VERŻJONI ELETTRONIKA

L.N. 338 of 2012

EUROPEAN UNION ACT
(CAP. 460)

European Union Act (Amendment of the Companies Act) Order, 2012

IN exercise of the powers conferred by article 4 of the European Union Act, the Prime Minister has made the following Order:-

Citation and scope.

1. (1) The title of this Order is the European Union Act (Amendment of the Companies Act) Order, 2012, and this Order shall be read and construed as one with the Companies Act, hereinafter referred to as "the principal Act".

Cap. 386.

(2) The objective of this Order is to implement the provisions of Directive 2010/73/EU 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.

Amends article 2 of the principal Act.

2. Sub-article (3) of article 2 of the principal Act shall be amended as follows:

(a) paragraph (b) thereof shall be amended as follows:

(i) in sub-paragraph (ii) thereof, for the words "one hundred persons", there shall be substituted the words "one hundred and fifty persons";

(ii) in sub-paragraph (iii) thereof, for the words "fifty thousand euro (50,000.00)", there shall be substituted the words "one hundred thousand euro (100,000.00)";

(iii) in sub-paragraph (iv) thereof, for the words "fifty thousand euro (50,000.00), or the total consideration of which", there shall be substituted the words "one hundred thousand euro (100,000.00), or the total consideration of the offer in the Community";

(iv) for sub-paragraph (v) thereof, there shall be substituted the following:

"(v) an offer where the total consideration of the securities for the offer in a Member State or EEA State does not exceed five million (5,000,000) euro, which limit shall be calculated over a period of twelve months; or";

(v) in sub-paragraph (vi) thereof, for the words "where the total consideration of the offer over a period of twelve months is less than fifty million euro (50,000,000.00)", there shall be substituted the words, "where the total consideration of the offer in a Member State or EEA State, over a period of twelve months is less than seventy five million euro (75,000,000)";

(vi) immediately after the first proviso thereto, there shall be added the following new proviso:

"Provided further that in the case of any such subsequent resale of securities or final placement of securities through financial intermediaries, it is not necessary to draw up another prospectus as long as a valid prospectus is available in accordance with paragraph 21 of Part A of the Second Schedule to this Act and the issuer or the person responsible for drawing up such a prospectus consents to its use by means of a written agreement:"; and

(b) for paragraph (e) thereof there shall be substituted the following:

"(e) For the purposes of this Act "qualified investors" means persons or entities that are described in points (1) to (4) of Section I of Annex II to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, and persons or entities who are, on request, treated as professional clients in accordance with Annex II to Directive 2004/39/EC or recognised as eligible counterparties in accordance with Annex II to Directive 2004/39/EC unless they have requested that they be treated as non-professional clients. Investment firms and credit institutions shall communicate their classification on request to the issuer without prejudice to the relevant legislation on data protection. Investment firms authorised to continue considering existing professional clients as such in accordance with article 71(6) of Directive 2004/39/

VERŻJONI ELETTRONIKA

EC shall be authorised to treat those clients as qualified investors under this provision.".

3. Article 89 of the principal Act shall be amended as follows: Amends article 89 of the principal Act.

(a) for paragraphs (d) and (e) thereof, there shall be substituted the following:

"(d) in relation to 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; or

(e) in connection with an offer where securities are 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 Community 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; or";

(b) in paragraph (f) thereof, for the words "shares issued on the redemption", there shall be substituted the words "in relation to shares issued on the redemption";

(c) in paragraph (g) thereof, for the words "an offer made in connection with", there shall be substituted the words "in relation to an offer made in connection with";

(d) for paragraph (h) thereof, there shall be substituted the following:

"(h) in relation to an offer made in connection with or pursuant to a proposed merger or division, provided that a document is available containing information which is regarded by the Registrar as being equivalent to that of the prospectus:"; and

(e) immediately after paragraph (h) thereof, there shall be added the following proviso:

"Provided further that paragraph (e) shall also apply to a limited liability company established outside the Community whose securities are admitted to trading either

VERŻJONI ELETTRONIKA

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 paragraph (e), is available in English provided that the European Commission has adopted an equivalence decision regarding the third-country market concerned.".

Amends article 94 of the principal Act.

4. For sub-article (3) of article 94 of the principal Act, there shall be substituted the following:

"(3) No person shall be liable for statements made in the summary referred to in Part A of the Second Schedule to this Act, including the translation thereof, except when such statements are misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus, or if 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. The summary shall contain a clear warning to that effect.".

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