement shall include the Auditors' report referred to in Listing Rule 8.45y 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 8.45x.4 and 8.45x.5 with the Annual Financial Report for the same financial year. For the remaining information that is required to be disclosed under Listing Rule 8.45x, the Auditors shall check that the corporate governance statement has been produced.<sup>77</sup>
- 8.47 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 8.45x.1 to 8.45x.3, 8.45x.6 and 8.45x.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.<sup>78</sup>

*Disclosure of service contracts entered into between the Issuer and its Directors*

- 8.48 Copies of service contracts entered into by Directors with the Issuer shall be made available for inspection by any person entitled to receive notice of general meetings.<sup>79</sup>

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<sup>76</sup> Article 1(7) of Directive 2006/46/EC.

<sup>77</sup> Article 1(7) of Directive 2006/46/EC.

<sup>78</sup> Article 1(7) of Directive 2006/46/EC

<sup>79</sup> UKLA.

- 8.40.1 at the place of the annual general meeting for at least fifteen (15) minutes prior to and during the meeting; and
  - 8.40.2 at the registered or head office of the Issuer.
- 8.49 Directors' service contracts available for inspection must disclose or have attached to them the following information;
- 8.49.1 the name of the contracting parties;
  - 8.49.2 the date of the contract, the unexpired term and details of any notice periods;
  - 8.49.3 full particulars of the Directors' emoluments, including salary and all other benefits;
  - 8.49.4 any commission or profit sharing arrangements;
  - 8.49.5 any provision for compensation payable upon early termination of the contract; and
  - 8.49.6 details of any other arrangements which are necessary to enable investors to estimate the possible liability of the Issuer upon early termination of the contract.

*Transactions by Directors and Officers of Issuers*

- 8.50 Subject to Listing Rule 8.46 below, an Issuer must require:
- 8.50.1 its Directors or Directors of its Subsidiary or Parent Undertaking; and
  - 8.50.2 any of its Officers or employees or an Officer or employee of its Subsidiary or Parent Undertaking who, because of his office or employment in the Issuer or Subsidiary Undertaking or Parent Undertaking, is likely to be in possession of unpublished price-sensitive information in relation to the Issuer (hereinafter referred to as "Restricted Persons")<sup>80</sup>
- to comply with an internal code of dealing which must be no less exacting than those of Listing Rules 8.53 to 8.60 below and must take all proper and reasonable steps to ensure such compliance.
- 8.51 Listing Rule 8.45 does not apply if such dealings are entered into by such persons:
- 8.51.1 in the ordinary course of business by a Securities dealing business; or<sup>81</sup>
  - 8.51.2 on behalf of third parties by the Issuer or any other member of its Group.
- 8.52 Issuers may impose more rigorous restrictions upon dealings by Restricted Persons if they so wish.
- 8.53 A Restricted Person shall not deal directly or indirectly in any of the Securities of the Issuer:<sup>82</sup>
- 8.53.1 at any time when he is in possession of unpublished price-sensitive information in relation to those Securities;

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<sup>80</sup> MSE 6.05.08(vii)

<sup>81</sup> UK LR 9.2.7

<sup>82</sup> MSE 6.05.08(i).

- 8.53.2 prior to the Announcement of matters of an exceptional nature involving unpublished price-sensitive information in relation to the market price of the Securities of the Issuer;
- 8.53.3 on considerations of a short-term nature;
- 8.53.4 without giving advance written notice to the Chairman, or one or more other Directors designated for this purpose. In his own case, the Chairman, or such other designated Director, shall not deal without giving advance notice to the board of Directors of such Company or any other designated Director as appropriate;
- 8.53.5 during such other period as may be established by the Listing Authority from time to time.
- 8.54 The same restrictions apply to dealings by a Restricted Person in the Securities of any other Issuer when, by virtue of his position in the Issuer, he is in possession of unpublished price-sensitive information in relation to those Securities.<sup>83</sup>
- 8.55 During the period of two (2) months immediately preceding the preliminary notification of the Issuer's annual results and of the notification of the half-yearly results or during a period of one (1) month if the Issuer reports the results on a quarterly basis (except in the final quarter of a Financial Year when the relevant period shall be two (2) months), a Restricted Person shall not purchase any Securities of the Issuer nor shall he sell any such Securities unless the circumstances are exceptional, for example where a pressing financial commitment has to be met and this with the prior written approval of the Listing Authority.<sup>84</sup>
- 8.56 If the approval of the Listing Authority to deal in exceptional circumstances has been granted, the Issuer must notify the Listing Authority of such deals immediately after these have been concluded.
- 8.57 The restrictions on dealings contained in this Chapter shall be regarded as equally applicable to any dealings by any Connected Person or any investment Manager acting on behalf of a Restricted Person or on behalf of any Connected Person where either he or any Connected Person has funds under management with that investment Manager, whether on a discretionary basis or not. It is the duty of the Restricted Person (as far as is consistent with his duties of confidentiality to his Company) to seek to prohibit any such dealing by any Connected Person at a time when he himself is not free to deal.<sup>85</sup>
- 8.58 Where a Restricted Person is acting as a trustee, dealing in the Securities of the Issuer by that trust is permitted during the period referred to in Listing Rule 8.55 where:
- 8.58.1 the Restricted Person is not a beneficiary of the trust; and
- 8.58.2 the decision to deal is taken by the other trustees or by investment managers on behalf of the trustees independently of the Restricted Person.
- 8.59 The other trustees or investment managers acting on behalf of the trustees will be assumed to have acted independently of the Restricted Person for the purpose of Listing Rule 8.58.2 where they:

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<sup>83</sup> MSE 6.05.08(ii).

<sup>84</sup> MSE 6.05.08(iii).

<sup>85</sup> MSE 6.05.08(iv).



- 8.59.1 have taken the decision to deal without consultation with, or other involvement of, the Restricted Person; or
  - 8.59.2 if they have delegated the decision making to a committee of which the Restricted Person is not a member.
- 8.60 No dealings in any Securities may be effected by or on behalf of an Issuer or any other member of its Group at a time when, under the provisions of this Chapter, a Director of the Issuer would be prohibited from dealing in its Securities, unless such dealings are entered into:
- 8.60.1 in the ordinary course of business by a Securities dealing business; or
  - 8.60.2 on behalf of third parties by the Issuer or any other member of its Group.

*Audit Committee*

- 8.61 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.<sup>86</sup>
- 8.62 It shall be the responsibility of the Board to determine who of the Directors satisfy the competence and independence criteria set out in Listing Rule 8.61 and such Directors shall be identified in the corporate governance statement that is required to be made under Listing Rule 8.45x. In the said corporate governance statement the Board shall also include the reasons why it considers the chosen Directors to be independent and competent in accounting and/or auditing.
- 8.63 For the purposes of this section a Director shall be considered independent only if he is free of any business, family, or other relationship with the Issuer, its controlling shareholder or the management of either, that creates a conflict of interest such as to impair his judgement. The Board of the Issuer shall take into account the following situations when determining the independence or otherwise of a director:
- 8.63.1 whether the director has been an executive officer or employee of the Issuer or a subsidiary or parent of the Issuer, as the case may be, within the last three years;
  - 8.63.2 whether the director has, or has had within the last three years, a significant business relationship with the Issuer either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the Issuer;
  - 8.63.3 whether the director has received or receives significant additional remuneration from the Issuer or any member of the Group of which the Issuer forms part in addition to a director's fee, such as participation in the Issuer's share option or a performance-related pay scheme, or membership of the Issuer's pension scheme, except where the benefits are fixed;
  - 8.63.4 whether he has close family ties with any of the Issuer's executive Directors or senior employees;

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<sup>86</sup> Article 41(1) of Directive 2006/43/EC.

- 8.63.5 whether he has served on the Board of the Issuer for more than twelve consecutive years; or
- 8.63.6 whether he is or has been within the last three years an engagement partner or a member of the audit team of the present or former external auditor of the Issuer or any member of the group of which the Issuer forms part.
- 8.64 For the purposes of Listing Rule 8.63.2 “business relationship” includes the situation of a significant supplier of goods or services (including financial, legal, advisory or consulting services), of a significant customer, and of organisations that receive significant contributions from the Issuer or its group.
- 8.65 In addition to anything contained in the Memorandum or Articles of Association of the Issuer relating to the nomination and appointment of Directors, when the Board of the Issuer is receiving nominations for Directors and none of the persons nominated satisfy the independence and competence criteria referred to in Listing Rule 8.61, the Board may nominate a person that satisfies these requirements.
- 8.66 If none of the persons elected as Directors of the Issuer satisfy the independence and competence criteria prescribed by Listing Rule 8.61, the Board shall have the right to appoint an additional Director that satisfies the said criteria. This right may only be exercised as long as there is a vacancy in the Board and provided the maximum number of Directors stipulated by the Memorandum and Articles of Association of the Issuer is not exceeded.
- 8.67 The obligation to establish an audit committee shall not apply to:<sup>87</sup>
- 8.67.1 an Issuer of Debt Securities which is a Subsidiary Undertaking provided that an audit committee which is compliant with these Listing Rules and which the Listing Authority considers to be satisfactory is set up at the ultimate Parent Undertaking;
- 8.67.2 an Issuer which is a UCITS in terms of article 1(2) of Directive 85/611/EEC;
- 8.67.3 an Issuer the sole object of which is the collective investment of capital provided by the public, which operates on the principle of risk spreading and which does not seek to take legal or management control over any of the issuers of its underlying investments, provided that such collective investment undertaking is authorised and subject to supervision by competent authorities and it has a depositary exercising functions equivalent to those under Directive 85/611/EEC;
- 8.67.4 an Issuer the sole business of which is to issue asset backed securities, provided that the Issuer explains to the public, by means of a Company Announcement, the reasons for which it considers it inappropriate to have an audit committee;
- 8.68 For the purposes of Listing Rule 8.67.4, “asset backed securities” means securities

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<sup>87</sup> Article 41(6) of Directive 2006/43/EC.

which:<sup>88</sup>

- 8.68.1 represent an interest in assets, including any rights intended to assure servicing, or the receipt or timeliness of receipts by holders of assets, of amounts payable thereunder; or
  - 8.68.2 are secured by assets and the terms of which provide for payments which relate to payments or reasonable projections of payments calculated by reference to identified or identifiable assets.
- 8.69 In the case of Issuers whose securities are already admitted to listing on a Regulated Market in Malta, the exemptions referred to in Listing Rule 8.67 shall not be automatically operative. Such Issuers may, within two months from the coming into force of this Listing Rule, apply in writing to the Listing Authority setting out the reasons why it qualifies for one or more of the said exemptions. The Listing Authority may accept or dismiss an application submitted to it in terms of this Listing Rule and, when accepting such application, the Listing Authority may subject it to such conditions as it may deem appropriate.
- 8.70 The primary purpose of the audit committee is to protect the interests of the company's shareholders and assist the Directors in conducting their role effectively so that the company's decision-making capability and the accuracy of its reporting and financial results are maintained at a high level at all times.
- 8.71 Without prejudice to Listing Rule 8.61, the Issuer shall determine the terms of reference, life span, composition, role and function of such committee and shall establish, maintain and develop appropriate reporting procedures, provided that the main role and responsibilities of the audit committee shall include:
- 8.71.1 the monitoring of the financial reporting process;<sup>89</sup>
  - 8.71.2 the monitoring of the effectiveness of the company's internal control, internal audit where applicable, and risk management systems;<sup>90</sup>
  - 8.71.3 the monitoring of the audit of the annual and consolidated accounts;<sup>91</sup>
  - 8.71.4 the maintenance of communication on such matters between the Board, management, the independent Auditors and the internal Auditors;
  - 8.71.5 the making of recommendations to the Board in relation to the appointment of the external Auditor and the approval of the remuneration and terms of engagement of the external Auditor following appointment by the shareholders in general meeting;
  - 8.71.6 the monitoring and reviewing of the external Auditor's independence, and in particular the provision of additional services to the Issuer.<sup>92</sup>
  - 8.71.7 the development and implementation of a policy on the engagement of the external Auditor to supply non-audit services.

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<sup>88</sup> Definition of asset-backed securities in Regulation 809/2004.

<sup>89</sup> Article 41(2)(a) of Directive 2006/43/EC.

<sup>90</sup> Article 41(2)(b) of Directive 2006/43/EC

<sup>91</sup> Article 41(2) (c) of Directive 2006/43/EC

<sup>92</sup> Article 41(2)(d) of Directive 2006/43/EC

- 8.72 The Issuer shall ensure that the Audit Committee establishes internal procedures and shall monitor these on a regular basis.
- 8.73 The external Auditor shall report to the audit committee on key matters arising from the audit, and in particular on material weaknesses in internal control in relation to the financial reporting process.<sup>93</sup>
- 8.74 The audit committee shall establish and maintain access between the internal and external Auditors of the Company and shall ensure that this is open and constructive.
- 8.75 The audit committee shall meet at least four times a year. The head of Internal Audit should attend the meetings of this Committee.
- 8.76 When the audit committee's monitoring and review activities reveal cause for concern or scope for improvement, it shall make recommendations to the Board on action needed to address the issue or make improvements. The Board shall satisfy itself that any issues raised by the audit committee and the external Auditor and communicated to the Board have been adequately addressed.
- 8.77 The Issuer shall inform the Listing Authority how the audit committee is constituted, identifying clearly that independent member of the committee who is competent in accounting and/or auditing as required by Listing Rule 8.56 and providing the reasons why such member is deemed to satisfy the independence and competence criteria set out in the said Listing Rule. The Issuer shall also provide the Listing Authority with the terms of reference of the audit committee and shall inform the Listing Authority, without delay, of any changes to the above.
- 8.78 The terms of reference of the audit committee should provide sufficient guarantees and safeguards for the protection of the rights of shareholders and particularly with respect to related party transactions. They should also prohibit any member of the audit committee who has a direct or indirect interest in any contract, transaction or arrangement that is brought before the committee from being present at, and from voting, at any meeting of the committee during which such contract, transaction or arrangement is being discussed.

### *Transactions with Related Parties*

#### *General*

- 8.79 Listing Rules 8.80 to 8.86 set out safeguards that apply to transactions and arrangements between an Issuer and a Related Party, which transactions must be entered into at arm's length and on a normal, commercial basis. Such safeguards are intended to prevent a Related Party from taking advantage of its position and also to prevent any perception that it may have done so.
- 8.80 In considering each possible related party relationship, attention should be directed to the substance of the relationship and not merely the legal form.
- 8.81 The following are not necessarily related parties:
- 8.81.1 two entities simply because they have a Director or other member of key management personnel in common;
  - 8.81.2 two venturers simply because they share joint control over a joint venture;

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<sup>93</sup> Article 41(4) of Directive 2006/43/EC.

- 8.81.3 providers of finance, trade unions, public utilities, and government departments and agencies; simply by virtue of their normal dealings with an entity; and
- 8.81.4 a customer, supplier, franchisor, distributor or general agent with whom an entity transacts a significant volume of business, merely by virtue of the resulting economic dependence.

*The role of the audit committee with respect to related party transactions*

- 8.82 The audit committee of the Issuer or any other committee established by the Issuer that satisfies the composition requirements prescribed by Listing Rule 8.61 shall be responsible for vetting and approving related party transactions. Any reference in this part to the audit committee shall be deemed to include a reference to such other committee that the Issuer may set up in terms of this Listing Rule.
- 8.83 Where the Issuer sets up a committee, other than the audit committee, to carry out the functions referred to in Listing Rule 8.71, the said committee shall provide the Listing Authority with its terms of reference, which terms of reference have to comply with the requirements of Listing Rule 8.78..
- 8.84 The audit committee shall give due consideration to:
  - 8.84.1 the materiality of the transaction in the context of the Issuer's business;
  - 8.84.2 whether the transaction is in the ordinary course of the Issuer's business or the business of any its Subsidiary Undertakings as applicable; and
  - 8.84.3 whether the transaction gives rise to preferential treatment to the Related Party
- 8.85 Should the audit committee, after considering the proposed related party transaction as laid down in Listing Rule 8.84, deem that the proposed transaction will have a material effect on the Issuer's business, the Issuer shall make a Company Announcement which shall contain:
  - 8.85.1 the nature and details of the transaction;
  - 8.85.2 the name of the Related Party concerned; and
  - 8.85.3 details of the nature and extent of the interest of the Related Party in the transaction.
- 8.86 Where the proposed related party transaction is not approved by the audit committee but the Issuer still wants to proceed with the transaction, the Issuer shall:
  - 8.86.1 make a Company Announcement which shall contain:
    - 8.86.1.1 the nature and details of the transaction;
    - 8.86.1.2 the name of the Related Party concerned; and
    - 8.86.1.3 details of the nature and extent of the interest of the Related Party in the transaction;
  - 8.86.2 send a Circular to its shareholders containing the information required by Listing Rule 11.16; and

- 8.86.3 obtain the approval of its shareholders either prior to the transaction being entered into or, if it is expressed to be conditional on such approval, prior to completion of the transaction and, where applicable, ensure that the Related Party itself abstains from voting on the relevant resolution. The board of directors of the Issuer shall disclose the fact that the audit committee has not approved the related party transaction in question at the general meeting convened for the purpose of this Listing Rule.

### *Exemptions*

- 8.87 The rules dealing with related party transactions shall not apply in the following cases:-
- 8.87.1 the transaction is an issue of new Securities either:
- 8.87.1.1 for cash by the Issuer (or any of its Subsidiary Undertakings) pursuant to an opportunity which (so far as is practicable) is made available to all holders of the Issuer's Securities (or to all holders of a relevant Class of its Securities) on the same terms; or
- 8.87.3.2 made pursuant to the exercise of conversion or subscription rights attaching to a Class of Securities Admissible to Listing or previously approved by the Issuer's shareholders in general meeting;
- 8.87.2 the transaction:
- 8.87.2.1 involves the receipt of any asset (including cash or Securities of the Issuer or any of its Subsidiary Undertakings) by a Director of the Issuer, its Parent Undertaking or any of its Subsidiary Undertakings; or
- 8.87.2.2 is a grant of an option or other right to a Director of the Issuer, its Parent Undertaking, or any of its Subsidiary Undertakings to acquire (whether or not for consideration) any asset (including cash or new or existing Securities of the Issuer or any of its Subsidiary Undertakings);
- in accordance with the terms of either an employee share scheme or a long-term incentive scheme;<sup>94</sup>
- 8.87.3 the transaction is a grant of credit (including the lending of money or the guaranteeing of a loan):
- 8.87.3.1 to the Related Party upon normal commercial terms;
- 8.87.3.2 to a Director for an amount and on terms no more favourable than those offered to employees of the Group generally; or
- 8.87.3.3 by the Related Party upon normal commercial terms and on an unsecured basis.<sup>95</sup>
- 8.87.4 the transaction is the grant of an indemnity to a Director of the Issuer (or any of its Subsidiary Undertakings) to the extent not prohibited by Article 148 of the CA, or the maintenance of a contract of insurance to

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<sup>94</sup> Annex 1R to Chapter 11 of UK Listing Rules.

<sup>95</sup> Annex 1R to Chapter 11 of UK Listing Rules

- the extent contemplated by that article (whether for a Director of the Issuer or for a Director of any of its Subsidiary Undertakings);
- 8.87.5 the transaction is an underwriting by the Related Party of all or part of an issue of Securities by the Issuer (or any of its Subsidiary Undertakings) and the consideration to be paid by the Issuer (or any of its Subsidiary Undertakings) in respect of such underwriting is no more than the usual commercial underwriting consideration and is the same as that to be paid to the other underwriters (if any);
- 8.87.6 the terms and circumstances of the investment or provision of finance by the Issuer, or any of its Subsidiary Undertakings are, in the opinion of an independent adviser acceptable to the Listing Authority, no less favourable than those applicable to the investment or provision of finance by the Related Party;
- 8.87.7 where the aggregate consideration or value of the related party transaction does not exceed €50,000 in any twelve (12) month period.

*Reporting requirement*

- 8.87a The Issuer shall disclose all related party transactions *ex post facto* in the Annual Financial Report.

*Memorandum and Articles of Association*

- 8.88 The Articles of Association of all Issuers seeking authorisation for Admissibility to listing must conform with the provisions set out in Appendix 8.3 and obtain the prior authorisation by the Listing Authority. Only in very exceptional circumstances will the Listing Authority grant exemption from compliance with any of the provisions of Appendix 8.3
- 8.89 An Issuer shall not amend its Memorandum and Articles of Association unless prior written authorisation has been sought and obtained from the Listing Authority.
- 8.90 Intentionally left blank.
- 8.91 If authorisation for the amendment to the Memorandum and Articles of Association is granted by the Listing Authority, the Issuer must send a Circular to its shareholders containing the information prescribed by Listing Rule 11.17.

*Acquisitions and Realisations*

- 8.91a In this section (except where specifically provided to the contrary) a reference to a transaction entered into by an Issuer:
- 8.91a.1 includes all agreements (including amendments to agreements) entered into by the Issuer or its Subsidiary Undertakings;
- 8.91a.2 excludes a transaction in the ordinary course of business;
- 8.91a.3 excludes any transaction between the Issuer and its wholly-owned Subsidiary Undertakings or between its wholly-owned Subsidiary Undertakings.

*Classification of acquisitions and realisations*

- 8.92 Acquisitions and realisations shall be classified as follows:-
- 8.92.1 Class 1 transaction: where any of the tests mentioned in Listing Rule 8.93 amount to five percent (5%) but less than thirty-five percent (35%); or
  - 8.92.2 Class 2 transaction: where any of the tests mentioned in Listing Rule 8.93 amount to thirty-five percent (35%) or more.

*Class tests*

- 8.93 In order to classify acquisitions and realisations the following class tests will be used:<sup>96</sup>
- 8.93.1 the gross assets test;
  - 8.93.2 the profits test; and
  - 8.93.3 the consideration test.

*The gross assets test*

- 8.94 The gross assets test shall be calculated by dividing the gross assets the subject of the transaction by the gross assets of the Issuer. For the purposes of this Listing Rule, “the gross assets of the Issuer” means the total non-current assets, plus the total current assets, of the Issuer.
- 8.95 In the case of:
- 8.95.1 an acquisition of an interest in an undertaking which will result in the consolidation of the assets of that undertaking in the accounts of the Issuer; or
  - 8.95.2 a disposal of an interest in an undertaking which will result in the assets of that undertaking no longer being consolidated in the accounts of the Issuer;
- the “gross assets the subject of the transaction” means the value of 100% of that undertaking’s assets irrespective of what interest is acquired or disposed of.
- 8.96 For an acquisition or disposal of an interest in an undertaking which does not fall within Listing Rule 8.95, the “gross assets the subject of the transaction” means:

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<sup>96</sup> MSE 6.06.01



- 8.96.1 for an acquisition, the consideration together with liabilities assumed (if any); and
  - 8.96.2 for a disposal, the assets attributed to that interest in the Issuer's accounts.
- 8.97 If assets, other than an interest in an undertaking, are acquired, "the assets the subject of the transaction" means the consideration or, if greater, the book value of those assets as they will be included in the Issuer's balance sheet.
- 8.98 In the case of a disposal of assets other than an interest in an undertaking, "the assets the subject of the transaction" means the book value of the assets in the Issuer's balance sheet.

*The profits test*

- 8.99 The profits test is calculated by dividing the profits attributable to the assets the subject of the transaction by the profits of the Issuer. For the purposes of this Listing Rule "profits" means profits after deducting all charges except taxation and, in the case of an acquisition or disposal of an interest in an undertaking referred to in Listing Rule 8.95, 100% of the profits of the undertaking (irrespective of what interest is acquired or disposed of).

*The consideration test*

- 8.100 The consideration test is calculated by taking the consideration for the transaction as a percentage of the aggregate Market Value of all the ordinary Shares of the Issuer. The figure used to determine market capitalisation is the aggregate Market Value of all the ordinary Shares of the Issuer at the close of business on the last day before prior to the date when the transaction has been agreed to.
- 8.101 For the purposes of Listing Rule 8.100:
- 8.101.1 the consideration is the amount paid to the contracting party;
  - 8.101.2 if all or part of the consideration is in the form of Securities to be traded on a market, the consideration attributable to those Securities is the aggregate Market Value of those Securities; and
  - 8.101.3 if deferred consideration is or may be payable or receivable by the Issuer in the future, the consideration is the maximum total consideration payable or receivable under the agreement.
- 8.102 For the purposes of Listing Rule 8.101.2, the figures used to determine consideration consisting of:
- 8.102.1 Securities of a Class already listed, must be the aggregate Market Value of all those Securities on the last Business Day before the announcement; and
  - 8.102.2 a new Class of Securities for which an application for Admissibility to Listing will be made, must be the expected aggregate Market Value of all those Securities.

- 8.103 If the total consideration is not subject to a maximum (and the other class tests indicate the transaction to be a class 1 transaction) the transaction is to be treated as a class 2 transaction.

*Acquisitions and disposals of Property*

- 8.103a Acquisitions and disposals of Property by an Issuer (including any transactions or arrangements the purpose of which is to change, in whole or in part, the beneficial ownership of Property) are subject to the rules contained in this section save as indicated below:

- 8.103a.1 for the purposes of Listing Rule 8.93.1 (the gross assets test), the assets test is calculated by dividing the transaction consideration by the gross assets of the Issuer and Listing Rules 8.97 and 8.98 do not apply<sup>97</sup>;
- 8.130a.2 for the purposes of Listing Rule 8.93.1 (the gross assets test), if the transaction is an acquisition of land to be developed, the assets test is calculated by dividing the transaction consideration and any financial commitments relating to the development by the gross assets of the Issuer;<sup>98</sup>
- 8.103a.3 for the purposes of Listing Rule 8.93.1, the “gross assets of the Issuer” are, at the option of the Issuer:
- 8.103a.3.1 the aggregate of the Issuer’s share capital and reserves (excluding minority interests);
- 8.103a.3.2 the book value of the Issuer’s Properties (excluding those Properties classified as current assets in the latest published Annual Accounts); or
- 8.103a.3.3 the published valuation of the Issuer’s Properties (excluding those Properties classified as current assets in the latest published Annual Accounts);<sup>99</sup>
- 8.103a.4 for the purposes of Listing Rule 8.93.2 (the profits test), “profits” means the net annual rental income;<sup>100</sup> and
- 8.103a.5 the test referred to in Listing Rule 8.93.3 shall not apply but when any of the consideration for an acquisition is in Shares, an alternative test will be applied comparing the Shares to be issued with the number of Shares in issue.

*Notification requirements*

- 8.104 In the case of a Class 1 transaction, the Issuer shall make a Company Announcement as soon as possible after the terms of the transaction are agreed.<sup>101</sup>
- 8.105 In the case of a Class 2 transaction, the Issuer must:

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<sup>97</sup> UK LR 10.7.1(1)

<sup>98</sup> UK LR 10.7.1(2)

<sup>99</sup> UK LR 10.7.1(3)

<sup>100</sup> UK LR 10.7.1(4)

<sup>101</sup> MSE 6.06.02

- 8.105.1 issue a Company Announcement in the manner laid down by Listing Rule 8.104.
- 8.105.2 send an explanatory Circular to its shareholders and obtain their prior approval in a general meeting for the transaction; and
- 8.105.3 ensure that any agreement effecting the transaction is conditional on that approval being obtained.

Provided that Issuers without Equity Securities authorised as Admissible to Listing shall only be required to comply with Listing Rule 8.105.1 when proposing to enter into a Class 2 transaction.

8.106 The Company Announcement referred to in Listing Rules 8.104 and 8.105 must include:

- 8.106.1 details of the transaction, including particulars of dates, parties, terms and conditions, general nature of contract, the name of the receiving notary, where applicable;
- 8.106.2 a description of the business carried on by, or using, the net assets the subject of the transaction;
- 8.106.3 the consideration, and how it is being satisfied (including the terms of any arrangements for deferred consideration);
- 8.106.4 the value of the gross assets the subject of the transaction;
- 8.106.5 the profits attributable to the assets the subject of the transaction;
- 8.106.6 the effect of the transaction on the Issuer including any benefits which are expected to accrue to the Issuer as a result of the transaction;
- 8.106.7 for a disposal, the application of the sale proceeds;
- 8.106.8 for a disposal, if Securities are to form part of the consideration received, a statement whether the Securities are to be sold or retained; and
- 8.106.9 details of key individuals important to the business or company the subject of the transaction.

8.107 If, at any time subsequent to any Company Announcements made in terms of Listing Rules 8.104 or 8.105, the Issuer has become aware that there has been a significant change affecting any matter contained in the Announcement or a significant new matter has arisen which would have been required to be mentioned in that Announcement if it had arisen at the time of making such Announcement, the Issuer must make another Company Announcement.

8.107a The supplementary Company Announcement must give details of the change or new matter and also contain a statement that, except as disclosed, there has been no significant change affecting any matter contained in the earlier Announcement and no other significant new matter has arisen which would have been required to be mentioned in that earlier Announcement if it had arisen at the time of preparation of that Announcement.

8.107b In Listing Rules 8.107 and 8.107a, “significant” means significant for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the Issuer and the rights attaching to any Securities forming part of the consideration. It includes a change in the terms of

the transaction such that affects the percentage ratios and requires the transaction to be reclassified.<sup>102</sup>

- 8.107c The Circular referred to in Listing Rule 8.105.2 must comply with the requirements of Listing Rules 11.17 to 11.25.
- 8.107d If, after the production of a Circular and before the completion of a Class 2 transaction, there is a material change to the terms of the transaction, the Issuer must comply again separately with Listing Rule 8.105 in relation to the transaction.
- 8.107e In deciding whether a Circular should be sent to shareholders, the Listing Authority may aggregate acquisitions or realisations that have taken place since either the publication of the last Accounts, or the issue of the last Circular, whichever is the later during the twelve (12) months prior to the date of the latest transaction. Such aggregated transactions may then be treated as if they were one transaction if they were all completed within a short period of time, and the total of transactions is thirty-five percent (35%) or more as defined in Listing Rule 8.92.2. For these purposes, the value of transactions in respect of which adequate information has already been issued to shareholders will be included in the net tangible assets or profits of the Issuer for comparison with the transaction or transactions under consideration. In case of doubt as to aggregation, the Listing Authority should be consulted at an early stage.
- 8.107f Without prejudice to the generality of Listing Rule 8.107e, transactions will normally only be aggregated in accordance with that provision if they:
- 8.107f.1 are entered into by the Issuer with the same party or with parties connected with one another; or
  - 8.107f.2 involve the acquisition or disposal of Securities or an interest in one particular Company; or
  - 8.107f.3 together lead to substantial involvement in a business activity which did not previously form part of the Issuer's principal activities.
- 8.107g If, under Listing Rule 8.107e, aggregation results in a class test of thirty-five percent (35%) or more which would require Shareholder approval in terms of Listing Rule 8.105, such approval is required only for the latest transaction.
- 8.107h Notwithstanding Listing Rule 8.107e, where acquisitions are entered into since either the publication of the last Accounts or the issue of the last Circular, whichever is the later, which cumulatively amount to thirty-five percent (35%) or more in any of the percentage ratios, the provisions outlined in Listing Rule 8.105 may apply.

*Transactions Involving Substantial Shareholdings*

- 8.108 This Listing Rule shall regulate the activities of an Issuer whenever it is advised or otherwise becomes aware of an impending share negotiation or transaction involving a Substantial Shareholding.
- Substantial Shareholding shall for the purposes of this Rule mean the entitlement to exercise or control the exercise of ten percent (10%) or more of the votes able to be cast at general meetings or the entitlement to appoint a majority of Directors on the board of Directors of an Issuer.

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<sup>102</sup> UKLA

- 8.108.1 All parties to an offer for an acquisition or disposal of a Substantial Shareholding in an Issuer as well as the Issuer must use every endeavour to prevent the creation of a false market in the securities of the Issuer. All parties involved in an offer for an acquisition or disposal of a Substantial Shareholding in an Issuer and the Issuer must take care that statements are not made which may mislead shareholders or the market.
- 8.108.2 Without prejudice to Listing Rule 8.7, an Issuer must promptly make a Company Announcement:
- 8.108.2.1 when the board of Directors of the Issuer is advised or otherwise becomes aware that a purchaser is being sought for a Substantial Shareholding in the Issuer;
  - 8.108.2.2 when the Issuer is the subject of rumour and speculation;
  - 8.108.2.3 when the board of Directors of the Issuer is advised or otherwise becomes aware of a firm intention to acquire or dispose of a Substantial Shareholding in the Issuer;
  - 8.108.2.4 when the board of Directors of the Issuer is advised or otherwise becomes aware that an offer has been made to acquire or dispose of a Substantial Shareholding in the Issuer.
- 8.108.3 Without prejudice to any applicable privacy or secrecy obligations in terms of law, an Issuer may furnish in confidence to a bona fide offeror and the corresponding bona fide transferor such information including unpublished price-sensitive information as may be necessary to enable the bona fide offeror, the bona fide transferor and their advisers to make, confirm, withdraw or modify the offer, provided that such disclosure of information may only be furnished subject to the following conditions:
- 8.108.3.1 the express consent of the Company in general meeting by an ordinary resolution of the Company unless the memorandum or articles of the Company require an extraordinary resolution, to make such disclosure of information to bona fide offerors. Such consent may, but need not, be limited to a specific prospective offeror(s);
  - 8.108.3.2 the signing of a confidentiality agreement signed by the prospective transferor and the prospective offeror(s) to prevent the disclosure and use of the information furnished, other than for the purpose of the acquisition of the Substantial Shareholding in the Issuer;
  - 8.108.3.3 an undertaking from the prospective offeror(s) whereby they bind themselves not to deal in the Issuer's shares or any derivative instrument relating thereto, whether directly or indirectly, for a period of one year following completion of the transaction or termination thereof or discontinuance or withdrawal, other than to complete the transaction that prompted the disclosure of information hereunder;
  - 8.108.3.4 an undertaking from the prospective transferor that it acknowledges that the information received from the Issuer cannot be used or communicated other than for the

purposes of a transaction in the shares that are the subject of the offer, whether wholly or in part, whether with the prospective offeror(s) or otherwise, and that it cannot deal in other shares of the Issuer for a period of one year following completion of the transaction or termination thereof or discontinuance or withdrawal.

- 8.108.4 When the transaction that prompted the furnishing of information in confidence is completed the Issuer shall make a Company Announcement disclosing the outcome of negotiations relating to the acquisition or disposal of a Substantial Shareholding in the Issuer, including the price at which the Substantial Shareholding was acquired or disposed of.
- 8.108.5 When the transaction that prompted the furnishing of information in confidence is not completed and the Issuer is advised or otherwise becomes aware of such non completion, the Issuer shall make a Company Announcement disclosing the outcome of negotiations.
- 8.108.6 In the event that the transaction that prompted the furnishing of information in confidence is completed, a purchaser which has had access to information in confidence in terms of this Listing Rule shall be prohibited from acquiring further securities in the Issuer or from disposing of securities in the Issuer, whether directly or indirectly for a period of one year from the date of acquisition.
- 8.108.7 In the event that the transaction that prompted the furnishing of information in confidence is not completed, a bona fide offeror which has had access to information in confidence in terms of this Listing Rule shall be prohibited from acquiring securities in the Issuer, whether directly or indirectly, for a period of one year following termination thereof or discontinuance or withdrawal, other than to complete the transaction that prompted the disclosure of information hereunder.
- 8.108.8 Regardless of the outcome of the transaction, the purchaser or the bona fide offeror, as the case may be, shall, immediately following completion of the transaction or termination thereof or discontinuance or withdrawal, notify the Issuer to that effect and return all the information furnished by the Issuer and shall take prompt action to cancel, delete or destroy such information furnished by the Issuer that cannot be returned.

*Notification of the acquisition or disposal of major holdings to which voting rights are attached.*

- 8.109 Where the Home Member State is Malta and as soon as a shareholder acquires 5% or more of the Issuer's shares to which voting rights are attached, the Issuer shall immediately inform the shareholder of his obligation to notify the Issuer and the Listing Authority of any changes in major holdings in terms of Listing Rules 8.110 to 8.128.
- 8.110.1 Any Shareholder who acquires or disposes shares to which voting rights are attached and where the Home Member State is Malta, shall notify the Issuer and the Listing Authority of the proportion of voting rights of the Issuer held by such Shareholder as a result of the acquisition or disposal where that proportion reaches,

exceeds or falls below the thresholds of 5%, 10%, 15% 20%, 25%, 30%, 50%, 75% and 90%.<sup>103</sup>

- 8.110.2 The voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended.<sup>104</sup>
- 8.110.3 This information shall also be given in respect of all the shares which are in the same Class and to which voting rights are attached.<sup>105</sup>
- 8.110.4 The Issuer and the Listing Authority shall also be notified in terms of Listing Rule 8.110.1 when the proportion reaches, exceeds or falls below the thresholds specified in the same Listing Rule, as a result of events changing the breakdown of voting rights.<sup>106</sup>
- 8.110.5 The threshold referred to in Listing Rule 8.110 shall be calculated on the basis of the information made available to the public by the Issuer at the end of each calendar month, of the total number of voting rights and capital, during which an increase or decrease of such total number has occurred.<sup>107</sup>
- 8.110.6 Where the Issuer is incorporated or registered in a non-EU or EEA State, the notification shall be made for equivalent events.<sup>108</sup>
- 8.111 The notification requirement defined in Listing Rule 8.110.1 shall also apply to a natural or legal person who:<sup>109</sup>
- 8.111.1 is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them:
    - 8.111.1.1 voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the Issuer in question;
    - 8.111.1.2 voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question;
    - 8.111.1.3 voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them;
    - 8.111.1.4 voting rights attaching to shares in which that person or entity has the right of usufruct;
    - 8.111.1.5 voting rights which are held, or may be exercised within the meaning of Listing Rule 8.111.1.1 to 8.111.1.4 above, by an undertaking controlled by that person or entity;
    - 8.111.1.6 voting rights attaching to shares deposited with that person or entity which the person or entity can

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<sup>103</sup> Article 9(1) of TD.

<sup>104</sup> Article 9(1) of TD (2<sup>nd</sup> para).

<sup>105</sup> Article 9(1) of TD (2<sup>nd</sup> para).

<sup>106</sup> Article 9(2) of TD.

<sup>107</sup> Article 15 of TD.

<sup>108</sup> Article 9(2) of TD.

<sup>109</sup> Article 10 of TD.

- exercise at its discretion in the absence of specific instructions from the shareholders;
- 8.111.1.7 voting rights held by a third party in its own name on behalf of that person or entity;
- 8.111.1.8 voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders.
- 8.112 The obligation to notify the Issuer in terms of Listing Rule 8.110.1 shall be an individual obligation incumbent upon each shareholder, or each natural person or legal entity as referred to in Listing Rule 8.111, or both in case the proportion of voting rights held by each party reaches, exceeds or falls below the thresholds laid down in Listing Rule 8.110.1. In the circumstances, however, referred to in Listing Rule 8.111.1.1 the said notification obligation shall be a collective obligation shared by all the parties to the agreement.<sup>110</sup>
- 8.113 In the circumstances referred to in Listing Rule 8.111.1.8, if a shareholder gives the proxy in relation to one shareholder meeting, notification may be made by means of a single notification when the proxy is given provided it is made clear in the notification what the resulting situation in terms of voting rights will be when the proxy may no longer exercise the voting rights at its discretion.<sup>111</sup>
- 8.114 If in the circumstances referred to in Listing Rule 8.111.1.8 the proxy holder receives one or several proxies in relation to one shareholder meeting, notification may be made by means of a single notification on or after the deadline for receiving proxies provided that it is made clear in the notification what the resulting situation in terms of voting rights will be when the proxy may no longer exercise the voting rights at its discretion.<sup>112</sup>
- 8.115 When the duty to make notification lies with more than one natural person or legal entity, notification may be made by means of a single common notification but this does not release any of those persons from their responsibilities in relation to the notification.<sup>113</sup>
- 8.116 A natural or legal person shall make a notification in terms of Listing Rule 8.110.1 in respect of any qualifying financial instruments held by such person, directly or indirectly, which result in an entitlement to acquire, on such holder's own initiative alone, under a formal agreement, shares to which voting rights are attached, of an Issuer whose shares are admitted to listing on a Regulated Market and provided that such person enjoys, on maturity, either the unconditional right to acquire the underlying shares or the discretion as to his right to acquire such shares or not.<sup>115</sup>
- 8.116a For the purposes of Listing Rule 8.116:  
 “qualifying financial instruments” means transferable securities and options, futures, swaps, forward rate agreements and any other derivative contracts, as referred to in paragraphs 1 to 10 of the Second Schedule to the Investment Services Act (Cap. 370 of the Laws of Malta);<sup>117</sup>

<sup>110</sup> Art 8(1) of Directive 2007/14/EC.

<sup>111</sup> Art 8(2) of Directive 2007

<sup>112</sup> Art 8(2), 2<sup>nd</sup> para

<sup>113</sup> Art 8(3)

<sup>115</sup> Art 11(1) (1<sup>st</sup> and 2<sup>nd</sup> para) of Directive 2007/14/EC.

<sup>117</sup> Art 11(1) of Directive 2007/14/EC.



- “formal agreement” means an agreement which is binding under applicable law.<sup>118</sup>
- 8.116b A person referred to in Listing Rule 8.116 shall aggregate and notify to the Issuer of the underlying share and the Listing Authority all qualifying financial instruments relating to the same underlying Issuer.<sup>120</sup>
- 8.116c If a qualifying financial instrument relates to more than one underlying share, a separate notification shall be made to each Issuer of the underlying shares.<sup>122</sup>
- 8.117 The notification required under Listing Rule 8.110.1 and 8.111 shall include the following information:<sup>124</sup>
- 8.117.1 the resulting position in terms of voting rights;
  - 8.117.2 the chain of Controlled Undertakings through which voting rights and/or financial instruments are effectively held, if applicable;
  - 8.117.3 the date on which the threshold was reached or crossed;
  - 8.117.4 the identity of the person entitled to exercise voting rights, even if that person is not entitled to exercise voting rights under the conditions laid down in Listing Rule 8.111.
  - 8.117.5 for instruments with an exercise period:
    - 8.117.5.a an indication of the date or time period where shares will or can be acquired, if applicable;
    - 8.117.5.b the date of maturity or expiration of the instrument;
    - 8.117.5.c name of the underlying Issuer.
- 8.117a For the purposes of the notification referred to in Listing Rule 8.117, the resulting position in terms of voting rights shall be calculated by reference to the total number of voting rights and capital as last disclosed by the Issuer in terms of Listing Rule 8.7.9.<sup>126</sup>
- 8.118 The notification that is required to be made to the Issuer in terms of Listing Rule 8.110.1 shall be effected as soon as possible, but not later than four trading days following the date on which the shareholder, or the natural or legal person representing the shareholder:<sup>128</sup>
- 8.118.1 learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect; or
  - 8.118.2 is informed about the events changing the breakdown of voting rights.
- 8.118a For the purposes of Listing Rule 8.118.1, the shareholder, or the natural or legal person representing the shareholder shall be deemed to have knowledge of the

<sup>118</sup> Art. 11(1) (3<sup>rd</sup> para) of Directive 2007/14/EC.

<sup>120</sup> Art 11(2) of Directive 2007/14/EC.

<sup>122</sup> Art.11(5) of Directive 2007/14/EC.

<sup>124</sup> Art. 12(1) of TD & Art. 11(3) of Directive 2007/14/EC.

<sup>126</sup> Art.11(3) (2<sup>nd</sup> paragraph) of Directive 2007/14/EC.

<sup>128</sup> Art 12(2) of TD.

acquisition, disposal or possibility to exercise voting rights no later than two trading days following the transaction in question.<sup>130</sup>

- 8.119 Notwithstanding Listing Rule 8.118, a Shareholder shall notify the Issuer by not later than 1 May 2007, of the proportion of voting rights and capital it holds in accordance with Listing Rule 8.110 and 8.116 with Issuers at that date, unless it has already made a notification containing equivalent information.<sup>133</sup>
- 8.120 An undertaking, being a shareholder of an Issuer, shall be exempted from notifying the Issuer of any changes in its holding as required under Listing Rule 8.110.1 if the notification is made by its Parent Undertaking or, where the Parent Undertaking is itself a Controlled Undertaking, by its own Parent Undertaking.<sup>134</sup>
- 8.121 Upon receipt of the notification in terms of Listing Rule 8.110.1 but no later than three trading days thereafter, the Issuer shall make the notification available to the public and shall make a Company Announcement including all the information contained in the notification.<sup>148</sup>
- 8.122 Notwithstanding Listing Rule 8.121 an Issuer shall disclose the information received in accordance with Listing Rule 8.119 by not later than 1 June 2007.<sup>149</sup>
- 8.123 Listing Rule 8.110.1 shall not apply to:
- 8.123.1 shares acquired for the sole purpose of clearing and settling within the usual short settlement cycle not exceeding three trading days following the execution of the transaction;<sup>150</sup>
  - 8.123.2 shares held by Custodians in their Custodian capacity provided such Custodians can only exercise the voting rights attached to such shares under instructions given in writing or by electronic means.<sup>152</sup>
  - 8.123.3 acquisitions or disposal of a major holding reaching or crossing the 5% threshold by a Market Maker acting in its capacity of a Market Maker and complying with the conditions and operating requirements set out in Listing Rule 8.124<sup>153</sup>
  - 8.123.4 shares provided to or by the members of the European System of Central Banks in carrying out their functions as monetary authorities, including shares provided to or by members of the European System of Central Banks under a pledge or repurchase or similar agreement for liquidity granted for monetary policy purposes or within a payment system.
- Provided that the above shall apply with regards to transactions lasting for a short period and the voting rights attaching to such shares are not exercised.<sup>154</sup>
- 8.124 A Market Maker shall be exempted in terms of Listing Rule 8.123.3 provided that, such Market Maker::

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<sup>130</sup> Art.9 of Directive 2007/14/EC.

<sup>133</sup> Art 30(2) of TD.

<sup>134</sup> Art 12(3) of TD.

<sup>148</sup> Art 12(6) of TD.

<sup>149</sup> Art 30(2) of TD (2<sup>nd</sup> para).

<sup>150</sup> Art.9(4) of TD & Art 5 of Directive 2007/14/EC.

<sup>152</sup> Art. 9(4) of TD.

<sup>153</sup> Art. 9(5) of TD.

<sup>154</sup> Art. 11(1) of TD.

- 8.124.1 is authorised by its home member state under Directive 2004/39/EC;
  - 8.124.2 does not intervene in the management of the Issuer concerned;
  - 8.124.3 does not exert any influence on the Issuer to buy such shares or back the share price; and
  - 8.124.4 notifies the Listing Authority within the time limit laid down in Listing Rule 8.118 that it conducts or intends to conduct market making activities on a particular Issuer. (Art.9(5) of TD & Art.6(1) of Directive 2007/14/EC)
- 8.125 Where the Market Maker ceases to conduct market making activities on the Issuer concerned, it shall notify the Listing Authority accordingly. (Art.6(1) of Directive 2007/14/EC)
- 8.126 The Listing Authority may require the Market Maker undertaking market making activities with respect to Securities of an Issuer whose Home Member State is Malta, as referred to in Listing Rule 8.123.3, to identify the shares or financial instruments held for market making activity purposes, in which case the Market Maker may make such identification by any verifiable means. (Art. 6(2) of Directive 2007/14/EC)
- 8.127 If the Market Maker is unable to identify the shares or financial instruments concerned, the Listing Authority may require him to hold them in a separate account for identification purposes. (Article 6(2) of Directive 2007/14/EC)
- 8.128 Voting rights held in the trading book, as defined in Article 11 of Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions (recast), of a credit institution or investment firm shall not be counted for the purposes of Listing Rule 8.110.1 provided that:
- 8.128.1 the voting rights held in the trading book do not exceed 5%; and
  - 8.128.2 the credit institution or investment firm ensures that the voting rights attaching to shares held in the trading book are not exercised nor otherwise used to intervene in the management of the Issuer.(Art 9(6) of TD)

*Notification by management companies and investment firms*

- 8.128a For the purposes of Listing Rules 8.128b.1 and 8.128d.3 “direct instruction” and “indirect instruction” shall have the following meaning:

“direct instruction” means any instruction given by the Parent Undertaking, or another Controlled Undertaking of the Parent Undertaking, specifying how the voting rights are to be exercised by the management company or investment firm in particular cases; (Art 10(5) 1<sup>st</sup> para of Directive 2007/14/EC)

“indirect instruction” means any general or particular instruction, regardless of the form, given by the Parent Undertaking, or another Controlled Undertaking of the Parent Undertaking, that limits the discretion of the Management Company or investment firm in relation to the exercise of the voting rights in order to serve specific business interests of the Parent Undertaking or another Controlled Undertaking of the Parent Undertaking. (Art 10(5) 2<sup>nd</sup> para of Directive 2007/14/EC)

- 8.128b The Parent Undertaking of a Management Company shall not be required to aggregate its holdings with the holdings managed by the Management Company under the conditions laid down in Directive 85/611/EEC, provided that:
- 8.128b.1 it does not interfere by giving direct or indirect instructions or it does not interfere in any other way in the exercise of the voting rights held by that management company; and
- 8.128b.2 the Management Company is free to exercise, independently of the parent undertaking, the voting rights attached to the assets it manages. (Art. 12(4) of TD, Art 10(1) of Directive 2007/14/EC)
- 8.128c Where the parent undertaking, or another Controlled Undertaking of the parent undertaking, has invested in holdings managed by such management Company and the Management Company has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another Controlled Undertaking of the parent undertaking, the holdings of the Parent Undertaking shall be aggregated with its holdings through the Management Company. (Art 12(4) 2<sup>nd</sup> para of TD)
- 8.128d The Parent Undertaking of an investment firm authorised under Directive 2004/39/EC shall not be required to aggregate its holdings with the holdings which such investment firm manages on a client-by-client basis within the meaning of Article 4(1), point 9, of Directive 2004/39/EC provided that:
- 8.128d.1 the investment firm is authorised to provide such portfolio management under point 4 of Section A of Annex I to Directive 2004/39/EC;
- 8.128d.2 it may only exercise the voting rights attached to such shares under instructions given in writing or by electronic means or it ensures that individual portfolio management services are conducted independently of any other services under conditions equivalent to those provided for under Directive 85/611/EEC by putting into place appropriate mechanisms;
- 8.128d.3 it does not interfere by giving direct or indirect instructions or it does not interfere in any other way in the exercise of the voting rights held by that investment firm; and
- 8.128d.4 the investment firm is free to exercise, independently of the parent undertaking, the voting rights attached to the assets it manages. (Art 12(5) of TD, Art 10(1) of Directive 2007/14/EC)
- 8.128e Where the parent undertaking, or another Controlled Undertaking of the parent undertaking, has invested in holdings managed by such investment firm and the investment firm has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another Controlled Undertaking of the parent undertaking, the holdings of the Parent Undertaking shall be aggregated with its holdings through the investment firm. (Art 12(5) 2<sup>nd</sup> para of TD)
- 8.128f A Parent Undertaking which does not aggregate its holdings in terms of Listing Rules 8.128b or 8.128d shall, without delay, notify to the Listing Authority the following information:
- 8.128f.1 a list of the names of those Management Companies and investment firms, indicating the competent authorities that supervise them or that

- no competent authority supervises them, but with no reference to the issuers concerned;
- 8.128f.2 in the case of a Management Company, a statement that the Parent Undertaking complies with the conditions laid down in Listing Rules 8.128b;
- 8.128f.3 in the case of an investment firm, a statement that the Parent Undertaking complies with the conditions laid down in Listing Rules 8.128d.3 and 8.128d.4. (Art 10(2) of Directive 2007/14/EC)
- 8.128g The Parent Undertaking shall update the list referred to in Listing Rule 8.128f.1 on an ongoing basis. (Art 10(2) of Directive 2007/14/EC)
- 8.128h Where a Parent Undertaking intends to avail itself of the exemptions contained in Listing Rules 8.128b or 8.128d only in relation to the financial instruments referred to in Listing Rule 8.116, it shall notify to the Listing Authority only the list referred to in Listing Rule 8.128f.1. (Art 10(3) of Directive 2007/14/EC).
- 8.128i The Listing Authority may request a Parent Undertaking of a Management Company or of an investment firm to demonstrate that:
- 8.128i.1 the organisational structures of the Parent Undertaking and the management company or investment firm are such that the voting rights are exercised independently of the Parent Undertaking;
- 8.128i.2 the persons who decide how the voting rights are to be exercised act independently;
- 8.128i.3 if the Parent Undertaking is a client of its Management Company or investment firm or has holding in the assets managed by the management company or investment firm, there is a clear written mandate for an arms-length customer relationship between the Parent Undertaking and the management company or investment firm. (Art. 10(4) of Directive 2007/14/EC)
- 8.128j The Parent Undertaking shall be deemed to satisfy Listing Rule 8.128i.1 if as a minimum the Parent Undertaking and the Management company or investment firm have established written policies and procedures that are reasonably designed to prevent the distribution of information between the Parent Undertaking and the Management Company or investment firm in relation to the exercise of voting rights. (Art 10(4) 2<sup>nd</sup> para of Directive 2007/14/EC)
- Calendar of trading days*
- 8.128k For the purposes of Listing Rules 8.7.10, 8.118 and 8.121, the calendar of trading days of the Home Member State of the Issuer shall apply. (Art 7(1) of Directive 2007/14/EC)
- 8.128l The Listing Authority shall publish on its website the calendar of trading days of the different regulated markets situated or operating in Malta.(Art 7(2) of Directive 2007/14/EC)

*Issuers registered in a non-EU or EEA State*

- 8.129 Where an Issuer is admitted to trading in Malta but its registered office is not in a Member or EEA State, the Listing Authority may exempt that Issuer from the requirements of the following Listing Rules:

Listing Rules

8.44i – 8.45	Annual Financial Report
8.45a – 8.45l	Half-yearly Report
8.45m – 8.45o	Interim Directors statements
8.7.8	Notification of major holdings
8.7.9	Total number of voting rights
8.7.10	Proportion of the Issuer’s holding in own equity
8.24-8.35	Information requirements

Provided that the Listing Authority considers that the Issuer is subject to equivalent legal requirements. (Article 23(1) of TD)

- 8.130 The Issuer, as referred to in Listing Rule 8.129, shall file and disclose the equivalent information subject to the provisions of this Chapter.(Art 23(1) of TD)

*Equivalent Information*

*Requirements equivalent to the Directors’ Report (Listing Rule 8.44i.1)*

- 8.130a An Issuer whose registered office is in a a non-EU or EEA State shall be considered by the Listing Authority to be subject to equivalent requirements as those prescribed by Listing Rule 8.44i.1 where, under the law of that country, a report is required to be prepared which includes at least the following information:

8.130a.1 a fair review of the development and performance of the Issuer’s business and of its position, together with a description of the principal risks and uncertainties that it faces, such that the review presents a balanced and comprehensive analysis of the development and performance of the Issuer’s business and of its position, consistent with the size and complexity of the business;

8.130a.2 an indication of any important events that have occurred since the end of the financial year;

8.130a.3 indications of the Issuer’s likely future development. (Art 13 of Directive 2007/14/EC)

- 8.130b For the purposes of Listing Rule 8.130a.1, the analysis required by that rule shall, to the extent necessary for an understanding of the Issuer’s development, performance or position, include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business. (Art 13 of Directive 2007/14/EC)

*Requirements equivalent to the Interim Directors’ Report (Listing Rule 8.45b.2)*

- 8.130c An Issuer whose registered office is in a non-EU or EEA State shall be considered by the Listing Authority to be subject to equivalent requirements as those prescribed by Listing Rule 8.45b.2 where, under the law of that country, an interim

management report is required to be prepared together with a condensed set of financial statements and such report includes at least the following information:

- 8.130c.1 a review of the period covered;
- 8.130c.2 indications of the Issuer's likely future development for the remaining six months of the financial year;
- 8.130c.3 for issuers of shares and if already not disclosed on an ongoing basis, major related parties transactions. (Art 14 of Directive 2007/14/EC)

*Requirements equivalent to the Statements of Responsibility (Listing Rules 8.44i.2 and 8.45b.3)*

8.130d An Issuer whose registered office is in a non-EU or EEA State shall be considered by the Listing Authority to be subject to equivalent requirements as those prescribed by Listing Rules 8.44i.2 and 8.45b.3 where, under the law of that country, a person or persons within the Issuer are responsible for the annual and half-yearly financial information, and in particular for the following:

- 8.130d.1 the compliance of the financial statements with the applicable reporting framework or set of accounting standards;
- 8.130d.2 the fairness of the management review included in the management report. (Art 15 of Directive 2007/14/EC)

*Requirements equivalent to the Interim Directors' Statements (Listing Rules 8.45m to 8.45o)*

8.130e An Issuer whose registered office is in a non-EU or EEA State shall be considered by the Listing Authority to be subject to equivalent requirements as those prescribed by Listing Rules 9.51 to 9.53 where, under the law of that country, an Issuer is required to publish quarterly financial reports. (Art 16 of Directive 2007/14/EC)

*Requirements equivalent to the annual financial statements required to be prepared in terms of Listing Rule 8.44k*

8.130f An Issuer whose registered office is in a non-EU or EEA State shall be considered by the Listing Authority to be subject to equivalent requirements as those prescribed by Listing Rule 8.44k where, under the law of that country, the provision of individual accounts by the parent company is not required but the Issuer whose registered office is in that non-EU or EEA State is required to include the following information in the consolidated accounts:

- 8.130f.1 for Issuers of shares, dividends computation and ability to pay dividends;
- 8.130f.2 for all Issuers, where applicable, minimum capital and equity requirements and liquidity issues.

Provided that such Issuer shall be able to provide the Listing Authority with additional audited disclosures giving information on the individual accounts of the Issuer as standalone, relevant to the elements of information referred to in Listing Rules 8.130f.1 and 8.130f.2, which disclosures may be prepared under the accounting standards of

the non-EU or EEA State in which the Issuer has its registered office.  
(Art 17 of Directive 2007/14/EC)

*Requirements equivalent to the annual financial statements required to be prepared in terms of Listing Rule 8.44l*

- 8.130g An Issuer whose registered office is in a non-EU or EEA State shall be considered by the Listing Authority to be subject to equivalent requirements as those prescribed by Listing Rule 8.44l where, under the law of that country, such Issuer is not required to prepare consolidated accounts but is required to prepare its individual financial statements in accordance with Generally Accepted Accounting Principles and Practice or with national accounting standards of the non-EU or EEA State in which the Issuer has its registered office if these are equivalent to Generally Accepted Accounting Principles and Practice (Art 18 of Directive 2007/14/EC)
- 8.130h If the individual financial statements are not considered by the Listing Authority to be equivalent in terms of Listing Rule 8.130g, such financial statements shall be presented in the form of restated financial statements. (Art 18 of Directive 2007/14/EC)
- 8.130i Individual financial statements referred to in Listing Rules 8.130g and 8.130h shall be audited independently. (Art 18 of Directive 2007/14/EC)
- 8.131 An Issuer whose registered office is in a non-EU or EEA State shall be exempted from preparing its Annual Financial Report and half-yearly report in accordance with Listing Rules 8.44i to 8.45 and 8.45a to 8.45k respectively, prior to the Financial Year starting on or after 1 January 2007, as long as such Issuer prepares its Annual Financial Report and half-yearly financial report in accordance with Generally Accepted Accounting Principles and Practice . (Art 23(2) of TD)

*Requirements equivalent to Listing Rule 8.121*

- 8.132 An Issuer whose registered office is in a non-EU or EEA State shall be considered by the Listing Authority to be subject to equivalent requirements as those prescribed by Listing Rule 8.121 where, under the law of that country, the time period within which such Issuer shall be notified of major holdings and within which it shall disclose those major holdings to the public is in total equal to or shorter than seven trading days. (Art 19 of Directive 2007/14/EC)
- 8.132a In the case of an Issuer whose registered office is in a non-EU or EEA State, the time-frames for the notification of major holdings to the Issuer and for the subsequent disclosure to the public by the Issuer may be different from those set out in Listing Rules 8.118 and 8.121.(Art 19 of Directive 2007/14/EC)

*Requirements equivalent to the test of independence for Parent Undertakings of management companies and investment firms*

- 8.133 Undertakings whose registered office is not in a Member or EEA State which would have required an authorization in accordance with Article 5(1) of Directive 85/611/EEC or, with regard to portfolio management under point 4 of section A of Annex I to Directive 2004/39/EC if it had its registered office or, only in the case of an investment firm, its head office within the Community, shall also be exempted from aggregating holdings with the holdings of its Parent Undertaking



under the requirements laid down in Listing Rules 8.128b and 8.128d provided that they comply with equivalent conditions of independence as management companies or investment firms. (Art 23(6) of TD)

- 8.133a The undertakings referred to in Listing Rule 8.133 shall be considered by the Listing Authority to be subject to equivalent requirements as those prescribed by Listing Rules 8.128b to 8.128e where, under the law of that country, the Management Company or investment firm is required to meet the following conditions:
- 8.133a.1 the Management Company or investment firm is required to be free in all situations to exercise, the voting rights attached to the assets it manages independently of its Parent Undertaking;
- 8.133a.2 the Management Company or investment firm is required to disregard the interests of the Parent Undertaking or of any other Controlled Undertaking of the Parent Undertaking whenever conflicts of interest arise. (Art 23(1) of Directive 2007/14/EC)
- 8.133b The Parent Undertaking of the Management Companies or investment firms referred to in Listing Rule 8.133a shall comply with the notification requirements laid down in Listing Rules 8.128f.1 and 8.128h and shall also make a statement that, in the case of each management company or investment firm concerned, the Parent Undertaking complies with the conditions laid down in Listing Rule 8.133a above. (Art 23(2) of Directive 2007/14/EC)
- 8.133c The Listing Authority may request the Parent Undertaking of the Management Companies or investment firms referred to in Listing Rule 8.133a to demonstrate that the requirements laid down in Listing Rule 8.128i are satisfied. (Art 23(3) of Directive 2007/14/EC)

*Requirements equivalent to Listing Rules 8.7.10 and 12.12*

- 8.133d An Issuer whose registered office is in a non-EU or EEA State shall be considered by the Listing Authority to be subject to equivalent requirements as those prescribed by Listing Rules 8.7.10 and 12.12 where, under the law of that country, the Issuer is required to comply with the following conditions:
- 8.133d.1 in the case of an Issuer allowed to hold up to a maximum of 5 % of its own shares to which voting rights are attached, it is required to make a notification whenever that threshold is reached or crossed;
- 8.133d.2 in the case of an Issuer allowed to hold up to a maximum of between 5 % and 10 % of its own shares to which voting rights are attached, it is required to make a notification whenever the 5% threshold or that maximum threshold is reached or crossed;
- 8.133d.3 in the case of an Issuer allowed to hold more than 10 % of its own shares to which voting rights are attached, it is required to make a

notification whenever the 5 % threshold or the 10 % threshold is reached or crossed. (Art 20 of Directive 2007/14/EC)

*Requirements equivalent to Listing Rule 8.7.9*

- 8.133e An Issuer whose registered office is in a non-EU or EEA State shall be considered by the Listing Authority to be subject to equivalent requirements as those prescribed by Listing Rule 8.7.9 where, under the law of that country, the Issuer is required to disclose to the public the total number of voting rights and capital within thirty (30) calendar days after an increase or decrease of such total number has occurred. (Art 21 of Directive 2007/14/EC)

*Requirements equivalent to Listing Rules 8.25.1 and 8.32.1*

- 8.133f An Issuer whose registered office is in a non-EU or EEA State shall be considered by the Listing Authority to be subject to equivalent requirements as those prescribed by Listing Rules 8.25.1 and 8.32.1, as far as the content of the information about meetings is concerned, where, under the law of that country, the Issuer is required to provide at least information about the place, time and agenda of meetings. (Art 22 of Directive 2007/14/EC)

*Uses of Languages*

- 8.134 When Malta is the Home Member State and securities are Admitted to Trading only in Malta, Regulated Information shall be disclosed in the English or Maltese language. (Art 20(1) of TD)
- 8.135 When Malta is the Home Member State and securities are Admitted to Trading in Malta and in one or more host Member or EEA State, the Regulated Information shall be disclosed: (Art 20(2) of TD)
- 8.135.1 in the English or in the Maltese language; and
- 8.135.2 depending on the choice of the Issuer, either in a language accepted by the regulatory authorities of those host Member or EEA States or in a language customary in the sphere of international finance.
- 8.136 When securities are Admitted to Trading in Malta as the host Member State, the Regulated Information shall be disclosed either in English or Maltese or in a language customary in the sphere of international finance. (Art 20(3) of TD)
- 8.137 When Malta is the Home Member State and securities are Admitted to Trading on a Regulated Market in one or more host Member or EEA States excluding Malta, the Regulated Information shall be disclosed either in English or Maltese or in a language customary in the sphere of international finance, depending on the choice of the Issuer. (Art 20(5) of TD)
- 8.138 Where securities are Admitted to Trading on a Regulated Market without the Issuer's consent, the obligation under Listing Rules 8.134 to 8.137 shall be incumbent not upon the Issuer, but upon the person who, without the Issuer's consent, has requested such admission. (Art 20(4) of TD)
- 8.139 Shareholders and the natural or legal persons referred to in Listing Rules 8.110, 8.111 and 8.116 shall notify information to an Issuer in a language customary in the sphere of international finance. In this case, the Issuer is not required to provide the Listing Authority with a translation of such notification. (Art 20(5) of TD)
- 8.140 Where securities whose denomination per unit amounts to at least €50,000 or, in the case of Debt Securities denominated in a currency other than euro equivalent to

at least €50,000 at the date of the issue, are admitted to trading on a Regulated Market in one or more Member or EEA States, Regulated Information shall be disclosed to the public either in English or Maltese language or in a language customary in the sphere of international finance, at the choice of the Issuer or of the person who, without the Issuer's consent, has requested such admission. (Art 20(6) of TD)

- 8.141 If an action concerning the content of Regulated Information is brought before a court or tribunal in Malta, responsibility for the payment of costs incurred in the translation of that information for the purposes of the proceedings shall be decided in accordance with the Maltese law. (Art 20(7) of TD)

*Access to Regulated Information*

- 8.141a An Issuer or a person who has applied, without the Issuer's consent, for Admissibility to Listing on a Regulated Market shall file and disclose Regulated Information in the manner set out in Listing Rules 8.141b to 8.141m. (Art 19(1) of TD)

*Filing of Regulated Information with the Listing Authority and the Officially Appointed Mechanism*

- 8.141b An Issuer or a person who has applied, without the Issuer's consent, for Admissibility to Listing on a Regulated Market shall file Regulated Information with the Listing Authority and the Officially Appointed Mechanism at the same time such information is disclosed to the public in terms of Listing Rule 8.141c. (Art 19(1) of TD)

*Disclosure of Regulated Information to the public*

- 8.141c When disseminating Regulated Information an Issuer or other person who has applied, without the Issuer's consent, for Admissibility to Listing on a Regulated Market shall ensure that the minimum standards laid down in Listing Rules 8.141d to 8.141j are observed. (Art 12(1) of Directive 2007/14/EC)
- 8.141d Regulated Information shall be disseminated in a manner ensuring that it is capable of being disseminated to as wide a public as possible, and as close to simultaneously as possible in the Home Member State and in other Member or EEA States. (Art 12(2) of Directive 2007/14/EC)
- 8.141e Regulated Information shall be communicated to the media in unedited full text, provided that in the case of the Annual Financial Report, the Half-yearly Report and the Interim Directors' Statement, this requirement shall be deemed to be fulfilled if the information communicated to the media indicates on which website, in addition to the Officially Appointed Mechanism for the central storage of Regulated Information, the relevant documents are available. (Art 12(3) of Directive 2007/14/EC)
- 8.141f Regulated Information shall be communicated to the media in a manner which ensures the security of the communication, minimises the risk of data corruption and unauthorized access, and provides certainty as to the source of the Regulated Information. Security of receipt shall be ensured by remedying as soon as possible any failure or disruption in the communication of Regulated Information. (Art 12(4) of Directive 2007/14/EC)

- 8.141g The Issuer or the person who has applied, without the Issuer's consent, for Admissibility to Listing on a Regulated Market, shall not be responsible for systemic errors or shortcomings in the media to which the Regulated Information has been communicated. (Art 12(4) 2<sup>nd</sup> para of Directive 2007/14/EC)
- 8.141h Regulated Information shall be communicated to the media in a way which:
- 8.141h.1 makes it clear that the information is Regulated Information; and
  - 8.141h.2 identifies clearly
    - 8.141h.2.1 the Issuer concerned;
    - 8.141h.2.2 the subject matter of the Regulated Information; and
    - 8.141h.2.3 the time and date of the communication of the Regulated Information by the Issuer or the person who has applied for an admission to listing on a Regulated Market without the Issuer's consent. (Art 12(5) of Directive 2007/14/EC)
- 8.141i In relation to any disclosure of Regulated Information, the Listing Authority may request from the Issuer or the person who has applied for Admissibility to Listing on a Regulated Market without the Issuer's consent, the following information:
- 8.141i.1 the name of the person who communicated the information to the media;
  - 8.141i.2 the security validation details;
  - 8.141i.3 the time and date on which the information was communicated to the media;
  - 8.141i.4 the medium in which the information was communicated;
  - 8.141i.5 if applicable, the details of any embargo placed by the Issuer on the Regulated Information. (Art 12(5) of Directive 2007/14/EC)
- 8.141j The Issuer or person who has applied for Admissibility to Listing on a Regulated Market without the Issuer's consent, shall not charge investors any specific cost for providing Regulated Information. (Art 21(1) of TD)
- 8.141k Where securities are Admitted to Trading on a Regulated Market in Malta and Malta is the only Host Member State, an Issuer or a person who has applied for Admissibility to Listing on a Regulated Market without the Issuer's consent, shall disclose Regulated Information in the same manner as prescribed in Listing Rules 8.141d to 8.141j (Art 21(3) of TD)

*Disclosure of information in a non EU or EEA State*

- 8.141 The Listing Authority shall ensure that information, including Regulated Information, disclosed in a non EU or EEA State which may be of importance to the public in the Member or EEA States is disclosed in terms of Listing Rules 8.141d to 8.141j. (Art 23(3) of TD)
- 8.141m The language used to disclose information in terms of Listing Rule 8.141 shall be determined in accordance with Listing Rules 8.134 to 8.141. (Art 23(3) of TD)

*Annual Information Update*

- 8.142 An Issuer whose securities are Admitted to Trading and in relation to whom Malta is the Home Member State shall at least annually prepare a document (an annual information update) that refers to and contains all information that has been published or made available to the public over the previous twelve months in one or more Member States or EEA States and in third countries in compliance with its obligations under Community and national laws and rules dealing with the regulation of securities, issuer of securities and securities markets.
- Provided that such an obligation shall not apply to issuers of Non-equity Securities whose denomination per unit amounts to at least €50,000.
- 8.143 The annual information update shall at least contain information that is made available to the public in terms of;
- 8.143.1 the CA or, for an overseas company, the companies legislation of the place where it is incorporated, relating to the regulation of securities, issuers and securities markets; and
  - 8.143.2 Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards
  - 8.143.3 laws and rules of other Member States or EEA States and third countries that relate to the regulation of securities, issuers of securities and securities markets.
- 8.144 The document shall be filed with the Listing Authority after the publication of the financial statement. Where the document refers to information, it shall be stated where the information can be obtained

*Amalgamations*

- 8.145 The term “merger”, wherever used in these Listing Rules, shall have the same meaning as that assigned to it by the CA or any subsidiary legislation issued thereunder.
- 8.146 In the case of mergers involving an Issuer, the latter shall, irrespective of the country in which it is registered, send an explanatory Circular to its shareholders containing the information required by Chapter 11 of these Listing Rules..
- 8.147 The Listing Authority may dispense with any of the requirements prescribed by Chapter 11 for a Circular that has to be issued in respect of a merger if there is a conflict between such requirements and the law of the country in which the Issuer is registered.

*Employee Share Schemes and Directors' Share-based Schemes*

- 8.148 Subject to Listing Rule 8.154, the following schemes of an Issuer (and of any of its Subsidiary Undertakings even where that Subsidiary Undertaking is incorporated or operates overseas) must be approved by an ordinary resolution of the shareholders of the Issuer in general meeting prior to their adoption:
- 8.148.1 an employees' share scheme; and
  - 8.148.2 any scheme under which Directors are remunerated in Shares, share options or any other right to acquire Shares or to be remunerated on the basis of Share price movements.<sup>159</sup>
- 8.149 A resolution approving the adoption of an employee share scheme or a Directors' share-based scheme under Listing Rule 8.148 may authorise the Directors to establish further schemes based on any scheme which has previously been approved by shareholders but containing the necessary modifications, provided that any Shares made available under such further schemes are treated as counting against any limits on individual or overall participation in the main scheme.<sup>160</sup>
- 8.150 The resolution approving the schemes referred to in Listing Rule 8.148 shall be accompanied by an explanatory Circular containing the information prescribed by Chapter 11 of these Listing Rules.

*Contents of Employee Share Schemes and Directors' Share-based Schemes*

- 8.151 The schemes referred to in Listing Rule 8.148 shall at least contain provisions relating to:
- 8.151.1 the persons to whom or for the benefit of whom Securities may be issued under the scheme (the "Participants");
  - 8.151.2 the total amount of the Securities subject to the scheme together with the percentage of the issued Shares that it represents at the time;
  - 8.151.3 the fixed maximum entitlement for any one Participant;
  - 8.151.4 the amount, if any, payable on application or acceptance and the basis for determining the subscription or option price;
  - 8.151.5 the period in or after which payments or calls may be paid or called;
  - 8.151.6 the voting, dividend, transfer and other rights, including those arising on a liquidation of the Issuer, attaching to the Securities and to any options, if appropriate. These rights must be drawn to the attention of Participants on their joining the scheme;<sup>161</sup>
  - 8.151.7 the details, if any, of the Directors' trusteeship of the scheme or, if applicable, the interests of such Directors in the trustees of the scheme;
  - 8.151.8 the pensionability or otherwise of the benefits under the scheme and, if so, the reasons for this;
  - 8.151.9 the manner in which the Issuer intends to provide for the Shares needed to meet its obligations under the schemes together with a

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<sup>159</sup> Paragraph 6.1 of EC Recommendation on directors' remuneration. Previously there was a reference to a long-term incentive scheme in which one or more directors is eligible to participate.

<sup>160</sup> This is currently Listing Rule 10.11

<sup>161</sup> Currently Listing Rule 4.37

- statement as to whether the Issuer intends to purchase the necessary Shares in the market, whether it holds them in treasury, or whether it will issue new Shares;
- 8.151.10 costs of the scheme to the Issuer in view of the intended application; and
- 8.151.11 the basis for determining a participant's entitlement to, and the terms of, Securities, cash or other benefits to be provided and for the adjustment thereof (if any) in the event of a capitalisation issue, rights issue or open offer, sub-division or consolidation of Shares or reduction of capital or any other variation of capital (and for the avoidance of doubt, the issue of Securities as consideration for an acquisition will not be regarded as a circumstance requiring adjustment in accordance with the provisions of this Listing Rule).
- 8.152 Any adjustments, other than those made on a capitalisation issue, must be confirmed in writing by the Issuer's Auditors to the Directors of the Issuer as being in their opinion fair and reasonable.<sup>162</sup>
- 8.153 The resolution contained in the notice of the meeting accompanying the Circular referred to in Listing Rule 8.150 must approve a specific scheme. In the case of Directors' share-based schemes, it should set out the relationship of such schemes with the overall Directors' remuneration policy.<sup>163</sup>
- 8.154 The requirements of Listing Rules 8.148 to 8.153 are not applicable to long-term incentive schemes where the only Participant is a Director (or proposed Director) of the Issuer and the arrangement is established specifically to facilitate, in exceptional circumstances, the recruitment or retention of the relevant individual. In these circumstances the following information must be disclosed in the first Annual Financial Report published by the Issuer following the date on which the relevant individual becomes eligible to participate in the arrangement:
- 8.154.1 the name of the sole Participant;
- 8.154.2 the total amount of the Securities subject to the scheme together with the percentage of the issued Shares that it represents at the time;
- 8.154.3 the date on which the Participant first became eligible to participate in the arrangement;
- 8.154.4 an explanation of why the circumstances in which the arrangement was established were exceptional;
- 8.154.5 the conditions to be satisfied under the terms of the arrangement; and
- 8.154.6 the maximum award(s) under the terms of the arrangement or, if there is no maximum, the basis on which awards will be determined.<sup>164</sup>
- 8.155 For the purposes of Listing Rule 8.154 the term "long-term incentive scheme" means any arrangement (other than a retirement benefit plan, a deferred bonus or any other arrangement that is an element of an executive Directors' remuneration package) which may involve the receipt of any asset (including cash or any

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<sup>162</sup> Currently Listing Rule 4.42

<sup>163</sup> Paragraph 7.1 of the EC Recommendation on Directors' remuneration.

<sup>164</sup> Currently Listing Rule 10.6 whose source is UK LRs 9.4.2 and 9.4.3.

security) by a Director or employee of the Issuer or the Group of which the Issuer forms part that:

- 8.155.1 includes one or more conditions in respect of the service and/or performance to be satisfied over more than one financial year; and
- 8.155.2 pursuant to which the Issuer, or the Group of which the Issuer forms part may incur (other than in relation to the establishment and administration of the arrangement) either a cost or a liability, whether actual or contingent.

*Discounted Option Arrangements*

8.156 Subject to the provisions of Listing Rule 8.157, an Issuer may not, without the prior approval by an ordinary resolution of its shareholders in general meeting, grant to a Director or employee of the Issuer or of any Subsidiary Undertaking of the Issuer an option to subscribe, warrant to subscribe or other similar right to subscribe for Shares in the capital of the Issuer or any of its Subsidiary Undertakings, if the price per Share payable on the exercise of such an option, warrant or other similar right to subscribe is less than whichever of the following is used to calculate the exercise price:

- 8.156.1 the Market value of the Share on the date when the exercise price is determined;
- 8.156.2 the Market value of the Share on the Business Day before such date; or
- 8.156.3 the average of the Market Values for a number of dealing days within a period not exceeding thirty (30) days immediately preceding such date.<sup>165</sup>

8.157 The provisions of Listing Rule 8.156 do not apply to the grant of an option to subscribe, warrant to subscribe or other similar right to subscribe for Shares in the capital of the Issuer or any of its Subsidiary Undertakings:

- 8.157.1 under an employee share scheme pursuant to the terms of which participation is offered on similar terms to all or substantially all employees of the Issuer or any of its Subsidiary Undertakings whose employees are entitled to participate in the scheme; or
- 8.157.2 following a take-over or reconstruction, in replacement for and on comparable terms with options to subscribe, warrants to subscribe or other similar rights to subscribe held immediately prior to the take-over or reconstruction in respect of Shares in either a Company of which the Issuer thereby obtains control or in any of that Company's Subsidiary Undertakings.<sup>166</sup>

8.158 Where shareholders' approval is required by Listing Rule 8.156, the Issuer shall publish a Circular containing the information prescribed by Chapter 11 of these Listing Rules.

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<sup>165</sup> Currently Listing Rule 10.13

<sup>166</sup> Currently Listing Rule 10.14





APPENDIX 8.2  
ARTICLES OF ASSOCIATION

Section	Description
1.	Directors
2.	Accounts
3.	Capital
4.	Dividends
5.	Transfers
6.	Borrowing Powers
7.	Notice of Meetings
8.	Winding - Up
9.	Alteration of Articles
10.	Proxy

Directors

- 1.1 All Directors of an Applicant shall be individuals.
- 1.2 Subject to such exceptions specified in the Articles of Association as the Listing Committee may approve, a Director shall not vote on any contract or arrangement or any other proposal in which he has a material interest.
- 1.3 An election of Directors shall take place every year. All Directors, except a Managing Director, shall retire from office once at least in each three (3) years, but shall be eligible for re-election.
- 1.4 The office of a Director shall become vacant should he become of unsound mind, is convicted of any crime punishable by imprisonment, or declared bankrupt during his term of office.
- 1.5 The maximum annual aggregate Emoluments as well as any increase of such Emoluments of the Directors shall be established pursuant to a resolution passed at a general meeting of an Issuer where notice of the proposed aggregate Emoluments and any increase has been given in the notice convening the meeting.
- 1.6 Any person appointed by the Directors to fill a casual vacancy or as an addition to the board will hold office only until the next following annual general meeting of the Issuer, and will be eligible for re-election.
- 1.7 An Issuer must give at least fourteen (14) days notice to its shareholders to submit names for the election of Directors. Notice to the Issuer proposing a person for election as a Director, as well as the latter's acceptance to be nominated as Director shall be given to the Issuer not less than fourteen (14) days prior to the date of the meeting appointed for such election.

Accounts

- 2. A printed copy of the profit and loss account and balance sheet including any Directors' report attached thereto, will, at least fourteen (14) days prior to the general meeting of the Issuer, be delivered or sent by post to every member and/or stockholder or holder of Securities in the Issuer.

## Capital

- 3.1 The Issuer shall not issue Shares such that such issue would dilute a substantial interest without prior approval of the shareholders in general meeting.
- 3.2 Unless the shareholders approve in a general meeting, or as otherwise permitted under the Listing Rules, no Director shall participate in an issue of Shares to employees.
- 3.3 Preference shareholders shall have the same rights as ordinary shareholders as regards receiving notices, reports and balance sheets, and attending general meetings of the Issuer.
- 3.4 Preference shareholders shall also have the right to vote at any general meeting of the Issuer convened for the purpose:
  - 3.4.1 of reducing the capital of the Issuer; or
  - 3.4.2 winding up of the Issuer; or
  - 3.4.3 where the proposition to be submitted directly affects their rights and privileges; or
  - 3.4.4 when the dividend on their Shares is in arrears by more than six (6) months.

## Dividends

4. Any amount paid up in advance of calls on any Share may carry interest but will not entitle the holder of the Share to participate in respect of such amount in any dividend.

## Transfers

5. There shall be no restriction on the right to transfer Securities which are authorised as Admissible to Listing.

## Borrowing Powers

6. The scope of the borrowing powers of the Board of Directors shall be expressed.

## Notice of Meetings

- 7.1 A general meeting of an Issuer shall be deemed not to have been duly convened unless at least fourteen (14) days' notice has been given to all shareholders in writing, wherein is stated the place, date and hour of the meeting and in case of special business, the general nature of that business.
- 7.2 Any notice of the meeting called to consider extraordinary business shall be accompanied by a statement regarding the effect and scope of any proposed resolution in respect of such extraordinary business.

## Winding-Up

- 8.1 The basis on which shareholders would participate in a distribution of assets on a winding-up shall be expressed.
- 8.2 On the voluntary liquidation of an Issuer, no commission or fees shall be paid to a liquidator unless it shall have been approved by shareholders. The amount of such payment shall be notified to all shareholders at least seven (7) days prior to the meeting at which it is to be considered.

#### Alteration of Articles

9. Issuers whose Securities are authorised as Admissible to Listing shall not delete, amend or add to any of their existing Articles of Association, which have previously been authorised by the Listing Authority, unless prior written authorisation has been sought and obtained from the Listing Authority for such deletion, amendment or addition.

#### Proxy

10. An Issuer is required to design proxy forms in a manner which will allow a Shareholder of an Issuer to indicate how he/she would like his proxy to vote in relation to each resolution.

