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Grand-ducal Regulation of 11 January 2008 relating to the transparency requirements for issuers of securities, transposing Directive 2007/14/EC of the European Commission of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 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
(Mém. A 2008, No. 5)

as amended by

- Grand-ducal Regulation of 10 May 2016

1. transposing Article 3 of Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending 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, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC;
2. amending Grand-ducal Regulation of 11 January 2008 relating to the transparency requirements for issuers of securities, transposing Directive 2007/14/EC of the European Commission of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 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.

(Mém. A 2016, No. 89)

Chapter 1 - Details relating to certain definitions used in the law on transparency requirements for issuers of securities

Art. 1 Definitions

(1) The “Law” shall, for the purposes of this regulation, mean the law of 11 January 2008 on transparency requirements for issuers of securities.

(2) This regulation may be referred to in abbreviated form using the designation “Grand-ducal on transparency requirements for issuers of securities”.

(...)¹

Art. 3 Minimum content of half-yearly non-consolidated financial statements (Article 4(3) of the Law)

(1) Where the condensed set of half-yearly financial statements laid down in Article 4(2)(a) of the Law is not prepared in accordance with international accounting standards adopted pursuant to the procedure provided for under Article 6 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, the minimum content shall be in accordance with paragraphs (2) and (3) of this Article.

(2) The condensed balance sheet and the condensed profit and loss account shall show each of the headings and subtotals included in the most recent annual financial statements of the

¹ Grand-ducal Regulation of 10 May 2016

issuer. Additional line items shall be included if, as a result of their omission, the half-yearly financial statements would give a misleading view of the assets, liabilities, financial position and profit or loss of the issuer.

In addition, the following comparative information shall be included:

- (a) balance sheet as at the end of the first six months of the current financial year and comparative balance sheet as at the end of the immediate preceding financial year;
 - (b) profit and loss account for the first six months of the current financial year with, from 29 March 2009, comparative information for the comparable period for the preceding financial year.
- (3) The explanatory notes shall include the following:
- (a) sufficient information to ensure the comparability of the condensed half-yearly financial statements with the annual financial statements;
 - (b) sufficient information and explanations to ensure a user's proper understanding of any material changes in amounts and of any developments in the half-year period concerned, which are reflected in the balance sheet and the profit and loss account.

(...)²

Art. 5 Major related parties' transactions (Article 4(4) of the Law

(1) In the interim management reports, issuers of shares for which Luxembourg is the home Member State shall disclose, in accordance with Article 4(4) of the Law, as major related parties' transactions, as a minimum, the following:

- (a) the related parties' transactions that have taken place in the first six months of the current financial year and that have materially affected the financial position or the performance of the enterprise during that period;
- (b) any changes in the related parties' transactions described in the last annual report that could have a material effect on the financial position or performance of the enterprise in the first six months of the current financial year.

(2) Where the issuer of shares for which Luxembourg is the home Member State is not required to prepare consolidated accounts, it shall disclose, as a minimum, the related parties' transactions referred to in Article 43(1)(7b) of Directive 78/660/EC.

Art. 6 Maximum length of the usual "short settlement cycle" (Article 8(3) of the Law)

For the purposes of Article 8(3) of the Law, the maximum length of the usual "short settlement cycle" shall be three trading days following the transaction.

Art. 7 Control mechanisms by competent authorities as regards market makers (Article 8(4) of the Law)

(1) The market maker seeking to benefit from the exemption provided for in Article 8(4) of the Law shall notify to the Commission as competent authority of the home Member State of the issuer, at the latest within the time limit laid down in Article 11(2) of the Law, that it conducts or intends to conduct market making activities on a particular issuer.

Where the market maker ceases to conduct market making activities on the issuer concerned, it shall notify that the Commission in its role as competent authority accordingly.

(2) Without prejudice to the application of Article 22 of the Law, where the Commission requests a market maker seeking to benefit from the exemption provided for in Article 8(4) of the

² Grand-ducal Regulation of 10 May 2016

Law to identify the shares or financial instruments held for market making activity purposes, that market maker shall be allowed to make such identification by any verifiable means. Only if the market maker is not able to identify the shares or financial instruments concerned, he may be required to hold them in a separate account for the purposes of that identification.

(3) Without prejudice to the application of Article 22(2)(a) of the Law, if a market-making agreement between the market maker and the stock exchange and/or the issuer is required under national law, the market maker shall provide such agreement to of Commission upon its request.

Art. 8 Calendar of trading days (Article 11(2), (6) and (7) and Article 13 of the Law)

(1) For the purposes of Article 11(2), (6) and (7) and Article 13 of the Law, the calendar of trading days of the home Member State of the issuer shall apply.

(2) The Commission publishes on its website the calendar of trading days of the regulated markets situated or operating on the Luxembourg territory.

Art. 9 Shareholders and natural persons or legal entities referred to in Article 9 of the Law required to make the notification of major holdings (Article 9 and Article 11(2) of the Law)

(1) For the purposes of Article 11(2) of the Law, the notification obligation which arises as soon as the proportion of voting rights held reaches, exceeds or falls below the applicable thresholds following transactions of the type referred to in Article 9 of the Law shall be an individual obligation incumbent upon each shareholder, or each natural person or legal entity as referred to in Article 9 of the Law, or both in case the proportion of voting rights held by each party reaches, exceeds or falls below the applicable threshold.

In the circumstances referred to in Article 9(a) of the Law, the notification obligation shall be a collective obligation shared by all parties to the agreement.

(2) In the circumstances referred to in Article 9(h) of the Law, if a shareholder gives the proxy in relation to one shareholder meeting, notification may be made by means of a single notification at the moment of giving the proxy provided that it is made clear in the notification what the resulting situation in terms of voting rights will be when the proxy may no longer exercise the voting rights at its discretion.

If, in the circumstances referred to in Article 9(h) of the Law, the proxy holder receives one or several proxies in relation to one shareholder meeting, notification may be made by means of a single notification at the moment of receiving the proxies provided that it is made clear in the notification what the resulting situation in terms of voting rights will be when the proxy may no longer exercise the voting rights at its discretion.

(3) Where the duty to make a notification lies with more than one natural person or legal entity, notification may be made by means of a single common notification.

However, use of a single common notification may not be deemed to release any of the natural persons or legal entities concerned from their responsibility in relation to notification.

Art. 10 Circumstances under which the notifying person should have learned of acquisition or disposal or of possibility to exercise voting rights (Article 11(2)(a) of the Law)

For the purposes of Article 11(2)(a) of the Law, the shareholder, or the natural person or legal entity referred to in Article 9 of the Law, shall be deemed to have knowledge of the acquisition, disposal or possibility to exercise voting rights no later than two trading days following the transaction.

Art. 11 Conditions of independence to be complied with by management companies and investment firms involved in individual portfolio management (Article 11(4) and (5) of the Law)

(1) For the purposes of the exemption to the aggregation of holdings provided for in the first subparagraphs of Article 11(4) and (5) of the Law, a parent undertaking of a management company or of an investment firm shall comply with the following conditions:

- (a) it must not interfere by giving direct or indirect instructions or in any other way in the exercise of the voting rights held by that management company or investment firm;
- (b) that management company or investment firm must be free to exercise, independently of the parent undertaking, the voting rights attached to the assets it manages.

(2) A parent undertaking which wishes to make use of the exemption shall, without delay, notify the following to the Commission in its role as competent authority of the home Member State of issuers whose voting rights are attached to holdings managed by the management companies or investment firms:

- (a) a list of the names of those management companies and investment firms, indicating the competent authorities that supervise them or that no competent authority supervises them, but with no reference to the issuers concerned;
- (b) a statement that, in the case of each such management company or investment firm, the parent undertaking complies with the conditions laid down in paragraph (1).

The parent undertaking shall update the list referred to in (a) on an ongoing basis.

(3) Where the parent undertaking intends to benefit from the exemptions only in relation to the financial instruments referred to in Article 12 of the Law, it shall notify to the Commission in its role as competent authority of the home Member State of the issuer only the list referred to in paragraph (2)(a).

(4) Without prejudice to the application of Article 22 of the Law, a parent undertaking of a management company or of an investment firm shall be able to demonstrate to the Commission in its role as competent authority of the home Member State of the issuer on request that:

- (a) the organisational structures of the parent undertaking and the management company or investment firm are such that the voting rights are exercised independently of the parent undertaking;
- (b) the persons who decide how the voting rights are to be exercised act independently;
- (c) if the parent undertaking is a client of its management company or investment firm or has holding in the assets managed by the management company or investment firm, there is a clear written mandate for an arms-length customer relationship between the parent undertaking and the management company or investment firm.

The requirement in (a) shall imply as a minimum that the parent undertaking and the management company or investment firm must establish written policies and procedures reasonably designed to prevent the distribution of information between the parent undertaking and the management company or investment firm in relation to the exercise of voting rights.

(5) For the purposes of paragraph (1)(a), “direct instruction” means any instruction given by the parent undertaking, or another controlled undertaking of the parent undertaking, specifying how the voting rights are to be exercised by the management company or investment firm in particular cases.

“Indirect instruction” means any general or particular instruction, regardless of the form, given by the parent undertaking, or another controlled undertaking of the parent undertaking, that limits the discretion of the management company or investment firm in relation to the exercise of the

voting rights in order to serve specific business interests of the parent undertaking or another controlled undertaking of the parent undertaking.

Art. 12 Types of financial instruments that result in an entitlement to acquire, on the holder's own initiative alone, shares to which voting rights are attached (Article 12 of the Law)

(...)³

(3) The notification required under Articles 12 of the Law shall include the following information:

- (a) the resulting situation in terms of voting rights;
- (b) if applicable, the chain of controlled undertakings through which financial instruments are effectively held;
- (c) the date on which the threshold was reached or crossed;
- (d) for instruments with an exercise period, an indication of the date or time period where shares will or can be acquired, if applicable;
- (e) date of maturity or expiration of the instrument;
- (f) identity of the holder;
- (g) name of the underlying issuer.

For the purposes of (a), the percentage of voting rights shall be calculated by reference to the total number of voting rights and capital as last disclosed by the issuer under Article 14 of the Law.

(4) The notification period shall be the same as laid down in Article 11(2) of the Law and the related implementing provisions, laid down in Article 10 of this Grand-ducal regulation.

(5) The notification shall be made to the issuer of the underlying share and to the Commission. If a financial instrument relates to more than one underlying share, a separate notification shall be made to each issuer of the underlying shares.

Art. 13 Minimum standards (Article 20(1) of the Law)

(1) The dissemination of regulated information for the purposes of Article 20(1) of the Law shall be carried out in compliance with the minimum standards set out in paragraphs (2) to (5).

(2) Regulated information shall be disseminated in a manner ensuring that it is capable of being disseminated to as wide a public as possible, and as close to simultaneously as possible in Luxembourg and in the other Member States.

(3) Regulated information shall be communicated to the media in unedited full text. However, in the case of the reports (...) ⁴ referred to in Articles 3, 4 and 5 of the Law, this requirement shall be deemed fulfilled if the announcement relating to the regulated information is communicated to the media and indicates on which website, in addition to the officially appointed mechanism for the central storage of regulated information referred to in Article 20 of the Law, the relevant documents are available.

(4) Regulated information shall be communicated to the media in a manner which ensures the security of the communication, minimises the risk of data corruption and unauthorised access, and provides certainty as to the source of the regulated information.

³ Grand-ducal Regulation of 10 May 2016

⁴ Grand-ducal Regulation of 10 May 2016

Security of receipt shall be ensured by remedying as soon as possible any failure or disruption in the communication of regulated information.

The issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent shall not be responsible for systemic errors or shortcomings in the media to which the regulated information has been communicated.

(5) Regulated information shall be communicated to the media in a way which makes clear that the information is regulated information, identifies clearly the issuer concerned, the subject matter of the regulated information and the time and date of the communication of the information by the issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent.

Upon request, the issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent shall be able to communicate on request to the Commission in its role as competent authority of the home Member State of the issuer, in relation to any disclosure of regulated information, the following:

- (a) the name of the person who communicated the information to the media;
- (b) the security validation details;
- (c) the time and date on which the information was communicated to the media;
- (d) the medium in which the information was communicated;
- (e) if applicable, details of any embargo placed by the issuer on the regulated information.

Chapter II – Conditions for equivalence for third countries (Article 21(1) and (4) of the Law)

Art. 14 Annual management report

A third country shall be deemed to set requirements equivalent to those set out in Article 3(2)(b) of the Law where, under the law of that country, the annual management report is required to include at least the following information:

- (a) a fair review of the development and performance of the issuer's business and of its position, together with a description of the principal risks and uncertainties that it faces, such that the review presents a balanced and comprehensive analysis of the development and performance of the issuer's business and of its position, consistent with the size and complexity of the business;
- (b) an indication of any important events that have occurred since the end of the financial year;
- (c) indications of the issuer's likely future development.

The analysis referred to in (a) shall, to the extent necessary for an understanding of the issuer's development, performance or position, include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business.

Art. 15 Interim management report

A third country shall be deemed to set requirements equivalent to those set out in Article 4(4) of the Law where, under the law of that country, a condensed set of financial statements is required in addition to the interim management report, and the interim management report is required to include at least the following information:

- (a) review of the period covered;
- (b) indications of the issuer's likely future development for the remaining six months of the financial year;

- (c) for issuers of shares and if already not disclosed on an ongoing basis, major related parties transactions.

Art. 16 Statements made by the persons responsible within the issuer

A third country shall be deemed to set requirements equivalent to those set out in Articles 3(2)(c) and Article 4(2)(c) of the Law where, under the law of that country, a person or persons within the issuer are responsible for the annual and half-yearly financial information, and in particular for the following:

- (a) the compliance of the financial statements with the applicable reporting framework or set of accounting standards;
- (b) the fairness of the management review included in the management report.

(...)⁵

Art. 18 Annual consolidated accounts

A third country shall be deemed to set requirements equivalent to those set out in the first sub-paragraph of Article 3(3) of the Law where, under the law of that country, the provision of individual accounts by the parent company is not required but the issuer whose registered office is in that third country is required, in preparing consolidated accounts, to include the following information:

- (a) for issuers of shares, dividends computation and ability to pay dividends;
- (b) for all issuers, where applicable, minimum capital and equity requirements and liquidity issues.

For the purposes of equivalence, the issuer must also be able to provide the Commission in its role as competent authority of the home Member State with additional audited disclosures giving information on the individual accounts of the issuer as a standalone, relevant to the elements of information referred to under (a) and (b). Those disclosures may be prepared under the accounting standards of the third country.

Art. 19 Annual non-consolidated accounts

A third country shall be deemed to set requirements equivalent to those set out in the second subparagraph of Article 3(3) of the Law in relation to individual accounts where, under the law of a third country, an issuer whose registered office is in that third country is not required to prepare consolidated accounts but is required to prepare its individual accounts in accordance with international accounting standards recognised pursuant to Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council on the application of international accounting standards or with third country national accounting standards equivalent to those standards.

For the purposes of equivalence, if such financial information is not in line with those standards, it must be presented in the form of restated financial statements.

In addition, the individual accounts must be audited independently.

Art. 20 Notification and disclosure of major holdings

A third country shall be deemed to set requirements equivalent to those set out in Article 11(6) of the Law where, under the law of that country, the time period within which an issuer whose registered office is in that third country must be notified of major holdings and within which it must disclose to the public those major holdings is in total equal to or shorter than seven trading days.

⁵ Grand-ducal Regulation of 10 May 2016

The time frames for the notification to the issuer and for the subsequent disclosure to the public by the issuer may be different from those set out in Articles 11(2) and (6) of the Law.

Art. 21 Own shares

A third country shall be deemed to set requirements equivalent to those set out in Article 13 of the Law where, under the law of that country, an issuer whose registered office is in that third country is required to comply with the following conditions:

- (a) in the case of an issuer allowed to hold up to a maximum of 5% of its own shares to which voting rights are attached, it must make a notification whenever that threshold is reached or crossed;
- (b) in the case of an issuer allowed to hold up to a maximum of between 5% and 10% of its own shares to which voting rights are attached, it must make a notification whenever a 5% threshold or that maximum threshold is reached or crossed;
- (c) in the case of an issuer allowed to hold more than 10% of its own shares to which voting rights are attached, it must make a notification whenever the 5% threshold or the 10% threshold is reached or crossed.

For the purposes of equivalence, notification above the 10% threshold need not be required.

Art. 22 Disclosure of the total number of voting rights and capital

A third country shall be deemed to set requirements equivalent to those set out in Article 14 of the Law where, under the law of that country, an issuer whose registered office is in that third country is required to disclose to the public the total number of voting rights and capital within thirty calendar days after an increase or decrease of such total number has occurred.

Art. 23 Information concerning general meetings

A third country shall be deemed to set requirements equivalent to those set out in Article 16(2)(a) and 17(2)(a) of the Law, as far as the content of the information about meetings is concerned, where, under the law of that country, an issuer whose registered office is in that third country is required to provide at least information on the place, time and agenda of meetings.

Art. 24 Conditions of independence for parent undertakings of management companies and investment firms

(1) A third country shall be deemed to set conditions of independence equivalent to those set out in Article 11(4) and (5) of the Law where, under the law of that country, a management company or investment firm as referred to in Article 21(4) of the Law is required to meet the following conditions:

- (a) the management company or investment firm must be free in all situations to exercise, independently of its parent undertaking, the voting rights attached to the assets it manages;
- (b) the management company or investment firm must disregard the interests of the parent undertaking or of any other controlled undertaking of the parent undertaking whenever conflicts of interest arise.

(2) The parent undertaking shall comply with the notification requirements laid down in Article 11(2)(a) and (3) of this Grand-ducal regulation.

In addition, it shall make a statement that, in the case of each management company or investment firm concerned, the parent undertaking complies with the conditions laid down in paragraph (1).

(3) Without prejudice to the application of Article 22 of the Law, the parent undertaking shall be able to demonstrate to the Commission as competent authority of the home Member State of

the issuer on request that the requirements laid down in Article 11(4) of this Grand-ducal regulation are respected.

Art. 25 Execution

Our Minister for the Treasury and Budget shall execute this regulation, which shall be published in the Memorial.