

**SECOND SUPPLEMENT TO THE GIBRALTAR
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LEGAL NOTICE NO. 163 OF 2012.

INTERPRETATION AND GENERAL CLAUSES ACT

**PROSPECTUSES ACT 2005 (AMENDMENT NO.2) REGULATIONS
2012**

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LEGAL NOTICE NO. 163 OF 2012.

INTERPRETATION AND GENERAL CLAUSES ACT

**PROSPECTUSES ACT 2005 (AMENDMENT NO.2) REGULATIONS
2012**

In exercise of the powers conferred on it by section 23(g)(ii) of the Interpretation and General Clauses Act, and all other enabling powers, and for the purpose of partly transposing into the law of Gibraltar Directive 2010/73/EC of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Prospectuses Act 2005 (Amendment No.2) Regulations 2012 and come into operation on the day of publication.

Amendments to the Prospectuses Act 2005.

2. The Prospectuses Act 2005 is amended in accordance with the provisions of these Regulations.

Amendments to section 2.

3. In section 2(1)—

- (a) after the definition of “base prospectus” insert the following definition—

““company with reduced market capitalisation” means a company listed on a regulated market that had an average market capitalisation of less than EUR 100,000,000 on the basis of end year quotes for the previous 3 calendar years;”;

- (b) after the definition of “competent authority” insert the following definitions—

““credit institution” shall be construed in accordance with the provisions of the Financial Services (Banking) Act;

“delegated act” means such legal instrument as may be adopted by the European Commission in accordance with the provisions of the prospectuses directive;”;

- (c) after the definition of “host Member State” insert the following definition–

““investment firm” shall be construed in accordance with the provisions of the Financial Services (Markets in Financial Instruments) Act 2006;”;

- (d) after the definition of “issuer” insert–

““key information” means essential and appropriately structured information which is to be provided to investors with a view to enabling them to understand the nature and the risks of the issuer, guarantor and the securities that are being offered to them or admitted to trading on a regulated market and, without prejudice to section 7(4)(b), to decide which offers of securities to consider further, and in light of the offer and securities concerned, the key information shall include the following elements–

- (a) a short description of the risks associated with and essential characteristics of the issuer and any guarantor, including the assets, liabilities and financial position;
- (b) a short description of the risks associated with and essential characteristics of the investment in the relevant security, including any rights attaching to the securities;
- (c) general terms of the offer, including estimated expenses charged to the investor by the issuer or the offeror;

- (d) details of the admission to trading;
- (e) reasons for the offer and use of proceeds;”;
- (e) at the end of the definition of “prospectuses directive” insert the words “, as the same may be amended from time to time”;
- (f) for the definition of “qualified investor” substitute the following definition—

““qualified investor” means persons or entities-

- (a) falling within the categories described in Part I, paragraphs 1 to 4 of Schedule 2 of the Financial Services (Markets in Financial Instruments) Act 2006;
- (b) who request that they should be treated as professionals in accordance with Part II of Schedule 2 of the Financial Services (Markets in Financial Instruments) Act 2006; or
- (c) recognised as eligible counterparties under section 24 of the Financial Services (Markets in Financial Instruments) Act 2006;

unless, where permitted, any such person or entity has requested that they be treated as non-professional. Investment firms and credit institutions shall communicate their clarification on request to the issuer without prejudice to the Data Protection Act 2004. Investment firms authorised to continue considering professionals as such in accordance with section 61(6) of the Financial Services (Markets in Financial Instruments) Act 2006 shall be authorised to treat those clients as qualified investors;”;

- (g) subsections (2) and (3) are repealed.

Repeal of section 3.

- 4. Section 3 is repealed.

Amendments to section 4.

5. In section 4(2)–

- (a) in paragraph (h) for the words “is less than EUR 2,500,000” substitute the words “in the European Union is less than EUR 5,000,000”;
- (b) in paragraph (j) for the words “of the offer is less than EUR 50,000,000” substitute the words “for the offer in the European Union is less than EUR 75,000,000”.

Amendment to section 5.

6. For section 5(2) substitute–

- “(2) Where subsection (1) applies, the securities note shall provide information that would normally be provided in the registration document, where there has been a material change or recent development which could affect investors’ assessments since the latest updated registration document, unless such information is provided in a supplement in accordance with section 8. The securities and summary notes shall be subject to a separate approval.”.

Amendments to section 6.

7. Section 6 is amended–

- (a) by substituting the following subsection for subsection (1)–
 - “(1) A prospectus shall be valid for 12 months after its approval for offers to the public or admissions to trading on a regulated market, provided that the prospectus is completed by any supplements required pursuant to section 8.”;
- (b) by substituting the following subsection for subsection (3)–
 - “(3) A registration document, as referred to in section 7(9), previously filed and approved, shall be valid for a period of up to 12 months. The registration document, updated in accordance with section 5(2) or

section 8, accompanied by the securities note and the summary note shall be considered to constitute a valid prospectus.”;

(c) in subsection (4)–

- (i) in paragraph (b) for “100” substitute “150”;
- (ii) in paragraph (c) for “50,000” substitute “100,000”;
- (iii) in paragraph (d) for “50,000” substitute “100,000”;
- (iv) in paragraph (e) after the words “total consideration payable” insert the words “in the European Union”;

(d) after subsection (9) insert the following subsection–

- “(10) Another prospectus is not required in any such subsequent resale of securities or final placement of securities through financial intermediaries as long as a valid prospectus is available in accordance with this section and the issuer or the person responsible for drawing up such prospectus consents to its use by means of a written agreement.”.

Amendments to section 7.

8. Section 7 is amended–

(a) by substituting the following subsection for subsection (4)–

- “(4) The prospectus shall contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market. It shall also include a summary that, in a concise manner and in non-technical language, provides key information in the language in which the prospectus was originally drawn up. The format and content of the summary of the prospectus shall provide, in conjunction with the prospectus, appropriate information about essential elements of the securities concerned in order to aid investors when considering whether to invest in such securities. The summary

shall be drawn up in a common format in order to facilitate comparability of the summaries of similar securities and its content should convey the key information of the securities concerned in order to aid investors when considering whether to invest in such securities. The summary shall also contain a warning that—

- (a) it should be read as an introduction to the prospectus;
 - (b) any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor;
 - (c) where a claim relating to the information contained in a prospectus is brought before a court, the plaintiff investor might, under the provisions of this Act, have to bear the costs of translating the prospectus before the legal proceedings are initiated; and
 - (d) clearly states that civil liability attaches to those persons who have tabled the summary including any translation thereof, and applied for its notification, but only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus or it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities.”;
- (b) in subsection (5) for “EUR 50,000” substitute “EUR 100,000”;
 - (c) in subsection (9) for the words “Subject to subsection (10), the” substitute the word “The”;
 - (d) for subsection (12) substitute the following subsection—
 - “(12) Where the final terms of the offer are neither included in the base prospectus nor in a supplement, the final terms shall be made available to investors, filed with

the competent authority and communicated, by the issuer, to the competent authority of the host Member State(s) when each public offer is made as soon as practicable and, if possible, in advance of the beginning of the public offer or admission to trading. The final terms shall contain only information that relates to the securities note and shall not be used to supplement the base prospectus. The proviso to subsection (7) shall apply in those cases.”.

Amendments to section 8.

9. In section 8—

(a) for subsection (1) substitute the following subsection—

“(1) Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, whichever occurs later, shall be mentioned in a supplement to the prospectus. Such a supplement shall be approved in the same way in a maximum of 7 working days and published in accordance with at least the same arrangements as were applied when the original prospectus was published. The summary, and any translations thereof, shall also be supplemented, if necessary, to take into account the new information included in the supplement.”;

(b) for subsection (3) substitute the following subsection—

“(3) Where the prospectus relates to an offer of securities to the public, investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within two working days after the publication of the supplement, to withdraw their acceptances, provided that the new factor, mistake or

inaccuracy referred to in subsection (1) arose before the final closing of the offer to the public and the delivery of the securities. That period may be extended by the issuer or the offeror. The final date of the right of withdrawal shall be stated in the supplement.”.

Amendments to section 9.

10. In section 9—

- (a) in subsection (1) after the words “which would otherwise be required” insert the words “under this Act or by a delegated act”;
- (b) in subsection (2) for the words “certain information to be included” substitute the words “certain information required to be included by a delegated act referred to in Article 7 of the prospectuses directive”;
- (c) after subsection (2) insert the following subsection—
 - “(3) Where securities are guaranteed by a Member State, an issuer, an offeror or a person asking for admission to trading on a regulated market, when drawing up a prospectus in accordance with section 4(3), shall be entitled to omit information about such guarantor.”.

Amendments to section 12.

11. In section 12, for subsection (4) substitute the following subsection—

- “(4) The competent authority shall, at the request of the issuer or the person responsible for drawing up the prospectus or any supplement thereto, and within 3 working days following receipt of that request or, where the request is submitted together with the draft prospectus, within 1 working day after the approval of the prospectus, notify the competent authority of the host Member State with a certificate of approval attesting that the prospectus has been drawn up in accordance with this Act and with a copy of that prospectus, and, if applicable, that notification shall be accompanied by a translation of the summary produced under the responsibility

of the issuer or person responsible for drawing up the prospectus. The issuer or the person responsible for drawing up the prospectus shall also be notified of the certificate of approval at the same time as the competent authority of the host Member State.”.

Amendments to section 13.

12. In section 13—

(a) in subsection (2)(c) for “and” substitute “or”;

(b) after subsection (2) insert—

“(2A) Issuers or the persons responsible for drawing up a prospectus that publish their prospectus in accordance with subsection (2)(a) or (b) shall also publish their prospectus electronically in accordance with subsection (2)(c).”;

(c) for subsection (4) substitute the following subsection—

“(4) Information may be incorporated in the prospectus by reference to one or more previously or simultaneously published documents that have been approved by the competent authority or filed with it in accordance with this Act or the Financial Services (Listing of Securities) Act 2006 or any Rules made under the latter Act. Such information shall be the most recent available to the issuer. The summary shall not incorporate information by reference.”.

Amendment to section 20.

13. In section 20(2)(c) for the words “and its implementing measures” substitute the words “the prospectuses directive and any delegated acts”.

Amendments to Schedule 4.

14(1). In paragraph 1 of Schedule 4—

(a) for subparagraphs (c), (d) and (e) substitute the following subparagraphs—

- “(c) securities offered, allotted or to be allotted in connection with a merger or division, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of European Union legislation;
- (d) dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
- (e) securities offered, allotted or to be allotted to existing or former directors or employees by their employer or by an affiliated undertaking provided that the company has its head office or registered office in the European Union and provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer;
- (f) the provisions of subparagraph (e) shall also apply to a company established outside the European Union whose securities are admitted to trading either on a regulated market or on a third-country market. In the latter case, the exemption shall apply provided that adequate information, including the document referred to in subparagraph (e), is available at least in a language customary in the sphere of international finance and provided that the European Commission has adopted an equivalence decision regarding the third-country market concerned;
- (g) the Gibraltar competent authority may request the European Commission to adopt an equivalence decision in accordance with the procedure referred to in Article 24(2) of the prospectuses directive and in so doing it shall indicate why it considers that the legal and supervisory framework of the third country

concerned is to be considered equivalent and shall provide relevant information to this end;

- (h) a third-country legal and supervisory framework may be considered equivalent where that framework fulfils at least the following conditions—
 - (i) the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis;
 - (ii) the markets have clear and transparent rules regarding admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;
 - (iii) security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and
 - (iv) market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation.”.

(2) In paragraph 2 of Schedule 4 for subparagraph (d) substitute the following subparagraph—

“(d) securities offered, allotted or to be allotted in connection with a merger or a division, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of European Union legislation.”.

Amendments to Schedule 5.

15. In Schedule 5—

- (a) wherever the words “Key information” appear substitute the words “Essential information”; and

- (b) wherever the words “key information” appear substitute the words “essential information”.

Dated 15th November, 2012.

G LICUDI,
Minister with responsibility for Education, Financial Services,
Gaming, Telecommunications and Justice.

EXPLANATORY MEMORANDUM

These Regulations amend the Prospectuses Act 2005 by partly transposing into the laws of Gibraltar Directive 2010/73/EC of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.