

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

**FEEDBACK STATEMENT ISSUED
FURTHER TO INDUSTRY RESPONSES TO MFSA
CONSULTATION DOCUMENT ON AMENDMENTS
TO THE LISTING RULES
IMPLEMENTING AUDIT COMMITTEE
REQUIREMENTS**

[MFSA REF: 07-2016]

11th August 2016

1. Background

On the 28th June 2016, the MFSA issued a Consultation Document on proposed amendments to the Listing Rules to transpose the new requirements set out in Article 39 of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, (“the Statutory Audit Directive”), which has been amended by Directive 2014/56/EU of 16 April 2014, and the new Regulation (EU) No 537/2014 of the European Parliament and of the Council of the European Union of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC, (“the Statutory Audit Regulation”).

The purpose of the Consultation Document was to bring to the attention of Listed Companies the changes required to the present Listing Rules regarding the Audit Committee to transpose the relevant provisions of the Statutory Audit Directive and the Statutory Audit Regulation. The Consultation Document also considered the options or derogations found in the said Article 39 and the Statutory Audit Regulation.

Further to the said Consultation Document, the MFSA is issuing the amendments to the relevant Listing Rules in Chapter 5 of the Listing Rules, together with a Feedback Statement on the comments received in relation to the proposed amendments relating to the audit committee requirements. An outline of the main comments received and the MFSA’s position in relation thereto is provided below.

2. Main Comments received on the proposed amendments to Listing Rules in relation to the Audit Committee requirements and the MFSA’s position

1. **Article 39 (1) of the Audit Directive** – *“The chairman of the audit committee shall be appointed by its members or by the supervisory body of the audited entity, and shall be independent of the audited entity. Member States may require the chairman of the audit committee to be elected annually by the general meeting of shareholders of the audited entity.”*

Industry comment – clarification was sought with regards to the options available for the election of the Chairman. Comments received stated that on the basis that the functions of the supervisory board are performed by the board of directors; the chairman should be appointed by the board of directors.

MFSA’s Position – The MFSA agrees with the Industry’s position. The Listing Rules are being amended to include the requirement that the Chairman should be appointed by the board of directors of the Issuer.

2. **Article 39 (2) of the Audit Directive** – *By way of derogation from paragraph 1, Member States may decide that in the case of public-interest entities which meet the criteria of “small and medium-sized enterprise”, the functions assigned to the audit committee may be performed by the board of directors as a whole, provided that where*

the chairman of such a body is an executive member, he or she shall not act as chairman whilst such body is performing the functions of the audit committee.

Industry comment – the feedback received suggested that a distinction should be made between issuers which have debt securities listed and those which have their equity listed given that the risks facing investors in debt securities are of a lesser degree than those investing in equities.

MFSA’s Position – The MFSA disagrees that such a distinction should be made for the following reasons:

- a. The Audit Directive does not make such distinction;
 - b. It is evident from market experience that the Audit Committee has played a vital role in respect of issuers of debt securities especially with regards to related party transactions.
3. **Articles 39 (4)** – *“By way of derogation from paragraph 1, Member States may require or allow a public-interest entity not to have an audit committee provided that it has a body or bodies performing equivalent functions to an audit committee, established and functioning in accordance with provisions in place in the Member State in which the entity to be audited is registered. In such a case the entity shall disclose which body carries out those functions and how that body is composed.”*

Industry comment - the feedback received indicates that this option should be available.

MFSA’s Position - On the basis of market practice, the MFSA is not aware of other committees that can perform the functions of the Audit Committee and therefore it does not agree to introduce such option.

The Authority also believes that the Audit Committee gives substance to good corporate governance of the Issuer.

4. **Listing Rule 5.118A** provides that in the Statement of Corporate Governance, within the Annual Return, the Issuer shall clearly indicate the independent members and the member/s competent in accounting and/or auditing together with the reasons why these members are considered by the Board as independent and competent in accounting and/or auditing.

Industry comment – There is no requirement in the Statutory Audit Regulation to report in the Issuer’s Annual Report (Statement of Corporate Governance), the reason/s why these Audit Committee members are independent and competent in accounting and/or auditing. It is therefore suggested to remove such requirement or to keep it on a voluntary basis.

MFSA’s Position - It is the Authority’s opinion that this requirement ensures that the right persons are appointed on the Audit Committee. Also with respect to the

independence of the members, this disclosure can help to promote confidence in the Issuer's controls especially in circumstances where the Issuer is being controlled and managed by the same individuals and subject to related party transactions. Accordingly, the Authority believes that this requirement should be retained.

3. The Way Forward

The MFSA will be approaching listed companies requesting feedback as to what steps such listed companies have taken or propose to take in order to comply with the requirements of the audit committee under the new Article 39 of the Statutory Audit Directive and the Statutory Audit Regulation.

Contacts

Any queries or requests for clarifications in respect of the above should be addressed by email on listcomm@mfsa.com.mt.

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