

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular 01/15 – Amendments to the Listing Rules [LR], the Financial Markets Act [FMA] and the Companies Act [CA] following the transposition of Directive 2013/50/EU [Directive]

[1.0] Introduction

Directive 2013/50/EU (which can be accessed through the following [link](#)) is amending the Transparency Directive which directive is transposed mainly in the Listing Rules.

The changes will affect companies with securities admitted to trading on regulated markets in the EEA. In particular:

- extractive and forestry logging companies (wherever incorporated) will be required to disclose payments to governments on a country by country and project specific basis;
- the requirement for companies to produce interim management statements or quarterly reports will be abolished, subject to a residual Member State discretion;
- the requirements for companies to notify interests in shares and related financial instruments will be extended to ensure greater consistency across the EU;
- the definition of “Home Member State” is being amended and the disclosure of the choice by the Issuer of the Home Member State is being clarified to prevent an Issuer from failing to declare its Home Member State;
- the creation of a minimum standard for the sanctions regimes that Member States must have in place for breaches of transparency rules.

[2.0] Summary of main amendments

A summary of the main amendments being introduced by Directive 2013/50/EU is included hereunder in the order presented in the Directive.

1. Disclosure requirements with respect to Home Member State

The rules on the choice of Home Member State have been changed to prevent an Issuer from failing to declare a Home Member State for the purposes of the Transparency Directive. This is important especially when an Issuer’s securities are listed on various regulated markets. To implement this change it is proposed that the definition in the Listing Rules is updated accordingly and the definition of “Home Member State” in the Companies Act is updated to ensure a harmonised approach. Issuers will now be required to disclose its’ choice of Home Member State (where applicable) to:

- the Listing Authority, where Malta is the Home Member State;
- to the competent authorities of all Host Member States, if applicable;
- where the registered office is not in Malta, to the competent authority of the Member State where it has its registered office, if applicable.

2. Half-Yearly Reports and Annual Reports

The half-yearly and annual reports shall **now be made available to the public for ten years** instead of five years.

Directive 2013/50/EU extended the deadline to publish half-yearly financial reports from two months to three months after the end of the period to which the report relates. The Listing Authority has considered this amendment and decided to opt to keep the currently two months time-frame given that there have been no major problems to meet the deadline of two months and therefore the extension of such timeframe is not warranted for the local market. The Listing Authority is opting to keep this time-frame in terms of the Directive which allows Member States to adopt more stringent rules.

The deadline to publish annual financial reports within four months after the end of the period to which the report relates has not changed.

3. Abolishing interim directors' statements

The requirement for companies to produce interim management statements or quarterly reports is being abolished. Experience has shown that few issuers actually give additional financial information which is of value to investors in these statements.

Issuers which are required to publish Interim Directors Statements by 26th November 2015 (being the Effective Date as per below) are still required to publish such statements.

4. Report on payment to governments

Extractive and forestry logging companies (wherever incorporated) will be required to disclose payments to governments on a country by country and project specific basis at consolidated level. The report shall be made at the latest six months after the end of each financial year and shall remain publicly available for at least ten years. Although this requirement is not envisaged to effect local issuers the Listing Rules have been amended to include such requirements.

5. Definition of financial instruments and changes to the notification of interests provisions

The Directive 2013/50/EU provides for changes to the notification of interests provisions, both to broaden the scope of the rules to require greater disclosure of economic interests and to ensure greater uniformity in their application across the EU. The definition of financial instruments relating to shares that are subject to notification is extended to cover cash-settled derivatives.

The changes are also designed to introduce greater consistency to the notification of interests regimes in Member States by removing options in the way that the Transparency Directive is implemented. In particular, it will be mandatory to aggregate holdings of voting rights with holdings of financial instruments in calculating notifiable interests. Member States will still be permitted to set lower notification thresholds than the thresholds mandated by the Transparency Directive but they will not be able to impose different requirements regarding calculation or aggregation of interests.

6. Sanctions

To improve compliance, the Directive sets out minimum powers to enable competent authorities to enforce key provisions of the Transparency Directive. These include the power to impose fines of up to €10,000,000 or 5% of annual turnover or up to twice the amount of profits gained or losses avoided because of the breach, whichever is the highest. In addition, for breaches of the notification of interests provisions, competent authorities will have the power to suspend the exercise of voting rights attached to the shares of the entity or individual in breach.

These provisions will be implemented through amendments to the FMA. Such amendments are in the process of being presented to Parliament for approval.

[3.0] Amended Listing Rules

The amended Definitions Section and the following Revised Chapters of the Listing Rules are annexed to this Circular as follows:

- Appendix 1 – Definitions
- Appendix 2 – Chapter 1
- Appendix 3 – Chapter 5
- Appendix 4 – Chapter 8
- Appendix 5 – Chapter 10

[4.0] Effective Date

The amendments to the Listing Rules shall become effective from **26th November 2015**.

[5.0] Contacts

Should you have any queries, please do not hesitate to contact: Ms Lorraine Vella, Senior Manager, Securities and Markets Supervision Unit (lvella@mfsa.com.mt) or Dr Ilona Schembri, Analyst, Securities and Markets Supervision Unit (ischembri@mfsa.com.mt).

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