

## DIRECTIVES

## COMMISSION DIRECTIVE 2007/14/EC

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**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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<sup>(1)</sup>, and in particular Articles 2(3)(a), 5(6), first subparagraph, and 5(6)(c), 9(7), 12(8)(b) to (e), 13(2), 14(2), 21(4)(a), 23(4)(ii) and 23(7) thereof,

After consulting the Committee of European Securities Regulators (CESR)<sup>(2)</sup> for technical advice,

Whereas:

(1) Directive 2004/109/EC establishes the general principles for the harmonisation of transparency requirements in respect of the holding of voting rights or financial instruments that result in an entitlement to acquire existing shares with voting rights. It seeks to ensure that, through the disclosure of accurate, comprehensive and timely information about security issuers, investor confidence is built up and sustained. By the same token, by requiring issuers to be informed of movements affecting major holdings in companies, it seeks to ensure that the latter are in a position to keep the public informed.

(2) The rules for the implementation of the rules governing transparency requirements should likewise be designed to ensure a high level of investor protection, to enhance market efficiency, and to be applied in a uniform manner.

(3) As regards the procedural arrangements in accordance with which investors are to be informed of the issuer's choice of home Member State, it is appropriate that such choices be disclosed in accordance with the same procedure as regulated information under Directive 2004/109/EC.

(4) As regards the minimum content of the condensed set of half-yearly financial statements, where that set is not prepared in accordance with international accounting standards, this should be such as to avoid giving a misleading view of the assets, liabilities, financial position and profit or loss of the issuer. The content of half-yearly reports should be such as to ensure appropriate transparency for investors through a regular flow of information about the performance of the issuer, and that information should be presented in such a way that it is easy to compare it with the information provided in the annual report of the preceding year.

(5) Issuers of shares who prepare consolidated accounts in accordance with International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS) should apply the same definition of related party transactions in annual and half-yearly reports under Directive 2004/109/EC. Issuers of shares who do not prepare consolidated accounts and are not required to apply IAS and IFRS should, in their half-yearly reports under Directive 2004/109/EC, apply the definition of related party transactions set out in Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies<sup>(3)</sup>.

(6) For the purposes of benefiting from the exemption from the notification of major holdings under Directive 2004/109/EC in the case of shares acquired for the sole purpose of clearing and settling, the maximum length of the 'short settlement cycle' should be as short as possible.

<sup>(1)</sup> OJ L 390, 31.12.2004, p. 38.

<sup>(2)</sup> CESR was established by Commission Decision 2001/527/EC of 6 June 2001 (OJ L 191, 13.7.2001, p. 43).

<sup>(3)</sup> OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 2006/46/EC of the European Parliament and of the Council (OJ L 224, 16.8.2006, p. 1).

- (7) In order for the relevant competent authority to be able to monitor compliance as regards the derogation for market makers with respect to the notification of information about major holdings, the market maker seeking to benefit from that derogation should make known that it is acting or intends to act as market maker and for which shares or financial instruments.
- (8) Conducting market making activities in full transparency is particularly important. Thus, the market maker should be capable upon request from the relevant competent authority of identifying the activities conducted in relation to the issuer in question, and in particular the shares or financial instruments held for market making activities purposes.
- (9) As regards the calendar of trading days, it is appropriate, for the sake of ease of operation, that time limits be calculated by reference to the trading days in the Member State of the issuer. However, in order to enhance transparency, provision should be made for each competent authority to inform investors and market participants of the calendar of trading days applicable for the various regulated markets situated or operating on its territory.
- (10) As regards the circumstances in which notification of major holdings is to be made, it is appropriate to determine when that obligation is triggered either individually or collectively, and how that obligation is to be complied with in the case of proxies.
- (11) It is reasonable to assume that natural persons or legal entities exercise a high duty of care when acquiring or disposing of major holdings. It follows that such persons or entities will very quickly become aware of such acquisitions or disposals, or of the possibility to exercise voting rights, and it is therefore appropriate to specify only a very short period following the relevant transaction as the period after which they are deemed to have knowledge.
- (12) The exemption from the obligation to aggregate major holdings should be available only to parent undertakings that can demonstrate that their subsidiary management companies or investment firms fulfil adequate conditions of independence. To ensure full transparency, a statement to that effect should be notified ex ante to the relevant competent authority. In this regard, it is important that the notification mentions the competent authority supervising the management companies' activities under the conditions laid down pursuant to Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) <sup>(1)</sup>, irrespective of whether or not they are authorised under that Directive, provided in the latter case that they are supervised under national legislation.
- (13) For the purposes of Directive 2004/109/EC, financial instruments should be taken into account in the context of notifying major holdings, to the extent that such instruments give the holder an unconditional right to acquire the underlying shares or discretion as to whether to acquire the underlying shares or cash on maturity. Consequently, financial instruments should not be considered to include instruments entitling the holder to receive shares depending on the price of the underlying share reaching a certain level at a certain moment in time. Nor should they be considered to cover those instruments that allow the instrument issuer or a third party to give shares or cash to the instrument holder on maturity.
- (14) The financial instruments in Section C of Annex I of Directive 2004/39/EC of the European Parliament and of the Council <sup>(2)</sup> which are not mentioned in Article 11(1) of this Commission directive do not qualify as financial instruments within the meaning of Article 13(1) of Directive 2004/109/EC.
- (15) Directive 2004/109/EC sets high-level requirements in the area of dissemination of regulated information. The mere availability of information, which means that investors must actively seek it out, is therefore not sufficient for the purposes of that Directive. Accordingly, dissemination should involve the active distribution of information from the issuers to the media, with a view to reaching investors.
- (16) Minimum quality standards for the dissemination of regulated information are necessary to ensure that investors, even if situated in a Member State other than that of the issuer, have equal access to regulated information. Issuers should ensure that those minimum standards are met, whether by disseminating the regulated information themselves or by entrusting a third party to do so on their behalf. In the latter case, the third party should be capable of dissemination in adequate conditions and have adequate mechanisms in place to ensure that the regulated information it receives emanates from the relevant issuer and that there is no significant risk of data corruption or of

<sup>(1)</sup> OJ L 375, 31.12.1985, p. 3, Directive as last amended by Directive 2005/1/EC of the European Parliament and of the Council (OJ L 79, 24.3.2005, p. 9).

<sup>(2)</sup> OJ L 145, 30.4.2004, p. 1. Directive as amended by Directive 2006/31/EC (OJ L 114, 27.4.2006, p. 60).

unauthorised access to unpublished inside information. Where the third party provides other services or performs other functions, such as media, competent authorities, stock exchanges or the entity in charge of the officially appointed storage mechanism, such services or functions should be kept clearly separated from the services and functions relating to the dissemination of regulated information. When communicating information to the media, issuers or third parties should give priority to the use of electronic means and industry standard formats so as to facilitate and accelerate the processing of the information.

(17) Additionally, by way of minimum standards, regulated information should be disseminated in a way that ensures the widest possible public access, and where possible reaching the public simultaneously inside and outside the issuer's home Member State. That is without prejudice to the right of Member States to request issuers to publish parts or all regulated information through newspapers, and to the possibility for issuers to make regulated information available on their own or other websites accessible to investors.

(18) Equivalence should be able to be declared when general disclosure rules of third countries provide users with understandable and broadly equivalent assessment of issuers' position that enable them to make similar decisions as if they were provided with the information according to requirements under Directive 2004/109/EC, even if the requirements are not identical. However, equivalence should be limited to the substance of the relevant information and no exception as regards the time limits set by Directive 2004/109/EC should be accepted.

(19) In order to establish whether or not a third country issuer is meeting equivalent requirements to those laid down in Article 4(3) of Directive 2004/109/EC, it is important to ensure that there is consistency with Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements<sup>(1)</sup>, in particular the items dealing with Historical Financial Information to be included in a prospectus.

(20) As regards the equivalence of independence requirements, a parent undertaking of a management company or investment firm registered in a third country should be able to benefit from the exemption under Article 12(4)

or (5) of Directive 2004/109/EC, independently of whether the authorisation is required by the law of the third country for the controlled management company or investment firm to conduct management activities or portfolio management activities, provided that certain conditions of independence are respected.

(21) The measures provided for in this Directive are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

##### Subject matter

This Directive lays down detailed rules for the implementation of Article 2(1)(i)(ii), the second subparagraph of Article 5(3), the second sentence of Article 5(4), Article 9(1), (2) and (4), Article 10, Article 12(1), (2), (4), (5) and (6), Article 12(2)(a), Article 13(1), Article 21(1), Article 23(1) and (6) of Directive 2004/109/EC.

#### Article 2

##### Procedural arrangements for the choice of the home Member State

(Article 2(1)(i)(ii) of Directive 2004/109/EC)

Where the issuer makes a choice of home Member State, that choice shall be disclosed in accordance with the same procedure as regulated information.

#### Article 3

##### Minimum content of half-yearly non-consolidated financial statements

(Article 5(3), second subparagraph, of Directive 2004/109/EC)

1. The minimum content of the condensed set of half-yearly financial statements, where that set 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, 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 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.

<sup>(1)</sup> OJ L 149, 30.4.2004, p. 1, as corrected by OJ L 215, 16.6.2004, p. 3. Regulation as amended by Regulation (EC) No 1787/2006 (OJ L 337, 5.12.2006, p. 17).

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 two years after the date of entry into force of this Directive, 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.

#### Article 4

##### Major related parties' transactions

(Article 5(4), second sentence, of Directive 2004/109/EC)

1. In the interim management reports, issuers of shares shall disclose as major related parties' transactions, as a minimum, the following:
- (a) 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 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/EEC.

#### Article 5

##### Maximum length of the usual 'short settlement cycle'

(Article 9(4) of Directive 2004/109/EC)

The maximum length of the usual 'short settlement cycle' shall be three trading days following the transaction.

#### Article 6

##### Control mechanisms by competent authorities as regards market makers

(Article 9(5) of Directive 2004/109/EC)

1. The market maker seeking to benefit from the exemption provided for in Article 9(5) of Directive 2004/109/EC shall notify to the competent authority of the Home Member State of the issuer, at the latest within the time limit laid down in Article 12(2) of Directive 2004/109/EC, 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 competent authority accordingly.

2. Without prejudice to the application of Article 24 of Directive 2004/109/EC, where in case the market maker seeking to benefit from the exemption provided for in Article 9(5) of that Directive is requested by the competent authority of the issuer 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 24(4)(a) of Directive 2004/109/EC, 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 upon request of the relevant competent authority provide the agreement to such authority.

#### Article 7

##### Calendar of trading days

(Article 12(2) and (6), and Article 14(1), of Directive 2004/109/EC)

1. For the purposes of Article 12(2) and (6), and Article 14(1), of Directive 2004/109/EC, the calendar of trading days of the home Member State of the issuer shall apply.

2. Each competent authority shall publish in its Internet site the calendar of trading days of the different regulated markets situated or operating on the territory within its jurisdiction.

#### Article 8

### Shareholders and natural persons or legal entities referred to in Article 10 of the Transparency Directive required to make the notification of major holdings

(Article 12(2) of Directive 2004/109/EC)

1. For the purposes of Article 12(2) of Directive 2004/109/EC, 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 10 of Directive 2004/109/EC shall be an individual obligation incumbent upon each shareholder, or each natural person or legal entity as referred to in Article 10 of that Directive, 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 point (a) of Article 10 of the Directive 2004/109/EC, the notification obligation shall be a collective obligation shared by all parties to the agreement.

2. In the circumstances referred to in point (h) of Article 10 of Directive 2004/109/EC, 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 point (h) of Article 10, 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.

#### Article 9

### Circumstances under which the notifying person should have learned of acquisition or disposal or of possibility to exercise voting rights

(Article 12(2) of Directive 2004/109/EC)

For the purposes of point (a) of Article 12(2) of Directive 2004/109/EC, the shareholder, or the natural person or legal entity referred to in Article 10 of that Directive, 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.

#### Article 10

### Conditions of independence to be complied with by management companies and investment firms involved in individual portfolio management

(Article 12(4), first subparagraph, and Article 12(5), first subparagraph, of Directive 2004/109/EC)

1. For the purposes of the exemption to the aggregation of holdings provided for in the first subparagraphs of Article 12(4) and (5) of Directive 2004/109/EC, 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 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 point (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 13 of Directive 2004/109/EC, it shall notify to the competent authority of the home Member State of the issuer only the list referred to in point (a) of paragraph 2.

4. Without prejudice to the application of Article 24 of Directive 2004/109/EC, a parent undertaking of a management company or of an investment firm shall be able to demonstrate to the 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 point (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 point (a) of paragraph 1, '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.

#### Article 11

### **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 13(1) of Directive 2004/109/EC)

1. For the purposes of Article 13(1) of Directive 2004/109/EC, transferable securities; and options, futures, swaps, forward rate agreements and any other derivative contracts, as referred to in Section C of Annex I of Directive 2004/39/EC, shall be considered to be financial instruments, provided that they result in an entitlement to acquire, on the holder's own initiative alone, under a formal agreement, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market.

The instrument holder must enjoy, on maturity, either the unconditional right to acquire the underlying shares or the discretion as to his right to acquire such shares or not.

A formal agreement means an agreement which is binding under the applicable law.

2. For the purposes of Article 13(1) of Directive 2004/109/EC, the holder shall aggregate and notify all financial instruments within the meaning of paragraph 1 relating to the same underlying issuer.

3. The notification required under Article 13(1) of Directive 2004/109/EC 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 point (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 15 of Directive 2004/109/EC.

4. The notification period shall be the same as laid down in Article 12(2) of Directive 2004/109/EC and the related implementing provisions.

5. The notification shall be made to the issuer of the underlying share and to the competent authority of the home Member States of such issuer.

If a financial instrument relates to more than one underlying share, a separate notification shall be made to each issuer of the underlying shares.

#### Article 12

##### Minimum Standards

(Article 21(1) of Directive 2004/109/EC)

1. The dissemination of regulated information for the purposes of Article 21(1) of Directive 2004/109/EC 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 the home Member State, or the Member State referred to in Article 21(3) of Directive 2004/109/EC, 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 and statements referred to in Articles 4, 5 and 6 of Directive 2004/109/EC, 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 21 of that Directive, 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.

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 to the competent authority, 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.

#### Article 13

##### Requirements equivalent to Article 4(2)(b) of Directive 2004/109/EC

(Article 23(1) of Directive 2004/109/EC)

A third country shall be deemed to set requirements equivalent to those set out in Article 4(2)(b) of Directive 2004/109/EC 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 point (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.

#### Article 14

##### **Requirements equivalent to Article 5(4) of Directive 2004/109/EC**

(Article 23(1) of Directive 2004/109/EC)

A third country shall be deemed to set requirements equivalent to those set out in Article 5(4) of Directive 2004/109/EC 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.

#### Article 15

##### **Requirements equivalent to Articles 4(2) and 5(2)(c) of Directive 2004/109/EC**

(Article 23(1) of Directive 2004/109/EC)

A third country shall be deemed to set requirements equivalent to those set out in Articles 4(2)(c) and 5(2)(c) of Directive 2004/109/EC 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.

#### Article 16

##### **Requirements equivalent to Article 6 of Directive 2004/109/EC**

(Article 23(1) of Directive 2004/109/EC)

A third country shall be deemed to set requirements equivalent to those set out in Article 6 of Directive 2004/109/EC where, under the law of that country, an issuer is required to publish quarterly financial reports.

#### Article 17

##### **Requirements equivalent to Article 4(3) of Directive 2004/109/EC**

(Article 23(1) of Directive 2004/109/EC)

A third country shall be deemed to set requirements equivalent to those set out in the first subparagraph of Article 4(3) of Directive 2004/109/EC 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 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 points (a) and (b). Those disclosures may be prepared under the accounting standards of the third country.

*Article 18***Requirements equivalent to Article 4(3), second subparagraph, of Directive 2004/109/EC**

(Article 23(1) of Directive 2004/109/EC)

A third country shall be deemed to set requirements equivalent to those set out in the second subparagraph of Article 4(3) of Directive 2004/109/EC 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 <sup>(1)</sup> as applicable within the Community 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.

*Article 19***Requirements equivalent to Article 12(6) of Directive 2004/109/EC**

(Article 23(1) of Directive 2004/109/EC)

A third country shall be deemed to set requirements equivalent to those set out in Article 12(6) of Directive 2004/109/EC 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.

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 12(2) and 12(6) of Directive 2004/109/EC.

*Article 20***Requirements equivalent to Article 14 of Directive 2004/109/EC**

(Article 23(1) of Directive 2004/109/EC)

A third country shall be deemed to set requirements equivalent to those set out in Article 14 of Directive 2004/109/EC 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.

*Article 21***Requirements equivalent to Article 15 of Directive 2004/109/EC**

(Article 23(1) of Directive 2004/109/EC)

A third country shall be deemed to set requirements equivalent to those set out in Article 15 of Directive 2004/109/EC 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 30 calendar days after an increase or decrease of such total number has occurred.

*Article 22***Requirements equivalent to Articles 17(2)(a) and 18(2)(a) of Directive 2004/109/EC**

(Article 23(1) of Directive 2004/109/EC)

A third country shall be deemed to set requirements equivalent to those set out in Article 17(2)(a) and 18(2)(a) of Directive 2004/109/EC, 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.

<sup>(1)</sup> OJ L 243, 11.9.2002, p. 1.

*Article 23***Equivalence in relation to the test of independence for parent undertakings of management companies and investment firms**

(Article 23(6) of Directive 2004/109/EC)

1. A third country shall be deemed to set conditions of independence equivalent to those set out in Article 12(4) and (5) of that Directive where, under the law of that country, a management company or investment firm as referred to in Article 23(6) of Directive 2004/109/EC 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 10(2)(a) and (3) of this Directive.

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 of this Article.

3. Without prejudice to the application of Article 24 of Directive 2004/109/EC, the parent undertaking shall be able to demonstrate to the competent authority of the home Member State of the issuer on request that the requirements laid down in Article 10(4) of this Directive are respected.

*Article 24***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 months after date of adoption at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 25*

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 26*

This Directive is addressed to the Member States.

Done at Brussels, 8 March 2007.

*For the Commission*  
Charlie McCREEVY  
*Member of the Commission*