

## CHAPTER 1

### Malta Financial Services Authority, Compliance with and Enforcement of the Capital Markets Rules

This Chapter describes the information relating to the authority of the Malta Financial Services Authority, and of Compliance with the rules regarding enforcement of the Capital Markets Rules, and how information may be communicated.

*General*

- 1.1 Issuers must comply with all Capital Markets Rules applicable to them.
- 1.2 Issuers must pay to the MFSA as they fall due the fees set out in Appendix 1.3 in relation to an application for Admissibility and in relation to their continued Admissibility to Listing status.

*Procedure for Admissibility*

- 1.6 All matters concerning applications for Admissibility to Listing of Securities must be dealt with between the MFSA and the Sponsor (see Chapter 2).

*Application for Admissibility*

- 1.7 Applications for Admissibility to Listing of Securities shall be authorised by the MFSA. It is entirely at the discretion of the MFSA to accept or reject such applications for Admissibility to Listing of Securities.
- 1.8 No application for Admissibility to Listing of Securities may be entertained by the MFSA unless it is made by, or with the consent of, the Issuer of the Securities concerned, evidenced by appropriate corporate authority.
- 1.9 In particular the MFSA may refuse a request for Admissibility to Listing of Securities:
  - 1.9.1 if it considers that the Applicant's situation is such that an authorisation for Admissibility to Listing of the Securities would be detrimental to the interests of investors;
  - 1.9.2 in respect of Securities already listed in a Recognised Jurisdiction if the Applicant has failed to comply with the obligations to which it is subject by virtue of that listing; or
  - 1.9.3 if it considers that the Applicant does not comply or has not complied with the requirements of the Capital Markets Rules or with any special condition imposed upon the Applicant by the MFSA.

### *Information Gathering and Additional Information*

- 1.10 Issuers must provide to the MFSA without delay:
- 1.10.1 all the information and explanations that the MFSA may reasonably require for the purpose of any decisions of the MFSA as to whether to grant an application for Admissibility to Listing of Securities;
  - 1.10.2 all the information that the MFSA considers appropriate in order to protect investors or to ensure the smooth operation of any Regulated Market;
  - 1.10.3 any other information or explanations that the MFSA may reasonably require for the purpose of verifying whether the Capital Markets Rules are being and have been complied with.
- 1.11 Additionally, in order to maintain high standards of disclosure and for investor protection, the MFSA may:
- 1.11.1. require an Issuer to provide the MFSA for publication in such form and within such time limits as the MFSA considers appropriate, further information not specified in these listing requirements;
  - 1.11.2 impose, and make Admissibility to Listing of Securities subject to, additional requirements, provided that these apply generally for all Issuers or for individual classes of Issuers.
- 1.12 The MFSA may require information or documents from;
- 1.12.1 issuers or persons seeking for admissibility to listing, and the persons that control them or are controlled by them,
  - 1.12.2 Auditors and managers of the Issuer or person seeking for admissibility to listing, as well as financial intermediaries commissioned to ask for admissibility to listing,
  - 1.12.3 any other person subject to the Capital Markets Rules:
- Provided that no duty, including the duty of professional secrecy, to which an Auditor referred to in Capital Markets Rule 1.12.2 may be subject, shall be regarded as contravened by reason of his communication in good faith to the MFSA, whether or not, in response to a request from it, any information or opinion on a matter of which the Auditor has become aware in his capacity as Auditor and which is relevant to any functions of the MFSA and such communication shall not involve the Auditor in liability of any kind
- 1.13 The Issuer must comply with such requirements to provide information, and, if it fails to do so, the MFSA may itself publish such information after having heard the representations of the Issuer.

### *Suspension of Trading*

- 1.14 If the MFSA establishes that the Capital Markets Rules have been infringed or has reasonable grounds for suspecting that the Capital Markets Rules have been infringed, it may;
- 1.14.1 Suspend an admission to trading for a maximum of 10 consecutive working days on any single occasion;
  - 1.14.2 prohibit or suspend advertisements for a maximum of 10 consecutive working days on any single occasion;

- 1.14.3 suspend or ask the relevant regulated markets to suspend trading on a Regulated Market for a maximum of 10 consecutive working days on a any single occasion;
  - 1.14.4 prohibit trading on a regulated market;
  - 1.14.5 make public the fact that an Issuer or any other person subject to the Capital Markets Rules is failing to comply with its obligations.
- 1.15 The MFSA shall suspend the listing of a security to protect investors or where the smooth operation of a Recognised Investment Exchange market otherwise is, or may be, temporarily jeopardised.
- 1.16 Suspension may be either with or without the request of the Issuer. Any request by the Issuer to suspend the listing of any securities must be made to the Recognised Investment Exchange and the MFSA.
- 1.17 An Issuer, the listing of whose Securities is suspended, must continue to comply with all Capital Markets Rules applicable to it, unless the MFSA otherwise agrees.
- 1.18 Where listing has been suspended, the procedure for lifting the suspension will depend on the circumstances and the MFSA reserves the right to impose such conditions and/or sanctions as it considers appropriate in such circumstances.
- 1.19 The continuation of a suspension for a prolonged period without the Issuer taking adequate action to obtain restoration of the listing of the relevant securities shall constitute sufficient reason for the MFSA in its absolute discretion, to discontinue the listing.
- 1.20 There may also be cases where Listing should be cancelled without suspension intervening (for example a significant change in the Issuer rendering its Securities unsuitable for Admission to Listing).

*Discontinuation of Listing*

- 1.21 The MFSA may discontinue the listing of any Security if, inter alia, it is satisfied that, owing to special circumstances normal regular dealings in any Security are no longer possible or upon the request of the Issuer or a Recognised Investment Exchange.

*Discontinuation of Listing upon the Issuer's Request*

- 1.22 An Issuer intending to make an application for the discontinuation of Listing of any of its Securities (hereinafter in this chapter referred to as "Application for Discontinuation of Listing") shall:
- 1.22.1 obtain approval from its board of Directors or any other equivalent governing body (hereinafter in this Capital Markets Rule 1.22 referred to as the "Directors") duly convened for the purpose;
  - 1.22.2 formulate a resolution in writing that shall be submitted for approval at a meeting of the holders of that Security (hereinafter in this chapter referred to as the "Security Holders") duly convened for that purpose within one month from the date of the said approval by the Directors;
  - 1.22.3 give advance notice to the Security Holders of the convening of any meeting in accordance with Capital Markets Rule 1.22.2 above at least fourteen (14) days prior to the date of such meeting and shall provide the text of the resolution together with an appropriate explanatory memorandum setting out the reasons for the Application for Discontinuation of Listing. The notice, resolution and explanatory memorandum shall be in the English and Maltese

languages and shall be delivered to the MFSA on the same day of despatch to the Security Holders; and

- 1.22.4 ensure that any meeting convened in accordance with Capital Markets Rule 1.22.2 above complies with the matters set out in Appendix 1.1.
- 1.23 A resolution which becomes effectual upon satisfaction of the criteria laid down in paragraph 3 of Appendix 1.1 shall form the subject of an application for the Discontinuation of Listing of a Security upon an Issuer's request in the format set out in Appendix 1.2. Such duly completed application for the Discontinuation of Listing shall be submitted to the MFSA by the Issuer by the opening of trading of the Business Day next following the date of the holding of the meeting referred to in Capital Markets Rule 1.22.2.
- 1.24 An application for Discontinuation of Listing made in accordance with Capital Markets Rule 1.22 above shall be considered by the MFSA as soon as practicable upon receipt thereof by the MFSA. It shall determine whether, on the basis of the information submitted by the Issuer in the application, the requirements as set out in Capital Markets Rule 1.22 in respect of the application for Discontinuation of Listing have been satisfied.
- 1.25 If the MFSA determines that on the basis of the said information the requirements as set out in Capital Markets Rule 1.22 and 1.23 in respect of the application for Discontinuation of Listing have been satisfied, it shall publish a notice announcing the Discontinuation of Listing of the relevant Security and the effective date of Discontinuation of Listing which shall be ninety (90) days following the date of submission of the relevant application for Discontinuation of Listing.
- 1.26 An Issuer who intends to make or has made an Application for Discontinuation of Listing shall forthwith make a Company Announcement as provided in Capital Markets Rule 5.16 below on any of the following matters as appropriate:
- 1.26.1 the date fixed for any meeting of the board of Directors at which the Issuer's intention to make an application for Discontinuation of Listing is expected to be considered;
  - 1.26.2 whether the resolution of the Directors referred to at Capital Markets Rule 1.22.2 was carried or not;
  - 1.26.3 the date fixed for any meeting of the Security Holders convened in accordance with Capital Markets Rule 1.22.2 above;
  - 1.26.4 the result of any vote of the Security Holders taken at a meeting convened in accordance with Capital Markets Rule 1.22.2 above (and in compliance with paragraph 7 of Appendix 1.1); and
  - 1.26.5 the delivery to the MFSA of an application for Discontinuation of Listing.

#### *Dispensing and Modification of Capital Markets Rules*

- 1.27 The MFSA may dispense with, vary or not require compliance with any of the terms of these Capital Markets Rules to suit the circumstances of a particular case. In circumstances where this discretion is availed of by the MFSA, a statement to this effect shall be included in the Prospectus. Furthermore, the Issuer concerned may be required to enter into an ancillary agreement prepared by the MFSA as a precondition of such dispensation, variation or non-compliance.

#### *Investigations and Imposition of Sanctions*

- 1.28 The MFSA may appoint one or more competent persons as investigators to conduct an investigation on its behalf into circumstances suggesting contravention of the Capital

Markets Rules or the rules or bye-laws of any Recognised Investment Exchange. The powers of any such investigators are governed by the relevant provisions of the FMA.

- 1.29 If the MFSA considers that an Applicant or Issuer or any other person subject to the Capital Markets Rules has contravened any provision of the Capital Markets Rules it may impose on the Applicant or Issuer or any other person subject to the Capital Markets Rules a financial penalty or publish a statement censoring the Applicant or Issuer subject to the provisions of the FMA or both.

Notwithstanding the above, no person shall be liable for statements made in a summary which is part of a Prospectus in terms of Capital Markets Rule 4.9, including the translation thereof, except when such statements are untrue when read together with the other parts of the Prospectus or the summary does not provide, when read together with other parts of the Prospectus, Key Information in order to aid investors when considering whether to invest in such securities.

- 1.30 An Issuer is obliged to give effect to, comply with and ensure the fulfilment of the terms of the prospectus as approved by the MFSA. Failure to strictly adhere to these obligations is considered a very 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, or to other sanctions allowed by the Capital Markets Rules or by the FMA commensurate to the seriousness of such breaches.

*Cooperation with other regulatory authorities*

- 1.31 The MFSA shall cooperate with other regulatory authorities for the purpose of assisting other regulatory authorities in carrying out their duties and making use of their powers, particularly for the following purposes:

1.31.1 Exchange of information and cooperation when an Issuer has more than one home regulatory authority;

1.31.2 Transfer of the Approval of a Prospectus to the regulatory authority of another Member State or EEA State.

1.31.3 When requiring suspension or prohibition of trading for securities traded in various Member States or EEA States in order to ensure a level playing field between trading venues and protection of investors.

- 1.32 Where Malta is the Host Member State and the MFSA finds that breaches have been committed by the Issuer or the financial institutions responsible for seeking admissibility to listing or any other person subject to the Capital Markets Rules, it shall refer those findings to the regulatory authority of the Home Member State or EEA State.

- 1.33 If measures taken by the regulatory authority of the Home Member State or EEA State do not prevent the Issuer or the financial institutions responsible for seeking admissibility to listing or any other person subject to the Capital Markets Rules, from breaching the relevant provisions of these Capital Markets Rules, the MFSA shall, after informing the regulatory authority of the Home Member State or EEA State, take all the appropriate measures in order to protect investors. The European Commission shall be informed of such measures at the earliest opportunity.

## Appendix 1.1

### Meetings of Security Holders in Relation to Discontinuation of Listing

- 1 No business shall be transacted at any such meeting convened as provided in Capital Markets Rule 1.22.2 of this Chapter unless a quorum of Security Holders is present at the time when the meeting proceeds to business. A Security Holder or Security Holders present in person or by proxy holding in aggregate more than fifty percent (50%) of the nominal value of the Security outstanding at the date of the holding of the meeting shall be a quorum. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall be dissolved.
- 2 The Chairman or the deputy Chairman, if any, of the Issuer's board of Directors or any other equivalent governing body, shall preside as Chairman of the meeting or if there is no Chairman or deputy Chairman, or if any such person shall not be present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act, the Directors present shall elect one of their number to be Chairman of the meeting, and that failing, the Security Holders present and entitled to vote shall appoint one of their number to be Chairman.
- 3 A resolution for the Discontinuation of Listing of a Security shall be ineffectual unless such resolution is:
  - 3.1 taken by a poll called exclusively for this purpose;
  - 3.2 approved by the Security Holders represented and entitled to vote at the meeting for this purpose, holding in the aggregate not less than seventy five percent (75%) of the nominal value of the outstanding issued amounts of the relevant Security of the Issuer or such other higher percentage as the Memorandum and Articles of Association of the Issuer may prescribe;
  - 3.3 not disapproved by Security Holders represented at the meeting holding 5% or more of the nominal value of the issued securities of the Issuer.
- 4 On the occasion of such a poll, every Security Holder shall have one (1) vote for each Security of which he is a holder. Votes may be given either personally or by proxy.
- 5 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a copy of the power or authority duly certified by a notary public, lawyer or legal procurator shall be deposited at the registered office of the Issuer or at such other place in Malta as is specified for that purpose in the notice convening the meeting, or in any instrument of proxy sent by the Issuer in relation to the meeting, not less than twenty four (24) hours before the time appointed for the taking of the poll or such longer time as required by the Memorandum and Articles of Association of the Issuer, and in default the instrument of proxy shall not be treated as valid.

When two (2) or more valid but differing instruments of proxy are delivered in respect of the same Security for use at the same meeting, the one which is last delivered (regardless of its date or of the date of its execution) shall be treated as replacing and revoking the others as regards that Security. If the Issuer is unable to determine which was last delivered, none of them shall be treated as valid in respect of that Security. Delivery of an instrument appointing a proxy shall not preclude a member from attending and voting in person at the meeting or poll concerned. An instrument of proxy shall be designed by the Issuer as provided in Paragraph 10 of Appendix 5.2.
- 6 No objection shall be raised to the qualification of any voter except at the meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall

be valid for all purposes. Any such objection made in due time shall be referred to the Chairman of the meeting, whose decision shall be final and conclusive.

- 7 A resolution which becomes effectual upon satisfaction of the criteria laid down in paragraph 3 of this Appendix 1.1 shall also form the subject of a Circular to be issued by the Issuer to all Security Holders of the Issuer as soon as practicable after the meeting referred to in the said paragraph 3, but in no case later than twenty four (24) hours after the result of the poll is announced at that meeting.



Appendix 1.2

Application for the Delisting of a Security upon an Issuers Request

1. Name of Issuer: \_\_\_\_\_
  
2. Name, Class and Nominal Value per Security of the Security for which Delisting is being sought: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
3. Number of issued securities for which Delisting is being sought: \_\_\_\_\_
  
4. Date of Meeting of the Board of Directors or other equivalent Governing Body of the Issuer held in terms of Capital Markets Rule 1.22.2: \_\_\_\_\_
  
5. Result of the Vote taken at the Meeting referred to in paragraph 4 above:  
\_\_\_\_\_

(Please attach a certified true copy of the Minutes of the Meeting when the said vote was taken and the result of the said vote)

6. Date of circulation of Notice, Resolution and Explanatory Memorandum to the holders of the Security to be delisted in terms of Capital Markets Rule 1.22:  
\_\_\_\_\_
  
7. Date of Meeting of the holders of the Security to be delisted in terms of Listing Rule 1.22:  
\_\_\_\_\_
  
8. Percentage amount of the Nominal Value of the Security to be delisted held by the holder/s represented at the meeting referred to in paragraph 7 above:  
\_\_\_\_\_
  
9. Name of the Chairman presiding at the Meeting referred to in paragraph 7 above:  
\_\_\_\_\_
  
10. Results of the poll taken at the Meeting referred to in paragraph 7 above in terms of percentage levels to the nearest three decimal places of the Nominal Value of the Issued Security held by security holders signifying :
  - (a) Approval of the Resolution: \_\_\_\_\_; and
  - (b) Disapproval of the Resolution: \_\_\_\_\_

(Please attach a certified true copy of the minutes of the Meeting when the said poll was taken and of the result of the said poll).

11. Date of Issue of the Circular referred to in Capital Markets Rule 1.22:  
\_\_\_\_\_

NAME: \_\_\_\_\_ SIGNATURE \_\_\_\_\_

12. Date of this Application for delisting: \_\_\_\_\_

\_\_\_\_\_  
For Office Use :

Date and time of delivery of this Application for Delisting:

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### Appendix 1.3

#### Admissibility to Listing Fees

In accordance with Capital Markets Rule 1.2 of the Capital Markets Rules, every Application for Admissibility to Listing must be accompanied by an initial (processing) non-refundable fee in accordance with the following scales.

A: Fees applicable to the Admissibility to Listing of Equities on both the Official and the Second Tier Markets

Market Capitalisation	Initial Fee
On the first €12,500,000	Increment per 2,500,000 - €1,500 – Minimum €12,500
On the next €12,500,000	Increment per 2,500,000 - €2,500
On the next €25,000,000	Increment per 2,500,000 -€2,000
On the excess	Increment per 2,500,000 - €1,500
	Maximum €60,000

B: Fees applicable to the Admissibility to Listing of Fixed Income Securities

Market Capitalisation	Initial Fees
On the first €12,500,000	Increment per 2,500,000 - €1,500 – Minimum €12,500
On the next €12,500,000	Increment per 2,500,000 - €2,500
On the next €25,000,000	Increment per 2,500,000 -€2,000
On the excess	Increment per 2,500,000 - €1,500
	Maximum €60,000

C: Fees applicable to the Admissibility to listing of Collective Investment Schemes

The Scheme	Initial Fees
The Scheme	€2,000

Note: If the CIS has a Primary Listing on an Overseas Exchange, the Initial Fees due shall be equivalent to 50%