

CHAPTER 11

Circulars

This chapter lists rules regarding Circulars and their issue.

11.1a An Issuer shall send an explanatory Circular to the holders of its Securities in the following cases:

11.1a.1 allotment of securities;

11.1a.2 increase in the Issuer's authorised share capital;

11.1a.3 capitalisation or bonus issues;

11.1a.4 granting of scrip dividends;

11.1a.5 acquisition and resale by the Issuer of its own Securities;

11.1a.6 redemption of Debt Securities;

11.1a.7 amendments to the Issuer's Memorandum and Articles of Association;

11.1a.8 Related Party transactions;

11.1a.9 a Class 2 transaction referred to in Listing Rule 8.92.2;

11.1a.10 a merger;

11.1a.11 without prejudice to Listing Rule 11.37, when notice of a meeting which includes any business, other than Ordinary Business at an annual general meeting, is sent to holders of Securities;

11.1a.12 employee share schemes, the grant of share-based schemes, including share options, to Directors and any changes made to such schemes; and

11.1a.13 discounted option arrangements.

Contents of all Circulars

11.1 Any Circular sent by an Issuer to holders of its Securities authorised as Admissible to Listing must:

11.1.1 contain the name, registered office and, if different, head office of the Issuer;

11.1.2¹ provide a clear and adequate explanation of its subject matter giving due prominence to its essential characteristics, benefits and risks;

11.1.3² if voting or other action is required, contain all information necessary to allow the holders of the Securities to make a properly informed decision;

11.1.4³ if voting or other action is required, contain a heading drawing attention to the importance of the document and advising holders of Securities who are in any doubt as to what action to take to consult appropriate independent advisers;

11.1.5⁴ where voting is required, contain a recommendation from the Directors of the Issuer as to the voting action ~~shareholders~~ holders of Securities should take, indicating whether or not the proposal described in the Circular is, in the opinion of the Directors of the

¹ UK Listing Rule 13.3.1(1)

² UK Listing Rule 13.3.1 (3)

³ UK Listing Rule 13.3.1 (4)

Issuer, in the best interests of the ~~holders of Securities~~ shareholders as a whole;⁴

~~11.1.6~~ contain a declaration by its Directors in the following form (with appropriate modifications):

~~“All the Directors of the Company, whose names appear on page [], accept responsibility for the information contained in this document. To the best of the knowledge and belief of the Directors who have taken all reasonable care to ensure that such is the case the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information.”~~⁵

~~11.1.75~~ state that where any or all of the Securities have been sold or transferred by the addressee, the Circular and any other relevant documents, ~~or copies thereof,~~ —should be passed to the person through whom the sale or transfer was effected for transmission to the purchaser or transferee;⁶

~~11.1.86~~ not include any reference to a specific date on which Securities will be marked “ex” any benefit or entitlement which has not been ~~agreed in advance with~~ notified to the ~~Recognised Investment Exchange~~ Regulated Market on which the Issuer’s Securities are or are to be Admitted to Listing;⁷

~~11.1.97~~ where ~~it relates to a transaction in connection with which the Issuer intends to issue Securities for which Admissibility to Listing will be sought~~ are proposed to be Admitted to Listing, include a statement that application has been or will be made to one or more Regulated Markets for the relevant Securities to be Admitted to Listing and Trading thereon, or an appropriate negative statement and, if known, a statement of the following matters:

~~11.1.97.1~~ the dates on which the Securities are expected to be Admitted to Listing and on which dealings are expected to commence on any ~~Recognised Investment Exchange~~ Regulated Market;

~~11.1.97.2~~ how the new Securities rank for dividend or interest;

~~11.1.79.3~~ whether the new Securities rank pari passu with any existing Securities Admitted to Listing;

~~11.1.79.4~~ the nature of the document of title;

~~11.1.79.5~~ the proposed date of issue;

~~11.1.79.6~~ the treatment of any fractions;

~~11.1.79.7~~ whether or not the Security may be held in uncertificated form; and

⁴ UK Listing Rule 13.3.1 (5)

⁵ UK Listing Rule 13.4.1 (4)

⁶ UK Listing Rule 13.3.1 (6)

⁷ UK Listing Rule 13.3.1.(8)

11.1.79.8 the names of the ~~Recognised Investment Exchanges~~ Regulated Markets on which Securities are or are to be Admitted to Listing;⁸

11.1.10 where applicable include a statement whether or not all the Securities that will be issued by the Issuer are being offered in whole or in part to the public. ~~and~~

11.1.11~~8~~ where a person is named in the Circular as having advised the Issuer or its Directors, contain a statement that such adviser has given and has not withdrawn its written consent to the inclusion of the reference to the adviser's name in the form and context in which it is included;⁹ and where a statement or report attributed to a person as an Expert is included in the Circular, contain a declaration that such statement or report is included, in the form and context in which it is included, with the consent of that person;¹⁰

11.1.12 contain a statement that the following documents or certified copies thereof will be available for inspection at the Issuer's registered office or principal place of business in Malta for at least fourteen (14) days from the date of publication of the Circular:

11.1.12.1 the Memorandum and Articles of Association or other constitutive document of the Issuer;

11.1.12.2 all reports, letters and other documents, valuations and statements by any Expert any part of which is reproduced or referred to in the Circular including any written consents from experts;

11.1.12.3 the last Annual Financial Report and the half-yearly financial report, if any, of the Issuer; and

11.1.13 include a valuation report prepared by an independent Expert in compliance with the requirements of Chapter 14 of these Listing Rules where the Issuer makes significant reference to the valuation of Property.

11.2 If another Listing Rule provides that a Circular of a particular type must include specified information, that information is (unless the contrary intention appears) in addition to the information required under Listing Rule 11.1.

Formal Authorisation of Circulars

11.3~~2~~ A Circular other than:

11.3.1 the Circulars referred to in Listing Rules 11.6 to 11.10 , 11.13 to 11.15 and 11.34 to 11.38; or

11.3.2 a Circular relating only to a proposed change of name of the Issuer shall not ~~No Circular, save for those described in Listing Rule 11.5, may~~ be circulated or made available publicly until it has received the formal authorisation of the Listing Authority in final form.

⁸ UK Listing Rule 13.3.1 (9)

⁹ UK Listing Rule 13.3.1 (10)

¹⁰ UK Listing Rule 13.4.1 (6)

~~Such authorisation will not be given until the following documents, or such of them as are applicable, have been lodged with the Listing Authority in final form:~~

- ~~11.2.1 the letter from the Sponsor referred to in Listing Rule 2.15 (working capital statement);~~
- ~~11.2.2 in the case of a Circular required pursuant to Listing Rule 8.95 and 8.96 or a Related Party Circular;~~
- ~~11.2.3 the statement of adjustments referred to in Listing Rule 9.7;~~
- ~~11.2.4 the Sponsor's confirmation of independence (see Listing Rule 2.7.2);~~
- ~~11.2.5 any other document required by the Listing Rules, of which the Listing Authority has informed the Issuer or its Sponsor in advance.~~

~~11.43 To obtain the authorisation of the Listing Authority in terms of Listing Rule 11.3, a copy of the relevant Circular, **three (3) copies** of the following documents (where applicable) must be submitted at least ten (10) Business Days prior to the intended publication date of ~~the relevant~~ such Circular:~~

- ~~11.5 ~~11.3.1~~ the Circular;~~
- ~~11.3.2 the statements, letters and documents referred to in Listing Rule 11.2.1 to 11.2.3.~~

~~Where a Circular submitted for authorisation is amended, a copy **three (3) copies** of the amended drafts must be ~~re~~submitted, appropriately annotated, to show all the amendments so made.~~

~~Authorisation will only be given during Normal Business Hours.~~

~~*Lodging of Circulars*~~

~~11.4 **Three (3) copies** of any Circular in its final form (whether or not it is required to be submitted to the Listing Authority for authorisation) must be lodged with the Listing Authority at the same time as it is despatched to shareholders.~~

~~*Circulars not Requiring Authorisation*~~

~~11.5 A Circular need not be submitted to the Listing Authority for authorisation before publication provided that:~~

- ~~11.5.1 it complies with the requirements of Listing Rule 11.1;~~
- ~~11.5.2 it is of a type referred to in Listing Rules 11.7 to 11.26 and complies with the specific requirements for a Circular of that type or it is a Circular only relating to a proposed change of name;~~
- ~~11.5.3 neither it, nor the transaction or matter to which it relates, has unusual features; and~~
~~or, in any other case, where the Listing Authority agrees that such Circular need not be so authorised.~~

~~11.6 Where the Circular, or the transaction or matter to which it relates, has unusual features the Listing Authority must be consulted at an early stage. If there is doubt about whether something is unusual, reference should be made to the Listing Authority.~~

Comment [m1]: To consider deletion

Authority to Allot Securities

11.67 A Circular in connection with a resolution proposing to grant the Directors of the Issuer authority to allot relevant Equity Securities ~~in accordance with Article 85(2) of the CA~~ must include:

11.67.1 a statement of the maximum amount of relevant Securities which the Directors will have authority to allot and the percentage which that amount represents of the total ordinary share capital in issue as at a date not more than one (1) month prior to the date of the Circular;

11.67.2 a statement by the Directors as to whether they have any present intention of exercising the authority, and if so for what purpose; and

11.67.3 a statement as to when the authority will lapse.

Increase in Issuer's Authorised Share Capital

11.78 A Circular in connection with a resolution proposing to increase the Issuer's authorised share capital must include:

~~11.8.1~~ a statement of the proposed percentage increase in the authorised share capital of the relevant Class;

~~;~~ and

~~11.8.2~~ a statement of the reason for the increase.

Capitalisation or Bonus Issues

11.89 A Circular in connection with a resolution proposing a capitalisation or bonus issue must include:

~~11.9.1~~ the reason for the issue;

11.89.12 a statement of the last date on which transfers were or will be accepted for registration to participate in the issue; the record date;

11.89.23 details of the pro rata entitlement; and

11.89.34 a description of the nature and amount of reserves which are to be capitalised; ~~and~~

~~11.9.5~~ the proposed date of issue;

~~11.10~~ Any timetable set out in the Circular must be approved before publication by the Recognised Investment Exchange on which the Issuer's Securities are or are to be Admitted to Listing.

Scrip Dividends

11.944 A Circular containing an offer to shareholders of the right to elect to receive Shares in lieu of all or part of a cash dividend must include:

11.944.1 a statement of the total number of Shares that would be issued if all eligible shareholders were to elect to receive Shares in respect of their entire shareholdings, and the percentage which that number represents of the Equity Shares in issue at the date of the Circular;

11.944.2 ~~in a prominent position,~~ details of the equivalent cash dividend forgone to obtain each Share or the basis of the calculation of the number of Shares to be offered in lieu of cash;

11.944.3 a statement of the total cash dividend payable and applicable tax credit on the basis that no elections for the scrip dividend alternative are received;

- 11.944.4 a statement of the date for ascertaining the Share price used as a basis for calculating the allocation of Shares;
- 11.944.5 details of the pro rata entitlement;
- ~~11.11.6 details of what is to happen to fractional entitlements;~~
- 11.944.67 the record date; and
- 11.944.78 a form of election relating to the scrip dividend alternative which:
 - 11.944.78.1 is worded so as to ensure that shareholders must elect positively in order to receive Shares in lieu of cash; and
 - 11.944.78.2 includes a statement that the right is non-transferable.
- ~~11.12 Any timetable set out in the Circular must be approved before publication by the Recognised Investment Exchange on which the Issuer's Securities are or are to be Admitted to Listing.~~
- ~~11.13 Three (3) copies of the form of election and the document of title to be issued in connection with the scrip dividend alternative in final form must be lodged with the Listing Authority at the same time as the Circular is lodged (see Listing Rule 11.4). A document of title need not be lodged with the form of election if it is in identical form to a document of title already issued by the Issuer.~~
- 11.1044 Any proposal whereby shareholders are entitled to complete a mandate in order to receive Shares in lieu of future cash dividends must include, in addition to the requirements set out in Listing Rules 11.944.4 and 11.11.6:
 - 11.1044.1 the basis of the calculation of the number of Shares to be offered in lieu of cash;
 - 11.1044.2 a statement of the last date for lodging notice of participation or cancellation in order for that instruction to be valid for the next dividend;
 - 11.1044.3 details of when adjustment to the number of Shares subject to the mandate will take place;
 - 11.1044.4 details of when cancellation of a mandate instruction will take place;
 - 11.1044.5 a statement of whether or not the mandate instruction must be in respect of a shareholder's entire holding;
 - 11.1044.6 the procedure for notifying shareholders of the details of each scrip dividend; and
 - 11.1044.7 a statement of the circumstances, if known, under which the Directors may decide not to offer a scrip alternative in respect of any dividend.
- ~~11.15 The timetable for each scrip alternative covered by a scrip dividend mandate scheme must be approved by the Recognised Investment Exchange on which the Issuer's Securities are Admitted to listing or trading.~~
- Acquisition by Issuer of its own Shares*
- 11.116 A Circular in connection with a resolution proposing to give the Issuer authority to purchase its own Securities must include the following information:
 - 11.11.1 a statement of the Directors' intentions regarding utilisation of the authority sought;

11.11.2 the method by which the Issuer intends to finance the acquisition and the number of Equity Securities to be acquired in that way;

11.11.3 duration and timing of the proposed acquisition;

11.11.4 details regarding the maximum and minimum price to be paid;

11.11.5 the Issuer's intentions subsequent to acquisition namely whether Issuer intends to cancel the Securities or hold them for re-sale; and

11.11.6 a statement showing the impact of the acquisition on the financial position of the Issuer, based on the assumption that the authority sought will be used in full at the maximum price allowed and this assumption must be stated.

Resale by Issuer of its own Securities

11.12 A Circular in connection with a resolution proposing to give the Issuer authority to resell its own Securities must include the following information:

11.12.1 details regarding the maximum and minimum price at which the Securities are to be sold;

11.12.2 the number of Securities which the Issuer intends to sell; and

11.12.3 the duration and timing of the sale.

comply with the provisions of Article 106 to 109 of the Companies Act and, if relevant, with the requirements of Chapter 12.

Miscellaneous

~~11.17 Whenever holders of Securities authorised as Admissible to Listing are sent a notice of meeting which includes any business, other than Ordinary Business at an annual general meeting, an explanatory Circular must accompany the notice. If such other business is to be considered at or on the same day as an annual general meeting, the explanation may be incorporated in the Directors' report.~~

~~11.18 A Circular or other document convening an annual general meeting at which only Ordinary Business is to be conducted and, if applicable, any other matter covered by this Chapter is to be considered or proposed need not be submitted to the Listing Authority for prior authorisation if, in respect of any such other matter to be considered or proposed, the Circular or other document complies with the relevant provisions of this Chapter.~~

~~11.19 A Circular or other document convening an annual general meeting need not comply with Listing Rules 11.1.3, 11.1.4 and 11.1.5.~~

Redemption of debt securities

~~11.20 A Circular in connection with a resolution proposing to approve the adoption or amendment of the Memorandum and/or Articles of Association must satisfy the requirements for such Circulars set out in Chapter 8.~~

~~11.21 A Circular in connection with a resolution proposing to approve the adoption or amendment of employee share schemes, long term incentive schemes and discounted option arrangements must satisfy the requirements for such Circulars set out in Chapter 10.~~

11.13~~22~~ A Circular in connection with a resolution proposing to redeem a listed Debt Security prior to its due date for redemption must include:

- 11.1322.1 ~~reference to the provisions in the relevant Prospectus allowing the early redemption and~~ an explanation of the reasons for the early redemption;
- 11.1322.2 a statement of the Market Values for the Securities on the first dealing day in each of the six (6) months before the date of the Circular and on the latest practicable date prior to despatch of the Circular;
- 11.1322.3 a statement of any interests of any Director in the Securities;
- 11.1322.4 if there is a trustee, or other representative, of the holders of the Securities to be redeemed, a statement that the trustee, or other representative, has given its consent to the issue of the Circular or stated that it has no objection to the resolution being put to a meeting of the holders of the Securities;
- 11.1322.5 the timetable for redemption; and
- 11.1322.6 an explanation of the procedure to be followed by the holders of the Securities.

11.1423 The Circular must not contain specific advice as to whether or not to accept the proposal for redemption.

~~11.24 The timetable for redemption must be approved before publication of the Circular by the Recognised Investment Exchange on which the Issuer's Securities are Admitted to Listing.~~

~~11.25 A Circular sent to holders of listed convertible Securities reminding them of the times when conversion rights are exercisable must include:~~

~~11.25.1 the date of the last day for lodgement of conversion forms and of the expected despatch of the certificates;~~

~~11.25.2 a statement of the market values for the Securities on the first dealing day in each of the six (6) months before the date of the Circular and on the latest practicable date prior to despatch of the Circular;~~

~~11.25.3 the basis of conversion in the form of a table setting out capital and income comparisons;~~

~~11.25.4 a brief explanation of the tax implications of conversion for holders resident for tax purposes in Malta;~~

~~11.25.5 reference to future opportunities to convert and whether the terms of conversion will be the same as or will differ from those available at present, or, if there are no such opportunities, disclosure of that fact;~~

~~11.25.6 reference to letters of indemnity, for example, where certificates have been lost;~~

~~11.25.7 where power exists to allot Shares issued on conversion to another person, reference to forms of nomination; and~~

~~11.25.8 a statement as to whether holders exercising their rights of conversion will retain the next interest payment due on the Securities.~~

~~11.26 The Circular must not contain specific advice as to whether or not to convert the Securities.~~

Amendments to the Memorandum and Articles of Association

11.15 The Circular referred to in Listing Rule 8.91 must comply with the relevant requirements of Listing Rule 11.1 and must include:

11.15.1 the full terms of the text of the resolution; and

11.15.2 an explanation of the effect of the proposed amendments.

Related Party Circular

11.16 The Circular referred to in Listing Rule 8.86.2 must include:

11.16.1 in the case of a transaction where the Related Party is (or was within the 12 months before the transaction) a Director, or a Connected Person of a Director, of the Issuer (or any other Group Company) the information specified by the following Listing Rules in respect of that Director:¹¹

11.16.1.1 a statement showing the interest of each Director of the Issuer or a Connected Person of such Director in the Share Capital of the Issuer or any member of the Group distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement;

11.16.1.2 all relevant particulars regarding the nature and extent of any interests of Directors of the Issuer in transactions which are or were unusual in their nature or conditions or significant to the business of the Group, and which were effected by the Group during the current or immediately preceding Financial Year or during an earlier Financial Year and remain in any respect outstanding or unperformed or an appropriate negative statement;

11.16.1.3 the total of any outstanding loans granted by any member of the Group to the Directors of the Issuer and also any guarantees provided by any member of the Group for their benefit.

11.16.2 full particulars of the transaction, including the name of the Related Party concerned and of the nature and extent of the interest of such party in the transaction;¹²

11.16.3 a statement by the Directors (other than any Director who is a Related Party, or who is a Director of a Related Party, in respect of the transaction) that the transaction is fair and reasonable so far as the shareholders of the Issuer are concerned and that the Directors have been so advised by an independent adviser acceptable to the Listing Authority;¹³

11.16.4 where applicable, a statement that the Related Party will abstain from voting at the meeting;¹⁴

11.16.5 if the transaction also falls within Listing Rule 8.92.2, the information required by Listing Rules 11.17 to 11.25, unless already covered by this section;

¹¹ UK L.R. 13.6.1(2)

¹² UK L.R. 13.6.1(3)

¹³ UK L.R. 13.6.1(5)

¹⁴ UK L.R. 13.6.1(6)

- 11.16.6 details of any other transactions entered into by the Issuer (or any of its Subsidiary Undertakings) with the same Related Party;
- 11.16.7 the fact that the audit committee has not approved the proposed related party transaction together with the reasons thereto; and
- 11.16.8 an explanation by the Issuer as to why it wishes to enter into the related party transaction notwithstanding the non-approval of the audit committee.

Circular relating to acquisitions and realisations

- 11.17 The Circular that is required to be sent by an Issuer to its shareholders in terms of Listing Rule 8.105.2 (hereinafter referred to as a “Class 2 Circular”) must contain:
 - 11.17.1 the information given in the Company Announcement issued in terms of Listing Rule 8.105, unless already provided elsewhere in the Circular;
 - 11.17.2 a summary of the principal commercial terms of the transaction including any conditions that need to be satisfied for the closure of the transaction;
 - 11.17.3 a statement of the effect of the acquisition or disposal on the earnings, assets, liabilities and trading prospects of the Issuer and, where applicable, the Group, together with a statement setting out any special trade factors or risks;¹⁵
 - 11.17.4 in the case of an acquisition of an interest in an Undertaking, the financial information required by Listing Rules 11.18 to 11.25;
 - 11.17.5 in the case of an acquisition or disposal of an asset other than an Undertaking, an asset valuation report prepared by an independent expert valuer containing a description of such asset, the method of valuation that has been used as well as a statement that the consideration paid by the Issuer is equal to the value of the said asset;
 - 11.17.6 in the case of an acquisition or disposal of Property or of a Property Company which is not listed, a valuation report prepared by an independent Expert in compliance with the requirements of Chapter 14 of these Listing Rules;
 - 11.17.7 in so far as is known to the Issuer, the name of any person other than a Director of the Issuer who, directly or indirectly, currently owns or will, as a result of the transaction, own five percent (5%) or more of the Issuer’s capital, together with the amount of each such person’s ownership or, if there are no such persons, an appropriate negative statement¹⁶;

¹⁵ UK Listing Rule 13.4.1 (5)

¹⁶ UK LR13 Annex IR requires the Class I Circular to disclose major interests in the shares of the issuer (as per Annex I item 18.1 of the Implementing Measures). If the Issuer is issuing shares for which listing is sought, this information must be given for the share capital both as existing and as enlarged by the shares for which listing is sought.

- 11.17.8 information on any legal or arbitration proceedings of the Undertaking or the asset which is the subject of the transaction (including any such proceedings which are pending or threatened of which the Issuer is aware) which may have a significant effect on the Issuer and/or the Group's financial position, or an appropriate negative statement¹⁷;
- 11.17.9 a description of any significant change in the financial or trading position of the Issuer or, where applicable, of the Group, and of the Undertaking since the subject of the transaction, which has occurred since the end of the last Financial Year for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement;
- 11.17.10 a statement showing any interest that a Director within the Issuer or the Group, or a Connected Person of such Director, may have in the transaction to be entered into by the Issuer, or any advantages (including any shares that may be issued to him) that such persons may derive from the transaction;
- 11.17.11 a statement that the the documents referred to in Listing Rules 11.1.12.1 to 11.1.12.3 ,or certified copies thereof, in respect of the Undertaking the subject of the transaction will be available for inspection at the Issuer's registered office or principal place of business in Malta for at least fourteen (14) days from the date of publication of the Circular;
- 11.17.12 if the total Emoluments receivable by the Directors of the Issuer will be varied as a result of the transaction, full particulars of the variation; if there will be no variation, a statement to that effect;

Financial Information in a Class 2 Circular

- 11.18 If an Issuer is required to prepare a Class 2 Circular for the purposes of the transaction referred to in Listing Rule 11.17.4, such circular is to contain selected financial information regarding the Undertaking the subject of the transaction and its Subsidiary Undertakings, if any, (hereinafter collectively referred to as the "target"). The selected financial information must provide the key figures that summarise the financial condition of the target.
- 11.19 The selected financial information referred to in Listing Rule 11.18 must cover a period of three (3) Financial Years up to the end of the latest financial period for which the target or its parent has prepared its Annual Financial Statements or a lesser period if the target has been in operation for less than three (3) years.
- 11.20 Where the target is obliged to prepare audited financial statements, the selected financial information should be extracted from such audited financial statements.
- 11.21 If the Class 2 Circular is dated more than nine (9) months after the end of the last audited Financial Year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six (6) months of the Financial Year. Such interim financial information must include comparative data from the same period in the prior Financial Year, except

¹⁷ ~~Annex I Building Block 20.8. UK LR 13 Annex IR also requires this information to be inserted in the Class I Circular, in relation to both the Issuer and the undertaking the subject of the transaction. To insert a requirement under Listing Rule 8.7 requiring a company announcement to be issued if there are any pending or threatened legal/arbitration proceedings against the Issuer.~~

that the requirement for comparative balance sheet information may be satisfied by presenting the year end balance sheet information.

Profit forecasts and profit estimates

11.22 If an Issuer chooses to include a profit forecast or a profit estimate in a class 2 Circular, it must comply with the requirements for a profit forecast or profit estimate set out in Building Block 13 of Annex I of EC Regulation 809/2004.

11.23 Where the Issuer prepares consolidated Annual Financial Statements, the profit forecast or profit estimate must be prepared on a consolidated basis.

Pro forma financial information

11.24 If an Issuer chooses to include pro forma financial information in a class 2 Circular, such information must be presented in the manner laid down by Building Block 20.2 of Annex I and by Annex II of EC Regulation 809/2004.

11.25 Listing Rule 11.24 shall be without prejudice to the right of the Listing Authority to request the insertion of pro forma financial information in a class 2 Circular should the circumstances so require.

Mergers

11.25a For the purposes of this section:

“company being acquired” means the company or companies whose assets and liabilities are wholly acquired by another Company and which, upon the coming into effect of a merger, is or are dissolved without having to be wound up;

“merging Companies” means two or more Companies which deliver all their assets and liabilities to a newly formed Company.

11.26 A Circular in connection with a resolution for the approval of a merger of the Issuer with another company or companies shall include:

11.26.1 a summary of the principal commercial terms of the merger including any conditions that need to be satisfied for the effectiveness and validity of the merger;

11.26.2 a statement of the effect of the merger on the earnings, assets, liabilities and trading prospects of the company resulting from the merger and, where applicable, the Group, together with a statement setting out any special trade factors or risks;

11.26.3 the financial information required by Listing Rules 11.27 to 11.33;

11.26.4 in so far as is known to the Issuer, the name of any person other than a Director of the Issuer who, directly or indirectly, currently owns own five percent (5%) or more of the capital of the Issuer, or will, as a result of the merger, own five percent (5%) or more of the Company resulting from the merger, together with the amount of

- each such person's ownership or, if there are no such persons, an appropriate negative statement¹⁸;
- 11.26.5 information on any legal or arbitration proceedings of the company being acquired or of the merging companies (including any such proceedings which are pending or threatened of which the Issuer is aware) which may have a significant effect on the company resulting from the merger and/or the Group's financial position, or an appropriate negative statement¹⁹;
- 11.26.6 a description of any significant change in the financial or trading position of the Issuer or, where applicable, of the Group, and of the company being acquired or of the merging companies, as the case may be, which has occurred since the end of the last Financial Year for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement;
- 11.26.7 a statement showing any interest that a Director within the Issuer or the Group, or a Connected Person of such Director, may have in the merger, or any advantages (including any shares that may be issued to him) that such persons may derive from the merger;
- 11.26.8 a statement that the documents referred to in Listing Rules 11.1.12.1 to 11.1.12.3, or certified copies thereof, in respect of the Company being acquired or the merging companies will be available for inspection at the registered office or principal place of business in Malta of the respective companies for at least fourteen (14) days from the date of publication of the Circular;
- 11.26.9 if the total Emoluments receivable by the Directors of the Issuer will be varied as a result of the merger, full particulars of the variation; if there will be no variation, a statement to that effect;
- 11.26.10 the intentions of the acquiring company or the merging companies, as the case may be.:
- 11.26.10.1 for the continuance of the business of the Company resulting from the merger explaining any major changes intended to be introduced in the business, including the redeployment of fixed assets of the company resulting from the merger and setting out the long term commercial justification for the proposed merger; and
- 11.26.10.2 for the continued employment of the existing employees of the company being acquired or the merging companies, as the case may be, setting out the extent of any steps to be taken towards terminating such employment;

¹⁸ UK LR13 Annex IR requires the Class I Circular to disclose major interests in the shares of the issuer (as per Annex I item 18.1 of the Implementing Measures). If the Issuer is issuing shares for which listing is sought, this information must be given for the share capital both as existing and as enlarged by the shares for which listing is sought.

¹⁹ To insert a requirement under Listing Rule 8.7 requiring a company announcement to be issued if there are any pending or threatened legal/arbitration proceedings against the Issuer.

11.26.10.3 in respect of the Admissibility to Listing or otherwise of the Securities of the acquiring company or of the company resulting from the merger, and

11.26.11 a statement as to the rights of the dissenting shareholders.

Financial Information to be included in a Circular relating to a merger

11.27 In addition to the information referred to in Listing Rule 11.26, a Circular issued in connection with a merger is to contain selected financial information regarding the company being acquired or the merging companies, as the case may be. The selected financial information must provide the key figures that summarise the financial condition of the company being acquired or the merging companies.

11.28 The selected financial information referred to in Listing Rule 11.27 must cover a period of three (3) Financial Years up to the end of the latest financial period for which the Company being acquired or the merging companies have prepared their Annual Financial Statements or a lesser period if the said companies have been in operation for less than three (3) years.

11.29 Where the company being acquired or the merging companies are obliged to prepare audited financial statements, the selected financial information should be extracted from such audited financial statements.

11.30 If the Circular is dated more than nine (9) months after the end of the last audited Financial Year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six (6) months of the Financial Year. Such interim financial information must include comparative data from the same period in the prior Financial Year, except that the requirement for comparative balance sheet information may be satisfied by presenting the year end balance sheet information.

Profit forecasts and profit estimates

11.31 If a profit forecast or a profit estimate is included in the Circular referred to in Listing Rule 11.26, the requirements for a profit forecast or profit estimate set out in Building Block 13 of Annex I of EC Regulation 809/2004 must be complied with.

Pro forma financial information

11.32 If pro forma financial information is included in the Circular referred to in Listing Rule 11.26, such information must be presented in the manner laid down by Building Block 20.2 of Annex I and by Annex II of EC Regulation 809/2004.

11.33 Listing Rule 11.32 shall be without prejudice to the right of the Listing Authority to request the insertion of pro forma financial information in a Circular prepared in terms of Listing Rule 11.26 should the circumstances so require.

Employee share schemes and share-based schemes granted to Directors

11.34 A Circular issued to shareholders in connection with the approval of an employee share scheme or a Directors' share-based scheme shall:

11.34.1 include either the full text of the scheme or a description of its principal terms including provisions relating to the matters referred to in Listing Rules 8.151; and

11.34.2 if the scheme is not circulated to shareholders, include a statement that it will be available for inspection:

11.34.2.1 from the date of the dispatch of the Circular until the close of the relevant general meetings, or, if later for at least fourteen (14) days at the registered or head office of the Issuer ; and

11.34.2.2 at the place of the general meeting for at least fifteen (15) minutes prior to and during the meeting.

Amendments to employee share schemes or share-based schemes granted to Directors

11.35 A Circular issued to shareholders in connection with any proposed amendments to an employee share scheme or a share-based scheme granted to directors (if the scheme would require Shareholder approval in terms of Listing Rule 8.148) shall:

11.35.1 include an explanation of the effect of the proposed amendments; and

11.35.2 include the full terms of the proposed amendments, or a statement that the full text of the scheme as amended will be available for inspection as required in Listing Rule 11.34.2.²⁰

Discounted option arrangements

11.36 A Circular issued to shareholders in connection with the approval of discounted option arrangements shall contain:

11.36.1 details of the persons to whom the options, warrants or rights referred to in Listing Rule 10.17 are to be granted; and

11.36.2 a summary of the principal terms of the said options, warrants or rights.²¹

Miscellaneous

²⁰ Currently Listing Rule 10.12

²¹ Currently Listing Rule 10.15

11.37 Whenever holders of Securities authorised as Admissible to Listing are sent a notice of meeting which includes any business, other than Ordinary Business at an annual general meeting, an explanatory Circular must accompany the notice. If such other business is to be considered at or on the same day as an annual general meeting, the explanation may be incorporated in the Directors' report.

11.38 A Circular or other document convening an annual general meeting need not comply with Listing Rules 11.1.3, 11.1.4 and 11.1.5.

Lodging of Circulars

11.39 A copy of any Circular in its final form (whether or not it is required to be submitted to the Listing Authority for authorisation) must be lodged with the Listing Authority at the same time as it is circulated to the shareholders.

11.40 Where the Circular, or the transaction or matter to which it relates, has unusual features the Listing Authority must be consulted at an early stage. If there is doubt about whether something is unusual, reference should be made to the Listing Authority.