

**Ordinance No. 39 of 21 November 2007  
on Disclosure of a Holding in a Public Company**

*Adopted by Decision No. 90-H dated 21.11.2007 of the Financial Supervision Commission,  
promulgated, SG No. 103/7.12.2007*

**Chapter One**

**GENERAL DISPOSITIONS**

**Article 1.** (1) This Ordinance regulates the terms and procedure for disclosure of a holding in a public company, as well as the content and form of the notification disclosing a holding.

(2) This Ordinance furthermore regulates the procedure for notifying acquisition of control in an investment company.

**Article 2.** (1) Any shareholder, who acquires or disposes of, directly and/or according to Paragraph (2), voting rights in the General Meeting of a public company, shall be obligated to notify the Financial Supervision Commission, hereinafter referred to as “the Commission,” and the public company, whenever:

1. as a result of the acquisition or disposal, the voting rights of the said shareholder in the General Meeting of the company reach, exceed or fall below 5 per cent or a multiple of 5 per cent of the number of votes in the General Meeting of the company;

2. the voting rights of the said shareholder reach, exceed or fall below the thresholds under Item 1 as a result of corporate events related to the company which lead to changes in the voting rights.

(2) The obligation under Paragraph (1) shall furthermore apply to any person who has the right to acquire, dispose of or to exercise the voting rights in the General Meeting of a public company for any of the following reasons or a combination of them:

1. voting rights held by a third party with whom that person has concluded an agreement which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the company;

2. voting rights held by a third party with whom that person has concluded an agreement providing for the temporary transfer of the voting rights;

3. voting rights attaching to shares which are lodged as collateral with that person, provided the person can control the voting rights and has expressly declared its intention of exercising them;

4. voting rights attaching to shares in which that person has the life interest;

5. voting rights which are held or may be exercised according to Items 1 to 4 by a company controlled by that person;

6. voting rights attaching to shares deposited with that person, which the person can exercise at its discretion in the absence of specific instructions from the shareholders’

7. voting rights held by third parties on their own behalf but for the account of that person;

8. voting rights which that person may exercise as a proxy where the person can exercise them at its discretion in the absence of specific instructions from the shareholders.

(3) Any public company, which acquires or disposes of its own shares directly or through another person acting on its own behalf but for the account of the company, shall be obligated to notify the Commission and to disclose to the public, under the terms and according to the procedure established by Articles 100s and 100u of the Law on Public Offering of Securities, information on the number of votes attaching to the said shares, but not later than four trading days after the acquisition or disposal, where the proportion of the said rights reaches, exceeds or falls below 5 or 10 per cent of the voting rights in the General Meeting of the company.

**Article 3.** (1) The voting rights shall be calculated on the basis of all the voting shares for each separate class even if the exercise of the voting rights is suspended.

(2) The total number of voting rights shall be determined on the basis of the total number of voting shares and the amount of capital as last disclosed by the public company according to Article 112e of the Law on Public Offering of Securities.

**Article 4.** In the cases where the thresholds referred to in Item 1 of Article 2 (1) herein are reached or crossed as a result of a direct acquisition or disposal of voting shares, a notification obligation under Article 2 (1) herein shall arise in respect of the Central Depository as well. The notification obligation shall be carried out before the end of the day succeeding the acquisition or transfer of the shares.

**Article 5.** (1) The notification obligation under Article 2 herein shall not apply to voting rights attaching to:

1. shares acquired for the sole purpose of clearing and settling within the usual short settlement cycle, which may not be longer than three trading days after conclusion of the transaction; shares held by custodians in their custodian capacity and provided such custodians can only exercise the voting rights attached to such shares under instructions given by the client in writing or by electronic means;

3. shares held by a market maker acting in its capacity of a market maker, whose voting rights do not reach or exceed 10 per cent of the votes in the General Meeting of the company, provided that:

(a) the said market maker has been granted authorisation to carry on business as an investment intermediary according to Article 3 of Council Directive 93/22/EEC on investment services in the securities field;

(b) the said market maker neither intervenes in the management of the company nor exerts any influence on the company to buy such shares or back the prices thereof.

(2) The market maker, which wishes to benefit from the exemption referred to in Item 3 of Paragraph (1), must notify the Commission that the said market maker acts or intends to act in its capacity of a market maker in respect of the shares of a particular company at the latest before expiry of the time limit under Article 13 (1) herein. The market maker shall also be obligated to notify the Commission under sentence one upon ceasing to act in its capacity of a market maker in respect of the shares of the company concerned. Notifications shall be made in writing, using a standard form established by the Deputy Chairperson of the Commission in charge of the Investment Activity Supervision Department, hereinafter referred to as “the Deputy Chairperson”.

(3) The market maker referred to in Paragraph (2) shall be obligated, where requested to do so by the Commission, to identify the securities or financial instruments held for market making activity purposes. In the cases where the market maker is not able to identify the securities or financial instruments according to sentence one, the Commission may require the said market maker to hold them in separate accounts.

**Article 6.** The notification obligation under Article 2 herein shall not apply to a company whose parent undertaking has carried out the notification obligation or, where the parent undertaking is itself a controlled company, its own parent undertaking had carried out the said obligation.

**Article 7.** (1) The voting rights of a management company, attaching to shares included in an individual portfolio managed thereby in accordance with Item 1 of Article 202 (2) of the Law on Public Offering of Securities, shall not be added to the voting rights of the parent undertaking of the said management company, provided that the management company exercises the voting rights independently of the parent undertaking.

(2) The voting rights of an investment intermediary, which has been granted authorisation to

carry on business according to Article 3 of Council Directive 93/22/EEC on investment services in the securities field, attaching to rights included in an individual portfolio, which the said intermediary manages according to Item 7 of § 1 of the Markets in Financial Instruments Act, shall not be added to the voting rights of the parent undertaking of the said investment intermediary, provided that:

1. the investment intermediary has the right to carry out individual portfolio management according to Item 4 of Article 5 (2) of the Markets in Financial Instruments Act;

2. the investment intermediary may only exercise the voting rights attached to such shares under instructions given in writing or by electronic means, or can ensure that individual portfolio management services are conducted independently of any other services and under conditions equivalent to those provided for under Directive 85/611/EEC by putting into place appropriate mechanisms;

3. the investment intermediary exercises its voting rights independently from the parent undertaking.

(3) Paragraphs (1) and (2) shall not apply in the cases where the parent undertaking or another company controlled by the parent undertaking has invested in voting shares included in an individual portfolio managed by the management company or, respectively, by the investment intermediary, and the management company or, respectively, the investment intermediary, has no discretion to exercise the voting rights at its own discretion but may only exercise such voting rights under direct or indirect instructions from the parent undertaking or from another company controlled by the parent undertaking.

(4) To benefit from the exemptions under Paragraphs (1) and (2), the parent undertaking of the management company or the investment intermediary must comply with the following conditions:

1. the parent undertaking may not interfere by giving direct or indirect instructions or in any other way in the exercise of the voting rights held by the management company or investment intermediary;

2. that management company or investment intermediary must be free to exercise, independently of the parent undertaking, the voting rights attached to the assets it manages.

(5) A parent undertaking which wishes to make use of the exemption under Paragraphs (1) and (2) must, without delay, present to the Commission:

1. a list of the business names of those management companies and investment intermediaries, indicating the competent authorities that supervise them or that no competent authority supervises them, but with no reference to the public companies concerned;

2. a statement that, in the case of each such management company or investment intermediary, the parent undertaking complies with the requirements under Paragraph (4).

(6) The parent undertaking shall update the list referred to in Item 1 of Paragraph (5) on an ongoing basis.

(7) Where the parent undertaking intends to benefit from the exemption under Paragraphs (1) and (2) only in relation to the financial instruments referred to in Article 8 (2) herein, it shall present to the Commission only the list referred to in Item 1 of Paragraph (5).

(8) The parent undertaking of a management company or an investment intermediary must be able on request by the Commission to present evidence that:

1. the organisational structures of the parent undertaking and the management company or investment intermediary guarantee that the voting rights are exercised independently of the parent undertaking;

2. the persons who decide how the voting rights are to be exercised act independently of one another;

3. if the parent undertaking is a client of its management company or investment intermediary or holds shares managed by the management company or the investment intermediary, there is a clear written mandate for an arms-length customer relationship between the parent undertaking and the management company or investment intermediary.

(9) Compliance with the requirement under Item 1 of Paragraph (8) shall imply as a minimum that the parent undertaking and the management company or investment intermediary must establish written procedures designed to prevent the distribution of information between the parent undertaking and the management company or investment intermediary in relation to the exercise of voting rights.

(10) Paragraphs (1) to (3) shall furthermore apply to companies whose registered office is in a third country which would have required an authorisation according to Article 5 of Council Directive 85/611/EEC or, with regard to individual portfolio management under point 3 of Section A of the Annex to Council Directive 93/22/EEC on investment services in the securities field if they had their registered office in a Member State or, in the case of an investment intermediary, if they had their head office in a Member State, provided that they comply with equivalent requirements for independent exercise of the voting rights or portfolio management as a management company or, respectively, an investment intermediary.

(11) A third country shall be deemed to set requirements equivalent to the requirements for independent exercise of the voting rights set out in Paragraphs (1) and (2) where, under the law of that country:

1. the management company or investment intermediary is free in all situations to exercise, independently of its parent undertaking, the voting rights attached to the shares it manages, and the management company or investment intermediary disregards the interests of the parent undertaking or of any other company controlled by the parent undertaking whenever conflicts of interest arise;

2. the parent undertaking furthermore complies with the requirements under Item 1 of Paragraph (5) and Paragraph (7) provided that:

(a) it makes a statement that, in the case of each management company or investment intermediary, the parent undertaking complies with the requirements under Item 1;

(b) if requested to do so by the Commission, the parent undertaking is able to demonstrate that the requirements under Paragraph (8) are respected.

**Article 8.** (1) The notification obligation under Article 2 herein shall furthermore apply to any persons holding, directly or indirectly, financial instruments that result in an entitlement to acquire, on the holder's own initiative and under a written agreement, shares to which voting rights in the General Meeting of a public company are attached, which are already issued.

(2) Transferable securities and options, futures, swaps, forward rate agreements and any other derivative contracts, as referred to in Article 3 of the Markets in Financial Instruments Act, shall be considered to be financial instruments under Paragraph (1), provided that:

1. they result in an entitlement to acquire, on the holder's own initiative and under a written agreement, which is mandatory according to the applicable law, shares to which voting rights in the General Meeting of a public company are attached, which are already issued;

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

(3) The holder of financial instruments shall be obligated to aggregate and, if necessary, to make notification of all financial instruments within the meaning given by Paragraph (2) relating to the same issuer of the underlying shares.

(4) The provisions of Article 3 and Articles 5 to 7 herein regarding the exemptions from the notification obligation shall apply, *mutatis mutinies*, to the acquisition and transfer of financial instruments according to Paragraph (1).

**Article 9.** The existence of the circumstances covered under Articles 2 and 8 herein shall be ascertained by a statement. The said statement shall be enclosed with the notification which is presented at the Commission.

**Chapter Two**  
**CONTENT, FORM AND PROCEDURE FOR DISCLOSURE OF A HOLDING**  
**Section I**  
**Content and Form of Notification and Statement**

**Article 10.** (1) The notifications and the statement referred to in Article 9 herein shall be submitted in writing, using a standard form established by the Deputy Chairperson. The standard form shall be published in the official bulletin and on the Internet site of the Commission. The written form shall be considered complied with if the notification and statement have been submitted by electronic means under the terms and according to the procedure established by the Electronic Document and Electronic Signature Act.

(2) The notification by the Central Depository shall be made by electronic means in a format proposed by the Central Depository and approved by the Deputy Chairperson.

**Article 11.** (1) The notification by the shareholder and the person referred to in Article 2 (2) herein must contain, as a minimum, the following information:

1. regarding the person that makes the notification:
  - (a) for a natural person: forename, patronymic and surname;
  - (b) for a sole trader or legal entity: business name, seat and registered office;
2. grounds for making a notification;
3. the particulars under Item 1 in respect of the shareholder where other than the person that makes the notification;
4. business name and seat of the public company in which the person has acquired, transferred, or holds voting rights;
5. regarding the person's holding in the votes in the General Meeting of the public company:
  - (a) number of voting shares and number of votes: before the acquisition or disposal, as a result of which the person has reached or exceeded the thresholds under Item 1 of Article 2 (1) herein;
  - (b) number of voting shares, number of votes and their proportion of the total number of votes: as a result of the acquisition or transfer, by which the person has reached or crossed the thresholds under Item 1 of Article 2 (1) herein;
6. the date on which the person's voting rights reached, exceeded or fell below the thresholds under Item 1 of Article 2 (1) herein;
7. the controlled persons through which the person exercises the voting rights, if applicable, and information on the voting rights held by them and the proportion of the total number of voting rights, where the controlled person holds voting rights above the thresholds specified in Item 1 of Article 2 (1) herein.

(2) The notification of the persons referred to in Article 8 herein must contain, as a minimum, the following information:

1. type of financial instrument;
2. number of voting rights and their proportion of the total number of votes: as a result of the acquisition or transfer, by which the person has reached or crossed the thresholds under Article 2 herein;
3. the controlled persons through which the financial instruments are held, if applicable, and information on the voting rights held by them and the proportion of the total number of voting

rights, where the controlled person holds voting rights in excess of the thresholds specified in Item 1 of Article 2 (1) herein;

4. the date on which the person's voting rights reached, exceeded or fell below the thresholds under Item 1 of Article 2 (1) herein;

5. for instruments with an exercise period, an indication of the date or time period where shares will or can be acquired, if applicable;

6. date of maturity or expiration of the financial instrument;

7. regarding the holder of the financial instruments:

(a) for a natural person: forename, patronymic and surname;

(b) for a sole trader or legal entity: business name, seat and registered office;

8. business name and seat of the public company which has issued the underlying shares.

(3) The notification by the Central Depository must contain as a minimum:

1. regarding the shareholder: the particulars under Item 1 of Paragraph (1);

2. regarding the person's holding in the votes in the General Meeting of the public company: the information under Item 5 of Paragraph (1) regarding the shares directly held, acquired or transferred;

3. date of registration at the Central Depository of the acquisition or of the transfer, as the case may be;

4. information on the public company in which the person has acquired or transferred shares, including:

(a) business name, seat and registered office;

(b) registration number of the company at the Commission and Central Depository code;

(c) amount of capital, number of votes in the General Meeting, and number of shareholders;

(d) ISIN code of the issue from which the person has acquired or transferred the shares.

(4) The notifications to the Commission must also contain the following information:

1. particulars of the obligated person:

(a) for a natural person: Personal Identity Number, permanent and current address, contact telephone, and if a non-resident person: Personal Number and address;

(b) for a sole trader and legal entity: BULSTAT Code or, respectively, unified identification code, the full names of the persons who manage and represent the person, contact details, including telephone, electronic mail address and contact person, and if a non-resident person, the respective identification data;

2. the particulars under Item 1 (a) for the authorised person.

(5) The statement referred to in Article 9 herein shall contain:

1. regarding a natural person obligated under Article 2 (1) and (2) and Article 8 herein: forename, patronymic and surname, Personal Identity Number, current and permanent address, and if a non-resident person, names, Personal Number and address; regarding a natural person representing the legal entity obligated under Article 2 (1) and (2) and Article 8 herein: forename, patronymic and surname, Personal Identity Number, current and permanent address, and if a non-resident natural person: names, Personal Number and address;

2. a statement certifying the existence of the circumstances stated in the notification.

(6) The notification and the statement referred to in Article 9 herein shall be signed by the person obligated under Article 2 (1) and (2) and Article 8 herein.

**Article 12.** (1) Where a natural or legal person acquires a possibility of exercising control over an investment company, the notification shall be made in writing, using a standard form established by the Deputy Chairperson, and must contain the information under Article 11 (1) herein, as well as an indication of other forms of control, if control is not exercised through holding of voting shares. The standard form shall be published in the official bulletin and on the Internet site

of the Commission.

(2) The notification referred to in Paragraph (1) shall be filed with the Commission by the person referred to in Paragraph (1) or by a person authorised thereby within three trading days after occurrence of the circumstance which results in a possibility of exercising control over the investment company.

## **Section II Notifying and Declaring Procedure**

**Article 13.** (1) The notification obligation under Article 2 (1) and (2) and Article 8 herein shall be carried out immediately but not later than four trading days after the day succeeding the day on which the person:

1. learns of the acquisition, transfer or of the possibility of exercising voting rights according to Article 2 (2) herein, or on which, having regard to the particular circumstances, should have learned of it, regardless of the date on which the acquisition, transfer or possibility to exercise voting rights take effect;

2. is informed about the occurrence of the events referred to in Item 2 of Article 2 (1) herein.

(2) For the purposes of Item 1 of Paragraph (1), the person shall be deemed to have knowledge of the acquisition, transfer or possibility to exercise voting rights no later than two trading days following the date of conclusion of the transaction.

(3) The notification obligation shall arise for each particular shareholder or person referred to in Article 2 (2) herein or for both as soon as the proportion of votes held by each of them reaches, exceeds or falls below the thresholds under Item 1 of Article 2 (1) herein.

(4) In the cases referred to in Item 1 of Article 2 (2) herein, the notification obligation shall arise for all parties to the agreement.

(5) In the cases referred to in Item 8 of Article 2 (2) herein, if the shareholder gives the proxy form in relation to one General Meeting, the notification obligation may be carried out by means of a single notification at the moment of giving the proxy form 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.

(6) In the cases referred to in Item 8 of Article 2 (2) herein, where the proxy holder receives one or several proxies in relation to one General Meeting, the notification obligation may be carried out 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 holder may no longer exercise the voting rights at its discretion.

(7) Where the notification obligation is incumbent on more than one person, they may make a single common notification. In such case, the persons shall not be released from their responsibility in relation to notification.

**Article 14.** The notification and the statement referred to in Article 9 herein shall be completed in the Bulgarian language, in the English language, or in another language that is customary in the sphere of international finance.

**Article 15.** (1) For the purposes of Article 13 (1) and (2) herein, the trading days determined according to Bulgarian legislation shall apply.

(2) The Commission shall publish on its Internet site the calendar of trading days in the Republic of Bulgaria.

**Article 16.** (1) The Deputy Chairperson may transmit a communication specifying any deficiencies and inconsistencies established or requiring additional information or proof of the veracity of the information contained in the notification.

(2) In the cases under Paragraph (1), the Deputy Chairperson shall set a time limit within which the obligated person shall be bound to remove the deficiencies and inconsistencies established or to present the required additional information and documents.

**Article 17.** (1) The notifications referred to in Article 11 (1) to (3) herein, as well as the statement referred to in Article 9 herein, shall be filed with the Commission within the time limits under this Ordinance by the person obligated under Article 2 (1) and (2) and Article 8 herein or by a person authorised thereby.

(2) The notifications referred to in Article 11 (1) herein shall be made available as well to the public company within the time limits and by the persons specified in the Ordinance.

(3) The notification referred to in Article 11 (2) herein shall be made available as well to the issuer of the shares underlying the financial instrument. If the financial instrument relates to more than one underlying share, a separate notification shall be made to each issuer of the underlying shares.

(4) The notifications referred to in Article 12 herein shall be made available as well to the investment company and to the regulated securities market on which the shares of the company are admitted to trading, within the time limits and by the persons specified in the Ordinance.

**Article 18.** The public company shall be obligated to disclose to the public, under the terms and according to the procedure established by Articles 100s and 100u of the Law on Public Offering of Securities, the information provided by the notifications by the persons under Article 2 (1) and (2) and Article 8 herein, within three trading days after being notified.

### **Chapter Three DISCLOSURE OF A HOLDING IN THIRD COUNTRY ISSUERS**

**Article 19.** (1) This Ordinance shall furthermore apply to third country issuers whose shares are admitted to trading on a regulated market, for which the Republic of Bulgaria is a home Member State according to Article Item 1 of Article 100j (2) of the Law on Public Offering of Securities.

(2) The requirements under Article 2 (3) and Article 18 herein shall not apply to the persons referred to in Paragraph (1) if the Commission considers that the legislation of that [third] country lays down equivalent requirements.

(3) The Commission may consider that the requirements laid down by the legislation of a third country are equivalent to the requirements covered under Article 2 (3) herein where, under the legislation of that country, the issuer whose registered office is in that country is required to comply with the following conditions:

1. in the case of an issuer allowed to acquire up to 5 per cent of its own voting shares, it must disclose information on the number of voting shares held thereby whenever this threshold is reached or crossed;

2. in the case of an issuer allowed to acquire between 5 and 10 per cent of its own voting shares, it must disclose the information on the number of voting shares held thereby whenever these thresholds are reached or crossed;

3. in the case of an issuer allowed to hold more than 10 per cent of its own voting shares, it must disclose the information on the number of voting shares held thereby whenever the 5 per cent threshold or the 10 per cent threshold is reached or crossed and need not disclose information on the number of voting shares held above the 10 per cent threshold.

(4) The Commission may consider that the requirements laid down by the legislation of a third country are equivalent to the requirements under Article 18 herein where, under the legislation of that country, the time period within which an issuer whose registered office is in that country must disclose to the public this information is shorter than seven trading days. The time frames for



the notification to the issuer and for the subsequent disclosure of the information to the public by the issuer may be different from those established in Articles 13 and 18 herein.

(5) The Commission may consider that the requirements laid down by the legislation of a third country are equivalent to the requirement for disclosure of information according to Article 112e of the Law on Public Offering of Securities where, under the legislation of that country, an issuer whose registered office is in that country is required to disclose to the public information regarding the total number of voting shares and the amount of capital within 30 days after an increase or decrease of such total number has occurred.

(6) The Commission may consider that the requirements laid down by the legislation of a third country are equivalent to the requirements of Article 100w and Article 115 (2) of the Law on Public Offering of Securities where, under the legislation of that country, the notice of General Meeting which an issuer whose registered office is in that country is required to provide at least information of the place, time and proposed agenda.

(7) The Commission shall publish on its Internet site a list of the countries in respect of which it considers that their legislations lay down requirements equivalent to the requirements under Article 2 (3), Article 18 herein. and Paragraphs (5) and (6).

#### **Chapter Four ADMINISTRATIVE PENALTY PROVISIONS**

**Article 20.** (1) Any persons who have committed violations of this Ordinance, as well as any persons who have admitted the committing of such violations, shall be punished according to Article 221 (1) of the Law on Public Offering of Securities.

(2) The acts establishing any violations of the Ordinance shall be drawn up by officials authorised by the Deputy Chairperson, and the Deputy Chairperson shall issue the penalty warrants.

(3) The establishment of violations, the issuing, appeal against and enforcement of the penalty warrants shall be carried out in accordance with the Administrative Violations and Sanctions Act.

#### **ADDITIONAL PROVISION**

**§ 1.** For the purposes of this Ordinance:

1. "Direct instructions" shall be any instructions given by the parent undertaking or another company controlled by the parent undertaking, specifying how the voting rights are to be exercised by the management company or the investment intermediary in each particular case.

2. "Indirect instructions" shall be any general or particular instructions, regardless of the form, given by the parent undertaking or another company controlled by the parent undertaking, that limit the discretion of the management company or investment company in relation to the exercise of the voting rights in order to serve specific business interests of the parent undertaking or another company controlled by the parent undertaking.

#### **TRANSITIONAL AND FINAL PROVISIONS**

**§ 2.** This Ordinance is issued in pursuance of § 16 (1) in reference to Article 100x (1), Article 120a (2), Article 145 (3), Article 146 (5), Article 148 (7), Article 148a (2), Article 148e, Article 174 and Article 179 of the Law on Public Offering of Securities and was adopted by Decision No. 90-H dated 21 November 2007 of the Financial Supervision Commission.

**§ 3.** The Commission shall give guidance on the application of this Ordinance.