

Circular 05/16 – Transposition of Directive 2014/95/EU

Disclosure of Non-Financial and Diversity Information

[1.0] Introduction

The Authority would like to bring to your attention the changes to the Listing Rules resulting from Directive 2014/95/EU (“the Directive”) which deals on the disclosure of non-financial information. The objective of the Directive is to increase European companies’ transparency and performance on environmental and social matters and contribute effectively to long-term economic growth and employment. Increased transparency will aid public interest companies to better manage the opportunities as well as the non-financial risks they are exposed to.

The requirements emanating from the Directive apply to large companies¹ which fall under the definition of public interest companies which includes companies having securities listed on a regulated market.

A copy of the Directive can be obtained through the following [link](#).

Large companies are required to include information on environmental matters, social and employee-related aspects and human resources, anti-corruption and bribery matters. Such information should be included in the Directors’ Report. The Directive applies a “comply and explain” requirement. Therefore, a large company that does not pursue a specific policy on one of the non-financial areas is required to provide an explanation to this effect in the Directors’ Report.

Large companies which have securities listed on a regulated market have the additional obligation to include:

- [i] a description of the diversity policy applied in relation to the Board of Directors with regard to aspects such as age, gender or educational and professional backgrounds;
- [ii] the objectives of the diversity policy;
- [iii] how has the diversity policy been implemented; and
- [iv] the results following the implementation of diversity policy during the reporting period.

1 having an average number of more than 500 employees and exceeding either a total balance sheet of EUR 20 million or a net turnover of EUR 40 million within the meaning of Art.3 (7) of the Directive 2013/34/EU

The provisions of the Directive 2014/95/EU are being transposed in the Companies Act, Cap 386² (CA) with the exclusion of Article 1(2) which applies only to large companies having securities listed on a regulated market.

[2.0] Amendments to the Listing Rules

The amendments to the Listing Rules resulting following the transposition of Directive 2014/95/EU are the following:

1. Amendments to Listing Rule 5.62

Listing Rule 5.62 which presently reads *“If the Issuer is a company registered in Malta, the Directors’ Report shall be drawn up in accordance with the CA and should contain a statement by the Directors that the business is a going concern with supporting assumptions or qualifications as necessary; such statement to be reviewed by the Auditors before publication;”*

is being revised as follows:

“5.62 The Directors’ Report shall be drawn up in accordance with the CA and should contain a statement by the Directors that the business is a going concern with supporting assumptions or qualifications as necessary; such statement is to be reviewed by the Auditors before publication.”

This change will result in that any Issuer, irrespective of whether it is registered in Malta, in any EU or EEA country or in a third-country, shall draw up a Directors’ Report in accordance with the CA.

In view of the above, Listing Rule 5.63³ is being deleted.

² <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=28161&l=1>

³ Listing Rule 5.63 - *If the Issuer is not a company registered in Malta but Malta is its Home Member State, the Directors’ Report shall be drawn up in accordance with Article 46 of Directive 78/660/EEC and if the Issuer is required to prepare consolidated accounts in accordance with Article 36 of Directive 83/349/EEC.*

2. Insertion new Listing Rule 5.97.8

Listing Rule 5.97 lists a minimum list of information to be included in the Corporate Governance Statement. A new provision is added to the list, which is the following:

“5.97.8 a description of the diversity policy applied in relation to the Issuer’s board of directors or equivalent administrative, management and supervisory bodies with regard to aspects such as, for instance, age, gender, or educational and professional backgrounds, the objectives of that diversity policy, how it has been implemented and the results in the reporting period. If no such policy is applied, the statement shall contain an explanation as to why this is the case. This requirement applies only to large companies, as defined in paragraph 1 of Part I of the Third Schedule of the CA which, on their balance sheet date, have more than an average number of 500 employees during the financial year.”

The description of the diversity policy shall be included in the Corporate Governance Statement, which is included in the Annual Financial Report, together with other relevant notions, such as reference to the corporate governance code to which the Issuer is subject and the manner in which the general meeting is conducted and its key powers together with a description of the shareholders’ rights and how they can be exercised.

3. Amendment to Listing Rule 5.99

Listing Rule 5.99 is amended to clarify that in the event where the Corporate Governance Statement is contained in a separate report, the Auditors’ report shall be annexed to such report. The amendments are being highlighted in bold.

*“An Issuer may elect to set out the information required by Listing Rule 5.97 in a separate report published together with the annual report or by means of a reference in the annual report where such document is publicly available on the Issuer’s website. In the event of a separate report, the corporate governance statement may contain a reference to the annual report where the information required in Listing Rules 5.97.4 and 5.97.5 is made available **and shall also include the Auditors’ report in terms of Listing Rule 5.98.**”*

4. Amendment to Listing Rule 5.100

Listing Rule 5.100⁴ is amended to transpose Article 1(2)(b) of Directive 2014/95/EU, and which has been amended as follows:

⁴ Listing Rule 5.100 prior amendments - Where the corporate governance statement is contained in a separate report, such statement shall include the Auditors’ report referred to in Listing Rule 5.98 and, in addition to this,

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“The Auditor’s report referred to in Listing Rule 5.98 shall express an opinion as to whether, in the light of the knowledge and understanding of the undertaking and its environment obtained in the course of the audit, the auditor has identified material misstatements with respect to the information referred to in Listing Rules 5.97.4 and 5.97.5, and shall give an indication of the nature of any such misstatements. For the remaining information that is required to be disclosed under Listing Rule 5.97, the Auditors shall check that such information has been provided.”

5. Amendment to Listing Rule 5.101

Listing Rule 5.101 has been amended in order to include reference to the new Listing Rule 5.97.8:

“Issuers that only issue Securities other than Equity Securities shall be exempt from the requirement to disclose in their corporate governance statement the information prescribed by Listing Rules 5.97.1 to 5.97.3, 5.97.6 to 5.97.8, unless such Issuers have issued Equity Securities which are traded in a multilateral trading facility in terms of Article 4(1), point (15) of Directive 2004/39/EC.”

[3.0] Effective date

The amendments to the Listing Rules shall become effective from 1st December 2016 and shall apply to all Issuers for the financial year starting on the 1st January 2017 or during the calendar year 2017.

[4.0] Contacts

Any queries on the above should be submitted by e-mail through the general email address CapitalMarkets@mfsa.com.mt.

Communications Unit
Malta Financial Services Authority
1st December 2016

the Issuer’s Auditors shall express an opinion concerning the consistency or otherwise of the information referred to in Listing Rules 5.97.4 and 5.97.5 with the Annual Financial Report for the same financial year. For the remaining information that is required to be disclosed under Listing Rule 5.97, the Auditors shall check that the corporate governance statement has been produced.”