

CHAPTER 2

Sponsors and Their Responsibilities

This Chapter contains the requirements relating to Sponsors and the Sponsor's responsibilities to the Issuer and the Malta Financial Services Authority (MFSA).

Introduction and General Information

- 2.1 An Applicant applying for a primary listing of its Securities which requires the production of a Prospectus or equivalent document is required to appoint a Sponsor.
- 2.2 Public Sector Issuers are not required to appoint a Sponsor.
- 2.3 The Applicant shall ensure that, up to the time of listing, all communications and/or meetings with the MFSA are made through its Sponsor.
- 2.4 The MFSA attaches particular importance to the Sponsor's role in satisfying itself that the Securities in respect for which an application has been made in terms of Chapter 4 of these Capital Markets Rules are suitable for authorisation for Admissibility to Listing.

Qualifications and obligations of a Sponsor

- 2.5 A Sponsor appointed under this Chapter shall:
 - 2.5.1 be in possession of a Category II or III licence in terms of the Investment Services Act or exempt from authorisation in terms of regulations issued under the Investment Services Act or authorised to provide investment services under Directive 2004/39/EC;
 - 2.5.2 be independent of the Issuer;
 - 2.5.3 have adequate resources to fulfil the role expected of a Sponsor under these Capital Markets Rules and be capable of giving the Applicant impartial advice before agreeing to accept the role.

Responsibilities of a Sponsor

- 2.6 The responsibilities of a Sponsor are owed solely to the MFSA. In carrying out its responsibilities, the Sponsor shall ensure that:
 - 2.6.1 to the best of its knowledge and belief, having made due and careful enquiry, the Applicant has satisfied all applicable conditions for Admissibility to Listing and other relevant requirements of the Capital Markets Rules;
 - 2.6.2 it has advised and guided the Applicant as to its responsibilities and obligations to ensure compliance with the Capital Markets Rules;
 - 2.6.3 all matters known to it which should be taken into account by the MFSA in considering the particular application for Admissibility to Listing have been disclosed in the Prospectus or otherwise in writing to the MFSA;
 - 2.6.4 it discloses to the MFSA without delay any information or explanations that the MFSA may reasonably require for the purpose of verifying any information which should be taken into account in considering an application for Admissibility to Listing;
 - 2.6.5 it does not provide its services as a Sponsor in relation to an Issuer from which it is not independent and shall provide a confirmation in writing of its independence to the MFSA.;
 - 2.6.6 all documentation has been submitted to the MFSA in a timely manner. Subsequent versions of any documents submitted to the MFSA must show clearly the tracked changes and all deletions must be notified;
 - 2.6.7 the formal application for authorisation for Admissibility to Listing as set out in Appendix 4.1 is filed with the MFSA, together with supporting documentation, in accordance with these Capital Markets Rules and it

shall deal with the MFSA on all matters arising in connection with the application;

- 2.6.8 it advises the MFSA in writing without delay of its resignation or if its appointment is terminated giving details of any relevant facts or circumstances thereto. A copy of such notification shall also be sent to the Applicant.

Principles of conduct for the Sponsor

Relations with the MFSA

- 2.7 A Sponsor shall:
- 2.7.1 deal with the MFSA in an open and co-operative manner;
 - 2.7.2 deal with all enquiries raised by the MFSA promptly; and
 - 2.7.3 disclose to the MFSA in a timely manner any material information relating to the Sponsor or Applicant of which it has knowledge which addresses non-compliance with the Capital Markets Rules.

Independence

- 2.8 A Sponsor shall be independent of the Applicant and in any event shall not act if the Sponsor or the Group of which the Sponsor forms part has:
- 2.8.1 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
 - 2.8.2 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.
- 2.9 Any interest that arises as a result of the Sponsor's discretionary client holdings is not to be included in the determination of the threshold set out in Capital Market Rule 2.8.1.
- 2.10 A Sponsor shall 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.
- 2.11 A Sponsor shall ensure that no Equity Securities are placed with connected clients of the Sponsor unless placed with a fund manager for the purpose of its business.

Directors of the Applicant

- 2.12 Prior to the endorsement by the Directors of the Applicant of the Prospectus in accordance with Capital Market Rule 4.31, the Sponsor to an application for authorisation for Admissibility to Listing shall satisfy itself that such Directors:

- 2.12.1 can be relied upon to prepare and publish all information within their knowledge (or which it would be reasonable for them to obtain) that investors and their professional advisers would reasonably require and reasonably expect to find for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the Applicant and of the rights attaching to the Securities to which the Prospectus relates; and
- 2.12.2 have had explained to them (by the Sponsor or other appropriate professional adviser) the nature of the responsibilities and obligations they will be undertaking as Directors of a Company whose Securities are Admissible to Listing under these Capital Markets Rules.
- 2.13 In the case of a new Applicant the Sponsor shall obtain written confirmation from the Directors that the Issuer has established procedures which provide a reasonable basis for them to make proper judgements as to the financial position and prospects of the Issuer and, in each case, its Group, and be satisfied that this confirmation has been given after due and careful enquiry by the Directors.

Financial Information

- 2.14 Where a Prospectus includes a working capital statement, the Sponsor shall report to the MFSA in writing that:
- 2.14.1 it has obtained written confirmation from the Issuer that the working capital available to the Group is sufficient for its present requirements, that is, for at least the next twelve (12) months from the date of publication of the relevant document; and
- 2.14.2 it is satisfied that this confirmation has been given after due and careful enquiry by the Issuer and that the persons or institutions providing finance have stated in writing that the relevant financing facilities exist.
- 2.15 The Sponsor shall report, where applicable, that it has satisfied itself that any profit forecast or estimates have been made after due and careful enquiry by the Issuer.
- 2.16 The Sponsor shall:
- 2.16.1 obtain written confirmation from the Issuer that the financial information published in that document has been properly extracted from the Issuer's accounting records; and
- 2.16.2 be satisfied that this confirmation has been given after due and careful enquiry by the Issuer.

Appointment of more than one Sponsor

- 2.17 Where an Applicant appoints more than one Sponsor, the Applicant shall establish how responsibility is to be allocated and so inform the MFSA in writing.
- 2.18 The appointment of more than one Sponsor does not relieve any of the Sponsors so appointed of their responsibilities and obligations under the Capital Markets Rules.

Termination

- 2.19 If an Applicant terminates the services of its Sponsor, the Applicant shall immediately notify the MFSA in writing and it shall copy the Sponsor stating the reasons for such termination. The Applicant shall ensure that a new Sponsor is appointed immediately. The MFSA shall suspend the processing of the application for authorisation for Admissibility to Listing until a new Sponsor is so appointed.

Breaches by Sponsors

- 2.20 The MFSA shall report any failure by Sponsors to comply with their obligations under these Capital Markets Rules or to satisfactorily perform the duties set out in this Chapter to the Competent Authority appointed by the Minister in terms of article 2A of the Investment Services Act.