

Circular 01/16 – The applicability of the Commission Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2014

[1.0] Introduction

The Commission Regulation (EU) No 2016/301 (which can be accessed through the following [link](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0301&rid=2) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0301&rid=2>) amends the Prospectus Regulation. This Commission Regulation is directly applicable in the Maltese territories and therefore this Regulation is applicable for any prospectus that has to be approved by the Listing Authority.

[2.0] Summary of the main amendments

A summary of the main amendments being introduced by the Commission Delegated Regulation (EU) 2016/301 is included hereunder in the order presented in the Commission Delegated Regulation.

1. Article 2 –Submission for an application for approval

All drafts of a prospectus must be submitted to the Listing Authority in a **searchable electronic format**. A contact point to which the Listing Authority can submit all notifications in writing must be provided at the time the first draft of the prospectus is submitted.

Along with the first draft of the prospectus, or during the review process, the following items must be submitted to the Listing Authority in searchable electronic form:

- a cross reference list that also identifies any items from the Annexes to the Prospectus Regulation that have not been included in the prospectus;
- a reasoned request for any information that is requested to be omitted from the prospectus;
- any request for the Listing Authority (as home member state) to notify the competent authority of the host member state with a certificate of approval (for passporting);
- any information incorporated by reference to the extent such information has not already been approved or filed with the Listing Authority; and
- any other information considered necessary, on reasonable grounds, for review by the competent authority of the home member state and expressly required by it for that purpose.

2. Article 3 – Changes to the draft prospectus

Subsequent drafts of the prospectus submitted to the Listing Authority must be marked to highlight all changes. In addition to the marked draft, a clean draft **must always** be submitted. In circumstances where it is not possible for technical reasons to submit a marked draft, changes must be identified to the competent authority in writing. Where the Listing Authority has commented on the completeness, consistency and/or comprehensibility, the subsequent revised draft submitted must be accompanied by a written explanation as to how the incompleteness has been addressed.

3. Article 4 – Final submission

The final draft prospectus shall be accompanied by the any information mentioned Article 2 which has changed since the previous submission. If there were no changes, a confirmation should be submitted to this effect.

4. Article 5 – Receipt and processing of the application

The Listing Authority (through the Listing Committee or the SMSU) shall acknowledge receipt of initial applications for approval of prospectuses in writing electronically as soon as possible and no later than close of business on the second working day following receipt. The acknowledgement will provide details of a contact to whom queries regarding the application may be addressed.

Where documents submitted are incomplete or supplementary information is needed, the Listing Authority (through the Listing Committee or the SMSU) shall provide a written explanation electronically for the additional information it requires. Where timing is of the utmost importance or the incompleteness in the documentation is of a minor nature, communication may be done orally without interrupting the approval timetable.

The Listing Authority can terminate the review process where any supplementary information it requests is not provided.

The Listing Authority will notify its decision regarding the approval of the prospectus in writing, via electronic means, on the day of the decision. In the case of a refusal to approve the prospectus, the decision shall contain the reasons for such refusal.

5. Article 6 – Publication of the prospectus in electronic form

When publishing a prospectus in electronic form, it must be easily accessible on the website; be in a searchable electronic format that cannot be modified; not contain hyperlinks (with the exception of links to electronic addresses where information incorporated by reference is available); and be downloadable and printable.

If a prospectus is made available on a website, measures should be taken to avoid targeting residents in member states or third countries where the offer does not take place, for example, by including a disclaimer as to who are the addressees of the offer.

In addition, access to a prospectus published in electronic form must not be subject to completion of a registration process; acceptance of a disclaimer limiting legal liability; or payment of a fee.

6. Article 11 – Dissemination of advertisements

Where an advertisement relating to an offer to the public and/or an admission to trading on a regulated market has been disseminated and a Supplement is subsequently published, an amended advertisement must be published if the matter or information resulting to the Supplement renders the contents of the previous advertisement inaccurate or misleading.

The amended advertisement must make reference to the previous advertisement, specifying that the previous advertisement has been amended, the reasons for the amendment and identifying the differences between them. The amended advertisement must be disseminated without undue delay following the publication of the Supplement. The requirement to publish an amended advertisement is not required after the final closing of the offer to the public or after the time when trading on a regulated market begins, whichever occurs later.

7. Article 12 – Consistency for purposes of Article 15 (4) of Directive 2003/71/EC

Information disclosed in oral or written form about an offer to the public or an admission to trading on a regulated market, whether for advertisement or other purposes, must not:

- contradict the information in the prospectus (directly or by reference);
- present a materially unbalanced view of the information contained in the prospectus, including by way of omission or presentation of negative aspects of such information with less prominence than the positive aspects; or
- contain alternative performance measures concerning the issuer unless they are contained in the prospectus.

[3.0] Effective date

This Regulation has entered into force on **24th March 2016**.

[4.0] Contacts

Should you have any queries, please do not hesitate to contact: Ms Lorraine Vella, Senior Manager, Securities and Markets Supervision Unit (lvella@mfsa.com.mt) or Dr Ilona Schembri, Analyst, Securities and Markets Supervision Unit (ischembri@mfsa.com.mt).

**Communications Unit
Malta Financial Services
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