





ARRANGEMENT OF SECTIONS

Section

**CHAPTER I**

**PART I**

**PRELIMINARY AND INTERPRETATION**

1. Title and Commencement.
2. Definitions.

**PART II**

**ADMISSION OF SECURITIES TO OFFICIAL  
STOCK MARKET LISTINGS**

3. Official Listing Rules.
4. Notification of changes in major holdings in listed securities.
5. Co-operation with competent authorities of member States.
6. Confidentiality.

**CHAPTER II**

**PART I**

**TRANSPARENCY REQUIREMENTS IN RELATION TO  
INFORMATION ABOUT ISSUERS**

7. Subject matter and scope of this Chapter.
8. Interpretation of Chapter.
- 8A. Disclosure of home Member State.
9. Integration of securities markets.

**PART II**

**PERIODIC INFORMATION**

10. Annual financial reports.
11. Half-yearly financial reports.
12. Report on payments to governments.
13. Responsibility and liability.
14. Exemptions.

**PART III**

**ONGOING INFORMATION**

15. Notification of the acquisition or disposal of major holdings.
16. Acquisition or disposal of major proportions of voting rights.

17. Procedures on the notification and disclosure of major holdings.
- 17A. Aggregation.
18. Repurchase of shares.
19. Threshold calculations in section 15.
20. Additional information.
21. Information requirements for issuers whose shares are admitted to trading on a regulated market.
22. Information requirements for issuers whose debt securities are admitted to trading on a regulated market.
23. Control by the regulatory authority.
24. Languages.
25. Access to regulated information.
26. Guidelines.
27. Non-European Union States.
28. The regulatory authority and its powers.
29. Professional secrecy and cooperation.
30. Precautionary measures.
31. Penalties.
- 31A. Sanctions for specified defaults.
- 31B. Defaults: public statement.
- 31C. Defaults: cease and desist order.
- 31D. Defaults: civil penalties.
- 31E. Defaults: suspension of voting rights.
- 31F. Exercise of penalty and sanctioning powers.
- 31G. Warning notices.
- 31H. Decision notices.
32. Right of appeal.
- 32A. Interim orders.
- 32B. Publication of enforcement action.

**PART IV**  
**TRANSITIONAL AND FINAL PROVISIONS**

33. Transitional provisions.
34. Repeal of Listing of Securities Act 1998.



AN ACT TO TRANSPOSE INTO THE LAW OF GIBRALTAR THE PROVISIONS OF DIRECTIVE 2001/34/EC OF THE EUROPEAN PARLIAMENT AND THE COUNCIL OF 28 MAY 2001 ON THE ADMISSION OF SECURITIES TO OFFICIAL STOCK EXCHANGE LISTING AND ON INFORMATION TO BE PUBLISHED ON THOSE SECURITIES; TO REPEAL THE LISTING OF SECURITIES ACT 1998; AND FOR CONNECTED PURPOSES.

## CHAPTER I

### PART I

#### PRELIMINARY AND INTERPRETATION

##### **Title and Commencement.**

1.(1) This Act may be cited as the Financial Services (Listing of Securities) Act 2006.

(2) This Act shall come into operation on such day as may be appointed by the Minister with responsibility for financial services by notice in the Gazette and different days may be so appointed for different purposes.

##### **Definitions.**

2. In this Act—

“the Listing Authority” means such body in Gibraltar as may be designated as such by the Minister by notice in the Gazette;

“the Directive” means Directive 2001/34/EC of the European Parliament and the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities, as the same may be amended from time to time;

““ESMA” means the European Securities and Markets Authority established by the ESMA Regulation;

“ESMA Regulation” means Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC;

“ESRB” means the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-

prudential oversight of the financial system and establishing a European Systemic Risk Board;”;

“Minister” means the Minister with responsibility for financial services;

“Official Listing Rules” means Rules prescribed under section 3;

“officially listed” means listed under the Official Listing Rules;

“the regulatory authority”, shall be construed in accordance with section 28.

## PART II

### ADMISSION OF SECURITIES TO OFFICIAL STOCK MARKET LISTINGS

#### Official Listing Rules.

3.(1) The Minister may, by notice in the Gazette, prescribe Rules (“Official Listing Rules”) on the admission of securities to stock exchange listing in Gibraltar and on the information to be published with respect to those securities and the bodies by whom they are issued.

(2) Official Listing Rules shall incorporate all such provisions as are necessary to give effect in Gibraltar to—

- (a) those provisions of the Directive relating to listing and the obligations of issuers of listed securities; and
- (b) any Community instrument amending or replacing any of those provisions.

(3) Official Listing Rules may—

- (a) impose obligations and grant discretions on the regulatory authority; and
- (b) make provision for persons to pay compensation in respect of statements made for the purposes of the Rules which are untrue or misleading.

(4) Any person who, for the purpose of, or in connection with, any requirement made by or under Official Listing Rules makes any statement which is false in a material particular shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Notification of changes in major holdings in listed securities.**

4.(1) The Minister may, by notice in the Gazette, make regulations to give effect to—

- (a) the provisions of Chapter III of Title IV of the Directive relating to the information to be published when a person acquires or disposes of a major holding in a listed security; and
- (b) any Community instrument amending or replacing any of those provisions.

(2) Any person who, for the purpose of, or in connection with, any requirement made by or under the regulations makes any statement which is false in a material particular shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding six months or to both a fine and such imprisonment.

**Co-operation with competent authorities of member States.**

5.(1) The Listing Authority or, as the case may require, the regulatory authority shall cooperate, whenever necessary for the purposes of carrying out their duties, with the competent authorities of any member State and shall exchange information useful for that purpose.

(2) In subsection (1)—

- (a) “duties” means duties under the Official Listing Rules or the regulations made under section 4 or otherwise arising by virtue of the Directive; and
- (b) “competent authority”, in relation to a member State, means the body carrying out in that member State functions corresponding to those of the Listing Authority under the Listing Rules or, as the case may be, the regulatory authority under those Rules or the regulations made under section 4.

**Confidentiality.**

6.(1) All persons employed or formerly employed by the Listing Authority or the regulatory authority shall be bound by professional secrecy so that,



except in so far as may be provided by or under any enactment, no confidential information received in the course of their duties may be divulged to any authority or other person.

(2) Nothing in subsection (1) precludes the Listing Authority or the regulatory authority from exchanging information in accordance with section 5 but, except for the purpose of any further such exchange, any information received as a result of such an exchange shall be covered by the obligation of professional secrecy referred to in subsection (1).

(3) *Repealed.*

## CHAPTER II

### PART I

#### TRANSPARENCY REQUIREMENTS IN RELATION TO INFORMATION ABOUT ISSUERS

##### **Subject matter and scope of this Chapter.**

7.(1) This Chapter establishes requirements in relation to the disclosure of periodic and ongoing information about issuers whose securities are already admitted to trading on a regulated market situated or operating within the European Union.

(2) This Chapter does 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.

##### **Interpretation of Chapter.**

8.(1) In this Chapter, and unless the context otherwise requires—

“collective investment undertaking other than the closed-end type” means unit trusts and investment companies—

- (i) the object of which is the collective investment of capital provided by the public, and which operate on the principle of risk spreading; and
- (ii) the units of which are, at the request of the holder of such units, repurchased or redeemed, directly or indirectly, out of the assets of those undertakings;

“controlled undertaking” means any undertaking—

- (i) in which a natural person or legal entity has a majority of the voting rights; or
- (ii) of which a natural person or legal entity has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or
- (iii) of which a natural person or legal entity is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights, respectively, pursuant to an agreement entered into with other shareholders or members of the undertaking in question; or
- (iv) over which a natural person or legal entity has the power to exercise, or actually exercises, dominant influence or control;

“credit institution” means a person licensed as such under the provisions of the Financial Services (Banking) Act;

“debt securities” means bonds or other forms of transferable securitised debts, with the exception of securities which are equivalent to shares in companies or which, if converted or if the rights conferred by them are exercised, give rise to a right to acquire shares or securities equivalent to shares;

“electronic means” are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means;

“formal agreement” means an agreement which is binding under the applicable law;

“host Member State” means Gibraltar or the Member State in which securities are admitted to trading on a regulated market, if different from the home Member State;

“issuer” means—

- (a) a natural person, or legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market; and
- (b) in the case of depository receipts admitted to trading on a regulated market, the issuer of the securities represented,

whether or not those securities are admitted to trading on a regulated market;

“management company” means a company as defined in section 5 of the Financial Services (Collective Investment Schemes) Act 2005;

“market maker” means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital at prices defined by him;

“regulated information” means all information which the issuer, or any other person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, is required to disclose under this Chapter, under section 10 of the Market Abuse Act 2005, or under any requirements imposed by the regulatory authority pursuant to section 9(1);

“regulated market” has the same meaning as in Article 4 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, as it may be amended from time to time;

“securities” means transferable securities as defined in section 2 of the Financial Services (Markets in Financial Instruments) Act 2006 with the exception of money-market instruments, as defined therein, having a maturity of less than 12 months;

“securities issued in a continuous or repeated manner” means debt securities of the same issuer on tap or at least two separate issues of securities of a similar type and/or class;

“shareholder” means any natural person or legal entity who holds, directly or indirectly–

- (i) shares of the issuer in its own name and on its own account;
- (ii) shares of the issuer in its own name, but on behalf of another natural person or legal entity;
- (iii) depository receipts, in which case the holder of the depository receipt shall be considered as the shareholder of the underlying shares represented by the depository receipts;

“the Transparency Directive” means Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC;

“units of a collective investment undertaking” means securities issued by a collective investment undertaking and representing rights of the participants in such an undertaking over its assets.

(2) For the purposes of the definition of “controlled undertaking” in subsection (1), the holder's rights in relation to voting, appointment and removal shall include the rights of any other undertaking controlled by the shareholder and those of any natural person or legal entity acting, albeit in its own name, on behalf of the shareholder or of any other undertaking controlled by the shareholder.

(3) In this Chapter “home Member State” means—

- (a) in the case of an issuer of debt securities the denomination per unit of which is less than EUR 1,000 or an issuer of shares—
  - (i) where the issuer is incorporated in the European Union, either—
    - (aa) Gibraltar, if the registered office is located there; or
    - (bb) a Member State, if the registered office is located there;
  - (ii) where the issuer is incorporated in a third country, the Member State or Gibraltar chosen by the issuer from amongst those where its securities are admitted to trading on a regulated market and the choice shall remain valid unless the issuer has chosen a new home Member State under paragraph (c) and has disclosed the choice in accordance with section 8A;

and the definition of home Member State applies to debt securities denominated in a currency other than euro, provided that the value of such denomination per unit is, at the date of the issue, less than or nearly equivalent to EUR 1,000;

- (b) for any issuer not covered by paragraph (a), the Member State or Gibraltar chosen by the issuer from among those places in

which the issuer has its registered office, where applicable, and those where its securities are admitted to trading on a regulated market, provided that—

- (i) the issuer may choose only one Member State or Gibraltar as its home Member State, and
  - (ii) its choice remains valid for at least three years unless its securities are no longer admitted to trading on any regulated market in the European Union or the issuer becomes covered by paragraph (a) or (c) during the three-year period;
- (c) for an issuer whose securities are no longer admitted to trading on a regulated market in its home Member State as defined in paragraph (a)(ii) or (b) but instead are admitted to trading in one or more other Member States or Gibraltar, such new home Member State as the issuer may choose from among the Member States or Gibraltar where its securities are admitted to trading on a regulated market and, where applicable, the Member State or Gibraltar where the issuer has its registered office.”.

(4) In this Chapter a reference to a “legal entity” means a person other than a natural person but includes a trust or a registered business association without legal personality.

(5) This Chapter applies to the European Economic Area as it applies to the European Union and references to the “European Union” and “Member State” are to be construed accordingly.

#### **Disclosure of home Member State.**

8A.(1) An issuer shall disclose its home Member State—

- (a) in accordance with sections 24 and 25; and
- (b) to the competent authority in each of Gibraltar or any Member State—
  - (i) where it has its registered office (if any);
  - (ii) which is its home Member State;
  - (iii) which is a host Member State.

(2) In the absence of disclosure by the issuer of its home Member State (within the meaning of section 8(3)(a)(ii) or (b)) within three months from the date the issuers' securities are first admitted to trading on a regulated market—

- (a) the home Member State shall be the place where the issuer's securities are admitted to trading on a regulated market; or
- (b) where the issuer's securities are admitted to trading on regulated markets situated or operating within more than one Member State (or one Member State or more and Gibraltar), they shall be the issuer's home Member States until a subsequent choice of a single home Member State has been made and disclosed by the issuer.

(3) For an issuer whose securities are already admitted to trading on a regulated market and whose choice of home Member State (within the meaning of section 8(3)(a)(ii) or (b)) has not been disclosed prior to 27 November 2015, the three months in subsection (2) shall start on 27 November 2015.

(4) An issuer that has chosen a home Member State (within the meaning of section 8(3)(a)(ii), (b) or (c)) and communicated that choice to the competent authority of the home Member State before 27 November 2015 shall be exempt from subsection (2) unless the issuer chooses another home Member State after 27 November 2015.

#### **Integration of securities markets.**

9.(1) Where Gibraltar is the home Member State of an issuer, the regulatory authority may—

- (a) subject to subsections (1A) and (1B), make an issuer subject to requirements more stringent than those laid down in this Chapter;
- (b) subject to subsection (1C), make a holder of shares, or a natural person or legal entity referred to in sections 16 or 17(8), subject to requirements more stringent than those laid down in this Chapter.

(1A) Subsection (1)(a) may only be used to require an issuer to publish periodic financial information more frequently than the annual financial reports under section 10 and the half-yearly financial reports under section 11 where—

- (a) the additional periodic financial information does not constitute a disproportionate financial burden in Gibraltar and, in particular, for the small and medium-sized issuers concerned; and
- (b) the content of the additional periodic financial information required is proportionate to the factors that contribute to investment decisions by investors in Gibraltar.

(1B) Before requiring issuers to publish additional periodic financial information, the regulatory authority must assess whether such additional requirements—

- (a) may lead to an excessive focus on the issuers' short-term results and performance; and
- (b) may impact negatively on the ability of small and medium-sized issuers to have access to the regulated markets.

(1C) Subsection (1)(b) may only be used for the purpose of:

- (a) setting lower or additional notification thresholds than those laid down in section 15(1) and requiring equivalent notifications in relation to thresholds based on capital holdings;
- (b) applying more stringent requirements than those referred to in section 17; or
- (c) applying laws, regulations or administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies, supervised by the authorities appointed by Member States and Gibraltar pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

(1D) Subsection (1)(a) does not restrict the ability of the regulatory authority to require the publication of additional periodic financial information by issuers who are financial institutions.

(2) Where Gibraltar is the host Member State of an issuer, the regulatory authority may not—

- (a) as regards the admission of securities to a regulated market in Gibraltar, impose disclosure requirements more stringent than those laid down in this Chapter or in section 10 of the Market Abuse Act 2005;

- (b) as regards the notification of information, make a holder of shares, or a natural person or legal entity referred to in sections 16 or 17(8), subject to requirements more stringent than those laid down in this Chapter.

## PART II

### PERIODIC INFORMATION

#### **Annual financial reports.**

10.(1) An issuer of securities to which this Chapter applies shall make public its annual financial report at the latest four months after the end of each financial year and shall ensure that it remains publicly available for at least ten years.

- (2) The annual financial report shall comprise—
  - (a) the audited financial statements;
  - (b) the management report; and
  - (c) 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—
    - (i) the financial statements prepared in accordance with the applicable set of 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
    - (ii) the management report includes a fair review of the development and performance of the business; and
    - (iii) 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.
- (3) Where the issuer—
  - (a) is required to prepare consolidated accounts according to the provisions of the Companies (Consolidated Accounts) Act 1999, the audited financial statements shall comprise such consolidated accounts drawn up in accordance with Regulation



(EC) No 1606/2002 and the annual accounts of the parent company drawn up in accordance with the laws of the Member State in which the parent company is incorporated;

- (b) is not required to prepare consolidated accounts, the audited financial statements shall comprise the accounts prepared in accordance with the laws of the Member State in which the company is incorporated.

(4) The financial statements shall be–

- (a) audited in accordance with section 10 of the Companies (Accounts) Act 1999 and, if the issuer is required to prepare consolidated accounts, audited, in accordance with the provisions of the Companies (Consolidated Accounts) Act 1999;
- (b) signed by the person or persons responsible for auditing the financial statements; and
- (c) disclosed in full to the public together with the annual financial report.

(5) The management report shall be drawn up in accordance with Schedule 10 of the Companies (Accounts) Act 1999 and, if the issuer is required to prepare consolidated accounts, in accordance with section 33 of the Companies (Consolidated Accounts) Act 1999.

(6) With effect from 1 January 2020 all annual financial reports shall be prepared in a single electronic reporting format in accordance with Article 4(7) of Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

#### **Half-yearly financial reports.**

11.(1) The issuer of shares or of debt securities shall–

- (a) make public a half-yearly financial report covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest three months thereafter;
- (b) ensure that the half-yearly<sup>17</sup> financial report remains available to the public for at least ten years.

(2) The half-yearly financial report shall comprise–

- (a) the condensed set of financial statements;
  - (b) an interim management report; and
  - (c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that—
    - (i) 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 as required under subsection (3); and
    - (ii) that the interim management report includes a fair review of the information required under subsection (4).
- (3) Where the issuer—
- (a) is required to prepare consolidated accounts, the condensed set of financial statements shall be prepared in accordance with the international accounting standard applicable to the interim financial reporting adopted pursuant to the procedure provided for under Article 6 of Regulation (EC) No 1606/2002;
  - (b) is not required to prepare consolidated accounts, the condensed set of financial statements shall at least contain a condensed balance sheet, a condensed profit and loss account and explanatory notes on these accounts. In preparing the condensed balance sheet and the condensed profit and loss account, the issuer shall follow the same principles for recognising and measuring as when preparing annual financial reports.
- (4) The interim management 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 description of the principal risks and uncertainties for the remaining six months of the financial year; and, for issuers of shares, the interim management report shall also include major related parties transactions.
- (5) If the half-yearly financial report has been audited, the audit report and review shall be reproduced in full; and where the half-yearly financial

report has not been audited or reviewed by auditors, the issuer shall make a statement to that effect in its report.

**Report on payments to governments.**

12.(1) An issuer active in the extractive or logging of primary forest industries, as defined in Article 41(1) and (2) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, shall prepare on an annual basis, in accordance with Chapter 10 of that Directive, a report on payments made to governments.

(2) A report under subsection (1) shall be made public at the latest six months after the end of each financial year and shall remain publicly available for at least 10 years.

(3) Payments to governments shall be reported at consolidated level.

**Responsibility and liability.**

13.(1) It shall be the responsibility of the issuer or its administrative, management or supervisory bodies to draw up and make public the information required in accordance with sections 10, 11, 12 and 20.

(2) An issuer or its administrative, management or supervisory bodies or any person responsible within the issuer that fails to comply with the provisions of subsection (1) is guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale.

**Exemptions.**

14.(1) Sections 10 and 11 shall not apply to any of the following issuers—

- (a) The Government of Gibraltar;
- (b) a public international body of which at least one Member State is a member, the European Central Bank (ECB), the European Financial Stability Facility (EFSF) established by the EFSF Framework Agreement or any other mechanism established with the objective of preserving the financial stability of European monetary union by providing temporary financial assistance to the Member States whose currency is the euro and Member States' national central banks whether or not they issue shares or other securities;

- (c) an issuer exclusively of debt securities admitted to trading on a regulated market, the denomination per unit of which is at least EUR 100,000 or, in the case of debt securities denominated in a currency other than euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 100,000.

(2) The regulatory authority may choose not to apply section 11 to credit institutions having Gibraltar as the home Member State 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 EUR 100,000,000 and that they have not published a prospectus under the Prospectuses Act 2005.

(3) The regulatory authority may choose not to apply section 11 to issuers having Gibraltar as the home Member State and already existing at the date of the entry into force of the Prospectuses Act 2005 which exclusively issue debt securities unconditionally and irrevocably guaranteed by the Government on a regulated market.

(4) By way of derogation from subsection (1)(c), sections 10 and 11 shall not apply to issuers of exclusively debt securities the denomination per unit of which is at least EUR 50,000 or, in the case of debt securities denominated in a currency other than euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 50,000, which have already been admitted to trading on a regulated market in the European Union before 31 December 2010, for as long as such debt securities are outstanding.

### **PART III**

#### **ONGOING INFORMATION**

##### **Notification of the acquisition or disposal of major holdings.**

15.(1) A person shall notify an issuer whose home Member State is Gibraltar if, as a result of an event specified in subsection (2), the percentage of voting rights of the issuer held by the person reaches, exceeds or falls below one or more of the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%.

- (2) The events are—

- (a) the acquisition or disposal by the person of shares in the issuer which are admitted to trading on a regulated market and to which voting rights are attached; or
- (b) an event changing the breakdown of voting rights, on the basis of information disclosed by the issuer in accordance with section 19;

and a notification under subsection (1) must also be made to an issuer that is incorporated outside of the European Union in circumstances where an event equivalent to one specified in paragraph (b) occurs and on the basis of disclosed information equivalent to that mentioned in that paragraph.

(3) Voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise of those rights is suspended, and 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.

(4) This section shall not apply to shares acquired for the sole purpose of clearing and settling within the usual short settlement cycle, or to custodians holding shares 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.

(5) This section shall not apply to the acquisition or disposal of a major holding reaching or crossing the 5% threshold by a market maker acting in its capacity of a market maker, provided that—

- (a) it is authorised by its home Member State under Directive 2004/39/EC; and
- (b) it neither intervenes in the management of the issuer concerned nor exerts any influence on the issuer to buy such shares or back the share price.

(6) This section shall not apply to voting rights held in the trading book (as defined in Article 11 of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions) of a credit institution or investment firm where—

- (a) the voting rights held in the trading book do not exceed 5%; and
- (b) the voting rights attached to shares held in the trading book are not exercised or otherwise used to intervene in the management of the issuer.

(7) This section shall not apply to voting rights attached to shares acquired for stabilisation purposes in accordance with Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments, where the voting rights attached to those shares are not exercised or otherwise used to intervene in the management of the issuer.

**Acquisition or disposal of major proportions of voting rights.**

16. The notification requirements defined in subsections (1) and (2) of section 15 shall also apply to a natural person or legal entity to the extent it is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them—

- (a) 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;
- (b) 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;
- (c) 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;
- (d) voting rights attaching to shares in which that person or entity has the life interest;
- (e) voting rights which are held, or may be exercised within the meaning of paragraphs (a) to (d), by an undertaking controlled by that person or entity;
- (f) voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders;
- (g) voting rights held by a third party in its own name on behalf of that person or entity;

- (h) 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.

**Procedures on the notification and disclosure of major holdings.**

17.(1) The notification required under sections 15 and 16 shall include the following information–

- (a) the resulting situation in terms of voting rights;
- (b) the chain of controlled undertakings through which voting rights are effectively held, if applicable;
- (c) the date on which the threshold was reached or crossed; and
- (d) the identity of the shareholder, even if that shareholder is not entitled to exercise voting rights under the conditions laid down in section 16, and of the natural person or legal entity entitled to exercise voting rights on behalf of that shareholder.

(2) The notification to the issuer shall be effected promptly, but not later than four trading days, after the date on which the shareholder, or the natural person or legal entity referred to in section 16–

- (a) 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
- (b) is informed about the event mentioned in section 15(2).

(3) An undertaking shall be exempted from making the required notification in accordance with subsection (1) if the notification is made by the parent undertaking or, where the parent undertaking is itself a controlled undertaking, by its own parent undertaking.

(4) The following provisions apply–

- (a) the parent undertaking of a management company shall not be required to aggregate its<sup>23</sup> holdings under sections 15 and 16 with the holdings managed by the management company under the conditions laid down in the Financial Services (Collective Investment Schemes) Act 2005, provided such management

company exercises its voting rights independently from the parent undertaking;

- (b) sections 15 and 16 shall apply 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.

(5) The parent undertaking of an investment firm authorised under the Financial Services (Markets in Financial Instruments) Act 2006 shall not be required to aggregate its holdings under sections 15 and 16 with the holdings which such investment firm manages on a client-by-client basis provided that—

- (a) the investment firm is authorised to provide such portfolio management under point 4 of Section A of Schedule 1 to Financial Services (Markets in Financial Instruments) Act 2006;
- (b) 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 the Financial Services (Collective Investment Schemes) Act 2005 by putting into place appropriate mechanisms; and
- (c) the investment firm exercises its voting rights independently from the parent undertaking,

save that, sections 15 and 16 shall apply 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.

(6) Upon receipt of the notification under subsection (1), but no later than three trading days thereafter, the issuer shall make public all the information contained in the notification.

(7) Where Gibraltar is the home Member State of an issuer, the regulatory authority may exempt the issuer from the requirement in



subsection (6) if the information contained in the notification is made public by its regulatory authority, under the conditions laid down in section 25 upon receipt of the notification, but no later than three trading days thereafter.

(8) The notification requirements in section 15 shall also apply to a natural person or legal entity who holds, directly or indirectly—

- (a) financial instruments that, on maturity, give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to his right to acquire, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market; or
- (b) financial instruments which are not included in paragraph (a) but which are referenced to shares referred to in that paragraph and with economic effect similar to that of the financial instruments referred to in that paragraph, whether or not they confer a right to a physical settlement.

(9) The notification required shall include the breakdown by type of financial instruments held in accordance with subsections (8)(a) or (b), distinguishing between the financial instruments which confer a right to a physical settlement and the financial instruments which confer a right to a cash settlement.

(10) Subsections (8) and (9) apply having regard to any delegated acts adopted by the European Commission under Article 13(2) of the Transparency Directive.

(11) The number of voting rights shall be calculated—

- (a) by reference to the full notional amount of shares underlying the financial instrument; or
- (b) where the financial instrument provides exclusively for a cash settlement, on a delta-adjusted basis, by multiplying the notional amount of underlying shares by the delta of the instrument.

(12) For the purpose of subsection (11)—

- (a) the holder shall aggregate and notify all financial instruments relating to the same underlying issuer but only long positions shall be taken into account for the calculation of voting rights and long positions shall not be netted with short positions relating to the same underlying issuer; and

- (b) any calculation shall be undertaken having regard to any delegated act adopted by the European Commission under Article 13(1a) of the Transparency Directive.

(13) For the purpose of subsection (8) the following, if they satisfy any of the conditions in paragraph (a) or (b) of that subsection, shall be considered to be financial instruments—

- (a) transferable securities;
- (b) options;
- (c) futures;
- (d) swaps;
- (e) forward rate agreements;
- (f) contracts for differences;
- (g) any other contracts or agreements with similar economic effects which may be settled physically or in cash; and
- (h) any other financial instruments which are included in the indicative list of financial instruments established by ESMA under Article 13(1b) of the Transparency Directive.

(14) The exemptions in subsections (3) to (5) and in sections 15(4), (5) and (6) shall apply to the notification requirements under subsections (8) to (13), but having regard to any delegated act adopted by the European Commission under Article 13(4) of the Transparency Directive.

**Aggregation.**

17A.(1) The notification requirements laid down in sections 15, 16 and 17(8) to (13) shall also apply to a natural person or legal entity when the number of voting rights held directly or indirectly by such person or entity under sections 15 and 16 aggregated with the number of voting rights relating to financial instruments held directly or indirectly under sections 17(8) to (13) reaches, exceeds or falls below the thresholds set out in section 15(1).

(2) The notification required under subsection (1) shall include a breakdown of the number of voting rights attached to shares held in accordance with sections 15 and 16 and voting rights relating to financial instruments within the meaning of sections 17(8) to (13).

(3) Voting rights relating to financial instruments that have already been notified in accordance with sections 17(8) to (13) shall be notified again when the natural person or legal entity has acquired the underlying shares and such acquisition results in the total number of voting rights attached to shares issued by the same issuer reaching or exceeding the thresholds laid down in section 15(1).

**Repurchase of shares.**

18. Where Gibraltar is the home Member State of an issuer of shares admitted to trading on a regulated market who acquires or disposes of its own shares, either itself or through a person acting in his own name but on the issuer's behalf, the regulatory authority shall ensure that the issuer makes public the proportion of its own shares as soon as possible, but not later than four trading days following such acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 % or 10 % of the voting rights. The proportion shall be calculated on the basis of the total number of shares to which voting rights are attached.

**Threshold calculations in section 15.**

19. For the purpose of calculating the thresholds provided for in section 15, an issuer whose home Member State is Gibraltar shall disclose to the public, at the end of each calendar month during which an increase or decrease of the total number has occurred, the total number of voting rights and capital in respect of each class of share that it issues.

**Additional information.**

20.(1) The issuer of shares admitted to trading on a regulated market shall make public without delay any change in the rights 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.

(2) The issuer of securities, other than shares admitted to trading on a regulated market, shall make public without delay any changes in the rights 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.

**Information requirements for issuers whose shares are admitted to trading on a regulated market.**

21.(1) The issuer of shares admitted to trading on a regulated market shall ensure equal treatment for all holders of shares who are in the same position.

(2) The issuer shall ensure that all the facilities and information necessary to enable holders of shares to exercise their rights are available in Gibraltar where Gibraltar is the home Member State, and that the integrity of data is preserved, and shareholders shall not be prevented from exercising their rights by proxy, subject to the law of Gibraltar where the issuer is incorporated in Gibraltar. The issuer shall, in particular–

- (a) provide information on the place, time and agenda of meetings, the total number of shares and voting rights and the rights of holders to participate in meetings;
- (b) *Omitted*
- (c) designate as its agent a financial institution through which shareholders may exercise their financial rights; and
- (d) 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.

(3) For the purposes of conveying information to shareholders and where Gibraltar is the home Member State of the issuer, the regulatory authority shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions–

- (a) 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 section 16(a) to (h), of the natural persons or legal entities;
- (b) identification arrangements shall be put in place so that the shareholders, or the natural persons or legal entities entitled to exercise or to direct the exercise of voting rights, are effectively informed;
- (c) shareholders, or in the cases referred to in section 16(a) to (e) the natural persons or legal entities 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, provided that they shall be able to request, at any time in the future, that information be conveyed in writing; and

- (d) 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 laid down in subsection (1).

**Information requirements for issuers whose debt securities are admitted to trading on a regulated market.**

22.(1) The issuer of debt securities admitted to trading on a regulated market shall ensure that all holders of debt securities ranking pari passu are given equal treatment in respect of all the rights attaching to those debt securities.

(2) The issuer shall ensure that—

- (a) all the facilities and information necessary to enable debt securities holders to exercise their rights are publicly available in Gibraltar, where Gibraltar is the home Member State of the issuer ;
- (b) the integrity of data is preserved;
- (c) debt securities holders shall not be prevented from exercising their rights by proxy, subject to the law of Gibraltar where the issuer is incorporated in Gibraltar. In particular, the issuer shall—
  - (i) 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;
  - (ii) make available a proxy form on paper or, where applicable, 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
  - (iii) designate as its agent a financial institution through which debt securities holders may exercise their financial rights.

(3) Where only holders of debt securities whose denomination per unit amounts to at least EUR 100,000 or, in the case of debt securities denominated in a currency other than euro whose denomination per unit is,

at the date of the issue, equivalent to at least EUR 100,000, are to be invited to a meeting, the issuer may choose as venue Gibraltar or any Member State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in Gibraltar or that Member State.

(3A) The choice referred to in the subsection (3) shall also apply with regard to holders of debt securities whose denomination per unit amounts to at least EUR 50,000 or, in the case of debt securities denominated in a currency other than euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 50,000, which have already been admitted to trading on a regulated market in the European Union before 31 December 2010, for as long as such debt securities are outstanding, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in the chosen venue.

(4) For the purposes of conveying information to debt securities holders the regulatory authority, where Gibraltar is the home Member State, or the Member State chosen by the issuer pursuant to subsection (3), shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions—

- (a) 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;
- (b) identification arrangements shall be put in place so that debt securities holders are effectively informed;
- (c) 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, their consent shall be deemed to be given, provided that they shall be able to request, at any time in the future, that information be conveyed in writing; and
- (d) 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 laid down in subsection (1).

**Control by the regulatory authority.**

23.(1) This section applies where Gibraltar is the home Member State of an issuer.

- (2) Whenever an issuer—
- (a) or any person having requested, without the issuer's consent, the admission of its securities to trading on a regulated market, discloses regulated information, it shall at the same time file that information with the regulatory authority, which may decide to publish such filed information on its website;
  - (b) proposes to amend its instrument of incorporation or statutes, it shall communicate the draft amendment to the regulatory authority and to the regulated market to which its securities have been admitted to trading. Such communication shall be effected without delay, but at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment.
- (3) The regulatory authority may exempt an issuer from the requirement under subsection (2) in respect of information disclosed in accordance with section 10 of the Market Abuse Act 2005 or section 17(6) of this Chapter.
- (4) Information to be notified to the issuer in accordance with sections 15, 16 and 17 shall at the same time be filed with the regulatory authority.

#### **Languages.**

24.(1) Where securities are admitted to trading on a regulated market only in Gibraltar as the home Member State, regulated information shall be disclosed in English.

(2) Where securities are admitted to trading on a regulated market both in Gibraltar as the home Member State and in one or more host Member States, regulated information shall be disclosed—

- (a) in English; and
- (b) depending on the choice of the issuer, either in a language accepted by the competent authorities of those host Member States or in a language customary in the sphere of international finance.

(3) Where securities are admitted to trading on a regulated market in one or more host Member States, but not in Gibraltar as the home Member State—

- (a) regulated information shall, depending on the choice of the issuer, be disclosed either in a language accepted by the

competent authorities of those host Member States or in a language customary in the sphere of international finance; and

- (b) the regulatory authority may decide that the regulated information shall, depending on the choice of the issuer, be disclosed either in English or in a language customary in the sphere of international finance.

(4) Where securities are admitted to trading on a regulated market without the issuer's consent, the obligations under subsections (1), (2) and (3) shall be incumbent upon the person who, without the issuer's consent, has requested such admission.

(5) Shareholders and the natural person or legal entity referred to in sections 15, 16 and 17(8) may notify information to an issuer under this Chapter only in a language customary in the sphere of international finance; and if the issuer receives such a notification, the regulatory authority may not require the issuer to provide a translation.

(6) By way of derogation from subsections (1) to (4), where securities whose denomination per unit amounts to at least EUR 100,000 or, in the case of debt securities denominated in a currency other than euro equivalent to at least EUR 100,000 at the date of the issue, are admitted to trading on a regulated market in Gibraltar or in one or more Member States, regulated information shall be disclosed to the public either in a language accepted by the competent authorities of the home and host Member States 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.

(6A) The derogation referred to in subsection (6) shall also apply to debt securities the denomination per unit of which is at least EUR 50,000 or, in the case of debt securities denominated in a currency other than euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 50,000, which have already been admitted to trading on a regulated market in Gibraltar or one or more Member States before 31 December 2010, for as long as such debt securities are outstanding.

(7) Where an action concerning the content of regulated information is brought before a court or tribunal, 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 law applicable to that action.

**Access to regulated information.**

25.(1) Where Gibraltar is the home Member State of an issuer–



- (a) the regulatory authority shall ensure that the issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, discloses regulated information in a manner that ensures fast access to such information on a non-discriminatory basis and makes it available to the officially appointed mechanism referred to in subsection (2);
- (b) the issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, may not charge investors any specific cost for providing the information;
- (c) the regulatory authority shall require the issuer to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the European Union; and
- (d) the regulatory authority may not impose an obligation to use only media whose operators are established in Gibraltar.

(2) Where Gibraltar is the home Member State of an issuer, the regulatory authority shall ensure that there is at least one officially appointed mechanism for the central storage of regulated information.

(3) The regulatory authority shall ensure that the mechanism referred to in subsection (2) is aligned with the filing procedure under section 23(1) and complies with such requirements as the authority shall set in relation to minimum quality standards of security, certainty as to the information source, time recording and easy access by end users.

(4) Where securities are admitted to trading on a regulated market in Gibraltar as a host Member State, the regulatory authority shall ensure disclosure of regulated information in accordance with the requirements referred to in subsection (1).

(5) This section is to be applied having regard to any delegated acts adopted by the European Commission in accordance with Article 21(4) of the Transparency Directive.

26. *Omitted.*

#### **Non-European Union States.**

33

27.(1) Where the registered office of an issuer is outside the European Union—

- (a) the regulatory authority, where Gibraltar is the home Member State of the issuer, may exempt that issuer from requirements under sections 10 to 13, 17(6) and 18 to 22, provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the regulatory authority considers as equivalent;
- (b) the regulatory authority shall inform ESMA of any exemption granted pursuant to paragraph (a).

(1A) Any information covered by the requirements laid down in a third country to which subsection (1) applies shall be—

- (a) filed by the issuer in accordance with section 23; and
- (b) disclosed by the issuer in accordance with sections 24 and 25.

(2) Where Gibraltar is the home Member State of the issuer, the regulatory authority shall ensure that information disclosed in a non-European Union country which may be of importance for the public in the European Union is disclosed in accordance with sections 24 and 25, even if such information is not regulated information within the meaning of section 8(1).

(3) Undertakings whose registered office is in a non European Union country which would have required an authorisation under the provisions of the Financial Services (Collective Investment Schemes) Act 2005 or, with regard to portfolio management, under point 4 of section A of Schedule 1 of the Financial Services (Markets in Financial Instruments) Act 2006 if it had its registered office or, in the case of an investment firm, its head office within the European Union, shall also be exempted from aggregating holdings with the holdings of its parent undertaking under the requirements laid down in section 17(4) and (5) provided that they comply with equivalent conditions of independence as management companies or investment firms.

**The regulatory authority and its powers.**

28.(1) The following provisions apply—

- (aa) subject to paragraph (ac) the competent authority designated under the Prospectuses Act 2005—

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- (i) shall be the central competent administrative authority and in this Act shall be referred to as the “regulatory authority”; and
  - (ii) shall be responsible for carrying out the obligations provided for in this Act and for ensuring that the provisions adopted pursuant to this Act are applied;
- (ab) the Minister shall ensure that the Commission and ESMA are informed of the designation pursuant to paragraph (aa);
- (ac) the Minister may, for the purpose of subsection (3)(h) designate a competent authority other than the regulatory authority;
- (a) the regulatory authority may, with the consent of the Minister, delegate tasks entrusted to it under this Act. Except for the tasks referred to in subsection (3)(h), any delegation of tasks relating to the obligations provided for in this Chapter shall be reviewed five years after the entry into force of this Chapter and shall end eight years after the entry into force of this Chapter. Any delegation of tasks shall be made in a specific manner stating the tasks to be undertaken and the conditions under which they are to be carried out;
- (b) those conditions shall include a clause requiring the entity in question to be organised in a manner such that conflicts of interest are avoided and information obtained from carrying out the delegated tasks is not used unfairly or to prevent competition. In any case, the final responsibility for supervising compliance with the provisions of this Chapter and implementing measures adopted pursuant thereto shall lie with the regulatory authority.
- (2) The Minister shall ensure that following are informed of any arrangements entered into with regard to the delegation of tasks, including the precise conditions for regulating the delegations, namely the European Commission, ESMA (in accordance with Article 28(4) of the ESMA Regulation) and the competent authorities of the Member States.
- (3) The regulatory authority shall have all the powers necessary for the performance of its functions and, without prejudice to the generality of the foregoing, for this purpose the regulatory authority may–
- (a) require auditors, issuers, holders of shares or other financial instruments, or persons or entities referred to in sections 16 or 17(8), and the persons that control them or are controlled by them, to provide information and documents;

- (b) require the issuer to disclose the information required under paragraph (a) to the public by the means, and within the time limits, the authority considers necessary. The regulatory authority may publish such information on its own initiative in the event that the issuer, or the persons that control it or are controlled by it, fail to do so and after having heard the issuer;
- (c) require managers of the issuers and of the holders of shares or other financial instruments, or of persons or entities referred to in sections 16 or 17(8), to notify the information required under this Chapter, and, if necessary, to provide further information and documents;
- (d) suspend, or request the relevant regulated market to suspend, trading in securities for a maximum of ten days at a time if it has reasonable grounds for suspecting that the provisions of this Chapter have been infringed by the issuer;
- (e) prohibit trading on a regulated market if it finds that the provisions of this Chapter have been infringed, or if it has reasonable grounds for suspecting that the provisions of this Chapter have been infringed;
- (f) monitor that the issuer discloses timely information with the objective of ensuring effective and equal access to the public in all those places in European Union where the securities are traded and take appropriate action if that is not the case;
- (g) make public the fact that an issuer, or a holder of shares or other financial instruments, or a person or entity referred to in sections 16 or 17(8), is failing to comply with its obligations;
- (h) examine that information referred to in this Chapter is drawn up in accordance with the relevant reporting framework and take appropriate measures in case of discovered infringements; and
- (i) apply to a magistrate for a warrant to carry out on-site inspections in order to verify compliance with the provisions of this Chapter.

(4) The disclosure to the regulatory authority by the auditors of any fact or decision related to the requests made by the regulatory authority under subsection (3)(a) shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any law and shall not involve such auditors in liability of any kind.

(5) Subject to subsection (6) the Minister may upon consultation with the Listing Authority prescribe fees to be made payable to the Listing Authority with regard to the application for listings made under the Official Listing Rules 2007.

(6) A prescribed fee made under subsection (5) must be published by notice in the Gazette.

**Professional secrecy and cooperation.**

29.(1) The duty of professional secrecy shall apply to all persons who work or who have worked for the regulatory authority and for entities to which the regulatory authority may have delegated certain tasks. Information covered by professional secrecy may not be disclosed to any other person or authority except in accordance with the provisions of this Act.

(2) In the event that in Gibraltar there is more than one competent authority, the competent authorities shall cooperate with each other, whenever necessary, for the purpose of carrying out their duties and making use of their powers, whether under this Act or pursuant to the Transparency Directive, and the competent authorities shall render assistance to the competent authorities of the Member States.

(2A) In the exercise of their sanctioning and investigative powers, competent authorities shall—

- (a) cooperate to ensure that sanctions or measures produce the desired results; and
- (b) coordinate their action when dealing with cross-border cases.

(3) The competent authorities may refer to ESMA where a request for cooperation has been rejected or has not been acted upon within a reasonable time.

(4) The competent authorities shall cooperate with ESMA for the purposes of this Act or the Transparency Directive, in accordance with the ESMA Regulation.

(5) The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties under the Transparency Directive and under the ESMA Regulation, in accordance with Article 35 of that Regulation.

(6) Subsection (1) shall not prevent the competent authorities from exchanging confidential information with, or from transmitting information to, other competent authorities, ESMA and ESRB and information thus

exchanged shall be covered by the obligation of secrecy to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

(7) The Government may conclude cooperation agreements providing for the exchange of information with the competent authorities or bodies of third countries enabled by their respective legislation to carry out any tasks under this Act in accordance with section 28, and ESMA shall be notified of any such agreements.

(8) Cooperation agreements to which subsection (7) refer are subject to guarantees of professional secrecy at least equivalent to those referred to in this section and any information exchanged thereunder shall be intended for the performance of the supervisory task of the authorities or bodies mentioned.

(9) Where information originates in a Member State, it shall not be disclosed pursuant to an agreement to which subsection (7) refers without the express agreement of the competent authorities which disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

#### **Precautionary measures.**

30.(1) Where Gibraltar is the host Member State of an issuer, and the regulatory authority finds that the issuer or the holder of shares or other financial instruments, or the person or entity referred to in section 16, has committed irregularities or infringed its obligations, it shall refer its findings to the competent authority of the home Member State and to ESMA.

(2) Where Gibraltar is the host Member State of an issuer and, despite the measures taken by the competent authority of the home Member State, or because such measures prove inadequate, the issuer or the security holder persists in infringing the relevant legal or regulatory provisions, the regulatory authority shall, after informing the Minister and the competent authority of the home Member State, take, in accordance with section 9(2), all the appropriate measures in order to protect investors.

(3) The Minister shall ensure that the Commission and ESMA are informed at the earliest opportunity of any measures taken pursuant to subsection (2).

#### **Penalties.**

31.(1) Where a person is responsible for any act or omission contrary to the provisions of this Chapter (“a contravention”), the regulatory authority may take any of the following actions—

- (a) reprimand the person;
- (b) impose a penalty not exceeding £10,000 recoverable summarily as civil debt;
- (c) suspend, vary or revoke a relevant authorisation to which the contravention relates;
- (d) where the person is not a legal entity—
  - (i) prohibit the person from carrying out specified functions in relation to the management of a legal entity for a specified period (not exceeding 12 months); or
  - (ii) declare that the person is not a fit and proper person for a specified purpose in connection with a Supervisory Act.

(2) In this section—

“relevant authorisation” means an authorisation, licence registration, approval or other permission granted to a natural person or legal entity under a Supervisory Act; and

“Supervisory Act” has the same meaning as in the Financial Services Commission Act 2007.

### **Sanctions for specified defaults.**

31A.(1) The regulatory authority may take any of the actions specified in sections 31B to 31E if it is satisfied that a default has occurred.

(2) For the purposes of this Chapter “default” means—

- (a) failure by an issuer to make public, within the required time limit, information required under section 10, 11, 12, 18 or 20; or
- (b) failure by a natural person or legal entity to notify, within the required time limit, the acquisition or disposal of a major holding in accordance with section 15, 16, 17 or 17A.

### **Defaults: public statement.**

39

31B.(1) The regulatory authority may publish a statement specifying—

- (a) the nature of the default, and

(b) the identity of the person who has committed it.

(2) Publication under this section may take any form, or combination of forms, that the regulatory authority thinks appropriate.

**Defaults: cease and desist order.**

31C. The regulatory authority may order a person—

- (a) to cease any conduct which constitutes a default, and
- (b) to desist from any repetition of that conduct.

**Defaults: civil penalties.**

31D.(1) The regulatory authority may by order impose a penalty of an amount not exceeding whichever is the higher of the following—

- (a) where the profit gained or loss avoided because of the default can be determined, twice the amount of the profit or avoided loss;
- (b) in the case of a legal entity—
  - (i) EUR 10,000,000 (or the Sterling equivalent based upon the exchange rate as at 26 November 2013); or
  - (ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body;
- (c) in the case of a natural person, EUR 2,000,000 (or the Sterling equivalent based upon the exchange rate as at 26 November 2013).

(2) Where a legal entity is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts pursuant to Directive 2013/34/EU, the relevant total turnover for the purpose of subsection (1)(b)(ii) is the total annual turnover (or the corresponding type of income) according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

(3) A penalty imposed under this section may be enforced in the same manner as if it were a debt owed to the regulatory authority.



**Defaults: suspension of voting rights.**

31E.(1) In the case of a default within the meaning of section 31A(2)(b) the regulatory authority may, where it is satisfied that the default is of a serious nature, by order suspend the voting rights of the shareholder responsible.

**Exercise of penalty and sanctioning powers.**

31F.(1) In determining the type and level of any penalty or sanction, the regulatory authority must take into account all relevant circumstances, including where appropriate—

- (a) the gravity and the duration of the contravention or default;
- (b) the degree of responsibility of the natural person or legal entity concerned;
- (c) the financial strength of the natural person or legal entity responsible, for example as indicated by the legal entity's total turnover or the natural person's annual income;
- (d) in so far as they can be determined—
  - (i) the importance of the profits gained or losses avoided by the natural person or legal entity responsible; and
  - (ii) the losses sustained by third parties as a result of the contravention or default;
- (e) the level of cooperation with the regulatory authority by the natural person or legal entity responsible;
- (f) previous contraventions or defaults by the natural person or legal entity.

**Warning notices.**

31G.(1) Before taking action in respect of a person under this Chapter the regulatory authority must give the person a warning notice, stating the action proposed and the reasons for it.

(2) Subsection (1) does not apply if the regulatory authority is satisfied that a warning notice—

41

- (a) cannot be given because of urgency;

- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action to be taken; or
  - (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.
- (3) A warning notice—
- (a) must give the recipient not less than 14 days to make representations; and
  - (b) must specify a period within which the recipient may decide whether to make oral representations.
- (4) The period for making representations may be extended by the regulatory authority.

**Decision notices.**

31H.(1) This section applies where the regulatory authority has—

- (a) issued a warning notice, or
  - (b) dispensed with the requirement to give a warning notice in accordance with section 31G(2).
- (2) After considering any representations made in accordance with section 31G the regulatory authority must issue—
- (a) a decision notice stating that the regulatory authority will take the action specified in the warning notice;
  - (b) a discontinuance notice stating that the regulatory authority does not propose to take that action; or
  - (c) a combined notice consisting of a decision notice stating that the regulatory authority will take certain action specified in the warning notice and a discontinuance notice in respect of the remaining action.
- (3) A decision notice takes effect, and the specified action may be taken—
- (a) at the end of the period for bringing an appeal if no appeal is brought, or

(b) when any appeal is finally determined or withdrawn.

(4) In the case of suspension of a relevant authorisation in accordance with section 31(1)(c), a decision notice may—

(a) state that the regulatory authority is taking the action specified in the decision notice immediately, and

(b) take effect immediately on receipt.

**Appeals.**

32.(1) The person on whom a decision notice is served may appeal to the Supreme Court.

(2) An appeal must be brought within 28 days of the date of the decision notice.

**Interim orders.**

32A. The regulatory authority may apply to the Supreme Court for permission to take action under this Chapter where a decision notice has been given and has not yet taken effect (whether or not a warning notice has been given).

**Publication of enforcement action.**

32B.(1) The regulatory authority, without undue delay, must publish on its website details of any decision taken under this Chapter in respect of a contravention or default.

(2) The information published under subsection (1) must include at least—

(a) the type and nature of the contravention or default; and

(b) the identity of the natural person or legal entity responsible for it.

(3) The regulatory authority may delay publication of a decision or publish it on an anonymous basis in any of the following circumstances—

(a) where the action is taken in respect of a natural person and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;

- (b) where publication would jeopardise the stability of the financial system or an ongoing investigation; or
  - (c) where publication would cause (insofar as it can be determined) disproportionate and serious damage to the natural person or legal entity involved.
- (4) If an appeal is submitted against a decision published under subsection (1), the regulatory authority must either—
- (a) include information to that effect in the publication at the time of publication; or
  - (b) amend the publication if the appeal is submitted after its initial publication.

#### **PART IV**

#### **TRANSITIONAL AND FINAL PROVISIONS**

##### **Transitional provisions.**

33.(1) Notwithstanding—

- (a) section 17(2), a shareholder shall notify the issuer, at the latest 2 months after the coming into force of this section, of the proportion of voting rights and capital it holds, in accordance with sections 15, 16 and 17(8), with issuers at that date, unless it has already made a notification containing equivalent information before that date;
- (b) section 17(6), an issuer shall in turn disclose the information received in those notifications no later than 3 months after the coming into force of this section.

(2) Where an issuer is incorporated in a non-European Union country and Gibraltar is the home Member State of the issuer, the regulatory authority may exempt such issuer only in respect of those debt securities which have already been admitted to trading on a regulated market in the European Union prior to 1 January 2005 from drawing up its financial statements in accordance with section 10(3) and its management report in accordance with section 10(5) as long as—

- (a) the regulatory authority acknowledges that annual financial statements prepared by issuers from such a country give a true and fair view of the issuer's assets and liabilities, financial position and results;

- (b) the country where the issuer is incorporated has not made mandatory the application of international accounting standards referred to in Article 2 of Regulation (EC) No 1606/2002; and
- (c) the Commission has not taken any decision as to whether there is an equivalence between the abovementioned accounting standards and
  - (i) the accounting standards in force in the country where the issuer is incorporated, or
  - (ii) the accounting standards of the country such an issuer has elected to comply with.

**Repeal of Listing of Securities Act 1998.**

34. The Listing of Securities Act 1998 is hereby repealed.