

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

## CHAPTER IV

### GENERAL OBLIGATIONS

#### *Article 23*

#### **Third countries**

1 Where the registered office of an issuer is in a third country, the competent authority of the home Member State may exempt that issuer from requirements under Articles 4 to 7 and Articles 12(6), 14, 15 and 16 to 18, provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the competent authority of the home Member State considers as equivalent.

However, the information covered by the requirements laid down in the third country shall be filed in accordance with Article 19 and disclosed in accordance with Articles 20 and 21.

2 By way of derogation from paragraph 1, an issuer whose registered office is in a third country shall be exempted from preparing its financial statement in accordance with Article 4 or Article 5 prior to the financial year starting on or after 1 January 2007, provided such issuer prepares its financial statements in accordance with internationally accepted standards referred to in Article 9 of Regulation (EC) No 1606/2002.

3 The competent authority of the home Member State shall ensure that information disclosed in a third country which may be of importance for the public in the Community is disclosed in accordance with Articles 20 and 21, even if such information is not regulated information within the meaning of Article 2(1)(k).

4 In order to ensure the uniform application of paragraph 1, the Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures

- (i) setting up a mechanism ensuring the establishment of equivalence of information required under this Directive, including financial statements and information, including financial statements, required under the law, regulations or administrative provisions of a third country;
- (ii) stating that, by reason of its domestic law, regulations, administrative provisions, or of the practices or procedures based on the international standards set by international organisations, the third country where the issuer is registered ensures the equivalence of the information requirements provided for in this Directive.

The Commission shall, in accordance with the procedure referred to in Article 27(2), take the necessary decisions on the equivalence of accounting standards which are used by third country issuers under the conditions set out in Article 30(3) at the latest five years following the date referred to in Article 31. If the Commission decides

that the accounting standards of a third country are not equivalent, it may allow the issuers concerned to continue using such accounting standards during an appropriate transitional period.

5 In order to ensure uniform application of paragraph 2, the Commission may, in accordance with the procedure referred to in Article 27(2), adopt implementing measures defining the type of information disclosed in a third country that is of importance to the public in the Community.

6 Undertakings whose registered office is in a third country which would have required an authorisation in accordance with Article 5(1) of Directive 85/611/EEC or, with regard to portfolio management under point 4 of section A of Annex I to Directive 2004/39/EC if it had its registered office or, only in the case of an investment firm, its head office within the Community, shall also be exempted from aggregating holdings with the holdings of its parent undertaking under the requirements laid down in Article 12(4) and (5) provided that they comply with equivalent conditions of independence as management companies or investment firms.

7 In order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 6, the Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures stating that, by reason of its domestic law, regulations, or administrative provisions, a third country ensures the equivalence of the independence requirements provided for under this Directive and its implementing measures.