**Circular to all Company Secretaries of Listed companies and Stockbroking Firms**

**16th November 2010**

***Subject: Revisions to the Listing Rules***

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## [1.0] Introduction

As indicated in the consultation document issued in January 2010 the Listing Authority had identified the need for a comprehensive review of the Listing Rules to be carried out. Since it wished to seek the widest participation in the review process, a Working Committee including representatives from the Authority as well as representatives from the College of Stockbrokers, the Forum of Company Secretaries, the Malta Stock Exchange and the Financial Services Consultation Council was set up. The purpose of this circular is to highlight the principal amendments to the Listing Rules which have been approved by the Listing Authority in terms of article 13 of the Financial Markets Act (Cap. 345 of the Laws of Malta). As indicated in the explanatory note dated 13th January 2010 the proposed amendments to the Listing Rules which were issued for consultation during the 1st quarter of 2010 were aimed at simplifying and updating the Listing Rules so that they can be understood and applied more easily by practitioners and entities operating in the Maltese capital market. The revised Listing Rules which are set out as an Appendix to this circular are effective as from the date of issue of this circular. There is, however, a transitory period for Issuers in relation to compliance with Appendix 8.1, which has been revised and re-numbered as Appendix 5.1, as set out in section 7 (d) of this circular.

## [2.0] Chapter 1 of the Listing Rules – Listing Authority, compliance with and enforcement of the Listing Rules

The only change to Chapter 1 of the Listing Rules is the insertion of a new Listing Rule 1.30 clarifying that it is an obligation of an Issuer to give effect to, comply with and ensure the fulfilment of the terms of a prospectus as approved by the Listing Authority and any failure by an Issuer to strictly adhere to these obligations is considered as a serious breach and shall result in an administrative sanction, including but not limited to the imposition of a penalty, the publication at the Issuer's expense of a public statement relating to the breach, or to both such penalty and public statement.

## [3.0] Chapter 2 of the Listing Rules – Sponsors

The main purpose of the amendments to Chapter 2 of the Listing Rules is to emphasise the responsibilities of a sponsor given the sponsor's important role in ensuring that an applicant satisfies all the conditions for the admissibility of securities to listing and complies with the requirements relating to the drawing up of a prospectus. The newly introduced Listing Rules 2.7 to 2.11 deal with the conduct of the sponsor in its relations with the Listing Authority and the independence of the sponsor respectively. The new Listing Rule 2.7 obliges sponsors to deal with the Listing Authority in an open and co-operative manner and to respond to all enquiries raised by the Listing Authority in a timely manner. In terms of this new Listing Rule, sponsors are also required to disclose to the Listing Authority in a timely manner any material information relating to the sponsor or the applicant of which the sponsor has knowledge which concerns non-compliance with the Listing Rules.

With the introduction of the new Listing Rule 2.8, a person will be prohibited from acting as a sponsor to an applicant if such person or the group of which it forms part has:

a) an interest, or a holding that is equivalent to 10 % or more of the equity or debt securities of the applicant or any other company in the Applicant's Group. In assessing the percentage of the interest, the equity securities for which application for admissibility to listing has been made are to be treated as having already been issued; or
b) a business relationship with, other than his role as sponsor, or a financial interest in the applicant or any other company in the applicant's group that would give the sponsor or the sponsor's group a material interest in the outcome of the transaction.

However, in terms of Listing Rule 2.9, any interest that arises as a result of the sponsor's discretionary client holdings would not be taken into account when determining the threshold set out in paragraph (a) above.

Furthermore, in terms of the new Listing Rule 2.10 a sponsor would not be considered to be independent of an applicant if a director, partner or senior officer of the sponsor or another company in the sponsor's group has a material interest in the applicant or any other company in the applicant's group.

The revised Chapter 2 also includes the insertion of new Listing Rules 2.17 and 2.18 dealing with the situation where more than one sponsor is appointed. Listing Rule 2.17 will require an applicant to inform the Listing Authority how responsibility between the sponsors is to be allocated whilst Listing Rule 2.18 expressly provides that the appointment of more than one sponsor will not relieve any of the sponsors so appointed of their responsibilities and obligations under the Listing Rules.

## [4.0] Chapter 3 of the Listing Rules – Conditions for admissibility to listing

The layout of Chapter 3 of the Listing Rules has been revised by dividing it into three parts dealing respectively with (i) the general conditions for listing for all securities; (ii) additional conditions applicable for the listing of equity securities; and (iii) additional conditions applicable to all other securities other than equity securities. Apart from the changes to the layout of the Chapter, the main changes to Chapter 3 are the following:-

a) *Market capitalisation*

Chapter 3 has been amended to provide that in the case of an application for the admissibility to listing of shares other than preference shares, the aggregate market value of the shares should be at least one million euros (€1,000,000) whilst in the case of an application for the admissibility to listing of debt securities or preference shares (excluding tap issues where the amount of the debt securities is not fixed) the applicant will be required to offer at least one million euros (€1,000,000) of issued preference shares or debt securities.

b) *Issued share capital*

Chapter 3 as revised introduces different capital requirements for issues of equity securites and issues of debt securities. Thus, in the case of an application for admissibility to listing of shares, an applicant is required to have fully paid-up capital of at least €1,000,000 whereas in the case of an application for the admissibility to listing of debt securities, the applicant will be required to have fully paid-up capital of €250,000.

c) *Equity securities – nature and duration of business activities*

The previous Listing Rule 3.8 required applicants to have a trading record in all the major sections of their business of at least three financial years for which audited accounts are available and for which audited trading results support the expected market capitalisation. This requirement is not imposed by Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on those securities. The new Listing Rule 3.20 requires an applicant to show that:

- at least seventy five per cent (75%) of its business or that of its subsidiary undertakings or affiliates is supported by a historic revenue earning record of at least three financial years preceding the application for admissibility to listing;
- it controls the majority of its assets and has done so for at least the period referred to above; and
- it will be carrying on an independent business as its main activity.

In addition to this, the new Listing Rule 3.22 lists a number of instances in which an applicant will be considered as not satisfying the requirements of Listing Rule 3.20if part or all of the applicant's business has one or more of the characteristics indicated in Listing Rule 3.22.

*d) Shares in public hands*

In the document issued for consultation in January 2010 the Working Committee set up to review the Listing Rules had proposed that the current Listing Rule 3.20 be revised by providing that a sufficient number of shares shall be deemed to be have been distributed to the public either when the shares in respect of which an application for admissibility to listing has been made are in the hands of the public to the extent of at least 25% of the subscribed capital represented by the class of shares concerned or when, in view of the large number of shares of the same class and the extent of their distribution to the public, the market will operate properly with a lower percentage. After having thoroughly considered this proposal the Authority is of the view that the wording of the current Listing Rule 3.20, which requires an applicant to demonstrate to the Listing Authority that at least twenty-five per cent (25%) of the class of shares in respect of which application is made are or shall be in the hands of the public in one or more recognised jurisdictions, provides greater clarity and that one cannot determine, at application stage, whether the market will operate properly with a lower percentage. For this reason the Authority has decided to retain the wording of the current Listing Rule 3.20 which Listing Rule has now been re-numbered as Listing Rule 3.26.

Furthermore, the definition of the term "public" in the previous Listing Rule 3.20 has been amended so as to clarify that shares are not considered to be held in public hands if they are held, directly or indirectly, by:

a) a director of the applicant or of any of its subsidiary undertakings;
b) a person connected with a Director of the Applicant or of any of its Subsidiary Undertakings;
c) the trustees of any employees' share scheme or pension fund established for the benefit of any directors and employees of the applicant and its subsidiary Undertakings;
d) any person who under any agreement has a right to nominate a person to the board of directors of the applicant; and
e) a substantial shareholder.

e) *Insertion of provisions of Chapter 4 in Chapter 3*

The Authority is of the view that it is more appropriate for the provisions of Chapter 4, other than those relating to employee share schemes, to form part of Chapter 3 as they refer to various methods on how applicants and issuers may approach the market. A new Appendix 3.1 has therefore been inserted in Chapter 3, to replace the provisions of the existing Chapter 4, which Appendix 3.1 lists and defines the different ways how an applicant or an issuer can approach the market such as an offer for sale or subscription, a rights issue, an intermediaries offer and a bonus issue.

## [5.0] Chapter 4 of the Listing Rules – Methods of bringing securities to listing or trading

As stated in section 4(e) above, the provisions of Chapter 4 dealing with the methods of bringing securities to listing or trading, other than those relating to employee share schemes, have been inserted in Chapter 3 as Appendix 3.1 thereto. Furthermore, the provisions of the current Chapter 4 relating to employee share schemes form part of the Chapter on continuing obligations as explained in further detail below.

## [6.0] Chapters 5 to 7 of the Listing Rules *{re-numbered as Chapter 4}* – Prospectus and authorisation for admissibility to listing

The Authority is of the view that the provisions of Chapters 5, 6 and 7 of the Listing Rules should be combined in one chapter which would specifically regulate the contents and approval of the prospectus relating to an application for admissibility to listing of securities as well as the approval by the Listing Authority of such application. Another advantage of having a single chapter is that all the provisions transposing the Prospectus Directive will be contained in a single document. As a result of the deletion of the current Chapter 4 relating to methods of bringing securities to listing as explained in sections 4(e) and 5 above, the combined chapter regulating the contents and approval of the prospectus has been re-numbered as Chapter 4.

Furthermore, new Listing Rules 4.66 and 4.67 have been inserted in Chapter 4 of the Listing Rules so as to implement article 20 of the Prospectus Directive dealing with the approval of a prospectus drawn up by issuers incorporated in third countries.

A new Appendix 4.3 containing a declaration to be completed and signed by the directors of an applicant for admissibility to listing has been added to Chapter 4. At the moment, directors of an applicant requesting admissibility to listing of its securities are already requested by the Authority to fill in such declaration but the Authority was of the view that such requirement should emanate from the Listing Rules. The said declaration would need to be submitted together with the other documents that have to be provided to the Listing Authority under Chapter 4 in connection with an application for admissibility to listing of securities.

## [7.0] Chapter 8 of the Listing Rules *{re-numbered as Chapter 5}* – Continuing obligations of issuers

Chapters 8 and 9 of the Listing Rules have been amalgamated so that the new Chapter 5 contains all the provisions relating to the continuing obligations of issuers. In 2008 Chapters 8 and 9 had already been amended so as to transpose the provisions of Directive 2007/14/EC which lays down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (the Transparency Directive). The following are further changes to Chapter 5:

a) *Audit committee*

In September 2008 the Listing Authority approved the amendments to the provisions of Chapter 8 dealing with the obligation of issuers to set up an audit committee so as to comply with article 41 of Directive 2006/43/EC (the Statutory Audit Directive). In addition to the said amendments, the Authority is also introducing new Listing Rule 5.117 which lays down a number of circumstances that the board of directors should take into account in determining the independence or otherwise of a director for the purposes of Listing Rule 5.115.

Furthermore, in order to ensure that listed entities are in a position to comply with the requirements of article 41 of the Statutory Audit Directive, Listing Rule 5.119 is being introduced to allow the board of directors to nominate a person who satisfies the independence and competence criteria prescribed by Listing Rule 5.115 if none of the nominations received from the shareholders satisfy these criteria. The board of directors will be entitled to exercise such a right notwithstanding the provisions of the Memorandum and Articles of Association of the issuer concerned.

In addition to this, Listing Rule5.120 provides that if none of the persons elected as directors in terms of the Memorandum and Articles of the issuer in question satisfy the independence and competence criteria under Listing Rule 5.115, the board of directors will be entitled to appoint an additional director who satisfies the said criteria. However, the said right may only be exercised as long as there is a vacancy in the board and provided that the maximum number of directors prescribed by the Memorandum and Articles of the issuer is not exceeded.

The Authority appreciates the important role that the audit committee exercises with respect to related party transactions and, therefore, recommends the introduction of Listing Rule 5.132 which requires the terms of reference of the audit committee to contain sufficient guarantees and safeguards for the protection of the rights of shareholders and in particular in relation to related party transactions. Moreover, this Listing Rule requires such terms of reference to prohibit any member of the audit committee who has a direct or indirect interest in any contract, transaction or arrangement that is brought before the committee from being present and from voting at any meeting of the committee during which such contract, transaction or arrangement is being discussed.

b) *Transactions with related parties*

The Authority has approved the following changes to the current Listing Rules dealing with related party transactions:-

(i) The issuer will be allowed to set up a committee other than the audit committee to review and approve related party transactions, provided that such committee satisfies the composition requirements prescribed by Listing Rule 5.115 and submits its terms of reference to the Listing Authority. References in this section to the "audit committee" shall also include any other committee established by the issuer for the purpose of vetting and approving related party transactions.

(ii) The current distinction between those situations where the audit committee is not considered by the Listing Authority as independent or is not providing sufficient guarantees/safeguards for the protection of shareholders' rights and those where the audit committee is deemed by the Listing Authority to be independent and to have sufficient measures in place for the protection of shareholders' rights has been removed. The independence of the members of the audit committee cannot be determined by the Listing Authority objectively in a vacuum but must be determined by the issuer on a case by case basis with reference to the proposed transaction in question.

(iii) Listing Rule 5.138 obliges the audit committee to take into consideration factors such as whether the proposed transaction is material within the context of the issuer's business and whether it gives preferential treatment to a related party. If after taking into account such factors, the audit committee is of the view that the proposed transaction will have a material effect on the issuer's business the issuer would have to issue a company announcement containing information on the transaction, the related party and the interest of such related party in the said transaction.

(iv) The previous Listing Rules did not cater for the situation where the audit committee does not approve the proposed transaction between the issuer and a related party. In view of this, new Listing Rule 5.140 is being introduced so as to provide that if the issuer still wants to proceed with the transaction notwithstanding the objection of the audit committee, the issuer would have to issue the company announcement referred to above, send a circular to its shareholders containing the information prescribed by Chapter 6 of the Listing Rules and obtain the approval of its shareholders either prior to the transaction being entered into or, if it is expressed to be conditional on such approval, prior to completion of the transaction. This Listing Rule will also oblige the board of directors to disclose the fact that the audit committee has not approved the related party transaction at the general meeting convened for this purpose.

(v) The Authority agrees with the recommendation made by the Working Committee that there should be one Chapter in the Listing Rules dealing with all circulars that an issuer is required to prepare under the Listing Rules. Accordingly, the Listing Rules stipulating the information to be included in a related party circular, which were previously found in the Chapter on continuing obligations, have been inserted in the Chapter on Circulars which has been re-numbered as Chapter 6.

c) *Acquisitions and realisations*

Previously the Listing Rules adopted four tests in order to classify acquisitions and realisations carried out by an issuer and these are:-

i) the gross assets test;
ii) the consideration test;
iii) the profits test; and
iv) the gross capital test

With the revisions which have been made to the Listing Rules, an Issuer need no longer adopt the gross capital test because the other three tests are sufficient for the purposes of determining the impact of an acquisition or realisation on the financial position and business of the issuer. Furthermore, Listing Rules 5.149 to 5.15 provide a clearer definition of the gross assets test, the consideration test and the profits test so as to facilitate the determination of whether an acquisition or realisation is a Class 1 or Class 2 transaction. The said definitions are based on the definitions used in the Listing Rules published by the Financial Services Authority of the United Kingdom.

In addition to this, after applying the three tests referred to in points (i) to (iii) above, a transaction will be classified either as a Class 1 transaction or as a Class 2 transaction. A Class 1 transaction will arise where any of the above three tests amounts to five per cent (5%) but less than thirty-five per cent (35%) whilst a Class 2 transaction will arise where any of the said tests amounts to thirty-five per cent (35%) or more.

In the case of a Class 1 transaction, Listing Rule 5.160 obliges the issuer to publish a company announcement as soon as the terms of the transaction are agreed. Such obligation to issue a company announcement already existed under the previous Listing Rule 8.94 but the new Listing Rule 5.162 clarifies the minimum information that such a company announcement should contain.

On the other hand, in the case of a Class 2 transaction, the revised Listing Rules provide that in addition to the obligation to issue a company announcement, the issuer should comply with the following procedures:-

- send a circular to its shareholders containing the information on the transaction in question in line with the requirements of Chapter 6 as re-numbered and amended;
- obtain the prior approval of its shareholders by convening a general meeting for such purpose; and
- ensure that any agreement effecting the transaction is conditional on that approval being obtained.

However, issuers of debt securities would only be required to issue a company announcement if they intend to enter into a Class 2 transaction.

d) *Appendix 8.1 {re-numbered as Appendix 5.1} – the Code of Principles of Good Corporate Governance*

One of the main revisions being made to the Listing Rules are the amendments to Appendix 8.1. Appendix 5.1 as re-numbered will be divided into main principles, supporting principles and code provisions. When preparing their corporate governance statement, listed companies will be required to divide such statement in two parts. The first part would deal generally with the company's adherence to the main principles whilst the second part would deal specifically with non-compliance with any of the code provisions. The "comply or explain" approach has been retained in that if an issuer does not comply with any one or more of the code provisions, it would need to provide a clear and careful explanation to shareholders as to how its actual practices are consistent with the main principle to which the code provision relates.

Furthermore, Principle 8 dealing with the remuneration committee has been amended so as to introduce code provisions requiring an issuer to include a remuneration statement in its annual report as indicated in the EU Recommendation 2004/913/EC on the remuneration of directors of listed companies. In view of this, code provisions have been inserted specifying what information should be included in the remuneration statement so as to be in line with the said EU Recommendation.

In addition to the above, Principle 8 of Appendix 8.1 also provides for the creation by an issuer of a nomination committee whose principal function would be to propose to the board candidates for the position of director, including those persons who can be considered to be independent. It is recommended that the nomination committee should be composed entirely of directors, the majority of whom being non-executive directors and at least one of whom should be independent. Given that the previous Listing Rule 8.56 required that at least one member of the audit committee should be competent in accounting and/or auditing and that at least one member of such committee should be independent, establishing a nomination committee would place issuers in a better position to be able to find the persons possessing the necessary skills and qualities required by Listing Rule 5.115.

**[Transitional period ]**

Due to the substantial changes being made to the Code of Principles of Good Corporate Governance found in Appendix 5.1 of the Listing Rules, an Issuer will be obliged to make the necessary changes so that the Corporate Governance Statement reflects the changes made to Appendix 5.l as from the financial year ending 2011 to be presented at the annual general meeting due to be held in 2012.

**[8.0] Chapter 9 of the Listing Rules *{inserted in Chapter 5}*– Financial information**

As indicated above, the provisions of the Chapter 9 relating to the publication of financial information by issuers have been inserted in Chapter 5 so that there would be a single chapter dealing with the continuing obligations of listed companies.

Furthermore the current provisions of Chapter 9 relating to the publication of profit forecasts and pro forma financial information are also being amended so as to bring them in line with the requirements of Regulation 809/2004 implementing the Prospectus Directive.

**[9.0] Chapter 10 of the Listing Rules *{inserted in Chapter 5}* – Documents not requiring prior authorisation**

The previous Listing Rules contained in Chapters 4 and 10 dealing with employee share schemes, long-term incentive schemes and discounted option arrangements have been included in Chapter 5 on Continuing obligations (Listing Rules 5.263 to 5.273).

**[10.0] Chapter 11 of the Listing Rules *{re-numbered as Chapter 6}*– Circulars**

As already indicated above the Authority is of the view that having a single chapter of the Listing Rules which contains all the instances in which a circular must be sent by an issuer to the holders of its securities will make the Listing Rules more user-friendly. It has therefore introduced a new Listing Rule which contains a list of the situations in which an issuer is obliged to send a circular to the holders of its securities. As a result of this amendment, in addition to the circulars previously mentioned therein, the revised Chapter 6 refers to circulars that must be issued in the following cases:-

a) related party transactions;
b) Class 2 acquisitions and realisations;
c) acquisition and resale by an issuer of its own securities;
d) mergers; and
e) employee share schemes, directors' share-based schemes and discounted option arrangements.

**[11.0] Chapter 12 of the Listing Rules *{deleted}*– Purchase of own securities**

The Authority has deleted Chapter 12 of the Listing Rules, other than the provision relating to the contents of the circular that an issuer must send to its shareholders, since it considers that the acquisition by a company of its own shares is sufficiently catered for by the Companies Act. The contents of the circular issued in connection

with an acquisition by an issuer of its own securities have been included in Chapter 6 dealing with circulars.

## [12.0] Chapter 13 of the Listing Rules *{deleted}*– Overseas companies

Chapter 13 of the current Listing Rules has been deleted since Chapter 4 of the Listing Rules (as amended) dealing with the contents, publication and approval of a prospectus, applies to all issuers including issuers registered in a third country. Likewise, Chapter 5 of the Listing Rules (as amended) on continuing obligations is applicable to all issuers (other than public sector issuers which are subject to a specific Chapter in the Listing Rules) irrespective of their country of registration. Furthermore, the Chapter in the Listing Rules on Continuing obligations was amended in 2008 in order to transpose Directive 2007/14/EC implementing certain provisions of the Transparency Directive and as a result of these amendments, new Listing Rules were inserted laying down in which circumstances can an issuer registered in a non-EU or EEA Member State be considered to be subject to requirements which are equivalent to those imposed by the Transparency Directive and Directive 2007/14/EC.

## [13.0] Chapter 14 of the Listing Rules *{re-numbered as Chapter 7}*– Property companies

The main amendments to this Chapter relate to the current Listing Rules 14.2 to 14.4 which deal with the classification of transactions by property companies and the instances in which a valuation report is required.

As a result of the revisions to the Listing Rules, the requirements of Listing Rule 14.2 have been included in that section of Chapter 5 dealing with acquisitions and realisations.

With reference to the current Listing Rule 14.4 providing for those cases in which a valuation report must be prepared by an independent expert, the said requirement has been inserted in Listing Rules 4.2.14, 6.2.13 and 6.11.6. The instances in which a valuation report is required are:-

- where the company applying for admissibility to listing is a property company or the debt securities in connection with which an application for admissibility to listing is submitted will be secured on immovable property;
- where an issuer makes significant reference to the valuation of property in a prospectus or a circular; and
- in the case of an acquisition or disposal by the issuer of a property company which is not listed.

**[14.0] Chapter 15 of the Listing Rules *[re-numbered as Chapter 8]*– Admissibility requirements for collective investment schemes**

Reference is made to the consultation document dated 15th March 2010 wherein the Authority announced that it was proposing certain amendments to this Chapter. As announced in said circular the primary objective of the amendments to this Chapter as approved by the Authority is that of allowing schemes which are not licensed in Malta or which are not UCITS which have passported into Malta but which are established in a recognised jurisdiction to be eligible for admissibility to listing on a regulated market in Malta.

**[15.0] Chapter 16 of the Listing Rules *{re-numbered as Chapter 9}*– Public sector issuers issuing debt securities**

The Authority has sought to simplify this chapter by focusing on the contents of the offering document or prospectus that is drawn up by a public sector issuer, taking into consideration the fact that most of the information concerning public sector issuers is already publicly available. It also introducing a new Listing Rule to provide that if a public sector issuer elects to draw up a prospectus in compliance with the Prospectus Directive, such prospectus must be prepared in line with the requirements of Regulation 809/2004 and of Chapter 4 of the Listing Rules. Furthermore, the revised Listing Rules provide that in such case, the public sector issuer concerned would also be subject to the continuing obligations contained in Chapter 5 of the Listing Rules.

**[16.0] Chapter 17 of the Listing Rules – Second Tier Market requirements/ Chapter 18 of the Listing Rules – Takeover bids/Chapter 19 – Shareholders' Rights {re-numbered as Chapters 10,11 and 12 respectively}**

Other than the consequential re-numbering of Chapters 17, 18 and 19 of the Listing Rules, due to the various revisions being made to the other Chapters of the Listing Rules, no major amendments are being proposed to these Chapters.

**Contacts**

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